

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**GENERAL CONDITIONS  
FOR  
CONSTRUCTION**

**2020 EDITION  
(7D-FA-26.0)  
Revision 1**

**(Applicable to Invitations to Bid issued  
before July 1, 2022)**

## SECTION 1

### DEFINITION OF TERMS

#### 1.1 DEFINITIONS

Wherever the words or expressions herein defined, or pronouns used in their stead, occur in these General Conditions and the other Contract Documents, they shall have the following meanings:

- A. AASHTO shall mean the American Association of State Highway and Transportation Officials. Reference to AASHTO shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- B. ACH NETWORK shall mean the Automatic Clearing House Network. The ACH Network is a highly reliable and efficient nationwide batch-oriented electronic funds transfer system governed by the NACHA Operating Rules which provide for the Interbank clearing of electronic payments for participating depository financial institutions. The Federal Reserve and Electronic Payments Network act as ACH Operators, central clearing facilities through which financial institutions transmit or receive ACH entries. Under this process, a payment is transferred electronically from a Commonwealth bank account to a payee-designated bank account.
- C. ACH PAYMENT shall mean Automatic Clearing House Payment. An ACH Payment is an electronic remittance to individuals or entities that is made electronically within the banking system; eliminates the need to print and mail a check; ensures that a payee receives payment by a specific date; provides an efficient, cost effective, and payee-friendly means of making payments; is environmentally friendly through the reduced use of paper, postage, office supplies, processing time, and storage space; and provides payees with an option to receive electronic addenda.
- D. ACI shall mean the American Concrete Institute. Reference to ACI shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- E. ASA shall mean the American Standards Association. Reference to ASA shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- F. ASTM shall mean the American Society for Testing and Materials.

Reference to ASTM shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.

- G. AWWA shall mean the American Water Works Association. Reference to AWWA shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- H. BID shall mean the written unit or lump sum price figures submitted by the Bidder on the Bid Form.
- I. BIDDER shall mean any individual, partnership, joint venture, corporation, or other legal entity submitting a bid for the work contemplated, acting directly or through a duly authorized representative.
- J. BID GUARANTY shall mean the security designated in the Bid Form to be furnished by the Bidder as guaranty of its ability to qualify for award of the Contract and to enter into a Contract with the Commonwealth for the performance of the work and to furnish satisfactory bonds if the work involved in the Bid Form is awarded to it.
- K. CHANGE ORDER shall mean a written instrument prepared by the Department and signed by the Department and Contractor, stating their agreement upon all of the following:
  - 1. A change in the Contract Work;
  - 2. The amount of the adjustment in the Contract Sum, if any; and
  - 3. The extent of the adjustment in the Contract Time, if any.
- L. COMMONWEALTH shall mean the Commonwealth of Pennsylvania.
- M. CONSULTANT shall mean the individual, partnership, joint venture, corporation, or other legal entity responsible for the design of the project.
- N. CONTRACT shall mean, collectively, all of the covenants, terms, and stipulations contained in the various portions of the Contract, including the Bid Documents, Agreement, Bonds, Drawings, Specifications, General Conditions, and Notice to Proceed, as well as any and all Change Orders, Amendments and Supplemental Agreements that reasonably could be required to complete the work in a substantial and acceptable manner.

- O. CONTRACTOR shall mean the individual, partnership, joint venture, corporation, or other legal entity that entered into a Contract with the Commonwealth for the performance of the work described in the Bid Form, acting directly or through its agents or employees, or the Surety in case of default in the performance of the work.
- P. CONTRACT PLANS or DRAWINGS shall mean, collectively, all of the drawings, or reproductions of drawings, pertaining to the Contract and made part thereof, and also such supplementary drawings as the Department may issue from time to time in order to elucidate the Contract Drawings, or for showing details that are not shown thereon, or for the purpose of showing changes in the work as authorized under Section 5.4, “Minor Changes and Alterations” and under Section 6.7, “Modification of Specifications and Drawings,” of the General Conditions.
- Q. CPC shall mean the Commonwealth Procurement Code, as amended (62 Pa. C.S. § 101 et seq.)
- R. DAY shall mean a calendar day, unless specifically indicated otherwise.
- S. DEPARTMENT or DCNR shall mean the Department of Conservation and Natural Resources of Pennsylvania.
- T. DEPARTMENT’S REPRESENTATIVE shall mean the Secretary’s properly authorized agents, engineers, assistants, or inspectors, acting within the scope of the particular duties assigned to them or of the authority given to them.
- U. MAINTENANCE BOND shall mean the approved form of security furnished by the Contractor and its Surety as a guaranty of good faith on the part of the Contractor to correct defects which may develop within the warranty period, in accordance with the terms of the Contract.
- V. MATERIAL AND LABOR BOND shall mean the approved form of security furnished by the Contractor and its Surety as a guaranty of good faith on the part of the Contractor to pay promptly or cause to be paid promptly in full such sums as may be due for material furnished and/or labor supplied or performed, or for equipment rental or for services rendered by public utilities, in the prosecution of the work under the Contract.
- W. NOTICE TO PROCEED shall mean a written notice issued by the Department to the Contractor of the date on or before which the Contractor is to begin the prosecution of the work.

- X. PENNDOT SPECIFICATIONS shall mean the specifications of the Pennsylvania Department of Transportation, Publication 408, as applicable, with its supplements, in effect on the date that the project was advertised.
- Y. PERFORMANCE BOND shall mean the approved form of security furnished by the Contractor and its Surety as a guaranty of good faith on the part of the Contractor to execute the work in accordance with the terms of the Contract.
- Z. PROPOSAL or BID FORM shall mean the approved prepared form on which the Bidder is to submit, or has submitted, a bid for the work contemplated.
- AA. SECRETARY shall mean the Secretary of Conservation and Natural Resources.
- BB. SEPARATE CONTRACTOR shall mean any of the below listed Contractors or their authorized representatives:
1. Contractor for General Construction.  
  
The Contractor holding a separate Contract for general construction work.
  2. Heating Ventilating Contractor.  
  
The Contractor holding a separate Contract for heating, ventilating and air conditioning construction work.
  3. Plumbing Contractor.  
  
The Contractor holding a separate Contract for plumbing construction work.
  4. Electrical Contractor.  
  
The Contractor holding a separate Contract for electrical construction work.

- CC. SPECIFICATIONS shall mean the directions, provisions, and requirements contained herein, and any supplements, revisions, addenda, general conditions, and special requirements referred to in, or bound with, the Bid Form, together with all written agreements made or to be made, pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the Contract.
- DD. SUBCONTRACTOR shall mean the individual, partnership, corporation, or other legal entity which enters into a contract with the Contractor for the performance of specific portions of the work described in the Bid Form, acting solely through the Contractor in the performance of the work.
- EE. SURETY or SURETIES shall mean the corporate body or bodies that are bound with and for the Contractor for the satisfactory performance of the work, prompt payment in full for labor and materials and project maintenance upon contract completion as provided in the bonds.
- FF. SURETY BOND(S) or BOND(S) shall mean the Performance Bond, the Material and Labor Bond, or the Maintenance Bond, or any combination of said bonds.
- GG. UNIT shall mean the specific portion or section of the works or project to be completed under the Contract.
- HH. WORKS or PROJECT shall mean all of the work to be performed and completed.

## **1.2 DIRECTION OR APPROVAL OF DEPARTMENT**

Wherever in the Contract, the words DIRECTED, REQUIRED, PERMITTED, ORDERED, INSTRUCTED, DESIGNATED, CONSIDERED NECESSARY, PRESCRIBED, or words of like import are used, it shall be understood that the direction, requirement, permission, order, instruction, designation, or prescription, etc., of the Department is intended, and similarly, the words, APPROVED, ACCEPTABLE, SATISFACTORY, or words of like import, shall mean approved by, or acceptable or satisfactory to the Department.

## **1.3 CONTRACTOR'S ADDRESS**

The address, given in the Bid Form upon which the Contract is founded, is designated as the place to which notices, letters, and other communications to the Contractor shall be mailed or delivered. The delivery to this address of any notice, letter, or other communication from the Department to the Contractor shall be deemed sufficient service thereof upon the Contractor, and the date of

said service shall be the date of such delivery. The address may be changed at any time by written notice from the Contractor to the Department. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon the Contractor personally.

## SECTION 2

### BID REQUIREMENTS AND CONDITIONS

#### 2.1 GENERAL INFORMATION FOR BIDDERS

The Bid Form specifies the place to which it must be delivered, the date, time, and place of opening of bids, the location and description of the work to be performed, the approximate quantities of work to be performed and materials to be furnished, the number of days or the date by which the work must be completed, the amount of the bid guaranty, and any special requirements pertaining to the particular works to be constructed that may vary from, or are not contained in, the General Conditions for Construction. All papers bound with or attached to the Bid Form are a necessary part thereof and shall not be detached.

#### 2.2 QUALIFICATION OF BIDDERS

The Bidder must present satisfactory evidence that the Bidder has been engaged in work of a general character covered by the Bid Form and that the Bidder is fully prepared and has the necessary capital to begin work promptly and to conduct it as required by the Contract. The Bidder may attach additional pages to the Bid Form to present the evidence required. The Bidder shall present additional evidence of its experience and fitness within five (5) days after a request is made by the Department following a Bid Opening, unless the time is extended by the Department.

If the Anti-Collusion Affidavit is included in the Bid Form, the Bidder must execute a sworn statement on behalf of each person, partnership, joint venture, corporation, or other legal entity, submitting the proposal, certifying that such person, partnership, joint venture, corporation, or legal entity has not, either directly or indirectly, entered into an agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Contract. The affidavit form provided by the Department in the Bid Form must be executed by the Contractor and notarized as a part of its bid.

All foreign corporations, and individuals or legal entities doing business under fictitious names, shall register with the Secretary of the Commonwealth, Department of State, before an award will be made to such corporation, individual, or legal entity.

By submitting its bid, the Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other State or the Federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.



The Contractor further agrees, through submission of its bid, to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with terms of this or any other agreement between the Contractor and the Commonwealth which result in a determination of willful misconduct or the suspension or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in a determination of willful misconduct or the Contractor's suspension or debarment.

If required in the Bid Instructions, a Bidder must hold a current small business certification from Pennsylvania Department of General Services.

### **2.3 ESTIMATE OF QUANTITIES**

The Bidder's attention is called to the fact that the estimate of quantities of work to be done and equipment to be furnished under the Specifications may be shown on the Bid Form and in the Contract, and if shown is approximate and is given only as a basis of calculation upon which the bids will be compared. The Department does not assume any responsibility that the quantities set forth shall be realized strictly in the work, nor shall the Contractor plead misunderstanding or deception because of such estimate of quantities or of the character of the work, location, or other conditions pertaining thereto. The Department reserves the right to increase or decrease any or all of the above-mentioned quantities of work and equipment or to omit any of them, as it may deem necessary, and such increase or decrease of the quantities given for any of the items shall not be considered as sufficient grounds for granting an increase in the unit prices bid. The Contractor will be paid at the unit prices bid for actual work performed under the Contract.

The Bidder is required to prepare its own estimate of quantities from the construction drawings and actual site investigation for a "Lump Sum" Contract.

### **2.4 SITE INVESTIGATION**

- A. GENERAL - The Bidder acknowledges that the Bidder has satisfied itself as to: the nature and location of the work; the general and local conditions, including but not restricted to those bearing upon transporting, disposing, handling, and storing of materials; availability of labor, water, electric power, and roads; uncertainties of weather, river stages, lake levels, tides, or similar physical conditions at the site; the conformation and conditions of the ground; and the character of equipment and facilities needed preliminary to and during the prosecution of the work. The Bidder further

acknowledges that the Bidder has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Department, as well as from information presented by the drawings and specifications made a part of the Contract. Any failure by the Bidder to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Department assumes no responsibility for any conclusions or interpretations made by the Bidder on the basis of the information made available by the Department. The Department also assumes no responsibility for any understanding or representations made by its officers or agents during or prior to the execution of the Contract, unless (1) such understanding or representations are expressly stated in the Contract, and (2) the Contract expressly provides that the responsibility therefor is assumed by the Department. Representations which are not expressly stated in the Contract and for which liability is not expressly assumed by the Department in the Contract shall be deemed only for the information of the Bidder.

- B. TOPOGRAPHY - Contours, topography, profiles, and/or cross sections of the existing ground are shown on the Drawings which accompany and are part of the Bid Documents. These contours, topography, profiles, and/or cross sections are believed to be reasonably correct but are not guaranteed to be absolutely so and are presented only as approximations.
- C. SUBSURFACE INVESTIGATIONS - Where subsurface and foundation conditions have been investigated by borings and test pits at the site of work of the Contract, these subsurface investigations have been made for design purposes only, and the logs and results are available at the offices of the Department.

Samples from drill holes may be available for inspection by the Bidder, who will be advised on inquiry of the location where the samples are stored.

These subsurface data are offered in good faith solely for the purpose of placing the Bidder in receipt of all the information available to the Department. The Bidder agrees that the Bidder will not place reliance thereon in the preparation of its bid, or in the event that the Bidder does rely thereon that it will do so entirely at its own risk. Such data shall in no event be considered a part of the Contract. Bidders will be required to sign a waiver form for this subsurface information, and such bidders accept this subsurface information in accordance with the provisions of this subsection.

Borings are believed to represent accurately the strata encountered at the locations indicated, but the Department will not be responsible for deductions, interpretations, or conclusions drawn therefrom. Groundwater levels are those observed at the time of the subsurface exploration and may not reflect stable groundwater levels at the time of construction.

## **2.5 THE BID**

The bid must be submitted on the forms provided by the Department for that purpose. They must not be changed in form, and no alteration or interlineation shall be made therein. Should the Bidder decide to explain or to qualify its bid, the Bidder should do so in a supplemental statement attached to the Bid Form; but any bid may be rejected which contains explanations or qualifications which change or modify the character of conditions of the Bid Form as printed, or which make it incomparable with other bids, as determined by the Department.

The blank spaces in the Bid Form shall be filled in, for each and every item and the Bidder must insert the price (either typewritten or in ink) for which the Bidder proposes to do the work. Unit price figures shall be considered as the prices bid. The extensions of the unit prices are only for the information of the Department and will not be considered as part of the bid. The Bidder shall sign its Bid Form correctly and enclose it in the sealed envelope furnished by the Department for that purpose. However, if the bid contains an apparent extended unit price, but no unit price, for a bid line item, the Department may determine the unit price bid as the indicated apparent extended unit price divided by the estimated quantity for that bid line item.

If the bid is made by an individual, it shall be signed by the individual; if it is made by a partnership, it shall be signed in the partnership name by a member of the partnership and the name and address of each member shall be given; if it is made by a corporation, the person signing must be the president or vice president of the corporation, attested to by the secretary or treasurer of the corporation, otherwise, the signing individual's certificate of authority to execute such documents must accompany the Bid Form and the name of the State under the laws of which the corporation is chartered and the names, titles, and business addresses of the president, vice president, secretary, and treasurer must appear therein. Bids will be opened and read publicly at the time and place given in the Bid Form. Bidders and other interested persons may witness the opening of bids.

Late bids will not be considered and will be returned unopened. If, due to inclement weather, natural disaster, or other cause, any of the Commonwealth offices associated with receipt and opening of bids are officially closed on the date and at the time scheduled for bid opening, the bid opening date shall be automatically postponed until the next Commonwealth business day, unless the

bidders are otherwise notified by the Commonwealth. The bid opening time shall remain the same.

## **2.6 BID GUARANTY**

Each bid must be accompanied by a monetary deposit in the amount stipulated in the Bid Form. The deposit shall be made payable to the “Commonwealth of Pennsylvania” and shall be the depositor’s check certified by the bank of deposit, or it may be a bank cashier’s or trust company treasurer’s check or equivalent. When specifically stated in the Bid Form, a bid bond in the same amount, executed by the Bidder and a surety company, may be substituted in lieu of the specified check at the Bidder’s option. Bid Bonds must be executed by a corporate surety authorized to do business in Pennsylvania. When the Bid Form contains a specimen bid bond form, the bid bond shall be submitted in that format to the exclusion of all other surety bid bond formats. Either the bid bond, or the specified check, or the equivalent thereof shall be a guaranty that the Bidder upon being declared the lowest responsible bidder and awarded the Contract, will, within ten (10) days after receipt of the Contract, execute the Contract and furnish the required Surety Bonds. The said Contract and Bonds shall be on the standard forms prescribed by the Department. No other forms of bid guaranties will be acceptable. Checks or bid bonds will be returned to bidders to whom the award is not made, other than the lowest and next lowest bidder under consideration for contract award, within thirty (30) days of the bid opening. The check or Bid Bond of the Bidder to whom the award is made and the next lowest responsible bidder will be returned to them within seven (7) days after the execution of the Contract by both parties, the furnishing of the required Surety Bonds, and approval of the Contract and Bonds by the Commonwealth.

If the Bidder to whom the award has been made shall fail to execute the Contract and to furnish satisfactory Bonds within the time heretofore specified or extended by the Department, the award shall thereupon become void, at the option of the Department, in which case the proceeds of the check or bid bond shall become the property of the Commonwealth of Pennsylvania as liquidated damages, and the Contract may be awarded to the next lowest responsible bidder who shall thereupon assume the Contract as if it were the party to whom the award was first made. Bids that are not accompanied by a proper bid guaranty will be rejected.

## **2.7 REJECTION OF BIDS**

The right is reserved to accept or reject any or all bids, and to waive technical defects, if, in the judgment of the Department, the best interests of the Commonwealth of Pennsylvania shall require such action, as deemed necessary by the Department in its sole discretion.

More than one bid for a project from an individual, partnership, corporation, joint

venture, or other legal entity under the same or different names will invalidate all bids from such Bidders.

A joint venture bid will be acceptable.

Bids in which the bid prices are obviously unbalanced may be rejected. This includes lump sum items such as Mobilization and Demobilization, as well as unit price items.

## **2.8 ASSIGNMENT OF BIDS**

The Bidder may not assign its bid, or any of its rights or interests thereunder, without the written consent of the Department.

## **2.9 MODIFICATION OR WITHDRAWAL OF BIDS**

Each and every bidder submitting a bid specifically waives any right to modify or withdraw it, except as hereinafter provided. Bids may be modified or withdrawn by written or telefax notice received at the Department's return address for bid delivery prior to the exact hour and date specified in the proposal for the opening thereof. However, if the Bidder chooses to attempt to provide such written notice by telefax transmission, the Department shall not be responsible or liable for errors in telefax transmission or failure to deliver a telefax received from the receiving telefax machine to the depository for bids prior to the deadline for receipt of bids. Revisions must not divulge the total amount of the bid, either original or revised. Such divulgence shall disqualify the bid. Revisions must be confirmed by letter within seventy-two (72) hours. A bid may also be modified or withdrawn in person by a bidder or its authorized representative, provided its identity is made known and the bidder or its authorized representative signs a receipt for the bid, but only if the modification or withdrawal is made prior to the exact hour and date set for the opening of bids.

After bid opening, withdrawal of bids must conform to Sections 512(f) and 902(d) of the CPC, provided that a request to withdraw must be made in writing to the Department within two (2) business days after the opening of bids. Supporting evidence of right to withdraw must be submitted by the Bidder to the Department within ten (10) business days after the bid opening.

## **2.10 EQUIPMENT SCHEDULE**

The Bidder shall furnish a list of its available equipment which is pertinent to each project on forms provided by the Department as a part of the Bid Form.

## **2.11 RECIPROCAL LIMITATIONS**

- A. The Reciprocal Limitations Act (62 Pa. C.S. § 107) requires the Department:
1. In the award of contracts exceeding \$10,000 for the erection, construction, alteration, improvement, or repair of any building or other public work, or the purchase or lease of any goods, supplies, equipment, printing, or materials, to give resident Bidders a preference against a nonresident Bidder from any state that gives or requires a preference to Bidders from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident Bidder. A resident Bidder is a person, partnership, or corporation or other business entity authorized to transact business in Pennsylvania and having a bona fide establishment for transacting business within Pennsylvania at which it was transacting business on the date when bids for the public contract were first solicited.
  2. In the erection, construction, alteration, improvement, or repair of any public building or other public work, and in all purchases of goods, supplies, equipment, printing, or materials, not to specify, use or purchase any goods, supplies, equipment, printing, or materials which are produced, manufactured, mined, grown, or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public building or other works, when such items are not produced, manufactured, mined, grown, or performed in such state.
- B. States which apply preference favoring in-state Bidders and the amount of such preference (that may affect this Contract), as found by the Department.

STATE	PREFERENCE
1. Arizona	5% (construction materials from Arizona resident dealers only)
2. Montana	3%
3. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
4. Wyoming	5%

- C. States which prohibit the use of out-of-state goods, supplies, equipment, materials, or printing and the prohibition (that may affect this Contract), as found by the Department.

STATE	PREFERENCE
1. Georgia	Forest products only
2. Indiana	Coal
3. New Jersey	For Bidders for the following items: major household appliances, chain link fence, portable sanitation units, glass, glazier supplies, storage batteries, carpet and cushion, shades, room air conditioning, electrical supplies, plumbing supplies, hardware supplies, fasteners, lumber, building supplies, audio-visual/video equipment, fire extinguishers, fire hose, motor oils, fuel oil, photographic supplies, Venetian blinds, drapes, paper towel dispensers, water hose
4. New Mexico	Construction

- D. In calculating the preference, the amount of a bid submitted by a Pennsylvania Bidder shall be reduced by the percentage preference which would be given to a nonresident Bidder by its state of residence. Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment, materials, and printing shall be reduced by the percentage preference which would be given to another Bidder by the state where the goods, supplies, equipment, materials, or printing are produced, manufactured, mined, grown, or performed.
- E. The Bidder must execute the "Bidder's Certification" that is included in the Bid Form. The Department will use this certification in determining whether the Bidder is a Pennsylvania resident bidder or whether the Bidder is a nonresident Bidder from a state that applies a preference favoring bidders from that state.

## 2.12 NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies,

performance of work, or any other activity required under the Contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

- B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- D. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- E. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- F. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the



Contract relates.

- G. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- I. The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- J. The Commonwealth may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## **2.13 CONTRACTOR INTEGRITY PROVISIONS**

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

A. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

1. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
2. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
3. **“Contractor”** means the individual or entity, which has entered into this Contract with the Commonwealth.
4. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
5. **“Financial Interest”** means either:
  - a Ownership of more than a five percent (5%) interest in any business; or
  - b Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
6. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor’s Code of Conduct, Executive Order 1980-18](#), the *4 Pa. Code §7.153(b)*, shall apply.
7. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

B. In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this Contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
3. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
4. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the Contract signed by Contractor.
5. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
  - a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

- b been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- c had any business license or professional license suspended or revoked;
- d had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- e been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the Contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the Contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- 6. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa. C.S. §13A01 et seq.)* regardless of the method of award. If this Contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- 7. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- 8. Contractor, by submission of its bid or proposal and/or execution of

this Contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

9. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
10. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the

Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

#### **2.14 SMALL DIVERSE BUSINESS and VETERAN BUSINESS ENTERPRISE PARTICIPATION**

The Contractor shall adhere to Small Diverse Business and Veteran Business Enterprise participation requirements set forth in the Special Requirements in the Bid Documents.

#### **2.15 PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT**

During the term of this Contract, the Contractor agrees as follows:

- A. Pursuant to Federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of Paragraph A, above.

#### **2.16 CONTRACTOR RESPONSIBILITY PROVISIONS**

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania. The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in

the Commonwealth.

- A. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- B. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations or has filed a timely administrative or judicial appeal if such liabilities or obligations exist or is subject to a duly approved deferred payment plan if such liabilities exist.
- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- F. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at

<http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

## **2.17 BID PROTESTS**

The procedures for bid protests set forth in Section 1711.1 of the CPC (62 Pa. C.S. § 1711.1) shall govern.



## **SECTION 3**

### **AWARD AND EXECUTION OF CONTRACT**

#### **3.1 AWARD OF CONTRACT**

Subject to the provisions of Section 2.7, "Rejection of Bids," when a Bid received has been determined by the Department to be satisfactory, a Contract will be awarded to the lowest responsible Bidder within sixty (60) days of the date of the Bid Opening. However, if the award is delayed because of a required approval of another government agency, the sale of bonds, or the award of a grant or grants, the Department will reject all bids, or award the Contract to the lowest responsible Bidder within one hundred twenty (120) days of the Bid Opening. Award in either case is subject to the Department's right to reject any or all bids, as hereinbefore stated. Thirty (30) day extensions of the date for the award may be made by the mutual written consent of the Department and the Bidder. The award will be based exclusively on the total results of computations of the estimated quantities and the prices bid, as applicable, provided the lowest Bidder is qualified as determined by the Department.

Release of the lowest responsible Bidder from any liability in respect to its bid or Contract shall be in accordance with Section 3913 of the CPC (62 Pa. C.S. § 3913)

All tie bids will be broken by the Secretary of Conservation and Natural Resources, or his/her designee, in the best interests of the Commonwealth.

#### **3.2 CANCELLATION OF AWARD**

The Department reserves the right to cancel the award of the Contract at any time before its execution or before approval as to its form and legality by the legally designated officials of the Commonwealth.

#### **3.3 EXECUTION OF CONTRACT**

The Bidder, to whom the award shall have been made, must execute the Contract and return it, together with properly executed bonds and insurance certificates, to the Department in Harrisburg, Pennsylvania, within ten (10) days after receipt of the documents. If the Bidder to whom the Contract shall have been awarded fails, refuses or neglects to return the Contract, Bonds and Insurance Certificates, as herein provided, the amount of the Bid Guaranty shall be forfeited and retained by the Commonwealth as liquidated damages for such neglect, refusal or failure. Any lapse of time beyond the ten (10) days shall be added to the time limitations for execution of the Contract as provided in Section 3912 of the CPC (62 Pa. C.S. § 3912). The lowest responsible Bidder shall signify its consent to this extension by signing the form included in the Contract.

No bid shall be considered binding upon the Commonwealth until the Contract has been fully executed.

### **3.4 PERSONS INTERESTED IN CONTRACT**

The Contractor shall ensure that no individual, partnership, joint venture, corporation or other legal entity other than the Contractor has any interest hereunder as Contractor.

### **3.5 ASSIGNMENT AND SUBCONTRACTS**

The personal services of the Contractor are contemplated under the Contract. Therefore, no more than forty percent (40%) of the work to be performed may be subcontracted without the written approval of the Department. Subcontractors shall be subject to the approval of the Department, which approval shall be contingent upon the subcontractor's proven ability to satisfactorily perform the subcontracted work. If, in the opinion of the Department, the subcontracted work is unnecessarily or unreasonably delayed, or is not being performed suitably, in accordance with the terms of the Contract, or sufficient progress is not being made to complete the work in the required time, or, for any cause whatsoever, is not being carried on in an acceptable manner, then the Department may notify the Contractor, in writing, to terminate the use of such subcontractor. The Contractor shall then comply with such notification within two (2) weeks and shall perform the work either by its own forces or by other approved means.

Proposed subcontractors must certify that they have not been suspended or debarred from contracting with the Commonwealth or the Federal government and provide their Federal Tax Identification Number to the Department.

The Contractor may obtain the current list of suspended and debarred contractors by contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Bldg.  
Harrisburg, PA 17125  
Telephone No. (717) 783-6472  
FAX No. (717) 787-9138

If the Contractor enters into subcontracts or employs under this Contract any subcontractors /individuals who are currently suspended or debarred by the Commonwealth or the Federal government or who become suspended or debarred by the Commonwealth or Federal government during the term of this Contract or any extensions or renewals thereof, the Commonwealth shall have the right to

require the Contractor to terminate such subcontracts or employment.

The Contractor shall be responsible in all respects for its subcontractors' compliance with all provisions of the Contract.

In any event, the Contractor shall not assign, transfer, or otherwise dispose of the Contract, or its right, title, or interest in or to the same or any part thereof, without such previous written consent of the Department. If the Contractor shall, without the previous written consent, assign, transfer, convey, or otherwise dispose of the Contract, or of its right, title, or interest therein to any other individual, partnership, joint venture, corporation or other legal entity, the Contract may, at the option of the Department, be terminated in accordance with Section 5.10A, "Termination due to Nature of Performance by Contractor," hereof. The Department shall thereupon be relieved and discharged from any and all liability and obligations, growing out of the same, to the Contractor and to its assignee, trustee or transferee; and no right under the Contract, or to any money to become due under the Contract, shall be asserted, excepting as provided herein, against the Department, in law or equity, by reason of any so-called assignment of the Contract or any part thereof, or of any moneys to become due under the Contract, unless authorized as aforesaid by written consent of the Department.

The Contractor will be required to submit to the Department, the names of all of the subcontractors and/or suppliers in which the Contractor has a financial interest, and which will be utilized in the Project.

The Contractor will be required to submit to the Department, copies of all subcontracts for work to be performed on the Project prior to commencement of any work by the subcontractor.

### **3.6 SEPARATE CONTRACTS**

- A. DEPARTMENT'S RIGHT TO AWARD SEPARATE CONTRACTS - The Department reserves the right to award other Contracts in connection with other portions of the Project under these or similar conditions of the Contract.

When separate Contracts are awarded for different portions of the Project, the "Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate Contract.

- B. MUTUAL RESPONSIBILITY OF CONTRACTORS - The Contractor shall afford other separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate its work awarded by the Department to other separate Contractors.

If any part of the Contractor's work depends for proper execution or results upon the work of any other separate Contractor, the Contractor shall inspect and promptly report to the Department any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper to receive its work, except as to defects which may develop in the other separate Contractor's work after the execution of the Contractor's work.

- C. COORDINATION - The work shall be conducted so as not to interfere with the work of other separate Contractors. If any part of a Contractor's work depends for proper execution or results upon work being done by another separate Contractor (or such other Contractor's subcontractor) not under Contract to the Contractor, the Contractor shall inspect and promptly report to the Department any interference, defects, or delays in the work done or being done by the other separate Contractors (or its subcontractors). The Department may, if requested by the Contractor, establish the sequence of the work in order to secure completion of the various portions of the work in general harmony or the Department may order suspension of the work in accordance with Section 4.1, Paragraph C until such time as proper sequence of the work is established, or both. In the event that any Contractor shall not complete the various portions of the work in general harmony, and another Contractor shall be caused damage or injury by the failure to so act in harmony, the Contractor damaged or injured shall have the right to settle by agreement or arbitration such claim or disputes in accordance with the provisions of Section 5.13, "Disputes or Actions Between Contractors," hereinafter. The Department, however, shall not be liable to any Contractor for any increased costs or damages resulting from the defective work, interference, or delays of other Contractors.

### **3.7 REMOVAL OF EQUIPMENT**

The Contractor shall not sell, assign, mortgage, hypothecate, or remove equipment which has been furnished *and is to be incorporated into the Project*, and which may be necessary, for the completion of the Contract without the written consent of the Department.

### **3.8 NOTICE TO PROCEED**

Within sixty (60) days of the date that the Contract is awarded, the Contract shall be executed by the Department and the lowest responsible Bidder, and the Department will issue a Notice to Proceed unless the time shall be extended by the mutual written consent of the Department and the lowest responsible Bidder.

### 3.9 SURETY BONDS

The Bidder to whom the Contract is awarded will be required to execute a “Performance Bond” covering satisfactory performance of the work contracted in the sum of One Hundred Percent (100%) of the amount of the Contract; a “Material and Labor Payment Bond” covering the prompt payment in full for materials, utility services rendered, and all equipment furnished and/or labor supplied or performed, in the prosecution of the work, also in the sum of One Hundred Percent (100%) of the amount of the Contract; and a “Maintenance Bond” in the sum of Fifty Percent (50%) of the Contract amount, conditioned for the Contractor’s remedy, without cost to the Department, of any defects which develop during the remedy guarantee period as outlined in Section 5.18, “Remedy Guarantee Period,” of these General Conditions. All bonds must be executed by a Corporate Surety authorized to do business in the Commonwealth. If the bonds are executed by a non-resident agent, they must be countersigned by a resident agent registered with the Pennsylvania Department of Insurance. The same Surety must execute all bonds and should the Surety upon such bonds become unsatisfactory to the Department, the Contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Department and of any individual, partnership, joint venture, corporations or other legal entity supplying materials, utility services, equipment, and/or labor in the prosecution of the work contemplated by the Contract.

If the Contractor selects a surety company who must obtain reinsurance in another surety company, co-suretyship, etc., by deposit with it, in pledge of conveyance to it in trust for its protection of property or by conveyance or mortgage for its protection, such reinsurance, co-suretyships, etc., will be reviewed by the Department and any costs associated with appraisals or evaluations of pledged assets shall be borne by the Contractor. The Department in its sole discretion will evaluate the reinsurance, co-suretyship, etc., to ensure that the public is adequately protected under the Contract.

In accordance with the Act of June 10, 1947 (P.L. 493, No. 223), 8 P.S. § 23, if the Contractor is a corporation not incorporated in Pennsylvania, the contracting corporation and its sureties shall not be discharged from liability on the bonds, nor the bonds surrendered, until such corporation files with the Department a certificate from the Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Unemployment Compensation, Benefits and Allowances of the Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth from the said contracting corporation, or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived.

The Contractor shall require each subcontractor to notify its subcontractors and

suppliers, in writing, that their right of recovery against the Material and Labor Payment Bond may not be exercised unless the Prime Contractor is notified of the claim by registered or certified mail within ninety (90) days from the last performance of labor or provision of materials. Contractor shall furnish to the Department a copy of this notification.

### 3.10 INSURANCE

The Contractor shall not commence work under the Contract until it has obtained all insurance required in this section and not until such insurance has been approved by the Department, nor shall the Contractor permit a subcontractor, if any, to commence work until all similar insurance has been obtained and approved. The Contractor shall either require each of its subcontractors to procure and maintain, for the life of its subcontract, subcontractors' insurance in the types and amounts specified or insure the activity of its subcontractor in its own policies. **Each certificate or policy submitted as evidence of such coverage shall contain a rider that the insurer will notify the Department, in writing, thirty (30) days prior to cancellation or modification of the policy.** All policies shall be issued by insurance companies authorized to conduct such business under the law of the Commonwealth of Pennsylvania. The certificate of insurance shall be submitted to pertinent Regional Office of the Bureau of Facility Design and Construction.

The required insurances shall be of the Contractual Liability type and the named insured parties shall include the Commonwealth of Pennsylvania. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to the work performed for the Commonwealth.

- A. **WORKERS' COMPENSATION INSURANCE** - The Contractor shall take out and maintain, during the life of the Contract, Workers' Compensation Insurance for all of its employees employed on the Project and, in case any of the work is sublet, the Contractor shall require the subcontractor, similarly, to provide Workers' Compensation Insurance, unless the latter's employees are covered by the protection afforded by the Contractor.
- B. **PUBLIC LIABILITY BODILY INJURY AND PROPERTY DAMAGE INSURANCE** - The Contractor shall take out and maintain, for the life of the Contract, such Public Liability Bodily Injury and Property Damage Insurance as shall protect the Commonwealth, the Contractor, and subcontractor(s), if any, performing work covered by the Contract, from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise in execution of the Contract, whether such be by the Contractor or by the subcontractor(s) or by anyone directly or indirectly employed by either. The amount of Public Liability Bodily Injury Insurance shall not be less than \$1,000,000.00 per

occurrence. The amount of Property Damage Insurance shall not be less than \$500,000.00 per occurrence. If the policy is issued for Bodily Injury and Property Damage combined, the amount shall not be less than \$1,500,000.00 per occurrence. Coverage shall include Underground, Explosion and Collapse Hazards.

- C. **AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE INSURANCE** - The Contractor shall take out and maintain for the life of the Contract such Automobile Bodily Injury and Property Damage Insurance as shall protect the Commonwealth, the Contractor and subcontractor(s), if any, performing work covered by the Contract, from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise in execution of the Contract, whether such be by the Contractor or by the subcontractor(s) or by anyone directly or indirectly employed by either. The amount of the Automobile Bodily Injury Insurance shall be not less than \$500,000.00 per person and \$1,000,000.00 per occurrence. The amount of Automobile Property Damage Insurance shall not be less than \$500,000.00 per occurrence. If the policy is issued for Automobile Bodily Injury and Property Damage combined, the amount shall not be less than \$1,500,000.00 per occurrence. Automobile Bodily Injury and Property Damage Insurance coverage shall include non-owned and leased vehicles. Evidence of such coverage shall be required even though the Contractor claims to own no vehicles to be employed on the Project.
- D. **SPECIAL HAZARD** - Special hazards, if there is a possibility of such hazards existing in the work contemplated, shall be covered by separate insurance or by rider(s) to other required policy(ies). Possible hazards, such as blasting, explosion, and fire on insurable items shall be so covered.
- E. **MAINTENANCE OF INSURANCE** - Whenever the estimated aggregate of losses covered by the Insurance, described in Section 3.10B and C, equals or exceeds one-half (1/2) of the aggregate policy limits as determined by the Department, the said policy shall, upon fifteen (15) days written notice by the Department, be endorsed to restore the initial policy limits or replaced by another policy having the same limits.
- F. **ACCIDENTS AND CLAIMS** - The Contractor shall indemnify and save harmless the Commonwealth and all its officials, agents, and employees from all suits, actions, or claims of any character, name, and description brought for or on account of any claims of any injury or damage received or sustained by any person(s) or property on account of any actions of the Contractor, its agents, employees, or subcontractors in the execution of the Contract, whether caused by negligence or not, or from any improper or inferior workmanship or inferior materials used, and the Contractor will be required to pay any judgement, with costs, which may be obtained against

the Department and all its officials, agents and employees, growing out of such injury or damage. The Contractor shall respond to any damage claims in a timely manner.

If at any time during the Contract term, the Contractor and/or its subcontractors fail to comply with the requirements of this Section, the Contractor and/or its subcontractors shall cease work at the site until compliance has been attained.

### **3.11 RIGHT-TO-KNOW LAW**

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (RTKL) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the Department.
- B. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- C. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  - 1. Provide the Commonwealth, within ten (10) days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.



- E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- G. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- H. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- I. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

## SECTION 4

### CONDUCT OF WORK

#### 4.1 TIME AND ORDER OF WORK

- A. GENERAL - The Contractor shall commence work within ten (10) days after receipt of the Notice to Proceed and the work shall be carried on at such points and in such order of procedure and such times and seasons as may be necessary in order that all of the Project may be constructed with safety during all stages of construction and completed within the time specified in the Bid Form. If the Contractor does any work or incurs any expense in furtherance of the Contract prior to receipt of the Notice to Proceed, such action shall be its sole responsibility.

Any shut-down will in no way change the provisions of Section 5.11, "Contractor's Liability," of these General Conditions. The requirements and responsibilities outlined in that and other pertinent sections shall remain in effect during the period when work has been discontinued.

- B. FIELD EXAMINATION - After the Notice to Proceed is given for the Contract and before work is started at the site, the Contractor or its authorized representative shall go over the Project accompanied by an authorized representative of the Department, and shall observe for itself, with the Contract Drawings before it, all pertinent conditions relative to the Contract, including the status of right-of-way, working area, and existing structures and utilities.
- C. SHUT-DOWN REQUIRED BY DEPARTMENT - The Department shall have the right to have the work discontinued for such time as may be necessary, in whole or in part, should the condition of the weather, or of flood, or other contingency make it desirable to do so, in order that the work shall be well and properly executed. Extensions of time may be granted the Contractor for discontinuance of work so required, as provided in Section 4.2, "Extension of Time," of the General Conditions.
- D. WINTER SHUT-DOWN - Unless otherwise specified, the Contractor may suspend operations for the winter season provided that: (1) progress of the work is such that no completion is expected within time specified or there are no items of work which can be satisfactorily and efficiently performed during winter months, and (2) written permission is obtained from the Department prior to shut-down. Extension of time for winter shut-down will not be considered unless the winter season is much longer than could ordinarily be anticipated from a study of local weather conditions, and then only for time in excess of the expected winter season duration.

- E. SCHEDULE OF WORK - On single Contract projects, the Contractor, within fourteen (14) days after receipt of the Notice to Proceed, shall submit to the Department for approval a proposed itemized Schedule of Work. This itemized Schedule shall be submitted on a standard form prescribed by the Department. The Contractor shall follow this Schedule as closely as practical but shall not delay any portion of the work for the sole purpose of adhering to the approved Schedule. The Contractor shall submit revised Schedules if the Contractor changes its work program, which shall also be subject to the approval of the Department. Payment on account of progress estimates for the work may be withheld by the Department unless and until satisfactory itemized Schedules of Work are submitted as specified herein.

On multiple Contract projects, the Contractor for General Construction on the Project, within fourteen (14) days after receipt of the Notice to Proceed, shall furnish to each separate Contractor a Schedule of the proposed prosecution of the work under its Contract. Each separate Contractor shall submit to the Contractor for General Construction within fourteen (14) days after the Notice to Proceed, a Schedule of the proposed prosecution of the work under its respective Contract. The Contractor for General Construction shall then submit to the Department within twenty-eight (28) days after the Notice to Proceed a complete and comprehensive Progress Chart signed by all separate Contractors indicating their approval and showing in detail, to the satisfaction of the Department, the proposed coordinated dates for the performance of each phase of the work under every Contract on the entire project, commencing with a date ten (10) days after receipt of the Notice to Proceed and ending on the Contract completion date. This itemized Schedule shall be submitted on a standard form prescribed by the Department. Each separate Contractor shall follow this Schedule as closely as practical but shall not delay any portion of the work for the sole purpose of adhering to the approved schedule. In the event that any separate Contractor changes its work program or that a new completion date is authorized by the Department, a Revised Progress Chart signed by all separate Contractors indicating their approval shall be furnished promptly by the Contractor for General Construction.

- F. JOB CONFERENCES - Job Conferences may be scheduled bi-weekly or as often as required. Job Conferences must be attended by all Contractors, or a representative who is authorized to make all decisions and representations affecting the Contractor and its progress on the Project. The dates and time of Job Conferences will be given to all concerned parties and these Conferences shall be attended whether or not a particular Contract may be affected. A failure to attend shall be construed to be a violation of the Contract.

- G. **CUTTING AND PATCHING UNDER SEPARATE CONTRACTS** - The Contractor shall do all cutting, fitting or patching of its work that may be required to fit it to receive or be received by the work of other separate Contractors shown in the Contract Documents. The Contractor shall not endanger any work of any other separate Contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other separate Contractors except with the written consent of the Department.

Any costs caused by the defective or ill-timed work shall be borne by the contractor responsible therefor.

#### **4.2 EXTENSION OF TIME**

If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Department, by any separate Contractor employed by the Department, or by any causes beyond the control of the Contractor which are not foreseeable at the time of Contract execution, then the Contractor may be entitled to an extension of time for completing the work sufficient to compensate for such delay. No extension of time shall be granted, however, unless the Contractor shall, within ten (10) days from the initiation of the delay, notify the Department, in writing, of such delay and of the time of beginning and the cause of the delay, and unless the Contractor shall, within ten (10) days after the expiration of such delay notify the Department in writing, of the extension of time claimed on account thereof and then only to the extent, if any, allowed by the Department. The Department shall notify all other separate Contractors of such requests for extension of time either in writing, or at regularly scheduled job conferences. The Department will respond to such requests for extension of time to no sooner than the end of a (10) day period. Should none of the other Contractors raise written objections during the ten (10) day period, the Department will assume such silence as indication of approval and no Contractor having remained silent may at a later date claim damages therefore. No extension of time shall operate to release the Surety or Contractor from any of their obligations. The Department shall be fully authorized and empowered to make such deductions from the final estimate of the amount due the Contractor, as are stipulated in the Bid Form and the Contract, for each day that the Contractor shall be in default for the completion of the work beyond the date to which the time of completion shall have been extended by the Department. Should the Contractor be permitted to continue and finish the work, or any part thereof, after the time for completion fixed by the Contract, or as it may have been extended, such permission shall in no way operate as a waiver on the part of the Department of its right to collect the liquidated damages agreed upon in case of such delay, or of any of its rights under the Contract.

The Contractor declares that the Contractor has familiarized itself with the weather, local conditions, and other circumstances which may, or are likely to,

affect the performance and completion of the work. The Contractor agrees that, taking these conditions and circumstances into account, it will provide adequate equipment and prosecute the work in such manner and with such diligence that the same will be completed within the time specified in the Contract, or as the Contract may be extended, even though the most adverse conditions which reasonably could be expected to occur during the period of construction do prevail during the performance of the work.

When the work of the Department is enjoined by legal proceedings that prevent the Contractor from prosecuting any of the work of the Contract, an extension of time, sufficient in the opinion of the Department, may be granted to compensate for the time lost by such delay.

Apart from extension of time, no payment or claim for damages shall be made to the Contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the work, notwithstanding whether such delay may be avoidable or unavoidable. The Department shall grant extension of time, if any, by Change Order to the Contract.

#### **4.3 INSPECTION AND RIGHT OF ACCESS**

The Department contemplates, and the Contractor hereby agrees to, a thorough inspection by the Department, or by any of its agents, or by any agents which the Department may appoint for such purpose, of all work and equipment furnished under the Contract, in order to ascertain whether all workmanship is in strict accordance with the requirements of the Contract.

The Contractor shall furnish to the Department and any of its agents access at all times to the work and to the premises used by the Contractor and shall provide them every reasonable facility as may be desirable, for the purpose of inspection even to the extent of discontinuing portions of the work temporarily. The Contractor shall make no charge for temporary discontinuance of work for purposes of inspection.

The Contractor shall regard and carry out the directions and instructions of the Department, or its agents, and shall correct any defective work found not to be in accordance with the Specifications and Drawings and, in case of dispute, the Contractor may appeal to the Department, whose decision shall be final. The Contractor shall make no claim for damages or delay on this account.

If construction operations are to be conducted other than during normal work hours, 8:00 a.m. to 4:00 p.m., Monday through Friday, approval must be obtained from the Department and the Department must be notified forty-eight (48) hours in advance to arrange for inspection services.

#### **4.4 PROVIDING FOR EMERGENCIES**

It is understood by both parties to the Contract that unusual conditions may arise during the work which will require that immediate and unusual provisions be made to protect the public from danger, loss, or damage, due directly or indirectly, to the prosecution of the work, and that it is part of the service required of the Contractor to make such provisions.

The Contractor shall use such foresight and shall take such steps and precautions as may be necessary to protect the public from danger or damage or loss of life or property, which would result from the interruption of any public service, or from the failure of partly completed work.

Whenever, in the opinion of the Department, an emergency exists for which the Contractor has not taken sufficient precaution for the safety of the public, or the protection of the work to be performed under the Contract, or of adjacent structures or property which may be damaged by processes of work on account of such neglect and whenever, in the opinion of the Department, immediate action shall be considered necessary in order to protect public or private property interests liable to loss or damage on account of the operations under the Contract, then, and in that event, the Department, upon giving notice to the Contractor, shall provide suitable protection for said interests by causing such work to be done and equipment to be furnished as, in the opinion of the Department, may seem reasonable and necessary.

If emergency conditions arise which are due to the lack of foresight or failure to take proper precautionary measures on the part of the Contractor, the Contractor shall be solely responsible for the costs of any necessary remedial work, whether incurred by its own forces or by work and equipment provided by the Department. Cost and expenses for work and equipment, provided by the Department, shall be paid by the Contractor, upon the presentation of the bills therefor, properly certified by the Department. If said bills are not paid, upon presentation, by the Contractor, then said cost and expense shall be deducted from any amount due, or which may become due, the Contractor.

In case the Department shall decide that all or part of the expense incurred in meeting any emergency cannot be justly charged to the Contractor, it may compensate the Contractor for all or part of the work done and equipment furnished in meeting such emergency.

#### **4.5 PERSONAL ATTENTION OF CONTRACTOR**

The Contractor shall give its personal attention constantly to the faithful prosecution of the work, and shall be present, in person or represented by a qualified and duly authorized agent, on the site of the work, continually during its

progress. The Contractor shall at all times while the work is in progress keep a complete copy of the Contract, including all addenda and permits, at the site of the work.

#### **4.6 AGENTS, SUPERINTENDENTS, AND FOREMEN**

When the Contractor is not present on any part of the work where it may be desired to give directions, orders may be given by the Department and shall be received and obeyed by the superintendents or foremen who may have charge of the particular part of the work in reference to which orders are given.

Superintendents, agents, and foremen must be qualified to perform the duties of their position in an orderly and efficient manner. Any superintendent, agent, or foreman who is not qualified or who will not work in a cooperative manner with the Department representatives shall be discharged from the Project at the direction of the Department.

#### **4.7 LABOR REGULATIONS**

- A. **CONTRACT COMPLIANCE REGULATIONS** - The Commonwealth of Pennsylvania is an equal opportunity employer and requires conformance with all State and Federal laws prohibiting discrimination in hiring or employment opportunities.

The Contractor additionally shall comply with the Nondiscrimination/Sexual Harassment Clause included in Section 2.12 hereof.

- B. **PREFERENTIAL HIRING OF VETERANS** - The Contractor, subcontractor, or any person in either of their behalf, shall carry out the provisions of Section 7106 of the Military and Veterans Code (51 Pa. C.S. § 7106), which concerns the giving of preferences to honorably discharged persons, who have served in the armed forces of the United States during any war or armed conflict, in determining who shall be employed on public works, which Act in part provides:

“Whenever the Commonwealth issues specifications for the construction, alteration or repair of any public works, such specifications shall include a provision under which the contractors and subcontractors shall agree to give a preferential rating similar to that given by the Commonwealth to any soldier making application for employment upon such public works.”

The word “soldier” as used herein shall be construed to mean a person who served in the armed forces of the United States, or in any women’s organization officially connected therewith, during any war or armed conflict in which the United States engaged, or who so served or hereafter serves in the armed forces of the United States, or in any women’s

organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service.

- C. PREFERENTIAL HIRING OF LOCAL LABOR - The Contractor shall endeavor to hire, whenever possible, local people living in the vicinity of the work, when such people are qualified, able, and available to perform the work to which the employment relates. The intent is to aid the unemployment situation in the vicinity of the work whenever possible.
- D. CHARACTER AND RESIDENCE OF EMPLOYEES - The Contractor shall employ only competent, skillful, faithful, and orderly persons to do the work, and whenever the Department shall notify the Contractor, in writing, that any person in the work is, in its opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, the Contractor shall discharge such person from the work and shall not again employ that person except with the written consent of the Department.
- E. PREVAILING MINIMUM WAGE

The Contractor shall comply with the provisions of the Act of August 15, 1961 (P.L. 987, No. 442), as amended, known as the "Pennsylvania Prevailing Wage Act" (43 P.S. §§ 165-1 - 165-17) and the regulations issued pursuant thereto by the Pennsylvania Department of Labor and Industry. The Contractor shall include these requirements in all subcontracts for the Project.

No person, nor his firm, nor any firm, corporation or partnership in which he or his firm has any interest, who is debarred by the Secretary of Labor and Industry pursuant to Section 11(e) of the Pennsylvania Prevailing Wage Act, shall be permitted to participate in this Contract in any way.

Payment of Wages - All workmen employed or working on the Contract, whether by the Contractor or subcontractor, shall be paid no less than the prevailing minimum wage rates as determined in the decision of the Secretary of Labor and Industry which are contained in the Bid Documents. They shall be paid unconditionally, regardless of whether any contractual relationship exists, not less than once a week, without deductions or rebate on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Employers not parties to a Contract requiring contributions for employee benefits which have been determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen. Payment of compensation to workmen on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the



production of a certain result, shall be deemed a violation of these requirements, regardless of the average hourly earnings resulting therefrom. No workman may be employed on the Contract except in accordance with the classifications set forth in the decision of the Secretary of the Department of Labor and Industry. Minimum wages for positions not covered therein will be determined by the Secretary upon written application. Nothing in the Contract, the Prevailing Wage Act, or its implementing regulations shall prohibit the payment of more than the prevailing minimum wage rates as determined by the Secretary of the Department of Labor and Industry. Based upon a recent interpretation by the Pennsylvania Department of Labor and Industry, the prevailing minimum wage rates apply only to work performed within the project limits indicated on the Contract Drawings. They are not applicable to off-site work, even though such work is dedicated only to the performance of the Contract.

Certification of Records - The Contractor and all subcontractors shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid, including employee benefits, to each worker employed by them in connection with the public work. This record must include any deductions from each workman. The record shall be preserved for two (2) years from the date of payment and shall be open at all reasonable hours to the inspection of the Department and its duly authorized representatives. Each week, the Contractor and each subcontractor shall file a copy of the Form LLC-25, "WEEKLY PAYROLL CERTIFICATION FOR PUBLIC WORKS PROJECTS," with the Department. With the first and final payroll submission only, the Contractor and each subcontractor shall complete the reverse side, "FRINGE BENEFITS EXPLANATION" and "CERTIFIED STATEMENT OF COMPLIANCE," and shall have the statement notarized. If any workmen remain unpaid, the amount owing to each workman must be set forth. The employer must also certify that it is not receiving, or requiring, and will not receive or require, directly or indirectly, from any employee, any refund of any such wage or wages. The payrolls shall be submitted to the Department's Representative within ten (10) days of the close of each pay period. Payrolls must be submitted even if the prevailing minimum wage rates do not apply in order that compliance with other provisions may be verified. Progress payments and final payments will be withheld if such payrolls and certification are not submitted using the proper form within the prescribed time limit.

Apprentices - Apprentices employed on the Project shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council. Only apprentices whose training and employment are in

full compliance with the provisions of the Act of July 14, 1961 (P.L. 604, No. 304), known as "The Apprenticeship and Training Act" and the rules and regulations issued pursuant thereto shall be employed. Any workman using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft and/or classification.

Posting - The wage determination decisions of the Secretary, including the effective date and changes thereof, must be posted in a prominent and easily accessible place(s) at the site of work and at the place where workmen are paid their wages. The posted notice must include a statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or if their employer is not complying with the prevailing minimum wage rate in any manner whatsoever, they may file a protest with the Secretary of Labor and Industry. The posted notice must also include that any workman paid less than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the Contract. This right of action must be exercised within six (6) months from the occurrence of the event creating such right.

Penalties - Failure to comply with the Pennsylvania Prevailing Wage Act and its regulations will result in withholding money due or to become due on the Contract and may also result in termination of the right to proceed with the project work under Contract and/or other penalties prescribed by law.

Prevailing Minimum Wage Predetermination - If the Prevailing Minimum Wage Predetermination from the Department of Labor and Industry is included in the Contract Documents, then the Contractor shall pay the wage rates listed regardless of contract value. If the Prevailing Minimum Wage Predetermination from the Department of Labor and Industry is NOT included in the Contract Documents, then the Contractor shall pay the enhanced minimum wage rate as provided herein regardless of contract value.

#### F. ENHANCED MINIMUM WAGE

1. **Enhanced Minimum Wage.** Contractor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage shall be increased by increments of \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware and Maryland. The applicable amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
  - a exempt from the minimum wage under the Minimum Wage Act of 1968;
  - b covered by a collective bargaining agreement;
  - c required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  - d required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the Contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the Contract, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

## 4.8 SURVEYS

The Department will provide reference points and/or bench marks throughout the Project.

The Contractor shall complete the layout of the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the Specifications or on the Contract Drawings, subject to such modifications as the Department may require to meet changed conditions.

The Contractor shall furnish, at its own expense, such stakes, templates, platforms, equipment, tools and materials, and all labor as may be required in laying out any part of the work from the reference points and/or baselines established by the Department. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by the Department until authorized to remove them and if such marks are destroyed by the Contractor or through its negligence prior to their authorized removal, the expense of replacement may be deducted from any amounts due or to become due the Contractor. The Department may require that work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking of the work.

The Department may check the grade and alignment of concrete forms prior to the placement of concrete. Any items of work which will be covered or made inaccessible by subsequent work will be checked by the Department prior to covering. If the Contractor covers or makes inaccessible any unchecked work, the Department may direct the Contractor to uncover or remove subsequent construction to permit a check of the previous work and the costs of uncovering or removing subsequent work and replacement of same will be borne by the Contractor as provided in Section 5.5, "Correction of Work," of the General Conditions.

It is the intention not to delay the work for the checking of lines or grades, but, if necessary, working operations shall be suspended for such reasonable time as the Department may require for this purpose. No special compensation shall be paid for the cost to the Contractor of any of the work or delay occasioned by checking lines and grades, by making other necessary measurements, or by inspection, but such costs, it is agreed, shall be included in the Contract price. The Contractor shall keep the Department informed a reasonable time in advance of the times and places at which it intends to do work in order that necessary measurements for record and payment may be made with a minimum of inconvenience to the Department or of delay to the Contractor.

## 4.9 WEATHER PROTECTION

The Contractor shall furnish at its own expense, all equipment, materials, and work necessary to protect the Works from any weather conditions that may prevail. Construction shall be suspended at any time when, in the judgment of the Department, the conditions are unsuitable or the proper precautions are not being taken. Apparatus for protection shall be installed and operated in such manner that the finished work will not be damaged thereby.

## 4.10 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

- A. COMPLIANCE WITH LAWS – In the performance of its obligations under the Contract, the Contractor shall comply with all laws, rules, regulations, orders, and ordinances of the Commonwealth of Pennsylvania and other governmental bodies, now in effect or later enacted, adopted or promulgated. The Contractor shall have knowledge of all relevant laws, rules, regulations, orders, and ordinances. The Contractor shall accept, insofar as the work covered by the Contract is concerned, the provisions of the Act of June 2, 1915 (P.L. 736, No. 338), as reenacted and amended, known as the Workers’ Compensation Act (77 P.S. § 1 et seq.). See Paragraph 3.10A, “Workers’ Compensation Insurance,” for insurance required against this liability. The Contractor shall procure all required permits and licenses, pay all charges and fees, and give all notice necessary and incident to the proper and lawful prosecution of the work. For purposes of the Uniform Construction Code, State-owned buildings are under the jurisdiction of the Pennsylvania Department of Labor and Industry. 35 P.S. § 7210.105(b); 35 Pa. Code § 401.1.
- B. POLICE AND SANITARY REGULATIONS - The Contractor and its employees shall promptly and fully carry out the police and sanitary regulations as hereinafter described, or as may from time to time be prescribed by the Department to the end that proper work shall be done, good order shall prevail, and the health of employees, and of the local people using water from the drainage area in which the work is being performed, and of the local communities affected by the operations under the Contract, may be conserved and safeguarded. The Contractor shall summarily dismiss and shall not again engage, except with the written consent of the Department, any employee who violates the police or sanitary regulations.
- C. INTOXICANTS - The Contractor shall not permit or suffer the introduction or use of intoxicating liquor or illegal substances upon the Works embraced in the Contract, or upon any of the grounds occupied or controlled by the Contractor.

- D. DRINKING WATER REGULATIONS - In accordance with the regulations of the Department of Labor and Industry for industrial sanitation, cool and wholesome water of a quality approved by the Department of Environmental Protection shall be supplied at all times in places acceptable to employees. The common drinking cup for public use is prohibited. Either individual drinking vessels or bubbling fountains shall be used in lieu thereof. Bubbling fountains, if used, shall be maintained in a sanitary condition.

Before the Contractor starts work it shall take adequate means to insure provisions of a drinking water supply in compliance with the above regulations. Containers in which drinking water is supplied to employees by the Contractor must be maintained in a sanitary condition.

In case of the use of a public water supply, the Contractor shall submit to the Department a certified statement from the utility showing that the water complies with all requirements of and has been approved for public use by the Pennsylvania Department of Environmental Protection.

In case of the use of a private source of supply, the Contractor shall submit to the Department the results of laboratory analysis by an approved testing agency indicating the water to be sufficiently pure for potable use.

- E. MEDICAL SERVICE - The Contractor shall make satisfactory arrangements for medical service and for the proper care of employees who become sick on the job and employee who are injured during the course of the work. If ordered by the Department, the Contractor shall provide, at such places as directed, all articles necessary for giving first-aid to the injured. The Contractor shall remove from the work any employee whose presence is, in the opinion of the Department, a danger to the health of other persons.
- F. NO DIRECT COMPENSATION - No direct payment will be made for any work or materials required to meet the requirements herein before specified, but compensation therefore shall be considered as having been included in the Contract prices stipulated in the Contract.
- G. ANTI-POLLUTION MEASURES - Section 3301 of the CPC (62 Pa. C.S. § 3301), requires that the Department advise bidders on Commonwealth construction contracts of the Federal and Pennsylvania statutes, rules, and regulations dealing with the prevention of environment pollution and the preservation of public natural resources that apply to the Project on which bids are being received.

The Bidder shall thoroughly acquaint itself with and comply with the terms of the statutes, enumerated in this section and the rules and regulations

promulgated pursuant thereto. All costs of compliance with the Anti-Pollution Measures, with the possible exception of the Erosion and Sedimentation Control Plan, shall be considered incidental to the work and no separate payment will be made therefore. In the event that the listed statutes, rules, and regulations are amended, or if new statutes, rules, or regulations become effective, which cause the Contractor to perform additional or extra work, the Department will issue a Change Order setting forth any additional or extra work that must be undertaken. This Change Order will not invalidate the Contract. The Change Order will specify the amount of additional payment, if any, that will be made to the Contractor. If the Department and the Contractor cannot arrive at a mutually agreeable price for the additional or extra work, payment will be made in accordance with Section 6.7, "Modification of Specifications and Drawings," or Section 6.8, "Extra Work," of the General Conditions as applicable. No payment will be made for additional or extra work performed without written authorization to do so.

The Contractor shall comply with the acts and regulations enumerated in Appendix A. This Appendix is comprised of two parts: Part I listing Pennsylvania statutes and Part II listing Federal statutes.

The Appendix is illustrative only and in no way limits Contractor's responsibility to comply with all Federal, State and local laws, rules and regulations, as set forth in Section 4.10A, "Compliance with Laws."

The Contractor shall comply with local laws, codes, and regulations that apply to this Project. It is the responsibility of the Contractor to determine what, if any, local laws, codes, and regulations are applicable.

Each separate Contractor shall comply with the regulations and standards of Title 25 of the Pennsylvania Code. Each separate Contractor will be solely responsible for any violations and shall be responsible for securing permits, when required.

Burning - Burning of materials from clearing and grubbing operations, periodic and final clean-up and all related construction shall be governed by local codes and ordinances and the regulations of the Pennsylvania Department of Environmental Protection. All burning is subject to approval by the Department. If burning is permissible in a State Forest, it shall be performed in a manner approved by the local District Forester.

Solid Waste - Storage, collection, transportation, processing and final disposal of solid waste shall be in accordance with regulations and standards of the Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended (35 P.S. § 6018.102 et seq.) Immediately upon notice of award

of Contract, the Contractor shall apply for the necessary permit from the Department of Environmental Protection and conduct waste disposal on sites approved under this permit. A copy of this permit must be submitted to the Department before commencing waste disposal. The Regional Waste Management Coordinator of the Department of Environmental Protection shall be contacted for the permit and for information concerning sites already approved for conducting waste disposal.

H. EROSION AND SEDIMENTATION CONTROL PLAN (for projects having excavation/earthmoving activities)

1. Applicable for projects where the Erosion and Sedimentation Control Plan has not been included in the Contract Specifications and Drawings - As soon as practicable after receipt of Notice to Proceed, the Contractor shall be responsible for preparing an Erosion and Sedimentation Control Plan as required by the Clean Streams Law and Chapter 102 of the Department of Environmental Protection Regulations promulgated thereunder, indicating how the Bidder intends to implement and maintain Erosion and Sedimentation Control Measures during the execution of the construction Contract. The Contractor is advised that the Department of Conservation and Natural Resources does not have the authority to approve an Erosion and Sedimentation Control Plan. The Plan must be submitted to the Department, which in turn will submit it to the County Conservation District for approval. No earthmoving activity may begin until a plan has been approved. The approval of this plan will not relieve the Contractor of any responsibility for the adequacy and successful functioning of the Erosion and Sedimentation Control Measures. A copy of a Soil Erosion and Sedimentation Control Manual is available for information and guidance in the preparation of the plan. If the Contractor does not have a copy or desires additional copies, they may be obtained from the Department.
2. Applicable for projects where the Erosion and Sedimentation Control Plan has been included in the Contract Specifications and Drawings - The Contractor shall be responsible for implementing the Erosion and Sedimentation Control Plan in accordance with the provisions shown on the Drawings and/or contained in the Technical Specifications.



3. Payment - Payment for the preparation, if required, and implementation of the Erosion and Sedimentation Control Plan will be based on the following: a. If a separate bid item for this work is not indicated in the Schedule of Prices of the Bid Documents, then payment for this work will be considered incidental to the Contract bid item(s). b. If a separate bid item for this work is indicated in the Schedule of Prices of the Bid Documents as a Lump Sum bid item, then payment for this work will be made in the following manner: thirty percent (30%) when installed, twenty percent (20%) for maintenance over the life of the Contract, and fifty percent (50%) upon the removal of the temporary control measures.
4. General information applicable to all projects - It is required that an approved Erosion and Sedimentation Control Plan be available at the construction site at all times. Any loss or damage to any part of either the permanent or temporary work shall be the responsibility of the Contractor who shall replace or repair, as required, to the satisfaction of the Department. Temporary Erosion and Sedimentation Control Measures shall remain until the disturbed area has been stabilized, at which time the control measures shall be removed by the Contractor, unless otherwise directed by the Department.

#### I. HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS

The Contractor is notified that, if any artifacts of possible historical or archaeological significance are encountered, the Contractor shall stop all work within the general area in all directions of the artifacts and notify the Department immediately. Provisions in Section 4.2 will apply in the case of this event.

#### 4.11 SAFETY PRECAUTIONS

The Contractor, subcontractors and their employees shall comply at all times with applicable Federal, State and local laws, provisions and policies governing safety and health, including the Federal Construction Safety Act (Public Law 91-54), Federal Register Chapter XVII, Part 1926 of Title 29 Code of Federal Regulations, Occupational Safety and Health Regulations for Construction and subsequent publications updating these regulations. The Contractor shall take any other needed action or proceed as directed, to protect the life, health and general occupational welfare of personnel employed on the Project. When, in the Department's opinion, employees are exposed to extraordinary conditions which could or do constitute a hazard, the Contractor shall modify such equipment, devices and job procedures to insure protection against the hazard or reduce the risk to employees engaged in project work.

All work areas and other locations where unauthorized entry or presence would present a potential hazard to the health and safety of trespassers shall be adequately posted to restrain unauthorized personnel.

The Contractor shall provide, at its own expense, adequate lighting at all places where work in connection with the Project is conducted and at any other place within the project area considered necessary by the Department. The Contractor shall provide barricades and lights at night to safeguard the work sites from vehicular traffic and protect pedestrian traffic.

When any work is to be done on public highways and streets, the Contractor shall maintain traffic and protect the traveling public within the Work Area in accordance with requirements of the Agency or Authority responsible for that street or highway.

The Contractor shall employ only experienced, licensed supervisors, and workmen in the handling, loading and firing of explosives. The Contractor shall comply with all Federal, Commonwealth, County, and City laws and regulations governing the handling, storage and use of explosives and shall pay for required permits. All blasts shall be properly covered and every precaution taken to insure safety of persons and property. The Contractor shall be responsible for all damages caused by blasting and shall notify the Department's representative of any claims of damage from blasting at the time of claim.

The Contractor shall immediately take corrective action upon notification by the Department's representative of any non-compliance with the provisions of this section. Upon receipt of this notice, failure or refusal to promptly comply will cause a written order to be issued, stopping all or part of the work until the corrective action has been taken. Claim for an extension of time, costs or damages because of time lost due to such orders will not be considered.

#### **4.12 RIGHT-OF-WAY**

The Department will furnish to the Contractor all right-of-way which, in its opinion, is necessary for carrying out the work, and for securing access to the site of the work. In some cases, the Contractor may be required to obtain right-of-way for disposal areas and/or borrow areas. The Contractor shall furnish the Department with one (1) copy of each Access Agreement for any area outside the project limits.

The Contractor shall be responsible for trespassing or injury to private property and shall conduct its work in accordance with any laws or regulations relating thereto.

The Drawings show the limits of the right-of-way or grading and of the Contractor's Work Area. The Contractor's Work Area is for use by the Contractor and, where so indicated on Drawings, for disposal and regrading for drainage. No buildings or structures in this area shall be moved or damaged in any way except by written

direction of the Department or with the written approval of the property owner. The Contractor will be liable for any property or other damage in the Contractor's Work Area. All lands within the Contractor's Work Area must be restored to as good as or better than their pre-construction condition and left in a slightly state.

#### 4.13 REQUIREMENTS FOR SECONDARY WORKS

- A. GENERAL - The Department reserves the right to have such agent or agents as it may elect enter the property or location on which the Works herein contracted for are to be performed for the purpose of constructing or installing such Secondary Works as the Department may desire, or for the construction or reconstruction of telephone and telegraph lines, highways or other such facilities affected by the work. Such Secondary Works will be constructed or installed with as little hindrance or interference as possible with the Contractor. The Contractor hereby agrees not to interfere with, or prevent the performance of, any Secondary Works by the agent or agents of the Department.
- B. PROTECTION OF EXISTING STRUCTURES - The Contractor shall carefully protect from injury any existing improvements, property, or structures that may be liable to injury by the work covered by the Contract, except insofar as work of the Contract requires their modification or removal. The Contractor shall take all precautions necessary for such protection and shall be responsible for and shall make good any injury to such works, property, or structures, that may occur by reason of its operations.

The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which do not unreasonably interfere with the construction, as may be determined by the Department. The Contractor shall be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials, or tracking of grass areas by equipment.

- C. PUBLIC AND PRIVATE UTILITIES - The Contractor shall comply with the Act of December 10, 1974 (P.L. 852, No. 287), as amended, 73 P.S. § 176 et seq., which defines the procedures for notification to public utilities prior to excavation, drilling, or demolition work by use of powered equipment or explosives. The Contractor is required to inform itself fully concerning location of public and private utilities located within the work area which may or may not require removal, resetting, construction and/or reconstruction, and which may interfere with its operations, and shall be assumed to have prepared its Bid and entered into the Contract in full contemplation of the conditions to be encountered and its responsibility in connection therewith. The Contractor shall take all precautions necessary to

protect existing utilities and shall be fully responsible for and shall make good any injury to such utilities that may occur by reason of its operations.

Necessary relocation or removal of utility structures within the project limits will ordinarily be accomplished by others, but if so indicated on the Drawings, shall be done by the Contractor. If such work is to be done by others, the Contractor shall give the Department sixty (60) days written notice, prior to the time such removal or relocation will be necessary, in order to enable the utility owner to complete the work without delay to the Contractor's operations.

#### **4.14 STREETS AND PUBLIC THOROUGHFARES**

- A. **ROADWAYS** - The Contractor shall be responsible for the maintenance of streets and public thoroughfares outside the work area used by its vehicles during the progress of the work, to the extent of cleaning up any materials spilled from or otherwise distributed by its vehicles and restoring the said streets and rights-of-way to their original condition, if damaged by it. This will include entering into Agreements concerning this obligation, if requested by the controlling Municipality or Township. The cost and expense incidental to the fulfillment of this section shall be borne by the Contractor and should the Contractor create any public nuisance, in the opinion of the Department, by its failure to fulfill the requirements of this section, then the Department, upon written notice to the Contractor, may request the appropriate Public Authority where the nuisance occurs, to correct the damage, and the cost of this work shall be deducted from any amounts due, or to become due, the Contractor under the terms of the Contract.
  
- B. **MAINTENANCE OF TRAFFIC** - The Contractor shall conduct the work so as to insure the least obstruction to traffic. The Contractor shall provide all necessary barricades, warning signs, lanterns, red flags, torches, and other such items, and shall maintain them in operating condition, to the satisfaction of the Department, Pennsylvania Department of Transportation, Municipality, or other Agency having jurisdiction over affected roads or streets.

#### **4.15 DEPARTMENTAL REQUIREMENTS**

- A. **SIGNS DURING CONSTRUCTION** - If specified in the Bid Documents, the Contractor for General Construction, at its own cost and expense, shall erect and maintain in locations designated by the Department not more than two (2) signs. The sign(s) shall remain in place at the completion of the Contract and shall become the property of the Department.

No advertisements will be permitted on any temporary structures, or elsewhere on the work site, excepting signs required by the Bid Documents.

#### **4.16 TEMPORARY SERVICES DURING CONSTRUCTION**

- A. GENERAL - The Contractor for General Construction shall, at its own cost and expense, install, operate, protect, and maintain all temporary services as hereinafter specified or required during the construction period of the entire project. These temporary services shall include water supply, electric light and power, temporary heat, sanitary facilities, access roads, and any other services as may be stipulated in these General Conditions, Special Requirements, Specifications, or elsewhere in the Contract.

The Contractor for General Construction, at its cost and expense, is responsible for providing all of the services required below, including, but not limited to, electric power for testing, water for testing and disinfection operations and temporary heat in all buildings which are to be permanently heated until the Project is completed and accepted by the Department.

- B. TEMPORARY ELECTRIC POWER - The Contractor for General Construction shall provide adequate temporary electric power for light and construction purposes by any means it deems advisable and as approved by the Department. Temporary service shall comply with all laws, ordinances and regulations governing its installation and maintenance. The use of this temporary electric power must be made available to and must be adequate for all separate Contractors and subcontractors and their employees working on this Project.

The expense of providing and maintaining temporary electric power, including conductor, conduit, poles, etc., shall be included in the price bid for the Contract. The Contractor shall maintain temporary service and shall remove it when it is no longer required.

- C. TEMPORARY HEATING - The Contractor for General Construction shall furnish all necessary temporary heating, including coverings or enclosures required to retain temporary heating, throughout the construction life of the Project and shall furnish and pay for all fuel, labor, materials, etc., required to accomplish the necessary temporary heating.

- D. TEMPORARY WATER SUPPLY - The Contractor for General Construction shall provide adequate temporary water service for construction purposes from any acceptable source and by such means it deems advisable and as approved by the Department. The temporary water service shall comply with all laws, ordinances and regulations governing its installation and maintenance. The use of this temporary water service must

be made available to and must be adequate for all separate Contractors and subcontractors and their employees working on this Project.

The expense of providing and maintaining temporary water service including all temporary facilities shall be included in the price bid for the Contract. The Contractor shall maintain temporary service and shall remove it when it is no longer required.

- E. **SANITARY FACILITIES** - Sanitary conveniences for the use of all persons employed on the work shall be provided and maintained by the Contractor for General Construction in sufficient number, in such manner and at such places as shall be approved by the Department. The Contractor for General Construction shall vigorously prohibit the committing of nuisances at the site of the work. Any employee found violating these provisions shall be discharged and not again employed. Such sanitary conveniences shall be constructed in compliance with all laws, ordinances, or regulations governing the same.
1. Unless sanitary facilities are provided by the Department, the Contractor for General Construction shall, at its own cost and expense, provide and maintain in a clean and sanitary condition adequate and approved sanitary facilities in accordance with OSHA requirements and as required by Paragraph 4.10B. All facilities shall be screened against insects. When directed by the Department, the Contractor shall dismantle and remove these facilities, clean out pits and disinfect as required. Portable chemical toilets approved by the Department are acceptable.
  2. Under temporary field conditions, provisions shall be made to assure not less than one (1) toilet facility is available.
  3. Job sites, not provided with a sanitary sewer, shall be provided with a minimum of one (1) of the following toilet facilities unless prohibited by local codes:
    - a. Chemical Toilets
    - b. Recirculating Toilets
    - c. Combustion Toilets.

#### **4.17 DRAWINGS AND SPECIFICATIONS FURNISHED THE CONTRACTOR**

The Department will furnish free to the Contractor two (2) complete sets of Contract Drawings, Specifications, and Special Requirements, and if requested,

such additional sets as may be available. Copies beyond those immediately available will be furnished to the Contractor at the actual cost to the Department.

#### **4.18 COMPLETION AND MAINTENANCE**

- A. **REMEDYING DAMAGED WORK** - If the work, or any portion thereof, shall be damaged in any way, including by vandalism, before the final completion and acceptance of the work, the Contractor shall forthwith make good, without compensation, such damage in a manner satisfactory to the Department.
  
- B. **MAINTENANCE OF COMPLETED WORK** - The Contractor shall maintain all completed work for the duration of the Contract. The completed work shall be in accordance with the Contract Plans and Specifications when the work is finally accepted by the Department.
  
- C. **OCCUPATION OF PARTIALLY COMPLETED WORK** - The Department shall have the right to use or permit the use of, or occupy any completed or partially completed portions of, the work, whether or not the time may have expired for completing the entire work or said portions of work, but such use or occupancy shall not be deemed an acceptance of the work so taken or used, or any portion thereof. Prior, however, to such use or occupancy, an inspection shall be made by the Department of the completed work to determine if it is in conformity with the Contract, and any subsequent damage thereto due merely to the use and occupancy of the completed portion, will not be the responsibility of the Contractor.
  
- D. **CLEAN-UP**
  - 1. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. The Contractor shall promptly remove from the premises all empty cartons, boxes, crates and containers belonging to it, including cleaning and removal of all materials attached to fixtures and used as a protection during shipment and installation. The Contractor shall, at its own cost and expense, pick up, move and deposit all discarded material and rubbish resulting from its work, other than as described above, at the location or locations on the premises designated by the Contractor for General Construction.
  
  - 2. The Contractor for General Construction shall be responsible for general broom cleaning, at its own cost and expense, in addition to the specific cleaning provided in Paragraph 1, applicable to each separate Contractor. The Contractor for General Construction shall, at least once weekly, remove from the premises all discarded material and

rubbish described in Paragraph 1, above resulting from the work of all Contractors and assure that the building, premises, and surrounding streets are clean and free of such materials. The surfaces which are to be finished shall have all plaster, mortar and other surplus materials removed before painting, varnishing and other finishing is begun. Before the acceptance of the Project by the Department at the final inspection, the responsible separate Contractor, at its own cost and expense, shall do all work necessary to restore the territory embraced within the zone of its operations to a sightly condition. All temporary facilities shall be removed and satisfactorily disposed of and all plant and equipment removed.

3. The Contractor shall promptly remove from the premises all excess excavated material that is on the premises as a result of its excavation, provided such material is not required elsewhere on the Project for fill to attain elevations shown on the Drawings.
4. If a dispute arises between the separate Contractors as to their responsibility for cleaning up, the Department may clean up and charge the cost thereof to the several Contractors as the Department shall determine to be just.
5. Final payment will not be made until the clean-up is satisfactorily completed.



## **SECTION 5**

### **CONTROL OF WORK**

#### **5.1 DIRECTION OF WORK**

It is mutually agreed that the Department shall have the right to require changes in the Contractor's procedure, to determine the order of procedure and the times and seasons at which the work shall be conducted, insofar as may be necessary, to secure the safe and proper progress and quality of the work, all at no additional cost to the Department.

Upon all questions concerning the execution of the work and the interpretation of the Drawings and Specifications and on the determination of quantities, the decision of the Department shall be final and binding on both parties and its estimates and decisions shall be a condition precedent to the right of the Contractor to receive any money under the Contract.

The Department shall especially direct the manner of conducting the work when it is in locations where the Commonwealth is doing other work, either by Contract or by its own forces, in order that conflict may be avoided and the work on the Contract be harmonized with that on other Contracts, or with other work being done in connection with, or growing out of, any operations of the Department.

#### **5.2 DEPARTMENT CANNOT WAIVE OBLIGATIONS**

It is expressly agreed that neither the Department, nor any of its employees or agents, shall have any power to waive the obligations of the Contract for the performance of good work by the Contractor, as herein described. Failure or omission on the part of the Department, or any of its employees or agents to condemn defective or inferior work shall not imply acceptance of the work, or release of the Contractor from obligation to properly replace the same at once without compensation, and at its own cost and expense, at any time upon discovery of said defective work, notwithstanding that such work may have been estimated for payment, or payments may have been made on the same. Neither shall such failure or omission, nor any acceptance by the Department, be construed as barring the Department, at any time, from recovery of damages and of such a sum of money as may be needed to build anew all portions of the work in which improper work was done.

#### **5.3 MODIFICATION OF METHODS AND EQUIPMENT**

Except where otherwise directly specified in the Contract, the Contractor shall design, lay out, and be responsible for the methods and equipment used in fulfilling the Contract, but such methods and equipment, when required, shall have the

approval of the Department.

If, at any time, the Contractor's methods or equipment appear to the Department to be unsafe, inefficient, or inadequate for securing the safety of the workers, the quality of work, or the rate of progress required, the Department may order the Contractor to increase their safety and efficiency or to improve their character, and the Contractor shall comply with such orders. If, at any time, the Contractor's working force, in the opinion of the Department, shall be inadequate for securing the necessary progress, as herein stipulated, the Contractor shall, if so directed, increase the force or equipment to such an extent as to give reasonable assurance of compliance with the schedule of progress, but the failure of the Department to make such demand shall not relieve the Contractor of its obligation to secure the quality, the safe conduct of the work, and the rate of progress required by the Contract, and the Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods. All directives issued to comply with this section shall be accomplished without any additional cost to the Department.

#### **5.4 MINOR CHANGES AND ALTERATIONS**

The Department reserves the right to make such alterations, eliminations, and additions as it may elect in the grade, location, or plan of the work herein contemplated, or any part thereof, either before or after the commencement of work, provided, however, that they are of a character as not to affect materially the unit cost of the work involved. The Contractor will be paid for said work at the Contract unit prices.

#### **5.5 CORRECTION OF WORK**

- A. **UNCOVERING OF WORK** - If any work should be covered contrary to the request of the Department, it must, if required by the Department, be uncovered for its observation and replaced, at the Contractor's expense.

If any other work has been covered which the Department has not specifically requested to observe prior to being covered, the Department may request to see such work and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Department. If such work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate Contractor employed as provided in Section 3.6, "Separate Contracts," and in that event the Department shall pay the Contractor for such costs and require reimbursement of such costs from the responsible separate Contractor. If the Department elects to accept non-conforming work, it may do so instead of requiring its removal and correction, in which case a Change Order shall be issued to reflect an

appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid to the Department by the Contractor and/or the Contractor's Surety.

- B. **CORRECTION OF WORK** - The Contractor shall promptly correct all work rejected by the Department as defective or non-conforming or as failing to conform to the Contract Documents whether observed before or after the Final Inspection and whether or not, fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work.
- C. **GENERAL** - All such defective or non-conforming work under Paragraph A of this Section and Section 5.18 shall be removed from the site where necessary, and the work shall be corrected to comply with the Contract Documents without cost to the Department.

The Contractor shall bear the cost of replacing or repairing all work of separate Contractors destroyed or damaged by such removal or correction.

## **5.6 NO WAIVER OF LEGAL RIGHTS**

The Department shall not be precluded or estopped by any measurements, estimate, or certificate, made or given by it or by any agent or employee of the Department, under any provision or provisions of the Contract at any time, either before or after the completion and acceptance of the work and payment thereof pursuant to any measurement, estimate, or certificate, from showing the true and correct amount and character of the work performed and materials furnished by the Contractor or from showing at any time that any such measurement, estimate, or certificate, is untrue or incorrectly made in any particular, or that the work or materials, or any part thereof do not conform, in fact, to the Contract. The Department shall have the right to reject the whole or any part of the aforesaid work or materials, should the said measurements, estimate, certificate, or payment be found, or be known to be inconsistent with the terms of the Contract, or otherwise improperly given, and the Department shall not be precluded and estopped, notwithstanding any such measurement, estimate, certificate, or payment in accordance therewith, from demanding and recovering from the Contractor and/or its Surety such damages as it may sustain by reason of its failure to comply with the terms of the Specifications and of the Contract, or on account of any overpayments made on any estimate or certificate. Neither acceptance by the Department, nor any estimate or certificate by the Department, for any payment of money nor any payment for, nor acceptance of the whole or any part of the work by the Department, nor any extension or remission of time, nor any possession taken by the Department or its employees, shall operate as a waiver of any portion of the Contract or of any power herein reserved by the Department, or any right to damages herein provided, nor shall any waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.

## 5.7 COMPLETENESS AND INTENT OF SPECIFICATIONS, ESTIMATES, AND DRAWINGS

- A. The Specifications and Drawings, taken in connection with the estimates and other provisions of the Contract, are intended to describe and illustrate the work required to be done. The Specifications and Drawings are to be taken as indicating the approximate amount of work, its approximate nature and position. The work is intended to be performed in accordance with the best practices and with due regard for safety and, in the event of any doubt as to the meanings of any portion of the Contract, supplementary drawings, or instructions of the Department, the interpretation adopted shall be understood to call for the best types of workmanship practicable.

The provisions of the Contract are intended to be mutually explanatory. Anything mentioned in the Specifications and not shown in the Drawings or shown in the Drawings and not mentioned in the Specifications shall be of the like effect as if shown or mentioned in both.

Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in any part of the Contract, the explanation of the Department shall be final and binding. Corrections of an error or omission in the Drawings or Specifications may be made by the Department when such correction is necessary to bring out clearly the intention which is indicated by a reasonable interpretation of the Drawings and Specifications as a whole.

- B. Whenever in the Specifications or Drawings, or in supplemental drawings which may be furnished to the Contractor for directing its work, the terms or descriptions of various qualities of workmanship, material, structures, processes, plant, or other features of the Contract as described in general terms, the meaning of fulfillment of which must depend upon individual judgment, then, in all cases, the question of the fulfillment of such Specifications or Requirements shall be decided by the Department, and said material shall be furnished, said work shall be done, and said structures, processes, plant, or features shall be constructed, furnished, or carried on in full and complete accordance with its interpretation of the same and to its full satisfaction and approval.

It is the intent and purpose of the Specifications and Drawings to include under each item all materials, equipment, apparatus, and labor necessary to properly construct and put into perfect operation all of the various components of the respective items and to interconnect the various equipment, apparatus, or systems to form a complete and properly coordinated whole. Any material, equipment, apparatus, and labor not hereinafter specifically mentioned or shown on the Drawings, which may be

found necessary to complete or perfect the Project in a substantial manner and in compliance with the requirements implied or intended in these Specifications or Drawings, shall be furnished by the Contractor as part of the Contract. The Contract prices shall constitute full payment for all labor, materials, devices, or methods peculiar to the equipment, apparatus or system intended.

## **5.8 OR EQUAL AND SUBSTITUTION**

Whenever the material, article or piece of equipment is identified on the plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, etc., it is intended merely to establish a standard, and any material, article, or equipment of other manufacturers and vendors, which will perform adequately the duties imposed by the general design, will be considered equally acceptable ("or equal"), provided the material, article, or equipment so proposed is, in the opinion of the Department, of the same materials and construction, equal quality, appearance and function. It shall not be purchased or installed by the Contractor without the Department's written approval.

If a submitted product differs in some manner from that specified but still maintains the specified level of quality, performance and appearance, the Department may accept this product as a substitution. It shall not be purchased or installed by the Contractor without the Department's written approval.

The Plumbing, Heating, Ventilating, and Electrical Contractors shall include, as part of their respective bids, the connection of equipment by model number as provided in the Specifications. If a different unit or model number is provided as an "or equal", or substitution, then the separate Contractor requesting the "or equal" or substitute item shall pay the difference in cost for the connection between the specified model and the substituted item.

## **5.9 SHOP DRAWINGS, CATALOG CUTS, CERTIFICATIONS AND SAMPLES**

The Contractor shall review and submit with reasonable promptness in orderly sequence, so as to cause no delay in the work or in the work of any other Contractor, samples, catalog cuts, shop drawings and Manufacturer's certifications that materials and equipment to be supplied meet Contract Specifications and as required by the Contract Documents or required subsequently by the Department for modifications. Certifications shall have original signatures and be notarized. At a minimum, six (6) sets of all submittals shall be required.

No portion of the work requiring a shop drawing, catalog cut or sample submission shall be commenced until the submission has been approved by the Department. All such portions of the work shall be in accordance with approved shop drawings, catalog cuts and samples.

These shop drawings shall be complete and shall contain all required detailed information. Each submittal shall bear a stamp of the Contractor attesting to the fact that the Contractor has reviewed the item and certifies that it meets the Contract Documents. If approved by the Department, each copy will be identified as having received such approval by being so stamped and dated. The Contractor shall make any corrections required by the Department. The approval of submittals by the Department shall not be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory. Approval of submittals will not relieve the Contractor of the responsibility for the dimensions and design of adequate connections, details, and satisfactory construction of all work. The right is reserved to require submission to the Department of shop drawings, certification or catalog cuts for any part of the work not particularly mentioned herein.

Contractors requiring sleeves and openings for their work in any deck, concrete slab or wall shall furnish to the Department a complete set of location sketch drawings in triplicate showing size and shape of openings. The Department shall make these drawings available to each separate Contractor and each separate Contractor shall be responsible for reviewing the drawings in order that there will be no interference and/or conflict in its portion of the work. When this review is finalized, the Contractor shall submit these drawings to the Department and in final workable form. Reproducible prints of the Contract Drawings may be obtained from the Department for this purpose.

The Contractor for General Construction shall construct or have built into building walls, partitions and floors all such chases, sleeves, and openings as are required. If the advanced layout drawings are not furnished before the walls, partitions and floors are built, the Contractor for General Construction will not be held responsible for the construction of these chases, sleeves, and openings, and they shall be constructed at the sole cost and expense of the responsible separate Contractor.

All construction pertaining to the cutting of chases, sleeves, and openings shall be done to the satisfaction of the Department. Should the cutting of such chases, sleeves, and openings be required after construction of walls, partitions and floors are completed, the Department may require the work to be performed in such a manner as to result in unmarred work even to the extent of requiring the removal and rebuilding of walls and partitions, all of which shall be at the sole cost and expense of the responsible separate Contractor.

## **5.10 TERMINATION**

- A. **TERMINATION DUE TO NATURE OF PERFORMANCE BY CONTRACTOR** - If the work to be done under the Contract shall be abandoned by the Contractor, or the work assigned or sublet by the

Contractor otherwise than as herein specified, or if at any time the Department shall be of the opinion and shall so certify that the performance of the Contract is unnecessarily or unreasonably delayed, or that the Contractor is violating any of the conditions or Agreements of the Contract, or is executing the same in bad faith or not in accordance with the terms thereof, or is not making such progress in the execution of the work as to indicate its completion within the time specified in the Contract or within the time to which the completion of the Contract may have been extended by the Department, the Department may notify the Contractor to discontinue all work or any part thereof under the Contract by a written notice of default to be served upon the Contractor, as hereinbefore provided, and a copy of said notice shall be served upon the Contractor's Surety, or the Surety's authorized agent. Upon receipt of written notice, the Contractor shall discontinue the work or such part thereof as the Department shall designate, whereupon the Surety may, at its option, assume the Contract, or that portion thereof on which the Department has ordered the Contractor to discontinue the work, and proceed to perform the same and may, with the written consent of the Department, sublet the work or portion of the work so taken over; provided, however, that the Surety shall exercise its option, if at all, within two (2) weeks after written notice to discontinue the work has been served upon the Contractor and upon the Surety or its authorized agent. The Surety, in such event, shall take the Contractor's place in all respects, and will be paid by the Department for all work performed by it in accordance with the terms of the Contract and if the Surety, under the provisions hereof, shall assume said entire Contract, all moneys remaining due the Contractor at the time notice of its default was served upon it shall thereupon become due and payable to the Surety as the work progresses, subject to all of the terms of the Contract.

In case the Surety does not, within the herein before specified time, exercise its right and option to assume the Contract, or that portion thereof on which the Department has ordered the Contractor to discontinue work, then the Department shall have the power to complete, by Contract or otherwise as it may determine, the work herein described or such part thereof as it may deem necessary, and the Contractor agrees that the Department shall have the right to possession of and use of any of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of its work, and to procure other tools, equipment, and materials for the completion of the work, and to charge to the Contractor the expense of all Contracts, labor, materials, tools and equipment, and expenses incident thereto.

The expense so charged will be deducted by the Department out of such moneys as may be due or may at any time become due the Contractor under and by virtue of the Contract or any part thereof. The Department shall not

be required to obtain the lowest figures for the work of completing the Contract, but the expense to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the Contract if the work had been completed by the Contractor, then the Contractor shall be entitled to receive the difference; and in case such expense shall exceed the amount which would have been payable under the Contract, if the work had been completed by the Contractor, then the Contractor and its Surety, shall be jointly and severally liable for, and shall pay, the amount of such excess to the Department on notice from the Department of the excess so due, but such excess shall not exceed the amount due under the Contract at the time the Contractor is notified to discontinue said work or any part thereof, plus the amount of the Bond(s) executed by the Surety and Contractor for the performance of the Contract. When any particular part of the work is being carried on by the Department, by Contract or otherwise under the provisions of this section, the Contractor shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as in no way to hinder or interfere with the persons or workers employed, as above provided by the Department.

- B. TERMINATION FOR CONVENIENCE OF THE COMMONWEALTH - It is understood and agreed that the Department may, at any time during the term thereof, cancel and terminate the Contract in whole or in part for its convenience, and award such compensation as in the Department's best judgment is fair and reasonable, but not including any anticipatory profits for work which has not been performed.
- C. TERMINATION FOR NON-AVAILABILITY OF FUNDS. The Department may terminate the Contract in whole or in part at any time during its term should funds be unavailable to complete the project work.

## **5.11 CONTRACTOR'S LIABILITY**

The work in every respect, from the execution of the Contract and during its progress until final acceptance, shall be under the charge and in care of the Contractor and at its risk. The foregoing sentence is intended to include risks of every kind and description, including vandalism, fire and flood risks.

The Contractor shall properly safeguard against any or all injury or damage to the public, or to property of any kind, and shall alone be responsible for any such damage or injury.

The Contractor's liability shall include, but is not limited to, the indemnification obligation set forth in Section 3.10F, "Accidents and Claims," hereof.

The Contractor agrees that so much of the money due it under the Contract as shall



be considered necessary by the Department may be retained until all suits or claims for damages, as aforesaid, have been settled and evidence to this effect has been furnished to the Department.

Notwithstanding the above, the Department and the Contractor agree that, if the work is damaged by a natural disaster and said damaged work is eligible for disaster assistance by Federal, State, or other source, the Department and Contractor will pursue said assistance and the Contractor will be relieved from its obligation under this paragraph insofar as said assistance is actually received.

## **5.12 HINDRANCES AND DELAYS**

The risks and uncertainties in connection with the work are assumed by the Contractor as a part of its Contract and are compensated in accordance with the Contract price for the work. The Contractor, except as otherwise definitely specified in the Contract, shall bear all loss or damage from hindrances or delays from any cause during the progress of any portion of the work embraced in the Contract, including all loss or damage arising out of the nature of the work to be done, or from the action of the elements, inclement weather and floods, or from any unforeseen and unexpected conditions or circumstances encountered in connection with the work, or from any cause whatsoever, and except as otherwise definitely specified in the Contract, no charge other than that so included in the Contract price for the work shall be made by the Contractor against the Department for such loss or damage.

Should the work be stopped by order of the Department for any cause other than those authorized in the Contract, then and in that event, such expense as, in the opinion of the Department, is caused to the Contractor hereby, other than the legitimate cost of carrying on the Contract, will be paid by the Department.

## **5.13 DISPUTES OR ACTIONS BETWEEN CONTRACTORS**

- A. Should the Contractor, either itself or by its subcontractor or subcontractors or their respective agents, servants, or employees, cause damage or injury to the property or work of any separate Contractor or Contractors, or by failing to perform its work (including the work of its subcontractor or subcontractors) hereunder with due diligence, delay any separate Contractor or Contractors who shall suffer additional expense or damage thereby, the parties involved in such dispute shall settle by agreement or arbitrate said claim, dispute or disputes by referring same to the American Arbitration Association and said dispute or disputes shall be determined pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. The Department shall not be a party to disputes or actions between Contractors concerning such expense or damages, and such disputes shall not be subject to the dispute resolution provided for in

Section 6.14, "Claims for Damages," and Section 6.15, "Board of Claims." It is agreed by all parties that disputes or actions between Contractors concerning the additional expenses or damage hereinbefore mentioned shall not delay completion of the work which shall be continued by the parties, subject to the rights hereinbefore provided. It is agreed by the parties to the Contract (the Department as promisee and the Contractor as promissor) that the intent of this clause is to benefit the other separate Contractors on the subject project or related projects and to serve as an indication of the mutual intent of the Department and the Contractor that this clause raise such other separate Contractors to the status of third party beneficiaries only as to the terms and conditions of this clause and Section 3.6, "Separate Contracts." The Contractor agrees that this clause and Section 3.6, "Separate Contracts," are provided as a benefit to the Contractor and that they specifically exclude claims against the Department for delays or other damages.

- B. The Contractor agrees that all claims, disputes and other matters in question between separate Contractors arising out of, or relating to the Contract or the breach thereof as provided in Paragraph A held by a separate Contractor pertaining to the Project for which the work is performed, shall be settled by Agreement or resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtained unless the parties mutually agree otherwise. This Agreement so to arbitrate shall be in consideration of the fact that all other separate Contractors agree to this same arbitration provision, as provided in each separate Contract required for the construction of this Project and shall be specifically enforceable under the prevailing Arbitration Law. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Department shall not be a party of this arbitration nor shall such claim or dispute be subject to dispute resolution as provided for in Sections 6.14 and 6.15.
- C. Notice of the demand for arbitration shall be filed in writing with the other separate Contractors and with either the Philadelphia or Pittsburgh Regional Office of the American Arbitration Association, and a copy shall be filed with the Department. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Department shall not be a party to the claim, dispute or other matter in question, but shall be a witness in any arbitration at the request of any party to the arbitration.

## 5.14 PURCHASE AND DELIVERY OF SUPPLIES, EQUIPMENT, AND MATERIALS

### A. ANTITRUST LAWS

The Contractor and the Commonwealth recognize that in actual economic practice overcharges by Contractor's suppliers resulting from violations of State or Federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has or may hereafter acquire under State or Federal antitrust laws relating to the goods or services which are the subject of this Contract.

### B. RECIPROCAL LIMITATIONS

Refer to Section 2.11, "Reciprocal Limitations."

### C. STEEL PRODUCTS PROCUREMENT ACT

The Contractor shall comply with the provisions of the Act of March 3, 1978 (P.L. 6, No. 3), as amended, known as the Steel Products Procurement Act (73 P.S. § 1881 et seq.).

Information regarding the Act's requirements, including a list of exempt products, is available on the Department's web site at

<http://www.dgs.pa.gov/Businesses/Design-and-Construction/Steel-Products-Act-Exemptions/Pages/default.aspx>.

### D. TRADE PRACTICES ACT

In accordance with the Act of July 23, 1968 (P.L. 686), as amended, known as the Trade Practices Act, (71 P.S. § 773.101 et seq.), the Contractor shall not use or permit to be used in the work (i.e., will serve a permanent functional use in the Project) any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, Spain, South Korea, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

1. Brazil: Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar;

prestressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.

2. Spain: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars, and cold-formed stainless steel bars; prestressed concrete steel wire strand; and certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars.
3. South Korea: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.
4. Argentina: Carbon steel wire rod and cold-rolled carbon steel sheet.

Penalties for violation of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three (3) years. This paragraph, in no way, relieves the Contractor of responsibility to comply with the provisions of the Steel Products Procurement Act described herein.

E. RECYCLED CONTENT

The Contractor shall comply with the recycled content requirements set forth in Appendix B.

F. SALES TAX

The Contractor shall pay all sales, consumer, use, and other similar taxes required by the law. It shall be the responsibility of the Contractor or its subcontractor to investigate whether Pennsylvania sales tax does not apply to certain construction materials that are purchased to be incorporated into the Project. The Contractor or subcontractor should contact the Department of Revenue for the most current information regarding which types of construction materials may qualify to be sales tax exempt and to obtain a Pennsylvania Exemption Certificate (Form REV-1220) or its equivalent. The Contractor or subcontractor (purchaser) is required to complete the Pennsylvania Exemption Certificate and provide the Certificate to the vendor (seller). This Certificate will not be provided by and it should not be submitted to the Department for execution.

G. OTHER

The Contractor shall include the provisions of the Acts cited in this Section in every subcontract and supply contract so that they shall be binding on each

subcontractor and supplier.

Materials to be used for work under the Contract shall be delivered sufficiently in advance of their proposed use to prevent delays, and they shall be delivered approximately in the order required.

## **5.15 INFRINGEMENTS OF PATENTS**

The Contractor shall be held responsible for any claims made against the Department or the Commonwealth for any infringement of patents by its use of patented articles or methods in the performance and completion of the work, or any patented process connected with the work agreed to be performed under the Contract, or of any patented materials used upon the said work, and shall save harmless the Department and the Commonwealth from all claims against them, by reason of any infringement or alleged infringement of patents used in the construction and completion of the work.

The Department has been given notice by a law firm representing GPAC, Inc., that the use of its equipment for asbestos containment and removal might constitute a patent infringement.

Should the Contractor desire to use the GPAC System as covered under the Natale U.S. Patent No. 4,604,111 issued on August 5, 1986, application for the license should be directed to:

Lawrence Michaels, Esq.  
Fox, Rothschild, O'Brien & Frankel  
10th Floor  
2000 Market Street  
Philadelphia, PA 19103

## **5.16 PROTECTION AGAINST CLAIMS FOR LABOR AND MATERIALS**

The Contractor agrees that it will save harmless the Commonwealth, from all claims against them for material furnished or work done under the Contract.

It is further agreed by the Contractor that it shall, if so requested, furnish the Department with satisfactory evidence that all persons who have done work or furnished material under the Contract have been duly paid for such work or material and, in case such evidence is demanded and not furnished as aforesaid, such amount as may, in the opinion of the Department, be necessary to meet the claim of the persons aforesaid, may be retained from the money due the Contractor under the Contract, until satisfactory evidence be furnished that all liabilities have been fully discharged.

When required by the laws of the Commonwealth, moneys due the Contractor will be retained for protection against claims.

#### **5.17 MATERIAL SAMPLES REQUIRING LABORATORY TESTS**

Where required in the Specifications or on the Drawings, tests which are to be performed at the expense of the Contractor shall be conducted by a material supplier or by an independent testing laboratory, either or both of which shall be subject to the approval of the Department. The test results shall be forwarded in duplicate directly to the Department. The Contractor shall pay all costs of the tests for which the Contractor is responsible including sampling, packing, shipping, and laboratory fees. No separate payment will be made for the cost of testing, which shall be included in the appropriate Contract price. The Department reserves the right to perform additional tests at its own expense and to use such tests as a basis of approval or rejection regardless of previous decisions.

#### **5.18 REMEDY GUARANTEE PERIOD**

The Contractor shall remedy, without cost to the Department, any defects which may develop within one year from the date of completion and acceptance of the work performed under the Contract, provided said defects, in the judgment of the Department, are caused by defective or inferior materials or workmanship.

#### **5.19 OPERATION AND MAINTENANCE INSTRUCTIONS AND MANUALS**

The Contractor shall for its Scope of Work carefully compile, during progress of work, operation and maintenance manuals to include methods of care and cleaning of all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment and methods of operations thereof. Descriptions shall give pertinent diagrams, identifying charts, color charts, color coding, connections, lubricating instructions, and single-line and detailed wiring diagrams, using manufacturers' printed information where possible. Otherwise, the Contractor shall obtain written instructions prepared by subcontractors. The Contractor shall include names, addresses and phone numbers of all subcontractors and of service firms of each mechanical item for the Department's use after expiration of the remedy guarantee period. Before completion of the work, the Contractor shall submit a rough draft of the Operation and Maintenance Instructions and Manual(s) in loose-leaf binder(s) for approval by the Department. After approval and before final payment, the Contractor shall furnish two (2) corrected bound copies to the Department.

#### **5.20 "AS-BUILT" DRAWINGS**

As the work progresses, the Contractor shall record on one set of Plans and Specifications all changes, deviations, or alterations made to the original design. At

the Final Inspection, the Contractor shall turn the “As-Builts” set of Drawings and Specifications over to the Department. If the Schedule of Prices contains a Mobilization and Demobilization pay item, Demobilization will not be paid until “As-Builts” are submitted and considered acceptable. If a pay item does not exist for Mobilization and Demobilization, the final payment will not be processed until “As-Builts” are submitted and considered acceptable.

## SECTION 6

### PAYMENT

#### 6.1 PENNSYLVANIA ELECTRONIC PAYMENT PROGRAM

The Pennsylvania Electronic Payment Program (PEPP) establishes ACH and electronic addenda as the preferred method of payment in lieu of issuing checks and mailing remittance advices. The Department has established that ACH shall be the required method of payment to the Contractor. The Contractor shall be required to register with CVMU to obtain a vendor number at:

<http://www.vendorregistration.state.pa.us/cvmu/paper/default.aspx>

Once a Commonwealth of PA vendor number has been obtained, The Contractor shall be required to participate in PEPP by completing the online form at:

<http://www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf>

The Commonwealth will make contract payments through ACH. Within 10 days of award of the Contract, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM). At the time of submitting ACH information, the Contractor will also be able to enroll to receive remittances via electronic addenda.

It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

#### 6.2 PAYMENT COVERAGE

The Contractor agrees to accept as full compensation, satisfaction, and discharge for all work done and all materials furnished, whether mentioned in the Bid Form and Specifications or not, and for all costs and expenses incurred and damages sustained, and for each and every matter, thing, or act performed, furnished, or suffered in the full and complete performance and completion of the work of the Contract in accordance with terms, conditions, and provisions thereof and of the instructions, orders, and directions of the Department, except extra work which will be paid as provided in Section 6.8, "Extra Work," of these General Conditions and except as otherwise specifically provided in the Contract, the unit price and/or lump sum prices stated in the Contract.



### 6.3 PAYMENT ONLY IN ACCORDANCE WITH CONTRACT

The Contractor shall not demand, nor be entitled to receive, payment for the work or materials, or any portion thereof, except in the manner set forth in the Contract and after the Department will have given approval for such payment.

If the actual quantity of work performed exceeds the estimated Contract quantity for an item of work, payment will be made for the increased quantity as long as payments made under the Contract do not exceed the maximum dollar amount of the Contract.

For purposes of interest payments required under Act 266 of 1982 and Section 3932 of the CPC (62 Pa. C.S. § 3932), (1) if there is Additional Work, or (2) if Extra Work is directed by the Department, or (3) if the term of the Contract has expired, payment will not be due hereunder until (A) as to (1) above, after the Contract Change Order for Additional Work (if payment for such work, when combined with all previous payments under the Contract, would exceed the maximum dollar amount of the Contract) or quantity adjustment (if payment for such work, when combined with all previous payments under the Contract, would exceed the maximum dollar amount of the Contract) has been fully executed by all of the parties, or (B) as to (2) above, after the Contract Change Order for Extra Work has been fully executed by all the parties, or (C) as to (3) above, an extension of time has been granted by Change Order.

Prior to the first progress Estimate, the Contractor shall submit for the Department's approval, a detailed Contract Breakdown Sheet, indicating values for line-items of the work. The Contract Breakdown Sheet must provide the aggregate total contract sum, divided to facilitate payments to subcontractors, The Contract Breakdown Sheet of values shall be prepared on the form specified by the Department and supported by such data required by the Department to substantiate its correctness in accordance with the following:

- Each item in the Cost Breakdown shall include its proper share of overhead and profit.
- When more than one building or structure is included in the Contract, the Contractor shall submit a Contract Breakdown Sheet, indicating Unit Prices for all items of work within the separate buildings or structures.

This Cost Breakdown, when accepted by the Department, will be used as a basis for the Contractor's Application for Payments. This breakdown may also be used by the Department to determine the cost or credit to the Department resulting from the changes in the work.

## **6.4 DELAYED PAYMENTS**

Should any payments due the Contractor on any Estimate be delayed beyond the time stipulated, such delay shall not constitute a breach of Contract, or be the basis of a claim for damages.

## **6.5 PROGRESS ESTIMATES**

- A.
1. The Department will, from time to time during the active progress of the work, at intervals of approximately once a month, make a determination of all work done and materials incorporated into the work by the Contractor up to that time, and will prepare a Progress Estimate, in writing, showing the value of such work.
  2. In addition, the Department may, at its discretion, make an Estimate, based upon received invoices or delivery tickets, of the amount of money represented by the materials so delivered, in storage on the job site but not incorporated in the work. This payment will not exceed Seventy-Five Percent (75%) of the material cost.
  3. The Department will determine any other amounts due the Contractor.
  4. The Department will enumerate all deductions to be charged against the Contractor in accordance with the provisions of the Contract.
  5. The Department will then compute the resulting balance from amounts derived as directed above.
- B. A Progress Estimate will not be required to be made by strict measurements, but they may be made either by measurements or by approximations. A Progress Estimate may at any time be omitted if, in the opinion of the Department, the protection of the Commonwealth so requires.
- C. In case work is nearly suspended, or in case only unimportant progress is being made, the Department may, at its discretion, make a Progress Estimate at intervals exceeding once a month.
- D. After a Progress Estimate is made by the Department and certified by the Contractor in writing to the Department, the Department will certify for payment the amount due the Contractor under such Estimate, provided, however, that the Department may at all times reserve and retain from such amount, any sum or sums which, by the terms hereof or of any law of the Commonwealth of Pennsylvania, it is, or may be, authorized to reserve or retain.

- E. It is specifically understood and agreed that protection of any materials in storage on the job site on which payments have been made in accordance with Paragraph 6.A.2 shall be the sole responsibility of the Contractor. Should the materials be pilfered, damaged, or removed from the job site in any manner, subsequent deductions will be appropriately made by the Department and computed in said balance. The Contractor shall not incorporate in the work, any materials damaged during storage or at any other time.
  
- F. In the absence of good and sufficient reasons, within fourteen (14) days of the receipt of payment by the Contractor, the Contractor shall pay all subcontractors or suppliers with which it has contracted their earned share of the payment which the Contractor received. Information as to payment to the prime Contractor will be made available by the Department to the subcontractors upon their request. The Contractor shall also require such subcontractor or supplier to make similar payments to its subcontractors and/or suppliers.

## **6.6 DETERMINATION OF QUANTITIES**

The Department will make all measurements and determine all quantities and amounts of work and materials done or furnished under the Contract.

## **6.7 MODIFICATION OF SPECIFICATIONS AND DRAWINGS**

The Specifications and Drawings herein referred may be modified and changed from time to time, as may be directed in writing by the Department, if such changes are necessary to carry out and complete fully and perfectly the work agreed to be done and performed.

If such modifications result in Additional Work, which is defined as work determined by the Department, in its sole discretion, to be of the type already provided by the Contract and for which there is a Contract price, additional payment will be made at the Contract price for actual Additional Work performed, in the same manner as if it had been included in the original Contract, so long as payments made under the Contract do not exceed the maximum dollar amount of the Contract. If payment for such Additional Work would result in payments made under the Contract to exceed the maximum dollar amount of the Contract, any such payment will only be made following execution of a Change Order stating an increase in the maximum dollar amount of the Contract and only to the extent of the increase.

If such modifications result in a deletion of work which is determined by the Department, in its sole discretion, to be of a type already provided by the Contract and for which there is a Contract price, payment will be similarly decreased at the Contract price based on the decrease in actual work performed.

If such modifications result in Extra Work, which is defined as work determined by the Department, in its sole discretion, to be of a type not provided by the Contract and having no price included in the Contract, payment will be made following execution of a Change Order, in accordance with Section 6.8, "Extra Work".

If such modifications materially increase the unit cost of work, the increased expense will be paid by the Department following execution of a Change Order in a dollar amount determined by the Department, in its sole discretion, to be fair and reasonable. If such modifications diminish the unit cost of the work, the amount of said diminution may be retained or withheld by the Department. No consequent loss of anticipated profit on work not executed will be paid to the Contractor.

When Additional Work or deletion of work, which is covered by a Lump Sum Item, is required due to a modification, not a normal overrun or underrun in estimated quantities, payment or credit for the work will be based upon apparent Unit Prices which will be derived by dividing the Lump Sum Price by the estimated plan quantities.

Payment for Additional Work, Extra Work, and Extra Work on a Force Account basis is accepted as payment in full for all profit and for all equipment, labor, material, field overhead, home office and general administrative expenses, and every other expense incurred as a result of the additional or extra work. No claims for additional compensation of any kind arising out of or relating to such work can be asserted against the Department with the Board of Claims.

The Contractor, in connection with any proposal it makes for a Contract Modification, shall furnish a price breakdown, itemized as required by the Department. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Department.

## **6.8 EXTRA WORK**

If, during the performance of the Contract, it shall become necessary or desirable for the proper completion of the work under the Contract to order Extra Work done, as defined in Section 6.7, "Modification of Specifications and Drawings," hereof, the Contractor shall, if ordered in writing by the Department, do and perform such work. Any such work shall be done as "Extra Work" at a price to be previously agreed upon in writing by the Contractor and the Department. Where a lump sum or a unit price cannot be agreed upon by both parties, or where this method of payment is impracticable, the Department may order the Contractor to do such Extra Work on a "Force Account" basis, as set forth in Section 6.9, "Force Account

Work”.

## 6.9 FORCE ACCOUNT WORK

The compensation as herein provided shall be received by the Contractor as payment in full for Extra Work done on a Force Account basis, in which the fifteen percent (15%) markup which is allowed on the labor cost, the material cost, and the equipment cost, and when applicable the markups on subcontractor work, is being made and accepted to cover all administration, general superintendents, other overhead, bonds, insurance, anticipated profit and use of small tools and equipment for which no rental is allowed. The Contractor and the Department shall compare records of Extra Work done on a Force Account basis at the end of each day to insure agreement. All costs for Extra Work done on a Force Account basis shall be submitted to the Department by the Contractor upon certified triplicate statements to which shall be attached original paid bills covering the cost of, and the freight charges on, all materials furnished and used in such work and said statement shall be filed during the month following that in which the work is actually performed. Should the Contractor refuse to prosecute the work as directed or should the Contractor refuse to submit its costs as required, then the Department may withhold payment of all estimates until the Contractor’s refusal or failure is eliminated.

All Extra Work done on a Force Account basis will be paid in the following manner:

- A. LABOR-For all Labor, including equipment operators and foreman in direct charge of the specific operation, the Contractor will receive the current local rate of wage per hour, to be agreed upon in writing before starting such work, for each and every hour that said laborers and foreman are actually engaged in such work, plus fifteen percent (15%) in addition thereto. Project superintendents are not included. The direct labor charges shall be the actual payroll rate of wages per hour and actual fringe benefits paid. The fringe benefits would be those included on a prevailing minimum wage predetermination, if applicable, which are actually paid. This would include health and welfare, apprentice training, supplemental unemployment benefits and pension plans but does not include profit sharing plans.

The Contractor will also be allowed to add to such direct labor and foreman costs the percentage rates paid for the following items:

Social Security Tax at the percentage legally required.

Unemployment Tax at the percentage legally required.

Workmen’s Compensation Insurance at the policy percentage rate.

Contractor's Public Liability Insurance at the policy percentage rate.

Contractor's Property Damage Liability Insurance at the policy percentage rate, including coverage for damage due to blasting and explosions when such additional coverage is secured on projects where blasting is required.

The Fifteen Percent (15%) herein before noted shall also be added to these tax and insurance items.

- B. MATERIALS - For all materials furnished and used, the Contractor will receive the actual cost of such materials, including freight charges and sales tax, as shown by original paid bills, to which cost will be added a sum equal to Fifteen Percent (15%).
- C. EQUIPMENT - For any machinery, trucks or equipment (exclusive of operators), except small tools and equipment for which no rental is allowed, which may be deemed by the Department to be necessary or desirable to use, the Department will allow the Contractor a reasonable rate of hire for rental prices for machinery, trucks, or equipment, which shall include fuel and lubricants, to be agreed upon in writing before such work is begun, for each and every hour that such machinery, truck, or equipment is in use on such work, and to which cost will be added a sum equal to fifteen percent (15%). The maximum rental rates which the Department will allow shall be computed in the following manner:

For equipment, either rented or owned, an hourly rate will be determined using the weekly rental rates, including applicable adjustment factors, taken from the current edition (including updated supplements) of the Rental Rate Blue Book for Construction Equipment or a current rental publication and dividing by forty (40). An allowance will be made for operating cost for every hour the machinery or equipment is operating, in accordance with rates listed in the Rental Rate Blue Book. If machinery or equipment is required at the work site but is not operating, compensation will be at the hourly rate exclusive of operating costs.

In the case of equipment not in the Rental Rate Blue Book for Construction Equipment, a weekly rate shall be computed on the basis of one and one half percent (1½%) of the manufacturer's list price for new equipment. the hourly rate shall be determined by dividing the weekly rate by forty (40) for equipment actually operating and dividing by forty-four (44) for equipment required at the work site but not operating.

Mobilization of equipment for Force Account work will be paid on the basis of labor and equipment rates in accordance with this subsection.

- D. SUBCONTRACTS - Force Account work may be performed by a subcontractor only when the type of work involved is specialized and is deemed, in the opinion of the Department, outside the scope of work normally performed under the Contract.

Subcontractors for Force Account work will be approved only when specifically authorized in writing by the Department. The work performed by the subcontractor shall conform to Contract requirements.

Payment for work performed by subcontractors will be based upon actual labor, materials, and equipment supplied and computed as specified in subsections A, B, and C above. The markup of fifteen percent (15%) for labor, materials, and equipment includes the overhead and profit of the subcontractor. The prime Contractor will be paid a fifteen percent (15%) allowance or markup on the first \$10,000 of the Force Account work of the subcontractor and ten percent (10%) allowance or markup for all above \$10,000. Subcontractors on a lump sum basis will not be accepted as a component of Force Account work.

#### **6.10 FINAL INSPECTION AND ACCEPTANCE**

As soon as practicable after the completion of the Project, a thorough inspection thereof will be made by the Department at the site of the work. If such work is found to comply fully with the requirements of the Contract, it will be accepted and final payment therefor will be made in accordance with Section 6.11, "Final Payment."

On those projects where temporary Erosion and Sediment Pollution Control Measures have been required to remain in place, the Final Inspection for those items will be made upon their removal. The Remedy Guarantee Period for those items will commence at that time.

#### **6.11 FINAL PAYMENT**

Whenever, in the opinion of the Department, the work covered by the Contract has been completed, the Department will prepare a Final Estimate showing the total amount of work done by the Contractor and its value under and according to the terms of the Contract, any other amounts due the Contractor, all deductions made in accordance under such provisions of the Contract, and the amount due the Contractor on the Final Estimate. However, the final payment will not become due until the Contractor submits the following documents on a form satisfactory to the Department:

- A. An Affidavit that all payrolls have been paid and that all payments have

been in strict compliance with the provisions of the Prevailing Minimum Wage Predeterminations applicable to the Project;

- B. An Affidavit that all labor, material, equipment rentals and utility bills, including those of subcontractors, have been paid and releasing the Department from any further claims on account of the Contract except for the amount due under the Final Estimate;
- C. A Statement of Surety approving the Final Payment; and
- D. If required by the Department, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Department.

#### **6.12 MONEY RETAINED FOR DEFECTS AND DAMAGES**

The Contractor shall pay to the Department, all expenses, losses and damages, as determined by the Department, incurred in consequence of any defect, omission, or mistake of the Contractor or its employees, of the repairing or replacing thereof, and the Department may apply any moneys which otherwise would be payable at any time under the Contract to the payment thereof.

Imperfect or damaged work shall be repaired or replaced where feasible, but if the imperfection, in the opinion of the Department, shall not be of such magnitude or importance as to necessitate, or be of such nature as to make impracticable or dangerous or undesirable the re-execution of the imperfect part, then the Department shall have the right to make such reduction as may be just and reasonable from the amounts due or to become due the Contractor, instead of requiring the imperfect work to be redone.

#### **6.13 OFFSET PROVISION**

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due to the Contractor under any contract with the Commonwealth.

#### **6.14 CLAIMS FOR DAMAGES**

If the Contractor shall claim compensation for any alleged damage by reason of the acts or omissions of the Department or its agents, it shall within six (6) months after the claim accrues, make a written statement to the Department, including the nature of the alleged damage, the date of occurrence, and an itemization of the details and amount of such damage. Upon request of the Department, it shall give access to all



books of account, receipts, vouchers, bills of lading, and other books or papers containing any evidence of the amount of such damage. Unless such statement shall be filed as thus required, its claim for compensation shall be forfeited and invalidated, and it shall not be entitled to payment on account of any such damages. All claims and disputes which the Contractor may have against the Department under the Contract shall be subject to the following procedure for resolution of same:

- A. All claims, disputes, questions, or other matters which the Contractor may have against the Department under this Contract which have not previously been resolved will be heard at a Pre-Claim Hearing by the Secretary or his/her designee. The Department will render its determination in writing following the conclusion of the Pre-Claim Hearing. The Department will send notice of the decision to the Contractor via certified mail, including informing the Contractor of the decision, the reasons for the decision and its right to appeal the decision.
- B. The Contractor shall carry on the work and maintain the Progress Schedule during any proceedings under this section unless otherwise agreed by it and the Department in writing.
- C. If the Contractor is carrying on with the work under protest, it must notify the Department in writing prior to the commencing of the work.

The Department shall review a claim and issue a final written determination regarding the claim within 120 days of the receipt of the claim unless extended by mutual written consent of the Department and the Contractor. If the Department fails to issue a final determination within 120 calendar days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the Department shall be the final order of the Department.

## **6.15 BOARD OF CLAIMS**

- A. All timely filed claims against the Department arising out of this Contract which have not previously been resolved by the Pre-Claim Hearing may be referred to the Board of Claims, in the manner and under the terms and conditions provided in Section 1712.1 of the CPC (62 Pa. C.S. § 1712.1). The timely submission of the claim in accordance with Section 6.14, "Claims for Damages," hereof shall be a condition precedent to the referral of the claim to the Board of Claims.
- B. Claims filed with the Board of Claims must be filed either (1) within fifteen (15) days of the mailing date of a final determination denying the claim or (2) within 135 days of filing a claim, if no extension is agreed to by the parties, whichever occurs first.

- C. The Contractor shall carry on the work and maintain the Progress Schedule during any Board of Claims' proceedings, unless otherwise determined by the Board of Claims or agreed to by the Department in writing.

## APPENDIX A

### PART I PENNSYLVANIA STATUTES

Contractor shall comply with all applicable Pennsylvania Statutes, including, but not limited to, the following:

I. Purdon's Statutes - Title 3 (Agriculture)

(Relating to Controlled Plants and Noxious Weeds), Act of October 30, 2017 (P.L. 774, No. 46), 3 Pa. C.S. § 1501 et seq.

PA Fertilizer Act, Act of December 13, 2001 (P.L. 876, No. 97), 3 Pa. C.S. § 6701 et seq.

PA Soil and Plant Amendment Act, Act of December 13, 2001 (P.L. 876, No. 97), 3 Pa. C.S. § 6901 et seq.

PA Pesticide Control Act of 1973, Act of March 1, 1974 (P.L. 90, No. 24), as amended, 3 P.S. § 111.21 et seq.

Agricultural Liming Materials Act, Act of March 17, 1978 (P.L. 15, No. 9), as amended, 3 P.S. § 132-1 et seq.

Plant Pest Act, Act of December 16, 1992 (P.L. 1228, No. 162), as amended, 3 P.S. § 258.1 et seq.

Conservation District Law, Act of May 15, 1945 (P.L. 547, No. 217), as amended, 3 P.S. § 849 et seq.

(Relating to Weather Modification), Act of January 19, 1968 (P.L. (1967) 1024, No. 449), as amended, 3 P.S. § 1101 et seq.

II. Purdon's Statutes - Title 16 (Counties)

(Relating to Land Use), Act of January 13, 1966 (P.L. (1965) 1292, No. 515), as amended, 16 P.S. § 11941 et seq.

III. Purdon's Statutes - Title 18 (Crimes and Offenses)

Crimes Code, Act of December 6, 1972 (P.L. 1482, No. 334), as amended, 18 Pa. C. S. § 101 et seq.

IV. Purdon's Statutes - Title 24 (Education)

Public School Code of 1949, Act of March 10, 1949 (P.L. 30, No. 14), as amended, 24 P.S. § 1-101 et seq.

V. Purdon's Statutes - Title 30 (Fish)

Fish and Boat Code, Act of October 16, 1980 (P.L. 996, No. 175), as amended, 30 Pa. C. S. § 101 et seq.

VI. Purdon's Statutes - Title 32 (Forests, Waters and State Parks)

(Relating to Water Power and Water Supply Permits), Act of June 14, 1923 (P.L. 704, No. 294), as amended, 32 P.S. § 591 et seq.

Water Well Drillers License Act, Act of May 29, 1956 (P.L. (1955) 1840, No. 610), as amended, 32 P.S. § 645.1 et seq.

(Relating to Flood Control), Act of August 7, 1936 (P.L. 106, 1st Ex. Sess., No. 46), as amended, 32 P.S. § 653 et seq.

Flood Plain Management Act, Act of October 4, 1978 (P.L. 851, No. 166), as amended, 32 P.S. § 679.101 et seq.

Storm Water Management Act, Act of October 4, 1978 (P.L. 864, No. 167), as amended, 32 P.S. § 680.1 et seq.

Dam Safety and Encroachments Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1 et seq.

(Relating to Stream Clearance), Act of June 5, 1947 (P.L. 422, No. 195), as amended, 32 P.S. § 701 et seq.

(Relating to Potomac River Pollution), Act of May 29, 1945 (P.L. 1134, No. 405), as amended, 32 P.S. § 741 et seq. Section 4 of Act of May 1, 1981 (P.L. 22 No. 9) repeals this section to "the extent it required one of the members of the Interstate Commission on the Potomac River Basin to be a member of the Pennsylvania Commission on Interstate Cooperation."

(Relating to Schuylkill River Pollution), Act of June 4, 1945 (P.L. 1383, No. 441), as amended, 32 P.S. § 751.1 et seq.

(Relating to Delaware River Pollution), Act of April 19, 1945 (P.L. 272, No. 123), as amended, 32 P.S. 815.31 et seq.

Delaware River Basin Compact, Act of July 7, 1961 (P.L. 518, No. 268), as amended, 32 P.S. § 815.101 et seq.

Ohio River Valley Water Sanitation Compact, Act of April 2, 1945 (P.L. 103, No. 50), as amended, 32 P.S. § 816.1 et seq.

Great Lakes Protection Fund Act, Act of July 6, 1989 (P.L. 215, No. 34), as amended, 32 P.S. § 817.11 et seq.

Brandywine River Valley Compact, Act of September 9, 1959 (P.L. 848, No. 337), as amended, 32 P.S. § 818 et seq.

Wheeling Creek Watershed Protection and Flood Prevention District Compact, Act of August 2, 1967 (P.L. 189, No. 61), as amended, 32 P.S. § 819.1 et seq.

Susquehanna River Basin Compact, Act of July 17, 1968 (P.L. 368, No. 181), as amended, 32 P.S. § 820.1 et seq.

Chesapeake Bay Commission Agreement, Act of June 25, 1985 (P.L. 64, No. 25), as amended, 32 P.S. § 820.11 et seq.

(Relating to Preservation and Acquisition of Land for Open Space Uses), Act of January 19, 1968 (P.L. (1967) 992, No. 442), as amended, 32 P.S. § 5001 et seq.

Land and Water Conservation and Reclamation Act, Act of January 19, 1968 (P.L. (1967) 996, No. 443), as amended, 32 P.S. § 5101 et seq.

(Related to Management of Fill) Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995 (P.L. 4, No. 1995-2), 35 P.S. § 6026.101 et seq.

Bluff Recession and Setback Act, Act of May 13, 1980 (P.L. 122, No. 48), as amended, 32 P.S. § 5201 et seq.

Wild Resource Conservation Act, Act of June 23, 1982 (P.L. 597, No. 170), as amended, 32 P.S. § 5301 et seq.

Cave Protection Act, Act of November 21, 1990 (P.L. 539, No. 133), as amended, 32 P.S. § 5601 et seq.

Rails to Trails Act, Act of December 18, 1990 (P.L. 748, No. 188), as amended, 32 P.S. § 5611 et seq.

VII. Purdon's Statutes - Title 34 (Game)

Game and Wildlife Code, Act of July 8, 1986 (P.L. 442, No. 93), as amended, 34 Pa. C.S. § 101 et seq.

VIII. Purdon's Statutes - Title 35 (Health and Safety)

Public Bathing Law, Act of June 23, 1931 (P.L. 899, No. 299), as amended, 35 P.S. § 672 et seq.

Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. § 691.1 et seq.

PA Safe Drinking Water Act, Act of May 1, 1984 (P.L. 206, No. 43), as amended, 35 P.S. § 721.1 et seq.

Phosphate Detergent Act, Act of July 5, 1989 (P.L. 166, No. 31), as amended, 35 P.S. § 722.1 et seq.

Plumbing System Lead Ban and Notification Act, Act of July 6, 1989 (P.L. 207, No. 33), as amended, 35 P.S. § 723.1 et seq.

PA Sewage Facilities Act, Act of January 24, 1966 (P.L. (1965) 1535, No. 537), as amended, 35 P.S. § 750.1 et seq.

Publicly Owned Treatment Works Penalty Law, Act of March 26, 1992 (P.L. 23, No. 9), as amended, 35 P.S. § 752.1 et seq.

PA Solid Waste-Resource Recovery Development Act, Act of July 20, 1974 (P.L. 572, No. 198), as amended, 35 P.S. § 755.1 et seq.

(Related to Pollution from Abandoned Mines), Act of December 15, 1965 (P.L. 1075, No. 410), as amended, 35 P.S. § 760.1 et seq.

Sewage System Cleaner Control Act, Act of May 28, 1992 (P.L. 249, No. 41), as amended, 35 P.S. § 770.1 et seq.

(Related to Camp Regulation), Act of November 10, 1959 (P.L. 1400, No. 497), as amended, 35 P.S. § 3001 et seq.

Air Pollution Control Act, Act of January 8, 1960 (P.L. (1959) 2119, No. 787), as amended, 35 P.S. § 4001 et seq.

(Related to Noise Pollution), Act of June 2, 1988 (P.L. 452, No. 74), as amended, 35 P.S. § 4501 et seq.

Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq. *Repealed in Part.* Section 905(b) of Act of February 9, 1988 (P.L. 31, No. 12), the Low-Level Radioactive Waste Disposal Act (35 P.S. § 7130.101, et seq.), repealed this section insofar as it is inconsistent with said act.

(Related to Infectious and Chemotherapeutic Waste Disposal), Act of July 13, 1988 (P.L. 525, No. 93), as amended, 35 P.S. § 6019.1 et seq.

Hazardous Sites Cleanup Act, Act of October 18, 1988 (P.L. 756, No. 108), as amended, 35 P.S. § 6020.101 et seq.

Storage Tank and Spill Prevention Act, Act of July 6, 1989 (P.L. 289, No. 32), as amended, 35 P.S. § 6021.101 et seq.

Hazardous Material Emergency Planning and Response Act, Act of December 7, 1990 (P.L. 639, No. 165), as amended, 35 P.S. § 6022.101 et seq.

Oil Spill Responder Liability Act, Act of June 11, 1992 (P.L. 303, No. 52), as amended, 35 P.S. § 6023.1 et seq.

Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995 (P.L. 4, No. 2), as amended, 35 P.S. § 6026.101 et seq.

Radiation Protection Act, Act of July 10, 1984 (P.L. 688, No. 147), as amended, 35 P.S. § 7110.101 et seq.

Low-Level Radioactive Waste Disposal Act, Act of February 9, 1988 (P.L. 31, No. 12), as amended, 35 P.S. § 7130.101 et seq.

Worker and Community Right-to-Know Act, Act of October 5, 1984 (P.L. 734, No. 159), as amended, 35 P.S. § 7301 et seq.

#### IX. Purdon's Statutes - Title 36 (Highways and Bridges)

State Highway Law, Act of June 1, 1945 (P.L. 1242, No. ), as amended, 36 P.S. § 670-101 et seq. *Repealed in Part.* Section 1 of Act of December 19, 1990 (P.L. 1343, No. 209) repealed this act insofar as it is inconsistent with said act.

(Related to Junkyards Along Highways), Act of July 28, 1966 (P.L. 91, 3rd Sp. Sess.), as amended, 36 P.S. § 2719.1 et seq.

Highway Vegetation Control Act, Act of December 20, 1983 (P.L. 293, No.

79), as amended, 36 P.S. § 2720.1 et seq.

X. Purdon's Statutes - Title 37 (Historical and Museums)

The History Code, Act of May 26, 1988 (P.L. 414, No. 72), as amended, 37 Pa. C.S. § 101 et seq.

XI. Purdon's Statutes - Title 43 (Labor)

(Related to General Safety), Act of May 18, 1937 (P.L. 654, No. 174), as amended, 43 P.S. § 25-1 et seq.

Seasonal Farm Labor Act, Act of June 23, 1978 (P.L. 537, No. 93), as amended, 43 P.S. § 1301.101 et seq.

XII. Purdon's Statutes - Title 52 (Mines and Mining)

Coal Refuse Disposal Control Act, Act of September 24, 1968 (P.L. 1040, No. 318), as amended, 52 P.S. § 30.51 et seq.

(Related to Coal Land Improvement), Act of July 19, 1965 (P.L. 216, No. 117), as amended, 52 P.S. § 30.101 et seq.

(Related to Mine Fires and Subsidence), Act of April 3, 1968 (P.L. 92, No. 42), as amended, 52 P.S. § 30.201 et seq.

PA Anthracite Coal Mine Act, Act of November 10, 1965 (P.L. 721, No. 346), as amended, 52 P.S. § 70-101 et seq.

(Related to Discharge of Coal into Banks of Streams), Act of June 27, 1913 (P.L. 640, No. 375), as amended, 52 P.S. § 631 et seq.

(Related to Caving-in, Collapse, Subsidence), Act of May 27, 1921 (P.L. 1198, No. 445), as amended, 52 P.S. § 661 et seq.

(Related to Subsidence), Act of September 20, 1961 (P.L. 1537, No. 656), as amended, 52 P.S. § 672.1 et seq. *Repealed in Part.* Section 16 of Act of November 30, 1971 provided that this section repealed insofar as it is inconsistent with Act No. 147.

Anthracite Strip Mining and Conservation Act, Act of June 27, 1947 (P.L. 1095, No. 472), as amended, 52 P.S. § 681.1 et seq. *Repealed in Part.* Section 16 of Act of November 30, 1971 provided that this section repealed insofar as it is inconsistent with Act No. 147.



(Related to Control and Drainage of Water from Coal Formations), Act of July 7, 1955 (P.L. 258, No. 82), as amended, 52 P.S. § 682 et seq.

Bituminous Coal Mine Safety Act, Act of July 7, 2008 (P.L. 654, No. 55), as amended, 52 P. S. §§ 690-101 et seq.

(Related to Abandoned Mines), Act of May 7, 1935 (P.L. 141, No. 55), as amended, 52 P.S. § 809 et seq.

(Related to Maps and Plans), Act of June 15, 1911 (P.L. 954, No. 770), as amended, 52 P.S. § 823.

Surface Mining Conservation and Reclamation Act, Act of May 31, 1945 (P.L. 1198, No. 418), as amended, 52 P.S. § 1396.1 et seq. *Repealed in Part.* Section 27 of Act of December 19, 1984 provides that, except as provided in § 3304 of this title, this section “is repealed to the extent that it applies to the surface mining of minerals other than bituminous and anthracite coal.”

The Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966 (P.L. 31, 1st Sp. Sess.), as amended, 52 P.S. § 1406.1 et seq.

Related to Cave-in or Subsidence of Surface Above Mines), Act of July 2, 1937 (P.L. 2787, No. 579), as amended, 52 P.S. § 1407 et seq.

(Related to Coal Stripping), Act of June 18, 1941 (P.L. 133), as amended, 52 P.S. § 1471 et seq.

(Related to Coal under State Lands), July 18, 1935 (P.L. 1306, No. 409), as amended, 52 P.S. § 1501 et seq.

(Related to Mining Safety Zones), Act of December 22, 1959 (P.L. 1994, No. 729), as amended, 52 P.S. § 3101 et seq.

(Related to Coal and Clay Mine Subsidence Insurance Fund), Act of August 23, 1961 (P.L. 1068, No. 484), as amended, 52 P.S. § 3201 et seq.

Interstate Mining Compact, Act of May 5, 1966 (P.L. 40, Sp. Sess. No. 1), as amended, 52 P.S. § 3251 et seq.

Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984 (P.L. 1093, No. 219), as amended, 52 P.S. § 3301 et seq.

### XIII. Purdon’s Statutes - Title 53 (Municipal Corporations)

Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July

28, 1988 (P.L. 556, No. 101), as amended, 53 P.S. § 4000.101 et seq.

#### XIV. Purdon's Statutes - Title 58 (Oil and Gas)

Oil and Gas Conservation Law, Act of July 25, 1961 (P.L. 825, No. 359), as amended, 58 P.S. § 401 et seq. *Repealed in part.* Repeal of this section where inconsistent with Act of June 20, 1978 (P.L. 477, No. 70)

PA Used Oil Recycling Act, Act of April 9, 1982 (P.L. 314, No. 89), as amended, 58 P.S. § 471 et seq.

Coal and Gas Resource Coordination Act, Act of December 18, 1984 (P.L. 1069, No. 214), as amended, 58 P.S. § 501 et seq. *Repealed in part.* Repeal of this section where inconsistent with Act 1978, June 20, P.L. 477, No. 70

#### XV. Purdon's Statutes - Title 63 (Professions and Occupations)

Water and Wastewater Systems Operators' Certification Act, Act of November 18, 1968 (P.L. 1052, No. 322), as amended, 63 P.S. § 1001 et seq.

#### XVI. Purdon's Statutes - Title 64 (Public Lands)

PA Appalachian Trail Act, Act of April 28, 1978 (P.L. 87, No. 41), as amended, 64 P.S. § 801 et seq.

#### XVII. Purdon's Statutes - Title 71 (State Government)

The Administrative Code of 1929, Act of April 9, 1929 (P.L. 177, No. 175), as amended, 71 P.S. § 51 et seq.

Conservation and Natural Resources Act, Act of June 28, 1995 (P.L. 89, No. 18), as amended, 71 P.S. § 1340.101 et seq.

#### XVIII. Purdon's Statutes - Title 72 (Taxation and Fiscal Affairs)

Project 70 Land Acquisition and Borrowing Act, Act of June 22, 1964 (P.L. 131, Sp. Sess., No. 8), as amended, 72 P.S. § 3946.1 et seq. *Repealed in part.* Repeal of this section where inconsistent with Act 1989, Dec. 21, P.L. 680, No. 88

(Related to Pollution Control Devices), Act of March 4, 1971 (P.L. 6, No. 2), as amended, 72 P.S. § 7602.1 et seq. This article shall terminate on December 31, 2022 pursuant to 72 P.S. § 9979-C.

XIX. Purdon's Statutes - Title 73 (Trade and Commerce)

(Related to Explosives), Act of July 1, 1937 (P.L. 2681, No. 537), as amended, 73 P.S. § 151 et seq. *Suspended in Part*. This section is suspended insofar as it is in conflict with the provisions of Reorganization Plan No. 8 of 1981. *See* 71 P.S. § 751-35.

(Related to Explosives), Act of July 10, 1957 (P.L. 685, No. 362), as amended, 73 P.S. § 164 et seq. *Suspended in Part*. This section is suspended insofar as it is in conflict with the provisions of Reorganization Plan No. 8 of 1981. *See* 71 P.S. § 751-35.

(Related to Black Powder), Act of May 31, 1974 (P.L. 304, No. 96), as amended, 73 P.S. § 169 et seq.

(Related to Excavation and Demolition), Act of December 10, 1974 (P.L. 852, No. 287), as amended, 73 P.S. § 176 et seq.

XX. Purdon's Statutes - Title 75 (Vehicles)

Vehicle Code, Act of June 17, 1976 (P.L. 162, No. 81), as amended, 75 Pa. C.S. § 101 et seq.

Snowmobile and All-Terrain Vehicle Law, Act of June 17, 1976 (P.L. 162, No. 81), as amended, 75 Pa. C.S. § 7701 et seq.

(Related to Hazardous Materials Transport), Act of June 30, 1984 (P.L. 473, No. 99), as amended, 75 Pa. C.S. § 8301 et seq.

XXI. Purdon's Statutes - Title 77 (Workers' Compensation)

Workers' Compensation Act, Act of June 2, 1915 (P.L. 736, No. 338), as reenacted and amended, 77 P.S. § 1 et seq.

PA Occupational Disease Act, Act of June 21, 1939 (P.L. 566, No. 284), as amended, 77 P.S. § 1201 et seq.

XXII. Pennsylvania Constitution-Article I, Section 27 (Adopted May 18, 1971).

## **PART II FEDERAL STATUTES**

Contractor shall comply with all applicable Federal statutes, regulations and executive orders, including, but not limited to, the following:

Acid Precipitation Act of 1980 (42 U.S.C. 8901-8912)

Act to Prevent Pollution from Ships (33 U.S.C. 1901-1912)

Americans with Disabilities Act, (42 U.S.C. §§ 12101-12213 and 47 U.S.C. §§ 225 and 611).

Asbestos Hazard Emergency Response Act of 1986 (see Toxic Substances Control Act Sections 201- 214 (15 U.S.C. 2641-2654))

Atomic Energy Act of 1954 (42 U.S.C. 2014, 2021, 2021a, 2022, 2111, 2113, 2114)

Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. §§ 47501-47510)

Boyd Anti-Lobbying Amendment (31 U.S.C. 1352)

Clean Water Act (see Federal Water Pollution Control Act)

Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951-3956)

Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464)

Community Environmental Response Facilitation Act (42 U.S.C. 9620 note)

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 - 9675)

Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), Supplement by 29 CFR, Part 5

Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276C)

Davis – Bacon Act (40 U.S.C. 2769 to 9-7)

Debarment and Suspension Executive Orders 12549 and 12689

Emergency Planning and Right-To-Know Act of 1986 (42 U.S.C. 11001-11050)

Endangered Species Act of 1973 (16 U.S.C. 1531-1544)

Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791-798)

Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371-4375)

Environmental Protection Agency Regulations (40 CFR, Parts 31 and 35 (Subpart 60) and 40 CFR 35.6550(b)(2)(ii))

Equal Employment Opportunity (Executive Order 1124b, as Amended Executive Order 11375; Supplemented by 31 CFR Part 60)

Federal Facility Compliance Act of 1992 (42 U.S.C. 6901 note)

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y)

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1784)

Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1101-1164)

Global Climate Protection Act of 1987 (15 U.S.C. 2901 note)

Hazardous Substance Response Revenue Act of 1980 (see 26 U.S.C. 4611, 4612, 4661, 4662)

Lead-Based Paint Exposure Reduction Act (15 U.S.C. 2681-2692)

Lead Contamination Control Act of 1988 (42 U.S.C. 300j-21 to 300j-25)

Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b-2021d)

Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401-1445)

Mining and Mineral Resources Research Institute Act of 1984 (30 U.S.C. 1221-1230)

National Climate Program Act (15 U.S.C. 2901-2908)

National Contaminated Sediment Assessment and Management Act (33 U.S.C. 1271 note)

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370b)

National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701-1709)

Noise Control Act of 1972 (42 U.S.C. 4901-4918)

Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101-10270)

Oil Pollution Act of 1990 (33 U.S.C. 2701-2761)

Organotin Anti-Fouling Paint Control Act of 1988 (33 U.S.C. 2401-2410)

Outer Continental Shelf Land Act Amendments of 1978 (43 U.S.C. 1801-1866)

Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109)

Public Health Service Act (42 U.S.C. 300f-300j-11)

Renewable Resources Extension Act of 1978 (16 U.S.C. 1671-1676)

Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6991:)

Safe Drinking Water Act (see Public Health Service Act Sections 1401-1451 (42 U.S.C. 300f, 300j-11))

Single Audit Act (31 U.S.C. 7501 of 509.) and Related or Updated Provisions, Regulations or OMB Circulars

Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001-2009)

Solid Waste Disposal Act (42 U.S.C. 6901-6991i)

Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201-1328)

Toxic Substances Control Act (15 U.S.C. 2601-2692)

Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901-7942)

US Energy Policy and Conservation Act (PUB.L. 94-163)

Water Resources Research Act of 1984 (42 U.S.C. 10301-10309)

Wood Residue Utilization Act of 1980 (16 U.S.C. 1681-1687)

**APPENDIX B  
CONSTRUCTION PRODUCTS  
RECYCLED CONTENT**

(A) **Requirement.** Unless specifically waived by the Department in writing, all construction products offered by the Bidder, or included in the final product offered by the Bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Construction Products</b>	<b>Material</b>	<b>% of Post-Consumer Materials</b>	<b>% of Total Recovered Materials</b>
Structural Fiberboard	Recovered Materials	-	80
Laminated Paperboard	Post-consumer Paper	100	-
Rock Wool Insulation	Slag	-	75
Fiberglass Insulation	Glass Cullet	-	20
Cellulose Insulation (loose-fill and spray-on)	Post-consumer Paper	75	-
Perlite Composite Board Insulation	Post-consumer Paper	23	-
Plastic Rigid Foam, Polyisocyanurate/ Polyurethane: Rigid Foam Insulation	Recovered Material	-	9
Foam-in-Place Insulation	Recovered Material	-	5
Glass Fiber Reinforced Insulation	Recovered Material	-	6
Phenolic Rigid Foam Insulation	Recovered Material	-	5
Floor Tiles (heavy duty/commercial use)	Rubber Plastic	90 -	- 90
Patio Blocks	Rubber or Rubber Blends Plastic or Plastic Blends	90 -	- 90
Polyester Carpet Fiber Face	Polyethylene terephthalate (PET) resin	25	-
Latex Paint: --Consolidated <sup>1</sup> --Reprocessed <sup>2</sup> ----White, Off-White, Pastel Colors ----Grey, Brown, Earhtones, and Other Dark Colors	Recovered Material  Recovered Material Recovered Material	100  20 50	-  - -
Shower and Restroom Dividers/Partitions:	Plastic	20	-
	Steel <sup>4</sup>	16	9

<sup>1</sup> Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.

<sup>2</sup> Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.

		67	33
Carpet Cushion:			
--Bonded Polyurethane	Old Carpet Cushion	15	-
--Jute	Burlap	40	-
--Synthetic Fibers	Carpet Fabrication Scrap	-	100
--Rubber	Tire Rubber	60	-
Railroad Grade Crossing Surfaces			
--Concrete	Coal Fly Ash	-	15
--Rubber <sup>3</sup>	Tire Rubber	-	85
--Steel <sup>4</sup>	Steel	16	9
		67	33

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(B) **Bidder’s Certification.** The Bidder certifies that the construction product(s) which the Bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **Manufacturer/Mill Certification.** In addition to the Bidder’s Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful Bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **Enforcement.** Awarded bidders may be required, after delivery of the construction product(s), to provide the Commonwealth with documentary evidence that the construction product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

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<sup>3</sup>The recommended recovered materials content for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives.

<sup>4</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.