

PART I -- GENERAL PROVISIONS

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Section 101

General Information, Definitions, and Terms

101.01 REFERENCES. Section, subsection, and heading titles are for convenience and do not bear on the meaning of the text.

Unless specified by year or date, cited publications refer to the most recent issue, including interim publications, in effect on the date bids are received.

101.02 ACRONYMS AND ABBREVIATIONS. Wherever the following abbreviations or acronyms are used in the contract documents, they are to be interpreted as follows:

AA	Aluminum Association
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
ANSI	American National Standards Institute
API	American Petroleum Institute
AREMA	American Railway Engineering 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
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
ICEA	Insulated Cable Engineers Association
IMSA	International Municipal Signal Association
ISO	International Organization for Standardization
ITE	Institute of Transportation Engineers
LRS	Louisiana Revised Statutes
MIL	Military Specifications
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
QC/QA	Quality Control/Quality Assurance
QPL	Qualified Products List (DOTD)
RMA	Rubber Manufacturers Association
SAE	Society of Automotive Engineers
SI	Systeme Internationale or International System of Units
SSPC	Steel Structures Painting Council
STB	Surface Transportation Board
TIMED	Transportation Infrastructure Model for Economic Development
UL	Underwriters Laboratories, Inc.

101.03 DEFINITIONS. Whenever the following words or expressions are used in the contract documents they are to be defined as follows:

Adjustment. A change in contract time or compensation provided in accordance with Subsections 108.07 and 109.04.

Advertisement. A public announcement inviting bids, generally describing the project to be constructed; how to obtain the contract documents; and giving general bidding instructions including the time and place of opening bids.

Assembly Period. Time the contractor is given to acquire approvals of required drawings, brochures and other submittals, begin the purchase and assembly of materials, and to perform specified preconstruction activities. Contract time will not be charged during an assembly period.

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Award of Contract. Transmission of the official written notice to the contractor that the Department has accepted the contractor's bid.

Base Course. The layer or layers of specified material of designed thickness constructed on the subgrade to support a surface course.

Bid. The binding offer of a responsible bidder that was submitted to the Department on the bid forms, or via approved electronic media, in accordance with the bidding documents.

Bid Express. An on-line service provided by Bidx.com, an Info Tech company, which is under contract to DOTD to facilitate two-way Internet electronic bidding.

Bid Forms. The portion of the bidding documents required to be submitted, in accordance with the bidding documents, in order to constitute a bid.

Bidder. An individual, partnership, corporation, or any other legal entity, or any acceptable combination thereof, or joint venture submitting a bid.

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 Department for use by bidders.

Bid Forms. The portion of the bidding documents, either paper or electronic, required to be submitted in accordance with the bidding documents, in order to constitute a bid.

Bidx.com. The subsidiary company owned by Info Tech that provides the Bid Express service.

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 1/2 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.

Calendar Day. Every day on the calendar, beginning and ending at midnight.

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.

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.

Construction Proposal. Document furnished to prospective bidders by the Department consisting of, but not limited to, the notice to contractors, special provisions, supplemental specifications, and bid forms.

Contract. The written agreement between the Department and the contractor setting forth obligations of the parties thereunder for performance of the prescribed work.

The contract documents include the advertisement, bid forms, contract form, payment/performance/retainage bond form, specifications, supplemental specifications, special provisions, plans, standard plans, change orders/special agreements, and supplemental agreements that are required to complete the work in an acceptable manner, and contract time, including authorized extensions thereof, all of which constitute one instrument.

Contract Item. See "Pay Item."

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 including authorized time extensions.

Contractor. The individual, partnership, corporation, joint venture, other

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legal entity, or acceptable combination thereof, that is awarded a contract.

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

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.

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 crossings at grade or direct private 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.

Culvert. Any drainage structure under a roadway or other facility not defined as a bridge.

Dedicated Stockpile. A stockpile assembled for a specific project.

Department. The Department of Transportation and Development of the State of Louisiana.

Department of Transportation and Development. The Louisiana Department of 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.

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.

Electronic Bidding. The process by which the Department and the bidder can utilize the Internet to facilitate the bidding process.

Electronic Signature: A secure and verifiable alpha-numeric code assigned to an individual, replacing or acting instead of a traditional signature.

Engineer. The Chief Engineer, acting directly or through duly authorized representatives, who is responsible for contract administration including engineering supervision of the work. When the term "Chief Engineer" is used, it shall mean the Department's Chief Engineer in person or the Department's duly appointed designee.

Engineering Directives and Standards Manual. A set of manuals containing directives and standards of the Department.

Equipment. All machinery, equipment, tools, and apparatus necessary for acceptable completion of the work.

Expedite. Software developed for AASHTO by Info Tech that enables and facilitates electronic bidding.

Extra Work. Work not provided for in the contract as awarded but found essential by the Department for satisfactory completion of the contract within its intended scope.

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.

Force Account. Payment for directed construction work based on the cost of labor, equipment, materials furnished, overhead, and profit, in accordance with Subsection 109.04

Highway, Street, or Road. A public way for vehicular travel, including the entire area within the right-of-way.

Incidental Work. Work required by the contract that is not directly measured and for which no specific pay item is provided.

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Inspector. The engineer's authorized representative assigned to make detailed inspections of contract performance.

Invitation For Bids. See "Advertisement."

Item. See "Pay Item."

Laboratory. The Department's testing laboratory or any other testing laboratory approved by the engineer.

Local Street or Local Road. A street or road not in the state maintained system.

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.

Manual of Uniform Traffic Control Devices (MUTCD). The manual adopted by the Department to describe the uniform system of traffic control devices used on state highways.

Materials. Any substances used in the work.

Materials Sampling Manual. The manual used to establish and standardize construction and maintenance sampling and material acceptance requirements for the Department.

Median. The portion of a highway separating traveled ways for traffic in opposite directions.

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.

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.

Parish. The parish in which the specified work is to be done.

Pavement Structure. The combination of base course and surface course placed on a subgrade across the roadbed.

Pay Item. A specific portion of work for which a price is provided in the contract.

Payment/Performance/Retainage Bond. The approved form of security, executed by the contractor and surety, guaranteeing complete execution of the contract and supplemental agreements thereto, and payment of all legal debts, including liens and monies due the Department, pertaining to the contract.

Plans. The contract drawings, which show location, type, dimensions and other details of the prescribed work.

Plan Change. See "Change Order."

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

Project. A specific undertaking of work as described by the contract within prescribed limits.

Project Engineer. The engineer assigned to represent the Chief Engineer in the administration of the contract.

Project Number. A number used to identify the project.

Proposal. See "Bid."

Proposal Form. See "Bid Forms."

Proposal/Bid Guaranty. The required security furnished with a bid.

Qualified Products Lists. Lists maintained by the Department's Materials and Testing Section for products that do not lend themselves to the preparation of meaningful specifications, or for which repetitive full testing is too time consuming or expensive to be practical for routine project control.

Quality Assurance. The combined efforts of quality control and acceptance processes to ensure that a project adheres to the contract

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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.

Right-of-Way. Land, property or interest therein, acquired for or devoted to transportation purposes.

Roadbed. The graded portion of a highway within the top of the side slopes, prepared as a foundation for the pavement structure including the shoulder.

Roadside. The area adjoining the outer edge of the roadway. Extensive areas between roadways of a divided highway may also be considered roadside.

Roadside Development. Those items necessary to the complete highway which provide for preservation of landscape materials and features; rehabilitation and protection against erosion of areas disturbed by construction through seeding, sodding, mulching and placing of other ground covers; and suitable planting or other improvements to increase the effectiveness and enhance the appearance of the highway.

Roadway. The portion of a highway within the limits of construction.

Secretary. The Secretary for the Louisiana Department of Transportation and Development.

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.

Special Provisions. Additions and revisions to the standard and supplemental specifications or plans covering conditions applicable to the project.

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.

Specifications. The compilation of provisions and requirements for the performance of prescribed work.

Standard Specifications: A book of specifications for general application and repetitive use.

Supplemental Specifications: Additions and revisions to the Standard Specifications.

Project Specifications: All Standard Specifications, Supplemental Specifications, Special Provisions and other provisions applicable to the project.

Specified. Required or stipulated in the contract documents.

Standard Plans. Department drawings approved for repetitive use, showing the details to be used where appropriate.

State. The State of Louisiana, acting through its authorized representative.

Structures. Bridges, culverts, catch basins, junction boxes, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other similar features encountered in the work.

Subcontractor. 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 therefrom.

Subgrade. The surface upon which the pavement structure, including shoulders, are constructed.

Subgrade Layer. The surface layer of the subgrade, which requires

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treatment with lime, portland cement, or portland-pozzolan cement. The subgrade layer may be constructed with stone, crushed slag, recycled portland cement concrete, or asphaltic concrete.

Substructure. That part of the structure below the bearings of simple and continuous spans, skewbacks or arches, and tops of footings of rigid frames, including backwalls, wingwalls, and wing protection railings.

Superintendent. The contractor's authorized representative in responsible charge of the work.

Superstructure. The entire structure except the substructure.

Surety. The corporation, partnership, or individual other than the contractor, executing a bond furnished by the contractor.

Surface Course. The top course of the pavement structure.

Technician. The contractor's or the Department's representative who shall be either certified or authorized as required in the specifications.

Testing Procedures Manual. The manual in which specific testing procedures used by the DOTD Laboratories are published. This manual is used to standardize testing procedures used by DOTD Laboratories.

Through and Local Traffic.

(a) Through Traffic - Traffic that has neither its origin nor destination within the limits of the project.

(b) Local Traffic - Traffic that has either its origin or destination, or both, within the limits of the project.

Traffic/Travel Lane. The portion of traveled way for movement of a single lane of vehicles.

Traveled Way. The portion of roadway for movement of vehicles, exclusive of shoulders and auxiliary lanes.

Unit. A quantity adopted as a standard for measurement of work.

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.

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 108.07.

Working Drawings. Supplemental design sheets or similar data that the contractor is required to submit to the engineer in accordance with Subsection 105.02.

101.04 UNDERSTOOD WORDS OR EXPRESSIONS. In order to avoid cumbersome repetition of the following words or 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 Department, 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.

Section 102

Bidding Requirements

102.01 PREQUALIFICATION 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.

102.02 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 FHWA funds are involved. When FHWA funds are involved, nonlicensed contractors may receive bid forms and submit bids; however, if the contractor's bid is \$50,000 or more, the successful nonlicensed 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 and no FHWA funds are involved, the contractor shall show his license number on the bid envelope unless the contractor submits the bid via the Department approved electronic bidding process. The contractor awarding a subcontract becomes an awarding authority; consequently, 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 FHWA 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.

102.03 CONTENTS OF BIDDING DOCUMENTS. Upon request, the Department will furnish prospective bidders with bidding documents. A prospective bidder will be required to pay the Department the sum stated in the Notice to Contractors for each construction proposal and set of plans. The prospective bidder may use the Bid Express services through Bidx.com. The use of these services will require payment by the contractor of additional fees to the service provider.

The construction proposal will state the location and description of the

contemplated work, will show the estimated quantities and kinds of work to be performed, and will include the bid forms to be completed and returned by the bidder. The construction proposal will state the time in which the work must be completed, and the date, time, and place of opening bids. The construction proposal will also include any specifications or requirements, which vary from or are not contained in the Standard Specifications. The plans, specifications and other documents designated in the construction proposal will be considered a part of the construction proposal whether attached or not.

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. The bid forms consist of the Schedule of Items, the Proposal/Bid Guaranty as required by Subsection 102.09, the Construction Proposal Signature and Execution Form, and any other returnables if required in the construction proposal.

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 be 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 Department 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 should be submitted to the Chief Engineer for prior approval no later than seven (7) working days prior to the opening of bids in accordance with LRS 38:2295(C). The Department will approve or deny substitution of the product or source submitted within three (3) 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 Department 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 Chief Engineer's sole discretion pursuant to Subsection 105.01.

102.04 ISSUANCE OF BID DOCUMENTS. The Department may refuse to issue bid documents to a bidder, or allow a bidder access to Bid

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Express for bidding purposes, for any of the following reasons:

- (a)** Failure of the bidder to comply with any prequalification requirements of the Department.
- (b)** Disqualification of the bidder in accordance with Subsection 108.04.
- (c)** If the bidder is in default of a contract in accordance with Subsection 108.09 and a notice of default has been issued to the bidder. Bid documents will not be issued to the bidder until such time as the project on which the bidder has defaulted has been issued a final acceptance.
- (d)** On Federal-Aid Projects, the bidder being included on the List of FHWA Suspension/Debarment Actions or having been found unacceptable for employment on Federal-Aid Projects.
- (e)** When requested, within 24 hours before the opening of bids.
- (f)** Any bidder debarred in accordance with Part XIII-B of Chapter I of LRS 48.
- (g)** Any bidder disqualified for Proposal/Bid Guaranty forfeiture or non-payment in accordance with Subsection 103.07.

102.05 INTERPRETATION OF QUANTITIES IN SCHEDULE OF ITEMS. The quantities in the Schedule of Items are prepared for comparison of bids and are approximate. Payment will be made in accordance with measurement and payment requirements for pay items and other requirements of the contract. Pay item quantities may be increased, decreased or eliminated by the Department. Nothing in the Bidding Requirements 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 without compensation in addition to that in the Schedule of Items. The contractor shall perform all work required in the plans and specifications and accept payment pursuant to the Schedule of Items as full and final compensation for all work performed under the contract including all incidental, overhead and subsidiary costs and work not measured for payment as described under the individual pay items listed in the Schedule of Items.

102.06 EXAMINATION OF BID DOCUMENTS AND SITE OF WORK. Written instructions necessary to use the electronic bidding service and prepare and submit a bid electronically are provided on the Bidx.com Internet site. Fees payable to Bidx.com are required of the contractor to use the service and to establish electronic signatures. The contractor is advised to timely make all necessary arrangements with Bidx.com and to familiarize himself with system and process requirements prior to using the service to

submit a bid.

The bidder shall examine carefully the site of the proposed work and the bidding documents before submitting a bid. In the event the bidder's site investigation reveals that the site conditions are inconsistent with the contract documents, the bidder shall immediately notify the Department. Submission of a bid shall be considered conclusive evidence that the bidder has made such examination and is satisfied as to conditions to be encountered in performing the work and as to requirements of the bidding documents.

If the contractor discovers an error, omission, or ambiguity, prior to the date of the bid opening, he shall immediately notify the DOTD Chief Engineer who will then make such corrections, interpretations, or issue addenda as deemed necessary to fulfill the intent of the plans and specifications.

Any subsurface tests and boring data which have been compiled by the Department and furnished to the bidder shall not be considered as fully representative of subsurface conditions and is not intended as a substitute for personal investigation, interpretations and judgment of the bidder.

102.07 PREPARATION OF BID. Bids shall be submitted on bid forms provided by the Department or accessed through Bidx.com. Only that portion of the construction proposal designated as Bid Forms must be completed and returned by the bidder. The bid forms include the Schedule of Items, the Proposal/Bid Guaranty as required by Subsection 102.09, the Construction Proposal Signature and Execution Form, and any additional returnables if required in the construction proposal.

A unit bid price, in English and U. S. dollars, shall be specified in the Schedule of Items in words or numerals, either typed or printed in ink, or computer printed in the spaces provided for each pay item or alternate pay item. If no alternate pay items are included in the Schedule of Items, bidders shall bid on all items; if alternate items are included, bidders shall bid on all "General Items" and on one of the groups of items under each set of "Alternate Items." When additive alternates are included, the bidders shall bid on all additive alternates.

The Construction Proposal Signature and Execution Form shall be signed either with an authorized electronic signature or with ink by the individual; or a member of the partnership; or an officer of one of the firms representing a joint venture; or an officer of a corporation; or an agent of the contractor legally qualified and acceptable to the state. The bidder's business street address and mailing address, if different, and the business telephone number of the individual signing the form and that of a contact person shall be shown on the Construction Proposal Signature and Execution Form.

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Execution, signature, and submission of the Construction Proposal Returnables shall constitute a legally binding and irrevocable offer by the bidder.

Bid bonds may be furnished and completed by a Department approved electronic bond verification service if the contractor elects to prepare and submit an electronic bid.

102.08 IRREGULAR BIDS. Bids may be considered irregular or non-responsive and will be subject to rejection for any of the following conditions:

(a) If the bid, except for legible facsimiles, is on a form other than that furnished by the Department or Bidx.com or if the bid forms are materially altered.

(b) If there are unauthorized additions, conditional or alternate bids or irregularities which make the bid 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 bid does not contain a legible unit price in U.S dollars and cents, written in English, for each pay item listed, except in the case of authorized alternate pay items.

(e) If the bid is submitted by a bidder other than the one to whom the construction proposal was issued.

(f) If the bidder is in default of a contract in accordance with Subsection 108.09 and a notice of default has been issued to the bidder.

(g) If an owner or a principal officer(s) of the bidding entity is an owner or a principal officer(s) of a contracting entity which has been declared by the Department to be ineligible to bid.

(h) If the proposal/bid guaranty does not meet requirements of Subsection 102.09.

(i) If more than one bid for the same work is received from an individual, partner, corporation, or any other legal entity, joint venture or combination thereof under the same or a different name.

(j) If the portion of the construction proposal form designated as Bid Forms is not properly executed either by hand or electronically and submitted with the bid.

(k) If unit prices are obviously distorted or unbalanced to reflect an advantage to the contractor which would result in undue expenditure of public funds and/or overrun of total cost of project.

(l) If it is determined by the Department that collusion and/or the bid rigging has occurred on a project.

(m) If the bidder is disqualified in accordance with Subsection 108.04.

(n) If the bidder is debarred in accordance with Part XIII-B of Chapter 1 of LRS 48.

(o) If the bidder is disqualified for Proposal/Bid Guaranty forfeiture or non-payment in accordance with Subsection 103.07.

102.09 PROPOSAL/BID GUARANTY. Each bid shall be accompanied by a proposal/bid guaranty in an amount not less than five percent of the total bid amount when the bidder's total bid amount as calculated by the Department in accordance with Subsection 103.01 is greater than \$250,000. No proposal/bid guaranty is required for projects when the bidder's total bid amount as calculated by the Department is \$250,000 or less. The official total bid amount for projects that include alternates is the total of the bidder's base bid and all alternates bid on and accepted by the Department. The proposal/bid guaranty submitted by the bidder shall either be a certified check, cashier's check, bidder's company check, postal money order, bank money order or bid bond made payable to the contracting agency as specified on the bid bond.

When the proposal/bid guaranty submitted by the bidder is a bid bond, this bond shall be on the "Bid Bond" form provided in the construction proposal; on a form that is materially the same in all respects to the "Bid Bond" form provided, or an electronic form that has received Department approval prior to submission. The bid bond shall be filled in completely, shall be signed by an authorized officer, owner or partner of the bidding entity, or each entity representing a joint venture; shall be signed by the surety's agent or attorney-in-fact; and shall be accompanied by a notarized document granting general power of attorney to the surety's signer. The bid bond shall not contain any provisions that limit the face amount of the bond.

When a bid bond is used it will be written by a surety or insurance company that is in good standing and currently licensed to write surety bonds in the State of Louisiana by the Louisiana Department of Insurance and also conform to the requirements of LSA-R.S. 48:253.

All signatures required on the bid bond may be original, mechanical reproductions, facsimiles or electronic. Electronic bonds issued in conjunction with electronic bids must have written Departmental approval prior to use. The Department will make a listing of approved electronic sureties providers on the Bidx.com site.

102.10 DELIVERY OF BIDS. Unless delivered electronically through the approved electronic bid submission service, each bid should be submitted in

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the envelope furnished by the Department. The blank spaces on the envelope shall be filled in correctly to clearly indicate its content. When an envelope other than the one furnished by the Department is used, it shall be the same general size and shape and be similarly marked to indicate its contents. Bids shall be received no later than the time and at the place specified in the Notice to Contractors. Paper bids received after the time set for opening bids will be returned to bidders unopened. Electronic bids shall be submitted via the Internet in accordance with Subsection 102.07. Electronic bids transmitted by the bidder after the time set for bid opening will not be accepted.

A proposal guarantee and all other required returnables not submitted electronically with an electronic bid must be delivered by the contractor to the Department in a sealed envelope as specified above prior to the date and time of the bid opening.

102.11 WITHDRAWAL OR REVISION OF BIDS. A bidder may withdraw or revise a bid after it has been deposited with the Department, provided the request for such withdrawal or revision is received by the Department in person, in writing, or by telegram, before the time set for opening bids and at the location set forth in the Notice to Contractors. Electronic bids submitted to Bid Express may be withdrawn prior to the specified bid opening time by the authorized bidder.

102.12 PUBLIC OPENING OF BIDS. Paper or electronic bids will be publicly opened and read or presented at the time and place indicated in the Notice to Contractors.

102.13 WITHDRAWAL OF BIDS DUE TO MISTAKE.

(a) Criteria:

(1) Withdrawal of Bid: The Department may allow a bidder to withdraw a bid after the scheduled time of bid opening in accordance with state law upon a determination that:

- 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 notice of the mistake, request for withdrawal of the bid by reason of the mistake, and written evidence of the mistake, is delivered to the

DOTD Chief Engineer within 72 hours after the bid opening, excluding Saturdays, Sundays, and legal holidays. The written evidence of the mistake supplied to the DOTD Chief Engineer 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 DOTD Chief Engineer within 72 hours of the bid opening, excluding Saturdays, Sundays, and legal holidays, constitutes clear and convincing evidence of the bidder's mistake.

(2) Other Bid Protests: The Department may also allow a bidder to protest any matter regarding the bidding or award of a contract after the scheduled time of bid opening in accordance with the following provisions:

a. The protest of a bidder must be submitted in writing and, specifically set forth the grounds and/or reasons for the protest; and,

b. The written protest must be delivered to the DOTD Chief Engineer within 72 hours after notice of bid rejection, irregularity or any other action regarding the bidding of the contract, excluding Saturdays, Sundays, and legal holidays.

(b) Hearing by the DOTD Chief Engineer--Prior to Contract: If a bidder files a notice of mistake along with a request to withdraw the bid, or protests in a timely manner any other matter regarding the bidding or award of the contract, the DOTD Chief Engineer, or designee, will hold a hearing within a reasonable period of time after a request has been delivered. The DOTD Chief Engineer will give the requesting bidder reasonable notice of the time and place of the hearing. The bidder may appear at the hearing and present evidence together with other facts and arguments in support of the request, except, for a request to withdraw a bid for reason of mistake, the bidder making such request will be limited to the sworn written evidence submitted within the time period prescribed in this subsection.

(c) Action by the Secretary--Prior to Contract: The DOTD Chief Engineer will present findings to the Secretary for action on the bidder's request or protest. A determination may be made by the Secretary that a bidder meets the criteria for withdrawal of the bid as set forth in this subsection upon the basis of the evidence supplied within the period specified in this subsection, or for other protests of matters involving bidding or award of contracts, upon the evidence submitted to the DOTD Chief Engineer at hearing of protest. The DOTD Chief Engineer will advise the bidder of the Secretary's decision prior to the Department's consideration of award of the contract for matters involving bidding and, for matters involving award of the

102.13

contract, prior to execution of the contract.

(d) Proposal / Bid Guaranty: When notice of a bid mistake and a request to withdraw the bid is made, the proposal/bid guaranty shall continue in full force and effect until and unless there is a determination by the Secretary that the conditions of this Subsection 102.13 have been met. If the Secretary determines that a mistake occurred in the preparation of the bid in compliance with the statutory and contractual requirements, the Department will return the proposal/bid guaranty to the bidder.

(e) Subcontracting: If it has been determined that a mistake has been made and the bidder 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 perform work under this contract as a subcontractor.

Section 103

Award and Execution of Contract

103.01 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 bids, waive technicalities and informalities, or advertise for new bids.

(a) The right is reserved to reject the low bid for any of the following reasons and contract with the next lowest responsive bidder or advertise for new bids:

(1) A low bidder's bid is considered irregular as indicated in Subsection 102.08.

(2) On DBE Goal Projects, the low bidder fails to submit the required information and satisfy the DBE requirements as specified in the DBE contract provisions for the project.

(3) The low bidder fails to agree to mutually extend the period required for Award of Contract as indicated in Subsection 103.02.

(4) The low bidder successfully withdraws the bid in accordance with Subsection 102.11.

(b) All bids may be rejected for just cause consisting of any of the following:

(1) The Department'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 advertised construction estimate for the project by the Department's engineers.

(3) A substantial change in scope or design of the project occurring prior to award.

(4) A determination of the Department or the funding agency not to build the proposed project within twelve months of the letting date.

(5) The disqualification or rejection by the Department of all bidders.

(6) The discovery, by the Department 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

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bidders.

103.02 AWARD OF CONTRACT. The Department shall award the contract to the lowest responsible bidder within 45 calendar days after the receipt of bids or within 20 days after the receipt by the Department of concurrence in award from all funding agencies or sources, whichever occurs last. Where concurrence in award is required, the total time from receipt of bids to award of contract, shall not exceed 60 calendar days unless extended by mutual agreement between the Department and the successful low bidder. Should the successful low bidder not agree to extend the deadline for award of contract, the proposal/bid guaranty may be returned to the bidder and the Department, at its discretion, may award the contract to the next lowest bidder or may readvertise the project.

103.03 CANCELLATION OF AWARD. The Department reserves the right to cancel the award of contract at any time before execution of said contract by all parties without liability against the Department for any of the following reasons:

- (a) Any of the just causes contained in Subsection 103.01(b).
- (b) The low bidder fails to agree to mutually extend the period required for issuance of the Notice to Proceed as indicated in Subsection 103.08.
- (c) The contract, satisfactory bonds, proof of all required policies of insurance with minimum insurance coverages and all other required contract documents are not properly executed and returned to the Department within the required time period specified in Subsection 103.06.

103.04 RETURN OF PROPOSAL/BID GUARANTY. The proposal/bid guaranty of the successful bidder will be returned after the contract, satisfactory bonds, and all other required contract documents are properly executed and returned to the Department within the required time period specified in Subsection 103.06. Unsuccessful bidders proposal/bid guaranties in the form of checks or money orders will be returned to the bidder not later than sixty days after receipt of bids. The Department will destroy the bid bonds of unsuccessful bidders not later than sixty days after receipt of bids. Electronic bid bonds of unsuccessful bidders will not be returned but will be deemed by the Department to have no force or effect after sixty days.

This subsection will not apply where the forfeiture of the proposal/bid guaranty is warranted.

103.05 PAYMENT, PERFORMANCE, AND RETAINAGE BONDS.

At the time of execution of the contract, the successful bidder shall furnish the following bonds on the forms provided by the Department.

(a) Payment bond in a sum equal to one hundred percent (100%) of the contract amount.

(b) Performance bond in a sum equal to one hundred percent (100%) of the contract amount.

(c) Retainage bond in a sum equal to five percent (5%) of the contract amount for contract amounts greater than \$500,000 unless an election is made to have the Department withhold five percent (5%) of the contract amount; and, retainage bond in a sum equal to ten percent (10 %) of the contract amount for contract amounts equal to or less than \$500,000 unless an election is made to have the Department withhold ten percent (10 %) of the contract amount.

The bonds shall be written by a surety or insurance company that is in good standing and currently licensed to write surety bonds in the State of Louisiana by the Louisiana Department of Insurance and also conform to the requirements of LSA-R.S. 48:255.

All signatures required on the "Bond Form" shall be original signatures, in ink, and are not to be mechanical reproductions or facsimiles.

103.06 EXECUTION AND APPROVAL OF CONTRACT. The contract, satisfactory bonds, proof of all required policies of insurance with minimum insurance coverages and all other required contract documents shall be properly executed and returned to the Department within 15 calendar days after transmission to the bidder. If the contract is not executed by the Department within 20 calendar days following receipt of all required documents, the bidder shall have the right to withdraw his bid without penalty.

103.07 FAILURE TO EXECUTE CONTRACT. Failure by the bidder to comply with Subsection 103.06 will be cause for cancellation of the award and forfeiture of the proposal/bid guaranty. For those projects wherein a proposal/bid guaranty was not provided with the bid, failure to comply with Subsection 103.06 will be cause for cancellation of the award and bidder to be disqualified from bidding or subcontracting for a period of one year from the award date. Awards, which were cancelled, may then be made to the next lowest responsible bidder or the work may be readvertised for bids, at the Department's discretion.

Should a proposal/bid guaranty be required to be forfeited by the bidder to the Department or other named obligee, and if for any reason the full amount

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of the proposal/bid guaranty is not collected or collectable by the Department upon demand, the bidder will be disqualified from bidding or subcontracting for a period of one year from the date of non-payment.

103.08 NOTICE TO PROCEED. The Department will issue the contractor a Notice to Proceed or a Conditional Notice to Proceed as soon as possible after award of the contract, and in no case will issue the contractor a Notice to Proceed or a Conditional Notice to Proceed later than 60 days after contract execution unless written consent of the contractor has first been obtained. If the Department has not issued the contractor a Notice to Proceed or a Conditional Notice to Proceed within 60 days of contract execution, and written consent of the contractor to extend this time period has not been obtained prior to its expiration, the contractor may demand cancellation of the contract.

When federal-aid funds are involved, prior to issuance of a Notice to Proceed, the contractor will be required to possess all required licenses before beginning work under the contract. Failure of the contractor to provide satisfactory licenses will be cause for cancellation of the award and forfeiture of the proposal guaranty, which shall become the property of the Department, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next responsible bidder or the work may be readvertised for bids, at the Department's discretion.

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 not later than the issuance of a Notice to Proceed or a Conditional Notice to Proceed. The project engineer will schedule the conference sufficiently in advance to permit the attendance of all parties concerned. The contractor is urged to have all subcontractors in attendance at the preconstruction conference.

Section 104 Scope of Work

104.01 INTENT OF CONTRACT. The intent of the contract is to provide for performance and completion of the work described. The contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the plans, project specifications and terms of the contract.

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 provide the engineer with a current copy of these recommendations or specifications.

104.02 ALTERATION OF THE CONTRACT. The Department 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. Pay 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 Subsections 109.03 and 109.04.

The Department reserves the right to order work not provided for in the contract whenever such extra work is found essential or desirable to satisfactory completion of the contract within its intended scope. Such extra work shall be performed in accordance with specifications and as directed. Payment for such extra work will be made as provided in Subsection 109.04.

The Department reserves the right to order changes in details, including changes in materials, processes and sequences, whenever such changes are in the best interests 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 109.04. 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.

Alterations to the contract as provided for by this subsection shall not invalidate the contract nor release the surety, and the contractor agrees to

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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 party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(2) Upon written notification, the engineer 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 engineer 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 Engineer.

(1) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 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 engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The engineer 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 engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(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 either for or against the contractor in such amount as the engineer 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 construed 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 increase, 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 contract. 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 increased expense, loss of expected

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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 therefor or for other reasons.

The change order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the Chief Engineer, such derivation shall show breakdowns of costs as detailed in Subsection 109.04, Headings (a) through (g).

(e) Extra Work. When necessary or desirable to complete the project, the engineer may direct the contractor to perform unforeseen work for which there is no pay item or unit price in the contract. The Department will pay for such work in accordance with Subsection 109.04 based on an approved change order.

104.03 MAINTENANCE OF TRAFFIC. Reasonable provisions for local traffic through the length of the project and the life of the contract shall be made by the contractor during construction, at no direct pay.

When specified, the contractor may also be required to provide for through traffic over the entire project, or designated portion thereof, at no direct pay.

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 Subsection 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.

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

Current Average Daily Traffic (Vehicles per Day)	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

104.04 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 in accordance with DOTD maintenance standards, all at no direct pay.

104.05 GUARANTEES. The contractor guarantees, by signing the contract, all installed project equipment, apparatus, materials and workmanship provided under the contract for a period of 1 year after final acceptance.

Instruction sheets that are required to be furnished by the manufacturer for installed project equipment, 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. The manufacturer's standard warranty for each piece of installed project equipment or apparatus furnished under the contract.
2. The contractor's guarantee that, during the guarantee period, necessary repair or replacement of the warranted equipment or apparatus will be made by the contractor at no direct pay.
3. The contractor's guarantee for satisfactory operation of installed project

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equipment including, but not limited to, the mechanical and electrical systems furnished and constructed under the contract for the guarantee period.

If it should be found that parts 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 will not only be required to furnish and install the replacement part, but will also be held responsible to the Department for all expenses due to accident or breakdown caused by such a failure. 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 Department.

Section 105 Control of Work

105.01 AUTHORITY OF THE ENGINEER. The engineer, acting directly or through duly authorized representatives in accordance with Subsection 105.09, will decide all questions which arise as to quality and 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.

The Chief Engineer has the authority to suspend the work if, at any time, the required policies of insurance become unsatisfactory to the Department, as to form or substance, or if a company that has issued any policies becomes unsatisfactory to the Department.

105.02 PLANS AND WORKING DRAWINGS. The contractor will be supplied a maximum of five sets of plans without charge. Additional copies will be furnished upon request at the appropriate charge for reproduction services. Reduced (half-sized) plans will be furnished unless full-sized plans are requested. Plans will show lines, grades, typical cross sections, location and details of structures, and a summary of pay items. Only general features will be shown for steel bridges. The contractor shall keep one set of plans available at the work site at all times.

Standard plans required for the work, but included only by reference, will be furnished free of charge to the contractor upon request.

Working drawings, unless included in the plans, shall be furnished by the

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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.

Type and size of drawings furnished shall conform to Subsection 801.03.

105.03 CONFORMITY WITH PLANS AND SPECIFICATIONS. All work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements of the contract.

When the engineer finds the materials furnished, work performed, or the finished product not in compliance 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 change order and/or special agreement. The change order 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 schedules 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 in compliance 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 Department. 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.

105.04 COORDINATION AND PRECEDENCE OF CONTRACT DOCUMENTS. 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, the following order of precedence will apply:

- 1) Special Provisions
- 2) Plans
- 3) Supplemental Specifications
- 4) Standard Specifications
- 5) Standard Plans

Calculated dimensions will govern over scaled dimensions.

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.

105.05 COOPERATION BY CONTRACTOR. The contractor shall keep one complete set of plans and other contract documents available at the work site.

The contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the engineer, inspectors and other contractors.

The contractor shall have on the work site at all times, as the contractor's agent, a competent representative capable of reading and understanding the plans and project specifications and experienced in the type of work being performed, who shall receive and execute directions from the engineer. At the preconstruction conference or upon request, the contractor shall furnish the engineer written notice of the name and home telephone number of the representative. The representative 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 representative 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 change orders, 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.

105.06 COOPERATION WITH UTILITIES. The Department will notify all known utility companies, pipeline owners or other parties affected by the

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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 Department of the name and address of the contractor, 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 Department's required clearance when the work is completed, it shall be the Department'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 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 Department. Nothing herein shall be interpreted to mean that the Department 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 proposed 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 extensions will be considered for such delays in accordance with Subsection 108.07.

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 nonremoval or nonadjustment of utilities.

When the contractor's work involves excavating or underground demolition activity, the contractor is required to reach Louisiana One Call, 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.

105.07 COOPERATION BETWEEN CONTRACTORS. The Department 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 or otherwise, in connection with the contract and shall hold the Department harmless and indemnify the Department 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.

105.08 CONSTRUCTION STAKES, LINES AND GRADES. Unless otherwise provided for in the contract, the engineer will set construction stakes establishing lines and continuous profile grade in road work, and centerline and bench marks for bridge work, culvert work, protective and accessory structures and appurtenances as deemed necessary, and will furnish the contractor all necessary information relating to lines, slopes and grades. These stakes and marks shall constitute the field control by and in accordance with which the contractor shall establish other necessary controls and perform the work.

The contractor shall be responsible for preservation of all stakes and marks established by the engineer. When any construction stakes or marks have been carelessly or willfully destroyed or disturbed by the contractor, the cost

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of replacing same will be charged to the contractor and will be deducted from payments for the work.

105.09 AUTHORITY AND DUTIES OF PROJECT ENGINEER. As the direct representative of the Chief Engineer, the Project Engineer has immediate charge of the Department's engineering details of the construction project. The Project Engineer is responsible for administration of the contract. The Project 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 Subsection 105.01.

Except as permitted and instructed by the Chief Engineer, the Project 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 Project Engineer perform any duties for or act as the representative of the contractor.

When the work is being done by force account, the contractor shall have the responsibility to supervise the work and provide a product meeting the requirements of the contract. The Project Engineer, however, shall have the authority to require the contractor to revise operations, including but not limited to, sequence and location of work; number, category and caliber of workers; number and type of equipment; and hours of work.

105.10 DUTIES OF THE INSPECTOR. Inspectors representing the Department are 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 is not authorized to alter or waive contract provisions. The inspector is not 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 the representative of the contractor.

105.11 INSPECTION OF WORK. All materials and each part or detail of the work shall be subject to inspection by the engineer. The engineer shall be allowed 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 Department representative, when the Department is not provided adequate notice or opportunity to provide inspection, 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 thereunder.

105.12 INSPECTOR'S STAMP FOR SHIPMENT.

(a) Approval for Shipment: When materials requiring shop or plant inspection are ready for shipment, the Department's inspector shall affix the stamp of the Department. Each shipment piece, keg, box or bound pallet shall be marked by the inspector by direct stamping.

Application of the inspector's stamp implies that at the time of stamping 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. Application of the inspector's stamp for shipment does not imply that the products will not be rejected by the Department if subsequently found to be defective.

(b) Rejection: The inspector will reject material and workmanship that do not conform to the contract.

Stamping of products by Department representatives shall not preclude further testing and inspection by the Department.

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 Stamped: Materials and fabricated items subjected to shop inspection will not be accepted at the project site if they do not bear the inspector's stamp for shipment. If the products are not

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stamped 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 Department may allow inspection to be performed at the project site at the contractor's expense.

105.13 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 105.03.

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

No work shall be done without lines and grades having been given by the engineer, except that work which is specified as construction layout. 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.

105.14 LOAD RESTRICTIONS. The contractor, subcontractors or suppliers shall observe legal load restrictions when hauling equipment or materials on public roads beyond project limits. A special permit does not decrease the contractor's liability for damage.

Except for specified equipment contractor shall obtain the engineer's written permission to exceed legal load limits within the project limits. Operating equipment or hauling loads that may damage structures, roadway, or any construction is prohibited.

105.15 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. 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 the 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.

The contractor shall maintain the roadway in a satisfactory condition to allow traffic to safely travel through the work zone at the posted speed limit.

Adjacent and parallel roadways within the project limits, not affected by construction shall not be the maintenance responsibility of the contractor.

105.16 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE. If the contractor fails to comply with Subsections 104.03 and 105.15, 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 Department will have the option to immediately remedy the condition with its own in-house forces or by another contractor, 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 will immediately remedy the condition as above and the costs thereof will be deducted from payments for the work.

105.17 ACCEPTANCE.

(a) Partial Acceptance: When the contractor satisfactorily completes a portion of the project that can be used advantageously for traffic or other use, the contractor may request the engineer to make final inspection of that portion. When the engineer finds upon inspection that the portion has been completed in compliance with the contract, the engineer may accept that portion as being completed and the contractor will be relieved of further responsibility for that portion and from further liability to the public.

Partial acceptance of a project will not be made until the portion being accepted has been completed in its entirety, including all safety devices, signs and striping. When partial acceptance is made, the terms of acceptance, including the responsibilities of all parties and any allowance of additional contract time, shall be set forth in a change order, mutually agreed to by the engineer and the contractor. Such partial acceptance shall not void or alter any terms of the contract, except as set forth in the change order.

(b) Final Acceptance: Upon notice from the contractor of presumptive completion of the entire project, the engineer will make an inspection. When the work provided for in the contract is found satisfactorily completed, that inspection will constitute the final inspection. The engineer will make final acceptance and notify the contractor in writing of this acceptance as of the

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date of final inspection.

When the inspection discloses any work as being unsatisfactory, the engineer will give the contractor instructions for correction of same. The contractor shall immediately comply with such instructions. Upon correction of the work, another inspection will be made which will constitute final inspection provided the work has been satisfactorily completed. In such event, the engineer will notify the contractor in writing of this acceptance as of the date of final inspection.

105.18 CLAIMS FOR ADDITIONAL COMPENSATION. If the contractor deems additional compensation is due for work, material, delays, inefficiencies, disruptions or other additional costs/or expenses not covered in the contract or not ordered as extra work, the contractor shall notify the engineer in writing of his intention to make a 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. Notification of claims shall conform to the requirements of EDSM III.1.1.28. If such notification is not given or the engineer is not afforded proper facilities by the contractor for keeping account of actual costs incurred by the contractor, the contractor hereby agrees and shall be deemed to waive any claim for such additional compensation. Such notice by the contractor and the fact that the engineer has kept account of the costs as aforesaid shall not be construed as proving or substantiating the validity of any claim. If the claim, after consideration by the Chief Engineer, or judicial determination, is found to be just, payment will be made as specified in Subsection 109.04 by force account or negotiated price. Nothing in this subsection shall be construed as establishing any claim contrary to Subsection 104.02.

105.19 VALUE ENGINEERING PROPOSALS. This provision is to share with the contractor only the cost savings generated on this contract as a result of a Value Engineering (VE) Proposal(s) offered by the contractor and approved by the Department. Any time savings resulting from a VE Proposal will be considered at the completion of the project as an incentive to the contractor, provided the contract contains an incentive clause for early completion of the work and the contractor has not met the incentive limit in the contract. A time only reduction will not be considered as a VE Proposal. The purpose is to encourage the use of the contractor's ingenuity and experience in arriving at alternative construction methods, which will reduce the overall construction cost. After award of the contract, the successful

bidder will be permitted to submit to the engineer, written VE Proposals, for modifying the plans, specifications, or other requirements of the contract for the purpose of reducing the total cost of construction. The VE Proposal shall not impair, in any manner, the essential functions and characteristics of the project, including but not limited to safety, service life, reliability, economy of operation, ease of maintenance, desired appearance, traffic flow during construction, or necessary standardized features.

The VE Proposal shall be specifically identified by the contractor as a cost reduction proposal. VE Proposals will be considered by the Department in the same manner as change orders.

The contractor has the option of submitting a conceptual VE Proposal to the Department for review prior to making formal submission. However, the contractor may submit the formal VE Proposal directly.

The conceptual VE Proposal shall provide the following minimum information:

- (a)** A description of the proposal.
- (b)** A listing of work items affected by the proposed change, including any change in contract time and/or traffic maintenance.
- (c)** An initial estimate of the net cost savings which the change is expected to generate, including elimination of any planned work.

The contractor may proceed to the formal VE Proposal upon the Department's approval of the conceptual VE Proposal. The Department is not obligated to approve the contractor's formal VE Proposal, even if the conceptual VE Proposal is initially considered acceptable.

As a minimum, the following information shall be submitted by the contractor with the formal VE Proposal.

- (a)** A statement that the proposal is submitted as a VE Proposal.
- (b)** A description of the difference between the existing contract requirements and the proposed change(s), and the comparative advantages and disadvantages of each, including effects on service life, economy of operations, ease of maintenance, desired appearance, necessary standardized features, reliability, traffic flow during construction, safety, and contract time.
- (c)** Any or all of the following submittals as required by the engineer showing proposed revisions relative to the original contract features and requirements: Plans, sketches, engineering calculations, specifications or stamped plans bearing the signature and seal of a professional engineer licensed to practice in the State of Louisiana.

- (d)** Detailed estimates of the cost to the Department for performing the work under the existing contract and under the VE Proposal, including a listing of contract items affected by the proposal, and quantity variations

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attributable thereto with the related costs.

(e) An assessment of any effects that adoption of the VE Proposal could have on other costs to the Department, including future maintenance and operation.

(f) A statement of the latest time or date that any agreement adopting the VE Proposal must be executed in order to obtain the maximum cost reduction during the remainder of the contract and the reasoning for this time schedule. This date must allow the Department time for review and processing of a change order. Should the Department find insufficient time is available for review and processing, it may reject the VE Proposal on such basis. If the Department fails to respond to the VE Proposal by the date or time specified, the contractor shall consider the proposal rejected and shall have no claim against the Department.

(g) A statement of the effect that adoption of the VE Proposal will have on the time for completion of the contract.

(h) A description of any previous use or testing of the final VE Proposal on another Department project or elsewhere and the conditions and results therewith. If the final VE Proposal was previously submitted on another Department project, indicate the date, the project, and the action taken by the Department.

The provisions of this subsection shall not be construed to require the Department to consider any VE Proposal which may be submitted. The Department reserves the right to reject any and all VE Proposals. The bidder is cautioned not to base any bid prices on the anticipated approval of a VE Proposal and to recognize that the proposal may be rejected. In the event of rejection, the contractor will be required to complete the contract at the contract bid prices. Proposed changes in basic configuration and design of a bridge, hydraulic capacity of drainage facilities, typical roadway section, type or minimum thickness of pavements, or changes in grade or alignment which do not meet the geometric standards of the project as conceived, will not be considered as acceptable VE Proposals. Typically, changes in materials for roadway sections will also not be considered as acceptable VE proposals. Plan errors which are identified by the contractor and result in a cost reduction will not qualify as a VE proposal. If the Department is already considering certain revisions to the contract or has approved certain changes in the contract for general use, which are subsequently incorporated in a VE Proposal, the Department will reject the contractor's proposal and may proceed without obligation to the contractor. The Department will not be liable to the contractor for failure to act upon or accept any VE Proposal nor for any delays to the work attributable to any such proposal. The contractor

may withdraw, in whole or in part, any VE Proposal not accepted by the Department within the period specified in the proposal. The decision of the Department as to the acceptance or rejection of VE Proposals shall be final and shall not be subject to the provisions of Subsection 105.19.

The contractor will be notified in writing of the Department's decision to accept or reject each VE Proposal submitted under these provisions. If a VE Proposal is accepted, the necessary contract modifications will be implemented by execution of a change order, which will provide for equitable price adjustments giving the contractor and the Department equal shares in the resulting net savings. Until a VE Proposal is affected by such contract modification, the contractor shall perform the work in accordance with the terms of the existing contract.

The net cost savings to be shared shall be determined as the difference in costs between the original contract costs for the involved work items and the actual final costs to the Department occurring as a result of the proposed change. Only those work items directly affected by the change order will be considered in making the final determination of net cost savings. Subsequent change orders affecting the modified work items but not related to the VE Proposal, will be excluded from such determination. In reviewing the VE Proposal, the Department reserves the right to reject the proposal if, in its judgment, the proposed net cost savings do not represent a reasonable measure of the value of the work to be performed or deleted.

All costs incurred by the contractor in developing the VE Proposal shall be borne by the contractor. The change order implementing the necessary contract modifications shall include a pay item for and a lump sum estimate of the approximate net cost savings anticipated as a result of the VE Proposal, and a proportionate amount thereof shall be included in partial payment estimates as the work on the modified contract items is performed. The contractor's 50 percent share of the net cost savings shall constitute full compensation for implementing all changes pursuant to the agreement. Any time savings for early completion of the project resulting from the VE Proposal will be considered upon completion of the project as an incentive to the contractor provided the contract contains an incentive clause for early completion of the work and the contractor has not met the incentive limit in the contract.

The Department reserves the right to include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VE Proposal. The Department also reserves the right to require the contractor to share in the Department's costs of investigating a VE Proposal submitted by the contractor as a condition of considering such

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proposal. The Department will have the option to perform the investigation in-house or by consultants. When such a condition is imposed, the contractor shall indicate his acceptance in writing, and such acceptance shall constitute full authority for the Department to deduct amounts payable to the Department from any monies due or that may become due to the contractor under the contract.

The Department reserves the right to adopt a VE Proposal for general use when it determines that said proposal is suitable for application to other contracts. When an accepted VE Proposal is adopted for general use, only the contractor who first submitted such proposal will be eligible for compensation pursuant to this subsection, and in that case, only as to those contracts awarded to him prior to submission of the accepted proposal. VE Proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under these provisions if the identical or similar previously submitted proposals were not adopted for general application to other Department contracts. Subject to the provisions contained herein, the State or any other public agency shall have the right to use all or any part of any submitted VE Proposal without obligation or compensation of any kind to the contractor.

Any changed conditions arising as a result of the acceptance of a VE Proposal will not be considered as the basis for any claim for additional compensation.

105.20 NIGHTTIME CONSTRUCTION OPERATIONS.

(a) Description: This work consists of furnishing, installing, operating, maintaining, moving, and removing portable light towers and equipment-mounted fixtures for nighttime construction operations. Nighttime construction operations are defined as work performed after sunset and before sunrise.

(b) Equipment Requirements : Materials and equipment shall be in good operating condition and in compliance with applicable OSHA, NEC, and NEMA codes.

The contractor shall furnish, to the engineer, two light meters capable of measuring the level of illuminance. These light meters will be used by the engineer to check the adequacy of illumination throughout the nighttime construction operations. The light meters will become the property of the contractor after final acceptance.

Suitable brackets and hardware shall be provided to mount lighting fixtures on equipment and machinery. Mountings shall be designed so that light fixtures can be positioned as necessary to reduce glare and provide the

required illumination. Mounting brackets and fixtures shall not interfere with the equipment operator or any overhead structures and shall be securely connected to the fixtures to insure minimum vibration.

Equipment-mounted systems shall be attached to construction equipment to provide Level II and Level III illuminance. Equipment mounted lighting shall be designed and positioned to be operated independently of general illumination.

Portable systems may consist of ground-mounted, trailer-mounted, or equipment mounted light towers. Portable light towers shall be sturdy and free-standing without the aid of guy wires or bracing. Towers shall be capable of being moved as necessary to keep pace with the construction operation. Extreme caution shall be used when moving portable light towers in the vicinity of overhead utilities. Portable lighting systems shall be positioned to minimize the risk of being impacted by traffic on the roadway or by construction equipment.

Conventional vehicle headlights shall not be permitted as the sole means of illumination while working. All motorized vehicles shall be equipped with conventional vehicle headlights to permit safe movement in non-illuminated areas. Use of strobe lights on vehicles and equipment is prohibited. Use of flashing lights shall be kept to a minimum to prevent motorist distraction. Flashing lights shall not be used behind barrier protection systems.

Switches shall be provided to adequately control the various lights. All wiring shall be weatherproof and installed according to local, state, federal, and OSHA requirements. Ground fault circuit interrupters shall be provided for electrical outlets used for electrical tools and extension cords. The contractor shall provide sufficient fuel, spare lamps, generators and qualified personnel to ensure that all required lights operate continuously during nighttime construction operations. In the event of any failure of the lighting system, the construction operation shall be discontinued until the required level of illumination is restored. In residential areas, generator systems shall be selected to comply with local noise ordinances. A supply of emergency flares shall be maintained by the contractor for use in the event of emergency or unanticipated situations.

(c) Illumination Requirements: All operations that are performed during nighttime hours shall be properly illuminated to allow for the safe performance and inspection of the work.

Work area is defined as a minimum of 50 feet (15 m) ahead and behind the employee, where work is to be performed. A minimum of 5 foot-candles (54 lux) shall be maintained throughout the work area during nighttime construction operations, and during the setup and removal of lane or roadway

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closures.

Lighting shall be adequate to meet the required level of illuminance and uniformity over the work area as follows:

(1) Level I (5 foot-candles, 54 lux): This level of illuminance shall be provided for all work areas of general construction operations, such as excavation and embankment; cleaning and sweeping; landscaping; planting and seeding. Stockpiles shall also be illuminated to Level I to enhance safety and improve work efficiency.

(2) Level II (10 foot-candles, 108 lux): This level of illuminance is required for areas on or around construction equipment such as that used for drainage installations, striping, base course construction, milling, asphalt paving operations, and concrete placement and removal. This level is necessary for safe operation of equipment and for obtaining an acceptable level of accuracy.

(3) Level III (20 foot-candles, 215 lux): This level of illuminance is required for tasks requiring a higher level of visual performance or for tasks with a higher level of difficulty. Such tasks include, pavement or structural crack filling, joint repair, joint cleaning, joint sealing, pavement patching and repairs, saw-cutting, installation of signal equipment or other electrical/mechanical equipment, and other tasks involving fine details or intricate parts and equipment.

(d) Glare Control: All lighting provided under this item shall be designed, installed, and operated to avoid glare interference with roadway traffic or discomfort for residences adjoining the roadway. The contractor shall locate, aim, and adjust the lights to provide the required level of illuminance and uniformity in the work area without the creation of objectionable glare. The engineer shall determine when glare exceeds acceptable levels, either for traffic or adjoining residences. The contractor shall provide shields, visors, or louvers on luminaries as necessary to reduce objectionable levels of glare.

At a minimum, the following requirements shall be met to avoid objectionable glare to oncoming traffic:

(1) Tower-mounted luminaries shall generally be aimed either parallel or perpendicular to the roadway.

(2) All luminaries shall be aimed such that the center of the beam axis is no greater than 60 degrees from the vertical.

(3) Luminous intensity of any luminary shall not exceed 20,000 candelas at an angle of 72 degrees from the vertical.

(e) Operational Requirements: Thirty days prior to the start of night time operations, the contractor shall submit a lighting plan to the

engineer for approval. The contractor shall select appropriate lighting systems and design a lighting plan to achieve the required illuminance levels.

The lighting plan shall include location of lights necessary for every aspect of work; description of light equipment to be used; description of power source; attachment and mounting details for lights to be attached to equipment; technical details pertaining to the lighting fixtures; details on hoods, louvers, shields, or other glare control methods; and lighting calculations confirming that the illumination requirements will be met by the layout plan.

Lighting inspection will include (1) light meter measurements to determine illumination levels, (2) subjective observation of the lighting setup to evaluate glare potential for drivers and workers, and (3) a physical check of the lighting equipment to ensure that it complies with the specification requirements included in the contractor's lighting plan.

Prior to the first night of operation, the engineer will check the adequacy of the installed lighting using a light meter. A summary of these measurements will be noted in the inspection records to provide a basis for comparing subsequent measurements. If the required illuminance levels are not met, the contractor shall make the necessary adjustments before any work proceeds.

Operational checks shall be made when construction phasing changes and lighting plan changes are required to accommodate different phases of construction. Periodic checks will be made throughout the duration of nighttime operations. If the required illuminance levels are not met, the contractor shall make the necessary adjustments to the lighting plan before work continues.

During construction operations, in the event of any failure of the lighting system, the operations shall be discontinued until the required level of illumination is restored.

Section 106 Control of Materials

106.01 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.

106.02 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 Department 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 Department may assume the cost of processing samples to

determine suitability of material.

(c) Use of Materials Found on the Project: Unless otherwise specified, the contractor may incorporate into the work materials found or produced on the project such as reclaimed asphaltic pavement, recycled portland cement concrete, stone, gravel, sand, topsoil or other materials found acceptable by the engineer. Payment for removal of such materials will be made under the designated contract items such as cold planing asphaltic pavement, removal of portland cement concrete pavement, excavation, etc. Payment will also be made for the pay items into which these materials are incorporated.

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.

106.03 ACCEPTANCE SAMPLES AND TESTS. Materials will be inspected, tested and approved before incorporation into 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 or work found to be unacceptable and, when directed, shall be removed at the contractor's expense. Sampling and testing will be performed in accordance with the contract or the cited standard method of the Department's Materials Sampling Manual and Testing Procedures Manual; if not contained therein, by AASHTO methods. If a procedure is not available in AASHTO methods, the ASTM procedure will be used, except for any resampling or retesting procedures included therein. Resampling or retesting procedures shall be as determined by the Department's Materials Engineer Administrator. When allowable variations or conflicts occur within an ASTM or AASHTO test procedure, the established DOTD procedure and publications shall govern. Sampling and testing procedures not contained in the above publications shall be as determined by the engineer. All procedures will be the most recent cited which are current on the date of advertisement for bids. Acceptance testing will be made by and at the expense of the Department. Samples for

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acceptance testing will be taken by an authorized representative of the Department. Materials being used will be subject to inspection, sampling, testing, retesting, or rejection at any time prior to final acceptance. The contractor will be notified of a failing test. Copies of all tests reports will be furnished to the contractor's representative upon request.

106.04 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 the certificates are required. They shall be signed by the material manufacturer, the manufacturer of assembled materials or 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 in the Department's Materials Sampling Manual.

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

106.05 CONTRACTOR QUALITY CONTROL. The contractor shall establish and maintain an effective quality control process. The quality control process shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations which comply with the contract requirements. The process shall cover construction operations both onsite and offsite, and shall be keyed to the proposed construction sequence.

Quality Control requirements shall be as specified in the latest edition of the Department's "Quality Control / Quality Assurance Manual" for the appropriate specification section.

Contractor personnel performing sampling and testing, observation, or inspection for the quality control process shall be evaluated and approved by the Department in accordance with Departmental requirements.

106.06 PLANT INSPECTION. The Department reserves the right to inspect plants and operations producing materials and to test materials, prior to incorporation into the work as necessary to ensure contract compliance.

When 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.

Certification of specified plants and operations will be in accordance with Department requirements.

106.07 FIELD LABORATORY. The contractor shall provide project site laboratories as required by the specifications to be used exclusively for quality assurance purposes by the Department. The buildings shall be installed, furnished, equipped and maintained in accordance with Section 722, and ready for use prior to the time the contractor's operations require testing.

106.08 FOREIGN MATERIALS. Materials manufactured outside the United States shall be delivered to approved locations within the United States, 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 Department 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 106.04. Certificates of Analysis prepared in accordance with Subsection 106.04 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.

106.09 MATERIAL STORAGE AND PLANT SITE. Materials shall be stored to assure preservation of their quality and fitness for the work. Stored

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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. Approved portions of the right-of-way may 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.

106.10 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.

106.11 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 has been given.

106.12 DEPARTMENT-FURNISHED MATERIAL. The contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the contractor at the points specified.

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.

Section 107

Legal Relations and Responsibility to Public

107.01 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 State 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.

When the Department is the contracting agency, any litigation arising under or related to the contract or the bidding or award thereof shall be instituted in the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana.

107.02 PERMITS, LICENSES, TAXES AND INSURANCE.

Contractors 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 maintain, at a minimum, the following insurance coverages:

(a) Workers 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. For the coverage provided in this subpart the contractor's Insurer will have no right of recovery or subrogation against the State of Louisiana or the Louisiana Department of Transportation and Development.

(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-

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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 107-1.

(c) A separate Owner’s and Contractor’s Protective (OCP) Liability Policy shall be furnished by the contractor naming the Louisiana Department of Transportation and Development as the named insured. The required combined single OCP limit amount shall be as provided in Table 107-1.

(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 required combined single limit amount of insurance shall be as provided in Table 107-1 below.

**Table 107-1
Insurance Requirements**

Initial Contract Amount	Minimum Insurance
Up to \$1,000,000	\$ 1,000,000
From \$1,000,001 to \$2,000,000	\$ 2,000,000
Over \$2,000,000	\$ 5,000,000

The following shall be included as provisions in each policy:

(a) The insurance company (ies) issuing the policy (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.

(b) 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 Department.

Upon failure of the contractor to furnish, deliver and maintain such insurance as required, this contract, at the election of the Department, may be immediately declared suspended, discontinued or terminated. 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 Subsection 107.17.

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

107.03 PATENTED DEVICES, MATERIALS AND PROCESSES. If the contractor uses any design, device, material or process covered by patent or copyright, the contractor shall be responsible for such use. The contractor and surety shall indemnify the State, 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 Department 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 Department at the contractor's sole cost from any damages, expenses or actions arising out of or related to use by the Department of information or documents supplied by the contractor to the Department.

107.04 RESTORATION OF SURFACES OPENED BY PERMIT. The right to construct or reconstruct any utility service in the highway or to grant permits for same, at any time, is reserved by the Department for proper authorities of the municipality in which the work is done and the contractor will not be entitled to damages either for digging up of the highway or delays occasioned thereby.

When an individual, corporation, or any other legal entity is authorized through an executed permit from the Department, the contractor shall allow parties bearing such permits to make openings in the highway. The contractor shall, when ordered, make all necessary repairs due to such openings. Payment for such work will be made as extra work or as provided in these specifications, and will be subject to the same conditions as original work performed.

107.05 FEDERAL AID PARTICIPATION. When the United States Government participates in the cost of the work covered by the contract, the work shall be under the supervision of the State, but subject to inspection and

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approval of the proper official of the United States Government, in accordance with applicable Federal Statutes, and rules and regulations pursuant thereto. Such inspection shall not make the Federal Government a party to the contract and will not interfere with the rights of either party thereunder.

On FHWA Federal-Aid Projects, when required by the project specifications, the contractor shall complete Federal-Aid Form PR-47, "Statement of Materials and Labor used by Contractors on Highway Construction Involving Federal Funds," prior to the time of final acceptance of the project. The final acceptance will not be executed until this form has been submitted to the engineer

107.06 SANITARY, HEALTH AND SAFETY PROVISIONS. 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.

The contractor shall provide and maintain in a neat, sanitary condition, restrooms and other such accommodations for use of employees and Department personnel. Such facilities shall comply with requirements of the State and local Boards of Health or other bodies or tribunals having jurisdiction.

107.07 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 highway 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 shall be provided in accordance with Subsection 105.20. 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.

107.08 RAILWAY-HIGHWAY PROVISIONS. All work to be performed by the contractor in construction on railway right-of-way shall be in accordance with the following provisions.

(a) 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.

(b) 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 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 arrangement effected between the contractor and the Railway. 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.

(c) 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.

(d) 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.

(e) 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.

(f) If the contractor 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

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contractor shall contact the Railway and request access across said right-of-way and tracks and execute a license agreement with the Railway. 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 contained under Heading (n) hereinafter 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 under the agreement with the Department prior to final acceptance.

(g) 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 Department, for the actual incurred cost for such services. 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 Department, the contractor will be issued written notification that no further reimbursement will be made by the Department for railroad services. Work done or services provided for the contractor's convenience will not be reimbursed by the Department.

The contractor shall notify the Railway 72 hours in advance of when railway services are required.

(h) 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 Department satisfactory evidence that the Railway has acknowledged receipt of payment before final acceptance.

(i) 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.

(j) 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 for approval, 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 approval 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.

(k) The contractor shall 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.

(l) The following temporary clearances are the minimum which shall be maintained during construction operations:

Vertical: 22.5 feet (6.86 meters) above top of highest rail.

Horizontal: 10.0 feet (3.05 meters) from centerline of the nearest track 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.

(m) The contractor shall not store or construct falsework or store materials, supplies or equipment closer than 15.0 feet (4.57 meters) from the centerline of any railway track, measured at right angles thereto, or 22.5 feet (6.86 meters) vertically from top of rail.

(n) Unless otherwise specified by special provisions, the contractor shall provide insurance of the following kinds and amounts:

(1) Regular Contractor's Public Liability and Property Damage

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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.

(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.

(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.

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

NORMAL 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 coverages by the contractor.

The contractor shall furnish to the Railway the Railroad Protective Policy and certificates evidencing the other insurance coverage required above. The Railroad Protective Insurance Policy and all insurance certificates shall be approved by the Railway before any work may be started on the Railway's property by the contractor or subcontractors. In addition, the contractor shall furnish evidence of commitment by the insurance company to notify the Railway and the engineer in writing of any material change, expiration or cancellation of the policy not less than 30 calendar days before such change, expiration or cancellation is effective.

The insurance specified shall be kept in force until final acceptance of the contract.

(o) 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.

(p) 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 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 Subsection 107.08(g), 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 Release from the railroad company 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

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the contractor's account, and that the Railway waives all claims for damages due to the contractor's operations within railway right-of-way under the contract. If the contractor is unable to secure a Certificate of Release from the Railway, the contractor shall submit an executed Contractor's Affidavit, to the engineer.

107.09 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 Department 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., for 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. When required by permit, upon completion and before final acceptance of the project, the contractor shall furnish the Bridge Design Engineer 8-by-10-inch color photographs of the bridge from abutment to abutment, two photographs looking upstream and two looking downstream. The prints shall be glossy finish, mounted on linen. These photographs will be furnished at no direct pay.

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 drawings required by the permit agencies. Drawing sizes shall be 8-by-10 1/2 inches with a 1-inch border on the top or short side. The drawings shall be submitted to the Bridge Design 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. 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 water-way 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 Bridge Design Engineer, in writing, sufficiently in advance so that the Department may obtain approval from the U. S. Coast Guard at least 3 weeks prior to said interference.

Copies of Department obtained permits are available in the Bridge Design Section.

Copies of any special permits obtained by the contractor shall be submitted immediately to the Bridge Design Engineer.

107.10 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. Highways closed to traffic shall be protected by effective barricades. 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, lights, temporary signals and other protective devices shall conform to the details shown on the plans and the MUTCD.

107.11 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

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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 (304.8 meters) 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.

107.12 PRESERVATION OF PUBLIC AND PRIVATE PROPERTY.

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 United States Coast and Geodetic Survey, National Geodetic Survey, Louisiana Geodetic Survey, Louisiana DOTD, Corps of Engineers, or United States Geological Survey.

Before removing and/or resetting any survey monuments, the contractor shall give sufficient written advance notice to the engineer with a copy to the Department's Location and Survey Section for coordination with the appropriate agency. The contractor shall not disturb or move any such monument without written approval. The contractor shall give immediate written notice to the engineer, with a copy to the Department's Location and Survey Section, of damage to survey monuments. The engineer will designate the location and manner in which monuments are to be reset in accordance with current Department procedures.

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 any negligent act, omission or misconduct in execution of the work, or in consequence of nonexecution thereof by the contractor, such property shall be restored at the contractor's expense, to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding or otherwise acceptably restoring as directed, or making good such damage in an acceptable manner.

107.13 FOREST PROTECTION. In carrying out work within or adjacent

to State or National Forests, the contractor shall comply with all regulations of the Department of Public Safety Office of the State Fire Marshal 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 of 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.

107.14 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.

Attention is directed to Section 204, Temporary Erosion Control.

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 (Sections 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", and shall include Section 204, Temporary Erosion Control of the standard specifications along with applicable supplemental specifications, special provisions, and the

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plans.

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 and asphaltic concrete plant restrictions.

The contractor shall maintain and operate equipment to minimize noise and vibration. Engines shall be equipped with properly functioning mufflers. The contractor shall assure the activities near noise and vibration sensitive areas, such as churches, hospitals and schools are not unduly disruptive.

107.15 AIR NAVIGATION. The Department will obtain a permit (or a determination of no hazard to air navigation) from the FAA for all permanent structures. 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, drawings complying with the FAA current requirements for temporary lighting for protection of aerial navigation. These drawings shall be submitted to the Bridge Design 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.

107.16 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 to the extent that definite information can be obtained on these situations.

It shall be the responsibility of the contractor to arrange and coordinate the work in the area with the agency or agencies concerned.

The contractor shall obtain from the Department and submit to the engineer the Department's Standard 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 Department to determine the presence of all hazards and to so note in the plans or project specifications shall not relieve the contractor from performing any required work.

107.17 DAMAGE CLAIMS. The contractor shall indemnify the Department, its officers and employees 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; any money due the contractor as considered necessary by the Department for such purpose, may be retained for use of the State; or, 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 Department; 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 are in effect.

107.18 OPENING SECTIONS TO TRAFFIC. Opening of sections of the work to traffic prior to completion of the entire contract may be desirable from a traffic service standpoint, or may be necessary due to conditions inherent in the work or by changes in the contractor's work schedule, or may be required due to conditions or events unforeseen at the time of the contract. Such openings shall be made when directed and shall not constitute acceptance of the work nor a part thereof or a waiver of any provisions of the contract.

The plans or project specifications will specify, insofar as possible, which sections shall be opened prior to completion of the contract. On any section opened by order of the engineer, when not specified, the contractor will not be required to assume any expense entailed in maintaining the road for traffic. Such expense will be borne by the Department or compensated for in accordance with Subsection 109.04. On portions of the project which are ordered to be opened for traffic, in the case of unforeseen necessity not the fault of the contractor, compensation for additional expense to the contractor and allowance of additional time for completion of other work on the opened

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portions of the project shall be as set forth in a change order mutually agreed on by the engineer and the contractor.

When the contractor's progress is undesirably slow in completing shoulders, drainage structures or other features of the work, the engineer may notify the contractor in writing and establish therein a reasonable period of time in which the work is to be completed. If the contractor fails to make a reasonable effort toward completion in this time period, the engineer may order all or a section of the project opened to traffic. On such sections ordered to be opened, the contractor shall conduct the remainder of construction operations to cause the least obstruction to traffic and shall not receive any added compensation due to the added cost of the work by reason of opening such section to traffic.

On any section opened to traffic under the foregoing conditions, whether specified in the contract or opened by necessity of the contractor's operations or unforeseen necessity, any damage to the highway not attributable to traffic that occurs on such section (except slides) shall be repaired by the contractor at no direct pay. Removal of slides shall be done by the contractor on a basis agreed to prior to removal of such slide.

107.19 CONTRACTOR'S RESPONSIBILITY FOR WORK. Until final acceptance, the contractor shall have the charge and care of the work 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 pay for damages, including theft and vandalism, to the work before final acceptance and shall bear the expense thereof, except for the following:

(a) Guard rail and permanent impact attenuators shall be repaired as soon as possible after damage. If the engineer determines that the contractor did not contribute to the damages, the Department will reimburse the contractor for such repairs by force account in accordance with Subsection 109.04.

(b) Unavoidable damage due to Acts of God such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomenon of nature or acts of governmental authorities.

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, maintain traffic, 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, seedings and soddings furnished under the contract, and shall take adequate precautions to protect

new tree growth and other important vegetative growth against damage. Should suspension of the work not be attributed to any actions of the contractor, the contractor will be reimbursed for additional work.

107.20 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.

107.21 FURNISHING RIGHT-OF-WAY. The Department will be responsible for securing all necessary rights-of-way, servitudes and easements in advance of construction.

107.22 PERSONAL 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 Secretary, Chief 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.

107.23 NO WAIVER OF LEGAL RIGHTS. Upon completion of the work, the Department will make final inspection and then notify the contractor of acceptance within 30 calendar days. Such final acceptance shall not prevent the Department from correcting any measurement, estimate or certificate made before or after completion of the work, nor shall the Department 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 Department of any breach of

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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 Department for latent defects, fraud or such mistakes as amount to fraud, or as regards the Department's rights under any warranty or guaranty.

107.24 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.

107.25 ANTI-TRUST VIOLATIONS. By execution of the contract, the contractor conveys to the Department 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 Department pursuant to the contract.

107.26 CONTRACTOR'S PAYROLLS. When predetermined minimum wage rates are included in the contract, the minimum wage determination shall be posted by the contractor in a prominent and easily accessible place at the site of work.

On Federal-Aid Projects, the contractor's payrolls shall be in accordance with the project specifications.

107.27 ARCHAEOLOGICAL AND HISTORICAL FINDINGS. If the contractor encounters cultural artifacts or archaeological or historical sites, operations shall be discontinued. 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.

Section 108 Prosecution and Progress

108.01 SUBLETTING OF CONTRACT. The contractor shall not sublet any portion of the contract, excluding material, without written consent, 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. 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 contract cost before computing the amount of work required to be performed by the contractor with the contractor's own organization.

A subcontractor shall not further subcontract to a third party any portion of this authorized work, excluding material, without written consent, including work sublet to an authorized Disadvantaged Business Enterprise.

No subcontract shall relieve the contractor of liability under the contract and bonds.

108.02 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.

108.03 CONSTRUCTION PROGRESS SCHEDULE. Prior to or at the preconstruction conference and before beginning work on the project, the contractor shall submit to the project 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. 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.

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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.

108.04 PROSECUTION OF WORK.

(a) General: The contractor shall provide sufficient materials, equipment and labor to complete the project in accordance with the plans and specifications within the contract time. If the completed work is behind the approved progress schedule, the contractor shall take immediate steps to restore satisfactory progress and shall not transfer equipment or forces from uncompleted work without prior notice to, and approval of, the engineer. Each item of work shall be prosecuted to completion without delay. 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.

(b) Disqualification: 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 a 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 contract time.

During the period of disqualification, the contractor will not be permitted to bid on contracts nor be approved as a subcontractor on contracts. 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.

(c) Disqualification Review Board: After disqualification, the contractor may submit a written appeal to the Chief Engineer for review by the Departmental Disqualification Review Board. The written appeal shall be submitted within 7 days, excluding weekends and holidays, after issuance of written notice of disqualification and may either request a meeting with the review board or that the review board consider a written appeal only. A meeting of the review board will be scheduled within 5 days, excluding weekends and holidays, after receipt of appeal.

The review board will be composed of the Chief Engineer, or his designee, and five other members appointed by the Secretary. The Chief Engineer, or his designee, and two other members will constitute a quorum.

After all pertinent information has been considered, the contractor will be notified of the decision of the review board in writing within 5 days, excluding weekends and holidays. The decision of the review board will not operate as a waiver by the Department of its rights concerning the assessment of stipulated damages as specified under Subsection 108.08.

108.05 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.

108.06 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

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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 pay items involved nor in contract time as a result of authorizing a change in methods or equipment.

108.07 DETERMINATION AND EXTENSION OF CONTRACT TIME.

The number of days allowed for completion of the work will be stated in the contract.

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 102.05 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 in accordance with Subsection 104.02 and the contractor requests additional contract time, the document authorizing or ordering alterations will show the number of additional days justified.

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 shall, at the time the delay occurs make written request to the engineer for an extension of time setting forth therein the reasons which justify granting the request. Such written request shall conform to the requirements of EDSM

III.1.1.28. If the request does not so conform, the contractor hereby agrees to and shall be deemed to have expressly waived any claim for such additional time. 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.

Upon satisfactory final inspection, daily time charges will cease.

(a) Working Day Contracts. On working day contracts, a working day will be charged when weather or other conditions not under the control of the contractor will permit construction operations to 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 Department or other governmental agencies, prevent contractor from proceeding with the controlling item of work at time of delay.
- (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 contractor hereby agrees to abide by the monthly statement and shall be deemed under the contract to have waived any claim that the monthly statement is incorrect.

If a protest is filed by the contractor, the Department 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

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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 the claims process.

(b) 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 Department is responsible.

(c) Excusable, Non-Compensable Delays. Excusable non-compensable delays are delays that are not the contractor's or the Department's fault or responsibility. The engineer will not grant additional payment for excusable, non-compensable delays, but will grant additional contract time.

(d) Excusable, Compensable Delays. Excusable, compensable delays are delays that are not the contractor's fault or responsibility, but are the Department's fault or responsibility or determined by judicial proceeding to be the Department's sole responsibility or are the fault and responsibility of a local government. The contractor will be granted additional contract time and payment in accordance with Subsections 104.02, 105.18, and 109.04.

(e) Non-Excusable Delays. Non-excusable delays are delays that are the contractor's fault or responsibility. All non-excusable delays are non-compensable.

(f) 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.

108.08 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 108-1 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 by the Department of its rights under the contract.

Based on the amount of the original contract, the charges given in Table 108-1 will be made for each contract day after expiration of the contract time.

**Table 108-1
Stipulated Damages**

Original Contract Amount (Dollars)		Daily Charge (Dollars)	
From More Than	To and Including	Calendar Day or Fixed Date	Working Day
\$ 0	\$ 25,000	\$ 80	\$ 195
25,000	50,000	210	345
50,000	100,000	240	400
100,000	500,000	270	510
500,000	1,000,000	330	595
1,000,000	2,000,000	400	695
2,000,000	5,000,000	480	825
5,000,000	10,000,000	600	975
10,000,000	-----	630	1,115

The contractor will automatically be subject to stipulated damages by the expiration of contract time on the project. 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 Department. The contractor hereby waives any requirement of written notice of default prior to any deduction for stipulated damages from any payments. The contractor and the surety shall be liable for stipulated damages in excess of amounts due the contractor under the contract.

108.09 DEFAULT AND TERMINATION OF CONTRACT.

(a) The contractor will be in default if the contractor:

- (1)** Fails to complete the project within the 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 or 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 Subsection 108.01, without written approval and consent in advance of the Department, and the surety in the case of an assignment of the entire contract, or makes an assignment of contract proceeds for the benefit of one or more

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creditors other than pursuant to a security interest in accordance with LRS 10:9-101, et seq., without prior written approval and consent of the Department; any such purported assignment will not be honored without evidence of compliance with this subparagraph,

(5) Discontinues prosecution of the work,

(6) Fails to begin work within 10 calendar days of the "Notice to Proceed",

(7) Fails to perform with sufficient workers, equipment or materials to assure prompt completion of the work,

(8) Performs the work unsuitably or neglects or refuses to remove materials, or replace or repair rejected work,

(9) Fails to resume discontinued work within 10 calendar days after notice to do so,

(10) Fails to perform the work in an acceptable manner, violates any provision in the contract, or fails to follow any federal, state or local laws pertaining to performance,

(11) 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, or

(12) Is a party to fraud.

(b) The Department will give written notice to the contractor, with a copy to the contractor's surety, of the Department's determination that the contractor is in default for any cause specified in this subsection. The Department 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 be issued. Upon notice of default, the Department 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) Within thirty days after default by the contractor, the Department will notify the contractor's surety by certified mail or overnight delivery of such default. Within thirty days of receipt of such notification, the surety shall present to the Department either a plan to assume performance of the contract and procure completion of the project, or provide the Department in writing with a reasonable response for the contractor's default. If no plan is presented by the surety, or at any time if immediate action must be taken to protect the public interest or the safety of the public or workers, the Department will take prosecution of the work out of the hands of the contractor or surety, may appropriate or use the materials and/or 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. The surety shall then be responsible for payment to the Department of the cost of completion of the project and stipulated damages assessed by the public entity up to the total amount of the bond. If the surety has not timely completed the project and a court of competent jurisdiction has determined that the surety has in bad faith refused to take over the project, the surety shall be responsible for the payment of any stipulated damages for any delay in completion of the project as specified in the original contract and any reasonable attorney's fees and court costs incurred by the Department in collection of payments required by this subsection.

(d) Nothing herein shall be construed to require or obligate the Department to suspend contract time or to release the obligation of the contractor and surety for stipulated damages in accordance with Subsection 108.08.

(e) The costs incurred by the Department 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 Department the amount of such excess.

108.10 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 DOTD Chief Engineer. The contractor will then be released from further obligation except as set forth in the contractor's payment/performance/retainage bond and Subsection 107.24.

108.11 TERMINATION OF CONTRACT. The Department may, by written notice, terminate the contract or any portion thereof when, for reasons beyond either the Department'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

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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 of 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 Department 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.

Section 109

Measurement and Payment

109.01 MEASUREMENT OF QUANTITIES. All work completed under the contract will be measured according to United States standard measure. The International System of Units, generally known as SI or metric units will be used to measure quantities if specified under the contract, or if shown on the plans or is directed by the engineer. Standard practice used in these specifications will be to show values in the United States standard measure units followed in parentheses by the International System of Units values. Tables and Figures for both United States standard measure and SI units will be referenced by the same number in the specification text. Applicable units of measure will be defined in the table or figure titles. The terms weight and mass will be used interchangeably in these specifications when SI units are used.

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 project 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 a cubic yard (cubic meter)(net section), the design quantities will be verified or revised in accordance with Departmental 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.

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

Items measured by the linear foot (meter), such as pipe culverts, underdrains, etc., will be measured parallel to the foundation upon which such structures are placed.

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

Thickness of plates and galvanized sheet metal used in the manufacture of

109.01

corrugated metal pipe and metal plate pipe culverts and arches will be measured in decimal fractions of inches (millimeters).

When United States standard units are used, the pound or the ton will be the standard units of weight. The term "ton," in the United States standard, will mean the short ton of 2,000 pounds avoirdupois. When SI units are used, the kilogram will be the standard unit of mass, however the megagram (1000 kg) will be used to measure large masses. 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 weighed 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 mark, which defines a known volume, upon arrival at the point of delivery. Vehicles will be measured in increments of 0.5 cubic yard (cubic meter), 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 (mass) and converted to volume for payment, conversion will be made to the nearest 0.1 cubic yard (cubic meter).

Asphaltic materials will be measured by the gallon (liter) or by the ton (megagram). When specified, volumes of liquid asphaltic materials will be converted to gallons at 60°F (liters at 15°C) 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 ton (megagram).

Timber will be measured by the thousand feet board measure (MFBM) (cubic meter) incorporated in the structure. Measurement will be based on

nominal widths and thicknesses and the extreme length of each piece.

The terms "lump sum, each, or unit" when used as a unit of measure for 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 fittings 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.

109.02 SCOPE OF PAYMENT. The contractor shall receive and accept compensation 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 Subsection 107.23.

When the "Payment" clause in the specifications relating to any unit price in the Schedule of Items 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.

109.03 COMPENSATION FOR ALTERED QUANTITIES. When contract quantities are altered in accordance with Subsection 104.02, or when final quantities vary for other reasons from the quantities in the Schedule of Items, 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 pay item expenses of the contractor for labor, materials, equipment, subcontractor costs, profits and overhead and subsequent loss of expected reimbursements therefor 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 amounts and basis as

109.03

agreed to in advance of the performance of the work. The change order authorizing or ordering the work shall show how the allowance was derived. Except when otherwise authorized by the Chief Engineer, such derivation shall show, as a minimum, breakdowns of costs as detailed in Subsection 109.04, 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 Department 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, in the case of a decrease of the item by 25 percent or more the remaining portion will be adjusted. The actual costs shall be itemized in accordance with Subsection 109.04, Headings (a) through (g), except that projected costs will be used in case of an increase in quantity.

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 change order and/or special agreement. The agreement shall be executed prior to performance of any work in excess of 12.5 percent of the contract amount. The requirements of the special agreement shall be as described above for increases in major items. If a minor item is decreased, no adjustment will be made in the unit price.

109.04 COMPENSATION FOR ALTERATIONS OF THE CONTRACT.

Payment for work performed in accordance with Subsections 104.02 and 105.19 will first be made at the contract's established unit prices. If unit prices are not applicable, the second basis of payment will be negotiated prices agreed to by change order prior to the start of the work. If an acceptable negotiated price cannot be established prior to the work being performed, the Department may require the contractor to perform the work on

a “force account” basis.

(1) 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 Subsections 104.02 and 109.03.

(2) Negotiated Prices – The Department’s objective is to compensate the contractor using the same pricing formulas established 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 subjective 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 subjective pricing components listed above.

(3) 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 Headings (a) through (g) 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 the Headings (a) through (d) below, and the mark-up on direct cost for the subcontractor and contractor described in Heading (e) below. The Department may consider additional reimbursement to the contractor for indirect fixed jobsite overhead costs for excusable compensable delays as defined in Subsection 108.07(d) 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 Department to be insufficient.

(a) 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

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upon prior to the contractor incurring such charges.

(b) 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.

(c) 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.

(d) 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.

(e) 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 Headings (a) through (d) 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.

(f) 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 Headings (a) through (e) above.

(g) 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, social security taxes, and bond costs.

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.

109.05 PARTIAL PAYMENTS. Provided the work is prosecuted in accordance with the provisions of the contract and with satisfactory progress, the engineer will make the first progress estimate within 2 months from the date indicated to begin work in the Notice to Proceed. The Department will determine the progress estimate date. Each successive progress estimate will be made on this same date of each 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. Prior to the progress estimate date the contractor will be allowed to review the progress estimate with the engineer.

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

If an election has been made to have retainage withheld from contract payments due the contractor in accordance with Subsection 103.05, the Department will deduct from the monthly payment estimate an amount equal to five percent of the monthly payment estimate. In addition 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

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subsequent estimates until defects have been remedied or causes for doubt removed.

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.

109.06 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 for materials stored outside the State of Louisiana will be considered, subject to approval of the Chief Engineer. This will generally be limited to adjacent states, except in cases where it will be in the best interest of the Department 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 Chief Engineer prior to bidding.

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

Partial payment for stockpiled materials shall be requested by the contractor in writing and the following documents shall be furnished:

- (1) A copy of the invoices from supplier or manufacturer verifying the

cost and quantity of material.

(2) If storage is on private property, a copy of the lease or agreement granting the Department right of entry to property.

Within 30 calendar days after payment by the Department, 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 Department shall not vest in the Department until such materials are incorporated in the work and the work accepted by the Department. The making of advancements by the Department shall not release the contractor from the responsibility for any portion thereof.

(b) Fabricated or 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 material will be in writing.

109.07 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

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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 Department, with the required receipted bills and forms, within 30 calendar days after final acceptance.

109.08 ACCEPTANCE AND FINAL PAYMENT. Upon acceptance of the work, the Chief 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 103.05, will be paid to the contractor after the Department has determined that quantities shown on the final estimate are correct; however, before payment of the final estimate, the contractor shall submit to the Department 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 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 employees, agents, subcontractors, suppliers or representatives.

