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DEPARTMENT OF ENVIRONMENTAL PROTECTION

STANDARD SPECIFICATIONS FOR CONSTRUCTION AND RECLAMATION CONTRACTS

The titles or headings of the sections and subsections are intended for convenience of reference and shall not be considered as having any bearing on their interpretation except those titles and headings used in conjunction with the definition of terms.

2 ABBREVIATIONS & DEFINITIONS

ADDENDUM – A document or information attached or added to the contract to clarify, modify or support the information contained therein. An addendum issued by the Department during the bidding process becomes part of the contract documents when the contract is awarded.

ADVERTISEMENT – The public announcement, as required by law, inviting bids for work to be performed or material to be furnished.

AMENDMENT – A change to the contract made by adding, altering or omitting a certain provision or term. An amended contract retains the legal validity of the original contract.

AWARD – The Department’s notice to a bidder of its acceptance of the submitted bid.

BID – Anything that a vendor submits in response to a solicitation that constitutes an offer to the Department and includes, but is not limited to, documents submitted in response to a request for quotation, proposals submitted in response to a request for proposal, or proposals submitted in response to an expression of interest.

BIDDER – An individual, firm, corporation or combination thereof, acting directly or through a duly authorized representative, submitting a bid for the proposed work.

CALENDAR DAY – Every day shown on the calendar.

CHANGE ORDER – A unilateral written order by the Department used when it becomes necessary to amend, clarify, change or cancel purchasing documents issued by the Department.

CONSTRUCTION – The clearing, dredging, excavating, grading of land and other activities associated with the reclamation of property once used to extract coal, oil or natural gas or operate landfills in this State.

CONTRACT – The written agreement between the Department and the Contractor that covers the performance of the work, the furnishing of labor, equipment, and materials, and the basis of payment. The contract includes the invitation of bids, proposal, contract form, contract bond, specifications, supplemental specifications, special provisions, plans, addendum, notice to proceed,

any change orders, and any supplemental agreements that are required to complete the construction project in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

CONTRACT ADMINISTRATOR – A person authorized by the Cabinet Secretary to be responsible for the management of contracts, including approval of any necessary changes that may be needed over the course of the contract. The Department will identify the contract administrator for each awarded contract. Vendors should rely only upon written notification by the Contract Administrator of changes to the scope of work or approval of change orders.

CONTRACT BOND – The approved form of security, executed by the Contractor and its surety, guaranteeing completion of the work and payment of all legal debts pertaining to the construction of the project.

CONTRACT PERIOD – The period from the specified date of commencement of work to the specified date of completion of the work, both dates inclusive, as is specified in the contract.

CONTRACTOR – Every person, individual, firm or corporation, including a subcontractor, who agrees, by written contract, to engage in a construction project for the Department.

CRITICAL PATH ACTIVITIES – Project tasks that must start and finish on time to ensure that the project ends on schedule.

DEPARTMENT – West Virginia Department of Environmental Protection.

EMPLOYEE – Any person working on behalf of the project who is under the direction of the contractor or any subcontractor.

ENGINEER – A person employed by the Department who is qualified to practice engineering per W. Va. Code § 30-13-1, et seq. and is authorized by the Cabinet Secretary to administer the engineering components of reclamation and construction contracts, limited by scope of duties assigned.

ENGINEER, CONSULTING – The individual or firm meeting the requirements of W. Va. Code § 30-13-1, et seq. who is contracted by the Department to provide engineering-related services such as design, supervision, execution, repair, operation, maintenance, technology or the creation of drawings and specifications for the project.

EQUIPMENT – All machinery, tools, and apparatus necessary for the proper construction and acceptable completion of the work, together with the necessary supplies for upkeep and maintenance of the same.

ESTIMATE – The official written itemization of the approximate calculation or judgment of the value of materials in place and work performed.

EXTRA WORK – An item of work not provided for in the contract as awarded, but found essential to the satisfactory completion of the contract within its intended scope. *See further*, Section 10 below.

FORCE ACCOUNT WORK ORDER – An order signed by the Contract Administrator directing the Contractor to perform additional work, with payments based on labor, materials used, equipment cost, plus specified percentages of profit.

HOLIDAYS – An observed day of recreation when no work is done.

INSPECTOR – The Department’s authorized representative assigned to make any or all necessary inspection of the work as further described below.

ITEM – A specifically described unit of work for which a price is provided in the contract.

LOWEST QUALIFIED RESPONSIBLE BIDDER – The bidder who bids the lowest price and that meets, as a minimum, all the following requirements in connection with the bidder’s response to the bid solicitation. The bidder must certify that it:

- Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;
- Is in compliance with all applicable laws of the State of West Virginia; and
- Has supplied a valid solicitation response guarantee or other surety authorized or approved by the Department.

MATERIALS – Any apparatus, equipment, parts or supplies (as distinguished from employees) specified for use in the construction of the project. Materials testing will be addressed in the Technical Specifications.

NOTICE TO PROCEED – A formal written communication from the Department to the Contractor that establishes the date for work on the project to commence and determines the date for project completion.

PAYMENT BOND – (a.k.a. Labor and Materials Payment Bond). A surety bond posted by the Contractor at the request of the Department to guarantee that its subcontractors and materials suppliers on the project will be paid.

PERFORMANCE BOND – A bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.

PLANS – A written account of the intended future course of action aimed at achieving the specific goals and objectives of the contract within the timeframe specified in the contract. It explains in detail what needs to be done, when, how, and by whom. The plans include, but are not limited to, the approved profiles, typical cross sections, working drawings, standard drawings, and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the work to be done.

PRE-BID CONFERENCE – A mandatory meeting between vendors and Department personnel that offers an opportunity to emphasize and clarify critical aspects of a solicitation, eliminate misunderstanding, and permit vendor input.

PRE-CONSTRUCTION CONFERENCE – A conference normally called by the Contract Administrator following award of the Contract and prior to the start of construction, to be attended by Department personnel and the Contractor (or his or her superintendent or authorized agent with direct responsibility for job decisions) to review the activities that shall take place during the construction of the project.

PRODUCT DATA – Illustrative data, brochures, schedules, catalog cuts, charts, informative material or specifications to illustrate materials, articles, items or products for use in some portion of the work.

PROJECT – A planned set of interrelated tasks to be executed over a fixed period and within certain cost and other limitations. For purposes of this document, “project” means the venture undertaken pursuant to the contract.

SAMPLES – Physical examples that show and illustrate materials, finishes, equipment or workmanship of products proposed for use in some portion of the work.

SEASONAL RESTRICTIONS – Limitations imposed on the work which prohibit the Contractor from performing certain types of work during specific seasons of the year.

SHOP DRAWINGS – Drawings, diagrams schedules, and other data prepared for the project by the Contractor, subcontractor, manufacturer or supplier to illustrate and/or install some portion of the work.

SOLICITATION – An attempt made by the Department to obtain bids or proposals for the purpose of entering into a contract, which attempts may include Requests for Quotations (RFQs), Requests for Proposals (RFPs) or other documents approved by the Department.

SOLICITATION RESPONSE – A written answer from a vendor to a solicitation made by the Department, usually made in the form of a bid on a contract.

SOLICITATION RESPONSE GUARANTY – The security furnished with a bid to guarantee that the bidder will enter into the contract if its bid is accepted. This bond is usually five percent (5%) of the total bid amount.

SPECIAL PROVISIONS – Additions and revisions to the Standard and Supplemental Specifications covering conditions peculiar to an individual project.

SPECIFICATIONS – A general term applied to all directions, provisions, and requirements pertaining to performance of the work.

STATE – The State of West Virginia.

SUBCONTRACTOR – A secondary contractor who contracts with the primary Contractor, not the Department, to perform some or all of the primary Contractor’s obligations under the contract.

SUBSTANTIAL COMPLETION or **SUBSTANTIALLY COMPLETE** – The stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the Contract so that the property can be utilized for its intended use, as determined by the Contract Administrator using his or her best professional judgment.

SUPERINTENDENT – The Contractor's authorized representative in responsible charge of the work.

SUPPLEMENTAL SPECIFICATIONS – Additions to and revisions of the Standard Specifications that are included in the solicitation for a specific project. Supplemental Specifications prevail over Standard Specifications when in conflict therewith.

SURETY – The corporation, partnership or individual (e.g. a bank, bonding company or insurance company), other than the Contractor, that is a guarantor of payment or performance if the Contractor fails to perform all of its obligations under the contract.

VENDOR SELF-SERVICE (VSS) PORTAL – A computer program that allows the vendor to access data regarding the State purchasing process. In West Virginia, this feature incorporates the vendor registration function as well as the West Virginia Purchasing Bulletin, which includes commodities and services currently out for bid. The VSS portal also allows vendors to receive solicitation notifications by e-mail based on commodities and services noted at the time of registration; review awarded contracts; perform inquiries pertaining to awards; view payment status and update company contact information, including mail and e-mail addresses.

WINTER SHUTDOWN – Period of time typically from November 30 to April 1 that work may not be practical.

WORK – The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all duties and obligations imposed by the contract.

WORKING DAYS – Monday through Friday, but excluding Saturday, Sunday, state holidays and days that governmental offices are closed due to declaration of an emergency.

WORK ORDER – A written order, signed by the Contract Administrator, providing authorization to the Contractor to proceed with performance of the contract without further instructions or negotiation. This order shall not create new items or make revisions to item prices.

wvOASIS – An enterprise resource planning (ERP) system used by the State to process all financial transactions, including procurement.

3 VENDOR REQUIREMENTS AND CONDITIONS

3.1 DISQUALIFICATION OF BIDDERS

No party shall bid on projects awarded by the Department who have outstanding environmental enforcement actions pending against them for any environmental violation. Nor shall any party bid on projects awarded by the Department who have unresolved vendor complaints, unpaid liabilities outstanding with the Department or the State or who fail to meet any requirements outlined within these specifications or any supplemental specifications associated with an individual solicitation.

3.2 wvOASIS REGISTRATION

It is the Contractor's responsibility to complete any wvOASIS VSS Portal registration forms and acquire all the necessary software, hardware, and networking capabilities for the electronic bidding process. All solicitations will be issued electronically in wvOASIS and all bids must be submitted electronically in wvOASIS.

The Contractor shall receive all payments electronically via direct deposit. Prior to award of the contract, the Contractor shall be approved and registered to accept payments electronically through the West Virginia State Auditor's Office. (www.wvsao.gov)

3.3 COLLUSION AMONG BIDDERS

In addition to the requirements stated in Section 3.1, bidders shall be disqualified if there is evidence of collusion among them.

Collusion among bidders means a situation in which companies share information illegally among themselves when offering to supply goods or services, in order to control the price. Participants in collusion will receive no recognition as bidders for any future work of the Department for a period of one year or until those participants found in collusion have been reinstated as qualified bidders, whichever is longer.

When Department personnel believe that collusion among bidders has occurred, the Department will provide written notice to the bidders. Bidders have ten days from the date of notification to respond to the notice, providing credible evidence that no collusion exists. The Department has discretion to determine if the evidence is credible.

Prior to the award of a contract, the apparent successful bidder shall execute a sworn non-collusion affidavit in a form provided by the Department, which will be included with the Solicitation.

3.4 CONTRACTUAL AGREEMENT

Issuance of a Purchase Order signed by the Department and approved as to form by the Attorney General's office, if required, constitutes acceptance of the contract made by and between the Department and the Vendor. The Vendor's electronic signature on its bid signifies its agreement to be bound by and accept the terms and conditions contained in the contract.

3.5 CONTRACT TERM

The term of the contract shall be stated in the specifications for the solicitation.

3.6 NOTICE TO PROCEED

The Vendor shall begin performance of the contract immediately upon receiving notice to proceed, unless otherwise instructed by the Department.

3.7 QUANTITIES

For this solicitation, which is a Combined Service and Goods solicitation, the scope of the service and deliverable goods to be provided will be more clearly defined in the Technical Specifications included herewith.

3.8 REQUIRED DOCUMENTS

The Vendor shall provide to the Department all of the items identified in the specifications for the solicitation.

3.9 SUBMISSION OF BIDS

The Vendor's submission of its bid in the wvOASIS VSS Portal constitutes an offer to the Department that cannot be unilaterally withdrawn; signifies that the service and goods proposed by the Vendor meet the mandatory requirements contained in the solicitation for that service and goods, unless otherwise indicated; and signifies acceptance of the terms and conditions contained in the solicitation, unless otherwise indicated.

3.10 PRICING

The pricing set forth herein is firm for the life of the contract, unless specified by the Department elsewhere within the solicitation or contract. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization to do so from the Department in the solicitation, may result in bid disqualification.

3.11 PAYMENT

Payment in advance is prohibited under the contract. Payment may only be made after the delivery and acceptance of the service and goods called for by the contract. The Vendor shall submit invoices in arrears.

3.12 TAXES

The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of the contract and the transactions contemplated thereby. The Department is exempt from federal and State taxes and will not pay or reimburse for them.

3.13 ADDITIONAL FEES

The Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the Department or included in the unit price or lump sum bid amount that the Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of the Vendor's bid. Requesting such fees or charges to be paid after the contract has been awarded may result in cancellation of the contract.

3.14 FUNDING

The contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, the contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

3.15 CANCELLATION

The Department reserves the right to cancel the contract immediately upon written notice to the Vendor if the materials or workmanship supplied do not conform to the specifications contained in the contract. The Department may also cancel any contract upon 30 days written notice to the Vendor.

3.16 TIME

Time is of the essence with regard to all matters of time and performance in this contract.

4 CONTENTS AND ISSUANCE OF SOLICITATION

All solicitations will be both published on the VSS Portal Business Opportunities tab and e-mailed to Contractors or to their authorized representatives who are registered for construction and reclamation commodities in the wvOASIS VSS Portal. Vendors are responsible for assuring that they are properly registered to receive these e-mails from wvOASIS.

The solicitation will show the location and description of the proposed project and all of the necessary particulars to allow for vendors to respond to the solicitation. The solicitation will also include any special provisions or requirements not contained in the Standard Specifications.

All documents included in the electronic solicitation, including plans, specifications, and other documents, are considered a part of the solicitation and must not be altered.

The quantities appearing in the solicitation specifications are approximate only and are prepared for the comparison of bids. Payment to the Contractor will only be made for the work accepted or for materials furnished in accordance with the contract. If, upon completion of the construction, the actual quantities used show either an increase or a decrease, the unit bid prices offered in the Purchase Order will prevail.

The bidder is required to examine carefully the Plans, Specifications, Supplemental Specifications, contract forms, and the site of the project, as well as any other documents contained in the solicitation. The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and has judged for and satisfied him- or herself as to the character, quality, and quantity of work to be performed and material required to be furnished under the Contract. Failure to conduct such examination or

inspection will not relieve the successful bidder of any obligation to furnish all material and labor necessary to carry out the provisions of the contract.

4.1 PREPARATION OF SOLICITATION RESPONSE

The bidder's Solicitation Response must be submitted through the wvOASIS VSS Portal.

The bidder must furnish a unit price or a lump sum price as called for in the solicitation, in numerical figures, for each pay item listed.

The Contractor or the Contractor's authorized agent shall use a digital signature for the Solicitation Response submission, as provided for in W. Va. Code § 39A-1-5.

The Solicitation Response shall comply with West Virginia Contractor Licensing Act, W. Va. Code § 21-11-1, et seq. The Contractor is required to have a valid contractor's license at the time of bid and throughout its work on the project.

Solicitation Responses will be considered irregular and will be rejected for any of the following reasons:

- When the Solicitation Response is on a form other than that furnished by the Department or if the Department-furnished form is altered.
- When there are unauthorized additions, conditional or alternate bids or irregularities of any kind that may tend to make the Solicitation Response incomplete, indefinite or ambiguous as to its meaning, or when there are errors or omissions in units of measure or measures.
- When the bidder adds any provisions reserving the right to accept or reject an award or to enter into a contract pursuant to an award. This does not exclude a bid limiting the maximum gross amount of awards acceptable to any one bidder at any one bid opening, provided that any selection of awards will be made by the Department.

The Department will not consider any Solicitation Response unless it is accompanied by a digitally signed solicitation response guaranty in the form of a solicitation bond, in the amount specified in the Solicitation, made payable to the West Virginia Department of Environmental Protection. Solicitation bonds will be accepted only if executed on the official form furnished by the Department, and the Department will reject any Solicitation Response accompanied by a bond executed on a copy, duplicate or facsimile.

The Contractor shall submit each Solicitation Response electronically, and the wvOASIS VSS Portal must receive it by the time designated in the solicitation in order to proceed with the bid opening.

Bidders may withdraw Solicitation Responses in a manner approved by the VSS Portal, so long as it does so in the VSS Portal prior to the time and date established for bid opening. It is the responsibility of the Vendor to withdraw any bid.

Contractors who are found to be low bidders on a number of projects, the total of which exceeds the Contractor's bonding capacity, may, upon approval by the Contract

Administrator, withdraw bids on the project or projects so as to bring the remaining total to within the limit of its bonding capacity. At his or her discretion, the Contract Administrator may award contracts for the project or projects on which bids have been so withdrawn to the next lowest qualified bidder.

At the Department's discretion, solicitations may be issued for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The Department reserves the right to make awards on combination bids or separate bids to the best advantage of the Department. The Department will not consider any combination bids other than those specifically set up in proposals by the Department. Separate Contracts will be written for each individual project included in the combination.

Solicitation Responses will be publicly available on the Department's website on a page dedicated solely to the Department's solicitations and solicitation responses, as well as on VSS.

Should the apparent successful bidder fail or refuse, for any reason, to execute and deliver its required bonds within 14 days after it received notice of the Department's acceptance of its bid, the Department may forfeit the security deposited with its bid.

4.2 PRE-BID QUESTIONS AND ANSWERS AND MANDATORY PRE-BID CONFERENCE

Any questions to be asked regarding solicitations issued by the Department are to be made by contacting the Department employee listed in the solicitation for the project published on the VSS Portal.

Vendors may not contact other Department employees with questions regarding the project, and doing so may result in their bids being disqualified. When questions are put to the Department, the vendor must provide valid contact information, which the Department may verify. If the Department is unable to verify the contact information, then the Department may not answer any questions associated with the invalid contact information.

The mandatory pre-bid conference is to provide the vendors the opportunity to see the site and discuss and clarify any questions they may have regarding the advertised specifications. All vendors who provide a solicitation response are required to attend the pre-bid conference. If the vendor sends an authorized representative to the mandatory pre-bid conference, that representative may only attend and sign in on behalf of that one vendor; no representative may represent more than one vendor.

Questions and answers are for informational purposes only. No questions or answers alter the terms and conditions of the advertised contract in question. The Department shall only issue official changes to the contract through an addendum to the applicable contract, which will be made available on the VSS Portal and which all bidders must acknowledge prior to bidding.

Potential bidders may ask questions of the assigned Department employee up until the time of the posted bid opening with no exceptions. However, it should be noted that bidders

should ask any questions that may necessitate a change to the contract seven days prior to the posted bid opening date to allow the Department to issue an addendum to modify the contract if necessary. The Department should answer questions received three working days or more in advance of a posted bid opening. The Department may or may not answer questions received within three days of the posted time of the bid opening, as time allows.

5 AWARD AND EXECUTION OF THE CONTRACT

After the Department has opened and read the solicitation responses, it will compare them on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices. The Department will make available to the public the results of these comparisons within 24 hours of the bid opening. In the event of discrepancy between unit bid prices and extensions, the unit bid price shall govern.

The Department reserves the right either to reject any or all solicitation responses or to waive technicalities in construing the regularity of proposals submitted by vendors, provided that the technicality so waived does not change the meaning, substance or intent of the proposal, and the proposal remains unmistakably clear as to its intent and meaning. The Department further reserves the right to advertise for new proposals if, in the judgment of the Contract Administrator, the best interests of the Department will be promoted thereby.

All installed materials and equipment shall be new, and all materials, equipment, and workmanship shall be of the kind and type specified in the contract, and, in all cases, be of good quality.

The award of the contract, if it is awarded, will be made to the lowest qualified responsible bidder within 30 calendar days after the opening of solicitation responses. The Contract Administrator may, with the agreement of the successful bidder, withhold issuing the Notice to Proceed for any length of time. The Department will notify the successful bidder by letter, mailed to the address shown on the solicitation response, that its bid has been accepted and that it has been awarded the contract. All solicitation response guaranties will be returned immediately following the execution of the contract.

The Department reserves the right to cancel the award of any contract at any time before the execution of the contract documents by all parties without any liability against the Department.

5.1 SURETY BOND

At the time of the execution of the contract, the successful bidder shall execute and deliver to the Department a surety bond payable to the Department of Environmental Protection in an amount equal to one hundred percent (100%) of the original contract price. This bond must be written by a company (or companies) licensed to do business in West Virginia and in good standing with the West Virginia Insurance Commissioner at the time the bond is issued. The bond shall be held in full force throughout the one year warranty period. The Department will release the bonds upon the Contractor's completion of the guarantee period

and the Department's acceptance of the work. The Department reserves the right to ask for a bond rider if the Department determines that the original bond is insufficient.

In the event that the Contractor's surety(ies) becomes insolvent or is placed in the hands of a receiver or loses the right to conduct business in the State, the Department may, at its own discretion, withhold payment or any estimate until the Contractor has obtained a sufficient bond in lieu of the bond executed by such surety.

5.2 INSURANCE REQUIREMENTS

5.2.1 *COMMERCIAL LIABILITY AND COMPREHENSIVE VEHICLE LIABILITY INSURANCE*

The Contractor shall maintain commercial general liability (CGL) coverage with limits not less than two million dollars (\$2,000,000) for bodily injury and property damage for each occurrence and not less than two million dollars (\$2,000,000) aggregate.

5.2.2 *WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE*

The Contractor shall also give evidence of Workers' Compensation Insurance coverage and Employers Liability Insurance coverage, with a 30-day notice of cancellation. The benefits provided under the Workers' Compensation coverage shall be benefits prescribed by State law.

The Employer's Liability policy must include coverage to protect the contractor for claims brought pursuant to the "deliberate intention" provisions of W. Va. Code § 23-4-2(d)(2). The limits of insurance under this section shall be one million dollars (\$1,000,000) for each of the following: Each Accident, Each Disease, and Each Disease / Employee.

5.2.3 *PROOF OF INSURANCE*

Before work commences, the Contractor shall provide to the Department certificates provided by the insurance company or companies issuing the insurance policies required by this Section. The certificates shall show the type, amount, class of operations covered, effective dates, and dates of expiration of such policies. The certifications shall provide that written notice shall be given to the Department prior to expiration, cancellation or modification of any such policy and shall contain substantially the following representation: "The insurance covered by this certificate will not be canceled or materially modified or altered, except after ten (10) days written notice has been verified as received by the Department of Environmental Protection." All certificates of insurance used to verify the policies issued must be endorsed by an agent licensed in West Virginia. The endorsement must include the printed name, street address, city, zip code, and West Virginia license number of the agent.

5.2.4 *INDEMNIFICATION*

By executing the contract, the Contractor agrees to indemnify and hold harmless the Department from all liability for personal injury, including death resulting therefrom, and against all liability for property damage sustained by any person or persons, including persons employed by the Contractor or its subcontractors, which is caused in whole or in part by an act or omission, negligent or otherwise, of the Contractor, its agents, servants or employees, and to assume the defense of any action brought by such persons to recover

damages and to pay all costs and expenses, including attorney's fees, incurred by the Department as a result thereof.

5.3 SPECIAL BONDS AND INSURANCE

When the work is of such nature that special bond or insurance is required, the special requirements will be detailed and included in the solicitation for the project.

5.4 EXECUTION OF CONTRACT

The contract shall be executed by the bidder to whom the contract has been awarded, the bond executed by the principal and the sureties, and the contract and bond returned to the Department within 20 days after the date of the notice of the award.

Failure by the bidder to execute the contract and file acceptable bond within 20 days after notice of award shall be just cause for the annulment of the award. It is understood by the bidder, in the event of an annulment of award, that the difference between the contractor's bid and the bid of the next lowest qualified bidder will be deducted from the amount of the solicitation response guaranty and retained and deposited by the Department, not as a penalty, but as liquidated damages. Award may then be made to the next lowest qualified bidder or the work may be re-advertised, at the Department's discretion.

5.5 NOTICE TO PROCEED

A change order will be created that will include the Notice to Proceed date so it will be included in the Purchase Order. The Department will mail the Change Order to the Contractor.

5.6 PRE-CONSTRUCTION CONFERENCE AND PROJECT MEETINGS

The Department will arrange a pre-construction conference as soon as possible after the award of each contract. The Contractor, its superintendent or its authorized agent shall be present at the conference and shall present the proposed schedule of work, a list of proposed subcontractors, if any, and a list of suppliers from whom the Contractor expects to purchase materials. The information so presented shall be on forms submitted to the Contractor.

The parties shall hold meetings at periodic intervals throughout the construction contract period for discussion of matters pertinent to the execution and administration of the project. The Engineer or Consulting Engineer, Contract Administrator, Inspector, Contractor and/or its superintendent, subcontractor(s), and/or project foremen, as required, shall attend these meetings.

6 SCOPE OF WORK

The intent of the contract is to provide for the construction and completion in every detail of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

Should any misunderstanding arise as to the intent or meaning of the contract, or any discrepancy appear, the decision of the Contract Administrator shall be final.

6.1 CORRELATION OF DOCUMENTS

The contract documents include all labor, materials, equipment, operations, and transportation necessary for the proper execution and completion of the work. The contract documents are complementary and what is required by one is required by all. The Contractor shall carefully study and compare the contract documents and shall report immediately to the Department any error, inconsistency or omission it may discover. The Contractor shall not proceed with the work affected by such error, inconsistency or omission until it is resolved to the satisfaction of both the Contractor and the Department.

The drawings and specifications are correlative, and the Contractor shall accept and use them as a whole and not separately. Should any item be omitted from the drawings but included in the specifications, and that item is required to complete the work under the contract, the Contractor shall execute that item as though it were shown on both. However, the Contractor is not required to provide items or work not required by the contract documents or applicable to the project, unless such item or work is consistent with the contract documents and reasonably inferable therefrom as being necessary to produce the results contemplated by the contract.

If the Contractor finds disagreement or conflict between drawings and specifications or inconsistencies, errors or omissions in the drawings and specifications or if the Contractor considers any part of the meaning of either the drawings or specifications vague, obscure or uncertain, the Contractor shall immediately notify the Contract Administrator. The Contractor shall not conduct any work so affected by such circumstances until the Contract Administrator renders a decision or interpretation thereon.

6.2 ALTERATIONS OF PLANS OR CHARACTER OF WORK

When the accepted quantities of work vary from the quantities in the bid schedule, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit price for the accepted quantities of work done.

The Department will not make any allowance, except as noted below, for any increased expense, loss of expected reimbursement or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursements therefor or from any other cause.

Increased work involving supplemental agreements will be paid for as stipulated in such agreements. The Contractor shall furnish substantiating data required in the preparation of these agreements.

Under no circumstances shall alterations of plans or the nature of the work involve work beyond the project limits of the proposed construction, except as may be necessary to satisfactorily complete the project.

Alterations in plans or increased quantities of items may be made necessary at a time when the contract or the items involved in the operations are substantially completed and the contractor has demobilized and essentially removed related equipment from the project. Under these circumstances, the Contract Administrator may allow additional compensation for remobilization and demobilization as outlined in the unit pricing in the contract.

The Contractor shall perform unforeseen work for which there is no price included in the contract whenever the Contract Administrator deems it necessary or desirable in order to complete fully the work as contemplated. The Contractor shall perform the work in accordance with the specifications and as directed and will be paid for as provided by a written supplemental agreement on a unit price or lump sum basis. In the event that the Contract Administrator and the Contractor are unable to agree upon the terms of the supplemental agreement, the Contractor shall proceed with the work and receive payment therefor in the manner and amount prescribed in Section 10 (Force Account Work) below.

6.3 FURNISHING RIGHT OF ENTRY

The Department is responsible for securing all construction rights of entry in advance of construction. Any exceptions will be indicated in the Technical Specifications.

The Contractor shall secure all rights of way for borrow, disposal, access or other purposes as it sees fit and shall indemnify and hold harmless the Department from all liability and/or damages resulting from the Contractor's use thereof. This indemnification shall include, but is not limited to, liability and/or damages resulting from the Contractor's failure to obtain a right of entry or failure to obtain a complete right of entry; failure to draft adequate right of entry agreement(s); or failure to obtain the permission and signatures of all persons or entities holding a legal interest in the subject property or properties covered by the right of entry agreement(s).

All right of entry agreements the Contractor obtains for borrow, disposal, access or other purposes shall include a provision requiring the property owner to indemnify and hold harmless the Department for the Contractor's actions and any injury and/or damages whatsoever resulting from the Contractor's use of the property.

6.4 TEMPORARY STRUCTURES

The Contractor will not be required to construct or maintain temporary structures unless the construction and maintenance of such structures are stipulated in the contract or ordered as extra work by the Contract Administrator. If the building of temporary structures is included in the contract or added by extra work order, the responsibility of the contractor for accidents to the public or to their employees arising from their construction or maintenance shall extend to such structure.

6.5 MAINTENANCE OF TRAFFIC

The Contractor must insure that the project does not impede traffic on public roadways.

All expenses for traffic maintenance shall be borne by the Contractor without extra compensation, except when the proposal provides for payment for efforts necessary to maintain traffic on public roadways.

6.6 RIGHTS IN AND USE OF MATERIALS FOUND ON THE PROJECT

The Contractor, with the approval of the Contract Administrator both as to use and material, may use on the project such stone, gravel, sand or other material as may be found in the excavation and will be paid both for the excavation of such materials at the corresponding contract unit price and for the pay item for which the excavated material is used.

The Contractor shall replace, at its own expense and with other acceptable material, all of that portion of the excavation material so removed and used which was needed for use in the embankments, backfills, approaches or otherwise. The Department will not make any charge against the Contractor for the material not used. The Contractor shall not excavate or remove any material from within the project limits that is not within the grading limits, as indicated by the slope and grade lines, without written authorization from the Contract Administrator.

6.7 ROUTINE AND FINAL CLEAN-UP

The Contractor shall at all times keep the construction site free of accumulations of waste materials and rubbish caused by its operations. Periodically during the progress of the work, and also when requested to do so by the Department, the Contractor shall remove, or cause to be removed, accumulated waste materials, rubbish, and debris and leave the construction area in good order. The Contractor shall dispose of all debris and waste resulting from work at its dump site. The Contractor shall not put or spill any materials into any drainage system that would pollute area streams or waterways. The Contractor is liable for any stream pollution caused directly or indirectly by its own employees or those of its subcontractor(s).

Should disputes arise between the Contractor and other contractors or subcontractors as to responsibility for cleaning up, and refusals to do so result therefrom, the Department may perform the cleanup and charge the cost thereof to the Contractor, the other contractors, and/or the subcontractors responsible therefor, as the Department shall determine is fair and just.

6.8 CHANGES IN THE WORK

During the progress of the work, if subsurface or latent physical conditions are encountered at the site that differ materially from those indicated in the contract, or if unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

If there are alterations or changes in quantities that significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or, by affecting other work, cause that other work to

become significantly different in character, the Department will make an adjustment to the contract, excluding anticipated profit. The parties shall agree upon the basis for the adjustment prior to the performance of the work. If the parties cannot agree upon a basis, then the Department will make an adjustment either for or against the Contractor in the amount that the Contract Administrator determines to be fair and equitable. The term “significant change” shall be construed to apply only to the following circumstance: when the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction.

6.8.1 CHANGE ORDERS

Without invalidating the contract, the Department may order or the Contractor may request changes in the work within the general scope of the contract consisting of additions, deletions or other revisions, and the Department will adjust the contract sum and the contract time accordingly. The contract sum or contract time may be changed only by a change order. A change order issued to the Contractor indicates the Department’s agreement therewith, including the adjustment in the contract sum or contract time set forth therein.

The parties shall determine the cost or credit to the Department resulting from a change in the work either by mutual acceptance of a lump sum properly itemized or by unit prices stated in the contract documents or subsequently agreed upon. If the parties cannot agree to either of these methods or if the parties agree that the nature of the work is such that it cannot be estimated in advance with sufficient exactness for mutual agreement, then the Department may direct the Contractor to perform the work by change order in accordance with the following provisions, and the Contractor shall promptly proceed with the work:

- The Contractor shall perform the work for an amount equal to the actual and necessary net cost to the Contractor for material and labor costs necessarily used therein, including all taxes and delivery costs for materials, all required extra costs on labor plus costs for superintendents, power, use of tools, equipment, plant, and the Contractor’s normal charge under the contract for overhead and profit. The Contractor shall keep and present to the Department for inclusion in the change order a complete itemized accounting for all materials, complete identified time and payment records for all employees actually performing the work covered by the change order, and the cost account of work performed by subcontractors for work covered by the change order. The Department reserves the right to require verifications of all costs covered under the change order.
- The actual net cost will be the amount of credit to be allowed by the Contractor to the Department for any deletion or change that results in a net decrease in the contract sum. When both additions and credits covering related work or substitutions are involved in one change, the allowance for overhead and profit shall be figured only on the basis of the increase, if any, with respect to that change.

The Engineer and the Contract Administrator (if the Contract Administrator is not the Engineer) are the only individuals who can execute a change order committing the Department to the expenditure of public funds. No persons other than the Engineer and the Contract Administrator can make any changes to the terms, conditions, contract

clauses, plans, specifications or other stipulations of this contract. The Contractor shall not accept any instructions issued by any person other than the Engineer or the Contract Administrator regarding changes in the work under the contract that affect the contract sum or contract time.

6.8.2 MINOR CHANGES IN THE WORK

Notwithstanding the requirements of subdivision 6.8.1 above, the Contract Administrator has the authority to order minor changes in the work that do not involve an adjustment in the contract sum or an extension of the contract time and are not inconsistent with the intent of the contract documents. Such changes may be affected by field order or other written order of the Contract Administrator and shall be binding on the Department and the Contractor. The Contractor shall promptly carry out such written order(s).

6.8.3 DELETIONS

The Department may delete any item or items in the contract, provided that the Department has given notice to the Contractor of its intent to delete such item(s) and the Contractor has not purchased any material or performed any labor on such item(s). Such deletion shall not constitute grounds of any claim for damages or loss of anticipated profits by the Contractor. The Department may delete any item or items shown in the estimate at any time by agreeing to compensate the Contractor for the reasonable expense already incurred and to take over at actual cost any unused material purchased in good faith for use for the item(s) deleted.

6.9 SUSPENSION OF WORK ORDERED BY THE DEPARTMENT

If the Contract Administrator suspends or delays in writing the performance of all or any portion of the work for an unreasonable period of time (not originally anticipated, customary or inherent in the construction industry), and the Contractor believes that additional contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contract Administrator a written request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

If the Contract Administrator agrees that the time required for the performance of the contract has increased as a result of such suspension and that the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers or subcontractors at any approved tier, and not caused by weather, the Contract Administrator will make an adjustment and modify the contract in writing accordingly. The Contract Administrator will notify the Contractor of his or her approval or disapproval of an adjustment to the contract.

No contract adjustment will be allowed: (a) unless the Contractor has submitted the request for adjustment within the time prescribed; or (b) to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of the contract.

6.10 FUNDING SOURCE IDENTIFICATION SIGNS

The Contractor shall furnish Funding Source Identification Signs and erect them during mobilization of the project. The cost of furnishing, erecting, maintaining, and removal of these signs shall be incidental to the cost of construction of the project.

Funding Source Identification Signs shall be located as directed by the Contract Administrator. The Contractor shall promptly remove each sign at the completion of the project for which the sign was erected, unless otherwise directed by the Contract Administrator.

The content of each sign and the size of letters and the size of board shall be as required by the Contract Administrator or in the contract documents. The Contract Administrator shall furnish to the Contractor the funding agencies and the dollar amounts involved.

The materials for Funding Source Identification Signs, such as for the sign panels and their supports and for the legend and background, are to be of a type and method of fabrication that will be consistent with the conditions and estimated period of use and as specified in the contract documents.

7 CONTROL OF WORK

7.1 AUTHORITY OF DEPARTMENT EMPLOYEES

The Engineer or Consulting Engineer has immediate charge of the engineering details of each construction project and will decide all questions that may arise as to the quantity, quality, and acceptability of materials furnished, work performed, the rate of progress of the work, and the interpretation of the plans and specifications, as well as approval of change orders and time extensions, any changes to the scope of work of the project, and all questions as to the acceptable fulfillment of the contract on the part of the Contractor.

The Engineer or Consulting Engineer will provide information relative to the engineering details of each construction project to the Contract Administrator (if the Contract Administrator is not the Engineer) to inform decisions with regard to the contract. The Inspector will also provide relevant information to the Contract Administrator to inform his or her decision. The decision of the Contract Administrator will be final.

All services rendered by the Engineer or Consulting Engineer consist of professional opinions and recommendations made in accordance with generally accepted engineering practices. Under no circumstances is it the intent of the Engineer or Consulting Engineer to directly control the physical activities of the Contractor, the Contractor's employees' accomplishment of work under the contract, or any superintending, supervision or direction of the actual work of the Contractor or the Contractor's employees. Any construction review of the Contractor's performance conducted by the Engineer or Consulting Engineer is not intended to include review of the adequacy of the Contractor's safety measures in or near the work site.

However, the Engineer or Consulting Engineer or the Inspector has the authority to suspend the work wholly or in part, for such periods as he or she deems necessary, due to the failure of the Contractor to correct conditions unsafe for the employees or the general public or for failure to carry out orders due to unsuitable weather, conditions considered unsuitable for the prosecution of the work, or any other condition or reason deemed to be in the public interest. The Department will direct all suspension orders to the Contractor in writing.

Neither the Consulting Engineer nor the Inspector are authorized to increase the obligation of the Department to any contract.

The Inspector has charge of inspecting the work site for non-engineering related aspects of the performance of the work. Inspectors are authorized to inspect all work done and materials furnished. The inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The Inspector is not authorized to alter or waive the provisions of the contract. The Inspector is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the plans and specifications. The Inspector is authorized to reject materials that do not meet specification requirements or suspend the portion of the work involved until any question at issue can be referred to the Engineer, Consulting Engineer or Contract Administrator as appropriate.

The Inspector is not authorized to issue instructions contrary to the plans and specifications. The Inspector shall not act as foreman or perform other duties for the Contractor or interfere with the management of the work by the Contractor. Any advice the Inspector may give the Contractor shall in no way be construed as binding on the Engineer, Consulting Engineer or the Contract Administrator in any way or releasing the Contractor from fulfilling all of the terms of the contract.

If the Contractor refuses to suspend operations on verbal order of the Inspector, the Inspector may issue a written order giving a reason for ordering the work to stop. After the placing the order in the hands of the superintendent or other person in charge of the project for the Contractor, the Inspector shall immediately leave the work site, and the Contractor shall cease all operations.

7.2 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

The Contractor shall review, approve, and submit to the Engineer or Consulting Engineer all shop drawings, product data, and samples required by the contract documents. The Contractor shall submit them with reasonable promptness and in a sequence that will not cause delay in the work. No shop drawings, product data or samples shall be submitted to the Engineer or Consulting Engineer except by the Contractor, who shall, before submission, verify all materials, check all details and measurements, and verify all field measurements, field construction conditions, and other job coordination requirements. Upon review, check, and approval by the Contractor, it shall place its stamp of approval thereon and submit them to the Engineer or Contract Engineer.

The Contractor shall submit shop drawings, product data, and samples for work, systems, articles, items, and equipment as specified in the contract documents. At the request of the Engineer or Consulting Engineer, the Contractor shall submit additional shop drawings, product data, and samples for approval.

The Contractor shall submit shop drawings, product data, and samples in sufficient number for all approvals. The Engineer or Consulting Engineer shall retain at least two copies of the samples, and the Contractor shall retain the number of copies and samples as is necessary to execute the work. The Contractor shall not commence work on any part of the project that requires submission of shop drawings, product data, and samples until the Engineer or Consulting Engineer has approved the submittal. All such portions of the work shall be in accordance with approved submittals.

The Contractor is not relieved of liability for any deviation from the requirements of the contract documents by the Engineer's or Consulting Engineer's approval of shop drawings, product data or samples, nor is it relieved of liability for errors or omissions therein.

7.3 MEASUREMENTS AND MANUFACTURER'S DIRECTIONS

Before ordering any material, product or article or doing any work, the Contractor shall take all necessary measurements at the project and is responsible for the correctness thereof. The Department will not allow extra charge or compensation on account of differences between actual dimensions and the dimensions indicated on the drawings. The Contractor shall notify the Engineer or Consulting Engineer of any difference and shall not proceed with work thereon until the Engineer or Consulting Engineer has approved the change.

The Contractor shall submit volume and weight measurements to the Engineer or Consulting Engineer for approval and is responsible for providing all necessary volumetric and weight measurement equipment necessary to measure quantities accurately for payment of contract unit items. This equipment is subject to approval by the Engineer or Consulting Engineer.

The Contractor shall apply, install, connect, erect, use, clean, condition, and put into operation or use all manufactured articles, items, products, material, and equipment as directed by the manufacturer's printed instructions, unless otherwise specified in the contract documents, and the Contractor is responsible for obtaining all such instructions.

7.4 LINES, LEVELS, GRADES, AND LAYOUT

Except when "Construction Layout" is included in the contract, the Engineer or Consulting Engineer will have set construction stakes establishing lines, slopes, and continuous profile-grade, together with necessary reference stakes and benchmarks, which are shown on the plans so that the Contractor can properly control the work contemplated by the contract. These stakes and benchmarks shall constitute field control by and in accordance with which the Contractor shall establish all additional stakes and marks necessary to secure a correct layout of all the work. The Contractor shall furnish all stakes. The Contractor shall not engage the services, whether or not those services would be voluntary or paid, of any person

or persons in the employ of the Department for the performance of any of the Contractor's layout work.

The Contractor and any of its subcontractors shall scrupulously preserve these stakes and markings. If any action by the Contractor results in the destruction of such stakes or benchmarks, the Department may deduct, at the discretion of the Engineer or Consulting Engineer, an amount equal to the cost of replacing the same from subsequent estimates due to the Contractor. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors that may have been made in laying out the work. Should any discrepancies become evident between the plans and the Contractor's field survey, the Contractor shall immediately notify the Engineer, Consulting Engineer or Inspector. If these discrepancies will create a change in any item in the Contractor's accepted final bid, the Department reserves the right to redesign or renegotiate. Should the Contractor fail to make notification of these discrepancies, the Department will not be held liable for any changes in the original quantities.

The Contractor shall make all field measurements necessary for its work and shall be responsible for the accuracy of all dimensions, lines, levels, and grades. If a survey is required, the Contractor shall perform it at its own expense. All survey work shall be performed by a Professional Engineer or a Professional Surveyor licensed by the State of West Virginia, who shall certify the accuracy of the survey to the Department.

7.5 DOCUMENTS AT THE SITE

The Department will supply the Contractor with three copies of the plans and specifications. The Contractor shall have one copy of the plans and specifications available on the work site at all times. The Contractor may obtain additional copies of the plans and specifications at its own cost.

The Contractor shall maintain at the project site, for use by the Department, one record copy of all drawings, specifications, addenda, change orders, and other modifications, in good order and marked to record all changes made during construction, as well as all approved shop drawings, product data, and samples, properly filed and referenced. Upon completion of the work, the Contractor shall deliver to the Contract Administrator all such documents and samples.

For use in accounting records, the Contractor shall furnish to the Inspector on a weekly basis two sets of written daily reports showing all personnel (by classification), equipment, and tools engaged in the work. The Contractor shall also submit to the Inspector, on a weekly basis, a written daily activity summary to report progress of the various construction activities performed at the work site. If the Contractor does not submit these summary reports timely, the Department may delay processing invoices.

7.6 COORDINATION OF PLANS, SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, SPECIAL PROVISIONS, AND ADDENDA

In case of discrepancy, large scale drawing details will govern over drawings of lesser scale; calculated dimensions will govern over scaled dimensions; supplemental specifications will govern over specifications; plans will govern over specifications and supplemental specifications; special provisions will govern over specifications, supplemental specifications and plans. Addenda will govern over special provisions, specifications, supplemental specifications and plans. When the plans provide that new work is to connect with existing structures, the Contractor must verify all dimensions with the Engineer or Consulting Engineer before proceeding with the work. Words and abbreviations that have well known technical or trade meanings are used in the contract documents in accordance with such recognized meanings.

7.7 COOPERATION BY CONTRACTOR

The Contractor shall supervise and direct the work, using its best skills and attention. The Contractor is responsible for all construction means, methods, techniques, and procedures, for coordinating all portions of the work, and for cooperating with Department personnel and with other contractors in every way possible.

The Contractor shall have on the work site at all times, as an agent, a competent superintendent capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed, who shall receive instructions from the Engineer, Consulting Engineer, Contract Administrator, Inspector or other authorized representative of the Department. The superintendent shall have full authority to execute orders or directions of the Engineer, Consulting Engineer, Contract Administrator or Inspector without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. The Contractor shall furnish a superintendent irrespective of the amount of work subcontracted.

The Contractor shall furnish to the Engineer, Consulting Engineer or Contract Administrator and Inspector a list of addresses and telephone numbers of its personnel who may be reached in case of emergency during hours when no work is being performed. On weekends and holidays and during suspensions of work and storms, the Contractor shall alert certain of its personnel to stand by and shall inform the Engineer Consulting Engineer or Contractor Administrator and Inspector of arrangements so made.

The Contractor is responsible to the Department for the acts and omissions of its employees and its subcontractors and their employees or agents and all other persons performing any of the work with the Contractor under the contract.

7.8 COOPERATION WITH UTILITIES

The Contractor shall be solely responsible to correctly locate all existing active underground and overhead utilities at the project site and take precautions to avoid damaging them. The Contractor shall repair or replace, at its own expense, any existing utility lines it damages. The Contractor shall notify the utility companies likely to be affected well in advance and immediately before beginning any work within the project site. In the event of damage to

the existing utilities or other facilities, the Contractor shall notify the affected utility owner(s) and the Engineer or Consulting Engineer and Inspector immediately and make, or have made, all necessary repairs and bear the expense thereof and resulting damages caused thereby.

It is the responsibility of the Contractor to arrange for relocating the utility lines where required and as directed by the Engineer, Consulting Engineer or Inspector in accordance with the guidelines set forth by the utility company, prior to beginning construction. The Contractor will be reimbursed for actual charges invoiced by the utility company. The Contractor must contact the utility companies and Miss Utility of West Virginia at least one week prior to commencement of construction activities for the purpose of field locating and marking utility owned facilities within the project area.

7.9 COOPERATION BETWEEN CONTRACTORS

The Department reserves the right to contract for and perform other or additional work on or near the project covered by the contract.

When separate contracts are awarded within the limits of any one project, each contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

Each contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and hold harmless the Department from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by the Contractor because of the presence and operations of other contractors working within the limits of the same project.

The Contractor shall arrange its work and shall place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same project. The Contractor shall join work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

In the event the Contract Administrator finds further coordination effort is necessary, he or she shall call a meeting of the contractors involved. After the meeting has been held, the Contract Administrator shall notify the contractors of the action required of each, and the Contract Administrator's decision is final.

7.10 INSPECTION OF WORK AND MATERIALS

All materials and each part or detail of the work is subject to inspection by the Engineer, Consulting Engineer or Inspector, who shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. To facilitate the inspection of materials, all delivery tickets shall contain, at a minimum, the properties required in the specifications.

At the Engineer's or Consulting Engineer's instruction, the Contractor may not bury any installed components unless an Inspector is present. Should the Contractor proceed without an Inspector present, the work is deemed unacceptable and shall be uncovered and, at the Inspector's direction, removed and replaced at the Contractor's expense. If any work should be covered contrary to the request of the Department, the Contractor must, at its own expense, if required by the Department, uncover the work so that the Department can view it and replace the work. If the Contractor has covered any other work that the Department did not specifically request to observe prior to it being covered, the Department may still request to see such work and the Contractor shall uncover it. If the Department finds such work to be in accordance with the contract documents, the Contractor shall charge the cost of uncovering and replacement to the Department in an appropriate change order. If the Department finds the work not to be in accordance with the contract documents, the Contractor shall pay the cost of uncovering and replacement, unless the unacceptable condition was caused by a separate contractor employed by the Department, in which case, the Department shall be responsible for the payment of such costs.

At the Engineer's or Consulting Engineer's request, the Contractor, at any time before the Department accepts the work, shall remove or uncover those portions of the finished work as the Engineer or Consulting Engineer may direct. After examination, the Contractor shall restore those portions of the work to the standard required by the specifications.

The Department may order any work done or materials used without supervision or inspection by an authorized Department representative to be removed and replaced at the Contractor's own expense. The Department's failure to reject any defective material or work shall not in any way prevent later rejection when such defects are discovered or obligate the Department to final acceptance.

No work shall be done at night or on Sundays or holidays without documented prior approval of the Contract Administrator.

The Contractor shall promptly correct all work rejected by the Department as defective or as failing to conform to the contract documents, whether observed before or after final completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work. The Contractor shall remove all such defective or non-conforming work from the site, if necessary, and correct the work to comply with the contract documents at no cost to the Department. If the Contractor fails to correct such defective or non-conforming work, the Department may either terminate the contract or accept the non-conforming work and issue a change order reflecting an appropriate reduction in the contract sum. If the appropriate reduction is not calculated until after the Department has made final payment to the Contractor, the Contractor shall reimburse the Department that sum.

The Contractor shall not do any work without lines and grades having been given or approved by the Engineer or Consulting Engineer. The Department will consider unacceptable any work done contrary to the instructions of the Engineer or Consulting Engineer, any work done beyond the lines shown on the plans or as given, except as

specified, or any extra work done without authority, and the Department will not pay for it. The Department may order work so done repaired or removed and replaced at the Contractor's own expense.

Upon the Contractor's failure to comply promptly with any order of the Engineer or Consulting Engineer, the Engineer or Consulting Engineer has the authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed, and the Department has the authority to deduct the costs from any monies due or to become due the Contractor.

7.11 MAINTENANCE DURING CONSTRUCTION AND FAILURE TO MAINTAIN

The Contractor shall protect its work from damage of any kind until construction is completed and the project is accepted by the Department. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and employees to ensure that the project is kept in satisfactory condition at all times. The Contractor and its subcontractor(s) shall provide protection against weather, frost, freezing, storms, and heat and maintain all work, materials, installations, and equipment safe from injury or damage. The Contractor shall provide temporary covering and closures in the project as required to protect it from damage by weather until permanent construction provides such protection.

At no additional cost to the Department, the Contractor must replace damaged or defective work and restore or replace any other work injured or damaged during the replacement of such damaged or defective work. At the option of the Department, and without any additional cost to the Department, the Contractor shall repair or replace any masonry damage, glass breakage or other damage the Contractor caused to existing buildings or structures in the performance of the contract work or the work to repair or replace damaged or defective work.

All cost of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various pay items, and the Department will not pay the Contractor an additional amount for such work.

If the Contractor at any time fails to comply with provisions for maintenance during construction, the Engineer, Consulting Engineer or Inspector will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer, Consulting Engineer or Inspector may immediately stop all work until the non-compliant condition is addressed.

7.12 ACCEPTANCE

Upon written notice from the Contractor of presumptive completion of the entire project, the Engineer or Consulting Engineer will make an inspection. If all construction and other contractual requirements provided for and contemplated by the contract are found completed to satisfaction, that inspection will constitute the final inspection. If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Engineer or Consulting Engineer will give the Contractor the necessary instruction for correction of

the same in writing, and the Contractor shall immediately comply with and execute those instructions.

Upon correction of the work, the Engineer or Consulting Engineer will make another inspection, which will constitute the final inspection so long as the work has been completed to the satisfaction of the Engineer or Consulting Engineer.

The Contractor shall deliver to the Department all certificates of testing, quality, compliance, and performance, as required, requested, and/or specified by the Engineer or Consulting Engineer upon completion of the work covered by the certificates.

The Contractor shall also deliver to the Department all certificates of approval, compliance, and completion as required by technical specifications, construction codes, inspection, and local, State or federal regulatory authorities upon completion of the work and the inspections covered by such certificates.

The Contractor shall submit to the Department as-built drawings certified by a Professional Engineer or Professional Surveyor identifying all changes that occurred on the project. The drawings shall be of professional quality. Drawings found by the Department to be less than professional quality will be returned for revisions. The Department shall approve these drawings prior to scheduling a final inspection. Final acceptance will be the date the Department fully executes its letter of acceptance.

8 WARRANTY OR GUARANTEE PERIOD

The materials and workmanship provided by the Contractor are subject to the guarantee established by the custom of the respective trades. In the absence of a special guarantee provision, the work, both as to the materials and workmanship, shall be considered, upon acceptance of final payment by the Contractor, guaranteed by the Contractor for one year from the date of the final inspection of the project. Neither the final inspection nor the final payment shall relieve the Contractor of responsibility for negligence or faulty materials or for defects appearing within the guarantee period.

The Contractor shall remedy negligence or faulty materials resulting in damage to the project at the Contractor's own expense. Upon written notification by the Department, the Contractor shall remedy, at its own expense, any defects appearing within the guarantee period. During the one-year guarantee period, the Contractor will maintain the project to the conditions existing at the date of the acceptance of the work. Any failures due to the negligence or workmanship of the Contractor in any of the work which develop during warranty period shall be corrected by the Contractor at its own expense.

The one-year guarantee period shall not be construed as being an extension of the performance period. Failure to perform warranty work shall extend the warranty period until the work is completed and accepted.

9 PROTECTION OF PERSONS AND PROPERTY

The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection preventing damage, injury or loss to:

- All employees on the project and all other persons who may be affected thereby;
- All the work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor or any of its subcontractors or their employees or subcontractors; and
- Other property on the site or adjacent thereto, including without limitation paving, roadways, structures, utilities, permanent property boundaries, monuments or markers not designated for removal, relocation or replacement during the course of the construction. The Contractor shall repair or replace any damage to these items at its own expense and to the satisfaction of the Department.

The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable and adequate safeguards for safety and protection. It shall post danger signs and provide other warnings against hazards and dangers as required.

In case of emergency that threatens injury, loss of life or damage to property, the Contractor must act in a diligent manner, without prior instruction from the Department. The Contractor shall notify the Contract Administrator or Inspector as soon as practicable after the emergency is abated. If the Contractor claims it is due compensation because of extra work caused by the emergency, it shall promptly submit such claim to the Contract Administrator, who has the discretion to determine whether and the amount such claim will be compensated.

10 FORCE ACCOUNT WORK

If directed by the Contract Administrator in writing, the Contractor shall perform extra or unforeseen work on a force account basis and shall be compensated in the following manner:

10.1 LABOR

For all labor, foremen, and superintendents in direct charge of the specific force account operations, the Contractor shall receive the actual payroll costs as shown on certified payrolls, paid for each and every hour that the labor, foremen, and superintendents are actually engaged in the work. The Contractor or subcontractor shall furnish satisfactory evidence of the payroll costs.

The Contractor shall also receive the actual costs paid to or on behalf of employees by reason of subsistence and travel allowances, Workers' Compensation insurance premiums,

unemployment insurance contributions, Social Security and Medicare taxes, health and welfare benefits, and pension fund benefits when such amounts are required by employment contract generally applicable to the classes of labor employed on the work. The Contractor shall furnish satisfactory evidence of the rate or rates and the amount paid for insurance premiums and taxes.

For overhead and profit, the Department shall pay to the Contractor an amount equal to twelve percent (12%) of the sum of the above labor costs.

10.2 MATERIALS

For all materials used in the specific force account operation and incorporated into the project, the Contractor shall receive the actual cost of materials delivered, including labor charges for employees of the material supplier who are required to perform an incidental amount of work in conjunction with the material furnished and freight charges paid exclusive of equipment rentals as hereinafter set forth.

The Contractor shall furnish invoices to document actual materials costs; however, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's inventory, than in lieu of the invoices, the Contractor or subcontractor shall furnish an affidavit certifying that such materials were taken from inventory, that the quantity claimed was actually used, and that the price and freight claimed represent the Contractor's actual cost.

For overhead and profit, the Department shall pay to the Contractor an amount equal to twelve percent (12%) of the sum of the above materials costs. All materials paid for will become the property of the Department.

10.3 EQUIPMENT

The movement of equipment to and from the specified force account operation shall be as directed by the Engineer, Consulting Engineer or Inspector. All equipment must be in good operating condition to qualify for rental payment. For all Contractor equipment either rented or owned, the rental rates and operating costs include full compensation for major repairs, repairs due to normal wear and tear, labor and parts needed for routine daily servicing, operating expenses such as fuel, lubricants, tires, and ground engaging components, and the percentage of mechanic's wages and related maintenance vehicles chargeable to preventive and field maintenance.

Payable time periods shall not include time elapsed before the Engineer or Consulting Engineer has advised the Contractor that the equipment is required for use in the force account or time elapsed after the Engineer or the Consulting Engineer has advised the Contractor that the equipment is no longer needed, exclusive of costs for transportation, assembly and disassembly, time elapsed while equipment is broken down or time spent repairing equipment. No separate payment will be made for any type of repairs to equipment.

When equipment is rented from a rental agency that the Contractor owns either in full or in part, the equipment shall be treated as owned equipment and rental rates determined accordingly.

10.3.1 RENTED EQUIPMENT

For required equipment that is not owned and must be obtained by rental, the Contractor shall be paid the actual rental cost for the equipment for the time that the equipment is required solely for use in the force account work. The Contractor shall furnish invoices to document actual equipment rental costs. The Department shall also pay estimated operating costs for each hour the rented equipment is actually operated in the force account work, not to exceed the estimated operating cost per hour set forth for the equipment in the current [Rental Rate Blue Book for Construction Equipment](#) published by Dataquest, Inc.

For overhead and profit, the Department shall pay to the Contractor or subcontractor an amount equal to twelve percent (12%) of the sum of the above costs for rented equipment.

10.3.2 OWNED EQUIPMENT

For owned equipment, other than small tools costing less than \$500 each, the Department shall pay the Contractor a rental rate determined from the current Rental Rate Blue Book for Construction Equipment published by Dataquest, Inc. The hourly rate shall be determined by dividing the monthly rate set forth in the Rental Rate Blue Book by 176, with appropriate adjustments made for age and region. The Department shall also pay the estimated operating cost per hour set forth in the Rental Rate Blue Book for each hour the equipment is actually operated in the force account work.

If the owned equipment is not referred to in the current Rental Rate Blue Book, the hourly rental rate will be an agreed amount not to exceed the hourly rate computed as follows: the Contractor shall establish a monthly rental rate equivalent to six percent (6%) of its original acquisition cost of the equipment and divide this monthly rental rate by 176. Operating costs in such cases shall be a reasonable agreed upon amount for each hour the equipment is actually operated in the force account work.

For overhead and profit, the Department shall pay to the Contractor an amount equal to twelve percent (12%) of the sum of the above costs for owned equipment.

10.3.3 IDLE EQUIPMENT

For required equipment held idle on the site of force account work at the request of the Engineer or Consulting Engineer, the Department shall pay the Contractor for such idle time at an adjusted hourly rental rate exclusive of estimated operating costs. For owned equipment, such payment shall be made at one-half the hourly rate determined by dividing the monthly rate set forth in the Rental Rate Blue Book by 176, with appropriate adjustments made for age and region.

Payment of idle time for owned equipment on force account work shall not exceed eight (8) hours each day, less the hours the equipment operates that day. Payment for idle time shall not be made on Saturday, Sunday, holidays, when equipment is operated more than eight (8) hours per day or forty (40) hours per week, when equipment is idle due to the Contractor's decision not to work on potential working days or when equipment is idle due to weather.

For overhead and profit, the Department shall pay to the Contractor an amount equal to twelve percent (12%) of the sum of the above costs for idle owned equipment.

10.3.4 MISCELLANEOUS

The Department shall pay transportation charges for owned or rented equipment to and from the site of the force account work, provided that the Contractor obtains the equipment from the nearest approved source, the return charges do not exceed the delivery charges, haul rates do not exceed the established rates of licensed haulers, and charges are restricted to those units of equipment not already available and not on or near the project.

In the case of owned equipment, the Department shall pay the Contractor idle time rates for the equipment being hauled in addition to the applicable rental rates for the hauling equipment. The Department shall also pay all costs associated with the assembly and disassembly of the equipment for transport. The Contractor shall support all charges by persons or firms other than the Contractor by satisfactory invoices.

10.4 TAXES

When the work is done by the Contractor, the Department shall reimburse to the Contractor the amount of State, municipal, corporate, and business taxes related to the force account work required to be paid by the Contractor. For work performed by a subcontractor, the amount of extra cost incurred by the Contractor for increased business and corporate taxes shall be computed on the gross amount of the force account work, exclusive of the increased corporate and business taxes incurred by the subcontractor.

For overhead and profit, the Department shall pay to the Contractor an amount equal to twelve percent (12%) of the sum of the above costs for State and municipal taxes.

10.5 INSURANCE AND BONDS

If additional premiums are required for the force account work, the Contractor shall pay them so as to have the insurance coverage detailed in Section 5.2 above.

10.6 ADMINISTRATIVE ALLOWANCE

For force account work performed by an approved subcontractor, the Department shall pay to the Contractor an administrative allowance equal to twelve percent (12%) of the total

amount paid for all work performed by the subcontractor on the specific force account operation, exclusive of additives paid for overhead and profit.

10.7 RECORDS

The Contractor and the Contract Administrator shall compare records daily of the cost of work done as ordered on a force account basis and shall indicate agreement by signature on such records.

The Department shall not make payment for work performed on a force account basis until the Contractor has furnished the Contract Administrator an itemized statement of the cost of such force account work detailed as follows:

- Name, classification, date, daily hours, total hours, wage rate, fringe benefit rate, and extended amounts for each laborer and foreman;
- Quantities of materials, unit prices, and extended amounts;
- Transportation of materials;
- Designations, dates, daily hours, total hours, rental rate per hour, operating cost per hour, and extended amount for each unit of equipment;
- Transportation of equipment; and
- Rates for property damage insurance, liability insurance, bond, municipal tax, subsistence and travel allowance, Workers' Compensation insurance, unemployment insurance, Social Security and Medicare taxes.

The Contractor must also furnish satisfactory evidence of the actual cost for each of the charges listed on the itemized statement (excluding those charges for owned equipment determined from the Rental Rate Blue Book).

10.8 BASIS OF PAYMENT

The Contractor shall receive compensation provided as payment in full for extra work done on a force account basis, including all labor, materials, equipment, fuel, lubricants, maintenance of equipment, administration, overhead, use of small tools and equipment for which no rental is allowed, profit, taxes, bond costs, insurance premiums, unemployment contributions, and any other expense arising from the performance of the force account work.

11 CONTROL OF MATERIALS

11.1 TESTING

The Contractor shall perform testing as required by the Technical Specifications or as ordered by the Engineer or Consulting Engineer in writing. The Engineer or Consulting Engineer will determine the need, location, extent, and time of any testing herein specified or in addition to that which is herein specified.

The Contractor shall select an independent testing laboratory or utilize a laboratory run by the Contractor to perform all testing for compaction, concrete, and soils as specified herein. All laboratory reports must be signed by a Professional Engineer. The Contractor is responsible for testing payments as an incidental to the various items of the bid schedule.

If the Contractor allows work to proceed beyond a testing point resulting in the disassembly of structures or the uncovering of work for testing, payment for such will be the responsibility of the Contractor at no extra cost to the Department.

11.2 QUALITY STANDARDS AND APPROVALS

The Contractor shall provide and maintain a quality control system for materials. This quality control system shall conform to all requirements of the Technical Specifications.

Notwithstanding reference in the Technical Specifications or on the drawings to any article, item, product, material, equipment or system by name, brand, make or manufacturer, such reference is intended and interpreted as establishing a standard of quality and shall not be taken, regarded or construed as limiting competition. The Department shall consider equally acceptable to that specified or referenced any article, item, product, material, equipment or system that will perform adequately and satisfactorily the duties imposed by the general design, providing the article, item, product, material, equipment or system so proposed is equal in quality, substance, design, manufacture, function, and performance as that specified or referenced and is adjudged and determined to be so in the opinion of the Engineer or Consulting Engineer. The Contractor shall obtain the approval of the Engineer or Consulting Engineer before purchase and installation.

Where the term “of approved manufacturer” appears in the Technical Specifications or an “approved” or “approved as equal” article or item is referred to, it means that the article, item, workmanship or material must meet the approval of the Engineer or Consulting Engineer.

11.3 DOMESTIC ALUMINUM, GLASS OR STEEL IN PUBLIC WORKS PROJECTS

If any aluminum, glass or steel products are to be supplied in the performance of this contract, only domestic aluminum, glass or steel products shall be supplied, unless the Department determines in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements. *See*, W. Va. Code § 5-19-2.

With regard to domestic aluminum, glass, and steel, the Department and the Contractor shall be bound by the provisions of W. Va. Code §§ 5-19-1, et seq., 5A-3-56, and any rules promulgated thereunder.

11.4 STORAGE OF MATERIALS AND EQUIPMENT

The Contractor shall store materials and equipment so as to assure the preservation of their quality and fitness for the work. The Contractor may use approved portions of the project limits for storage purposes and for placing its plant and equipment, but any additional space required therefor must be provided by the Contractor at its own expense. The arrangement of storage facilities shall be orderly and convenient and shall not obstruct movement on the site, the work of others or the construction operations.

The Contractor shall not use private property for storage purposes without the written permission of the property's owner or lessee, and the Contractor shall make that documentation available to the Contract Administrator upon his or her request. The Contractor shall restore all storage sites to their original condition at its own expense. This shall not apply to the stripping and storing of topsoil or to other materials salvaged from the work. The Contractor shall provide adequate weather protection for any such material so stored.

The Contractor shall safely store all flammable, toxic or explosive materials in conformance with the applicable safety requirements of State and federal regulations, the safety standards of the National Fire Protection Association, and any directive of the State Fire Marshall.

11.5 SILENCE OF SPECIFICATIONS

The apparent silence of these Specifications, the Technical Specifications, the Supplemental Specifications, plans, and special provisions as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that the Contractor shall only use material and workmanship of acceptable quality.

12 PROSECUTION AND PROGRESS

12.1 SUBCONTRACTING THE PRIME CONTRACT

The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the contract or contracts or any portion thereof without written approval of the Contract Administrator prior to any of the subject work being performed. The Contractor shall not award any subcontract to a subcontractor that is under debarment with the State. All subcontracts shall be in writing and substantially conform to the prime contract. No subcontracts shall in any case release the Contractor of its liability under the contract or bonds.

As soon as practicable after the award of the contract, the Contractor shall furnish to the Department, in writing, the names of all subcontractors the Contractor proposes using on the project, including those who are to furnish materials or equipment fabricated to special design. The Department reserves the right to disapprove any proposed subcontractor whose record of performance does not establish its experience, competence or financial ability to perform the work for which the subcontract is proposed. Nothing contained in the contract documents creates any contractual relationship between any subcontractor and the Department.

The Contractor and each subcontractor shall coordinate the work and operations and shall cooperate with and assist each other on the job for the successful execution of the work within trade jurisdictional rulings. Each shall study all drawings and specifications and shall perform all work that properly comes under jurisdiction of the trade he or she represents.

12.2 NOTICE TO PROCEED

The Notice to Proceed will stipulate the date on which the Department expects the Contractor to begin work and from which date contract time will be charged. In the event the Department cannot issue a Notice to Proceed, it may issue a Conditional Notice to Proceed upon the mutual agreement of the Department and the Contractor. The Conditional Notice to Proceed will be used to allow the Contractor to begin work on a portion of the project not impacted by the issue that created the need for the Conditional Notice to Proceed.

12.3 PROSECUTION OF THE WORK

The Contractor shall provide sufficient resources (materials, equipment, labor, and incidentals) to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the proposal. The Contractor shall provide a schedule in a format acceptable to the Contract Administrator in accordance with these Specifications.

The Contractor is responsible for all damage to property of any character during the prosecution of the work resulting from any act, omission, negligence or misconduct in the Contractor's manner or method of executing the work, or at any time due to defective work or materials. The Contractor will not be released from this responsibility until the project has been completed and the Department has accepted it.

13 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

13.1 LAWS TO BE OBSERVED

The Contractor shall, at all times, observe, comply with, and post as required all federal, State, and local laws, ordinances, rules, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority that in any manner affects those engaged or employed on the project or that in any way affect the conduct of the work. The Contractor shall protect, indemnify, defend, and hold harmless the Department from any and all claims, liabilities, and causes of action or any fines or penalties imposed on the Department by any State or federal agency because of violation of any State or federal law, rule or regulation by the Contractor or any of its subcontractors or consultants. The Department is not liable for any citations received by the Contractor.

Failure to list a specific federal, State or local law, ordinance, rule, or regulation below does not relieve the Contractor of its obligation to comply.

13.2 PERMITS, LICENSES, AND TAXES

The Department shall procure all environmental permits and licenses, pay all charges and fees thereon, and give all notices necessary and incidental thereto. The Contractor shall comply with all permits obtained by the Department and provide the Department with sufficient documentation at the time of project acceptance that all applicable taxes have been paid.

Permits for the project may include, but are not limited to: NPDES permit from the Division of Water & Waste Management, construction stormwater permit from the Division of Water

& Waste Management, registration of aboveground storage tanks with the Division of Water & Waste Management, Dredge and Fill permit from the U.S. Army Corps of Engineers, a permit for the obstruction or alteration of navigable waters of the United States from the U.S. Army Corps of Engineers, a Stream Activity Permit from the Division of Natural Resources, and/or well plugging permit from the Office of Oil & Gas.

The Contractor must comply with the approved permits and exercise best environmental management practices at no additional cost to the Department.

13.3 SAFETY

The Contractor shall comply with all aspects of the federal Occupational Safety & Health Act of 1970 (OSHA), which was adopted by the State of West Virginia via the Division of Labor's legislative rule entitled *West Virginia Occupational Safety & Health Act*, 42 C.S.R. 15. The Department is not liable for any citations received by the Contractor as a result of its failure to comply with applicable OSHA standards. Actual costs involved in complying with OSHA will be paid by the Contractor.

The Contractor shall also comply with Section 107.7 of the West Virginia Division of Highways' Standard Specification regarding public convenience and safety.

13.4 WEST VIRGINIA JOBS ACT

If the amount of the contract is equal to or greater than \$500,000, the Contractor is subject to the West Virginia Jobs Act, W. Va. Code § 21-1C-1, et seq. Thus, the Contractor shall utilize the local labor market as specified in W. Va. Code § 21-1C-4 and file, with the Division of Labor, copies of the waiver certificates and certified payrolls, or other comparable documents that include the number of employees, the county and state wherein the employees reside, and their occupations in accordance with W. Va. Code § 21-1C-5(b).

13.5 SANITARY PROVISIONS, ELECTRICITY, AND WATER SUPPLY

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of State and local Boards of Health, or of other bodies or tribunals having jurisdiction. The Contractor shall not create, commit or maintain a public nuisance.

There are no sanitary facilities, drinking water supplies or electricity at the work site. The Contractor shall make, at its own expense, arrangements for sanitary facilities, drinking water supplies, and electricity at the site.

13.6 USE OF EXPLOSIVES

When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor is responsible for any and all damage resulting from the use of explosives and shall, if blasting is required, maintain in full force and effect blasting insurance to protect, indemnify, and defend the property owner(s) and the Department from damage claims and lawsuits that may arise as a result of blasting.

All explosives shall be stored in a secure manner, in compliance with all federal and State laws and regulations, and all such storage places shall be clearly marked.

13.7 CONTRACTOR'S RESPONSIBILITY FOR DAMAGE CLAIMS

The Contractor shall indemnify and hold harmless the Department, its officers, and employees from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, negligence or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the laws governing workers' compensation or any other labor law, ordinance, order or decree; and so much of the money due the Contractor under and by virtue of the contract as may be considered necessary by the Department may be retained for the use of the Department or, in case no money is due, the surety may be held until such suit(s), action(s), claim(s) for injuries or damages are settled and suitable evidence to that effect is furnished to the Department. However, the Department will not withhold money due the Contractor when the Contractor produces satisfactory evidence that it is adequately protected by commercial general liability, property damage, automobile or blasting insurance.

13.8 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising the power or authority granted to them by or within the scope of the contract, there is no liability upon the Secretary, Division Director, Office Chief, Contract Administrator, Engineer, Consulting Engineer, Inspector or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

13.9 NO WAIVER OF LEGAL RIGHTS

The Department is not precluded or estopped by any measurement, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor from determining the true amount and character of the work performed and materials furnished by the Contractor, nor from determining that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not, in fact, conform to the contract.

The Department is not precluded or estopped, notwithstanding any such measurement, estimate or certificate or payment in accordance therewith from recovering from the Contractor or sureties or both such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the contract or of any rights reserved or of any right to damages.

13.10 LEGAL REMEDIES

Unless otherwise provided by law or elsewhere in the contract, all claims, counterclaims, disputes, and other matters in question between the Department and the Contractor shall be decided by a court of competent jurisdiction of the State of West Virginia, applying West Virginia law.

13.11 PROTECTION OF THE ENVIRONMENT AND SITE CONDITIONS

The Contractor is responsible for knowing and following all applicable environmental laws, rules, and regulations, specifically the provisions regarding clean water and clean air. The Contractor shall examine conditions at the site and assume responsibility as to the contours and character of the earth, rock, water, and other items that may be encountered during excavating and filling operations.

The Contractor may encounter groundwater at various locations within the work site, and the Contractor may be required to divert or pump the groundwater to remove it from these locations prior to performing the work. The Contractor is responsible for the operation and maintenance of any required diversion or pumping facilities during progress of the work under the contract.

The Contractor shall take any necessary steps to prevent erosion or silting problems from occurring and to minimize pollution or sedimentation of any stream. If any such problems develop, the Contractor is responsible and shall take immediate corrective action.

The Contractor is responsible for the repair or replacement, to their original condition or better, of streets or driveways (blacktop, gravel or concrete), trees, shrubs, fences or any other physical features disturbed by the work under the contract. The Contractor is also responsible for the replacement of any existing boundary or corner markers disturbed by construction activities.

13.12 TEMPORARY ACCESS ROADS

The Contractor shall construct and maintain temporary access roads for convenient access to the various parts of the work and for other necessary purposes incidental to the performance of the contract. The Engineer or Consulting Engineer shall approve the location of access roads prior to construction. The Department will not make separate payment for construction and maintenance of temporary access roads, unless otherwise indicated. The Contractor shall erect such temporary fences or guards as may be necessary to keep unauthorized persons away from the work. The Contractor shall provide, and maintain in good condition, all grading and surfacing of temporary access roads, excavations, fills, and embankments, whether for purposes of construction or convenience, beyond the limits of ordered excavations. The Contractor is required to maintain all roads used by its hauling equipment in a dust-controlled condition and/or cleared of snow. Upon completion, the Contractor shall return the disturbed areas to the approximate original condition as approved by the Engineer or Consulting Engineer.

14 DETERMINATION AND EXTENSION OF CONTRACT TIME

14.1 CONTRACT TIME

The Department shall determine and specify the contract time in the Notice to Proceed. The Date of completion shall be the date that the Department finds the work acceptable under the contract documents and that the Contractor has fully performed the work under the contract.

The work on the contract will be considered substantially complete when the project has met the intention of the plans, as reasonably determined by the Engineer or the Consulting Engineer. When the Engineer or the Consulting Engineer considers the project substantially complete, the Department will discontinue the contract time charges prior to its final acceptance of the work.

14.2 PROGRESS SCHEDULE

Immediately after being awarded the contract, the Contractor shall, at the request of the Department, prepare and submit to the Department for its information an estimated progress schedule for the work. The progress schedule shall be related to the entire project to the extent required by the contract documents and shall provide for expeditious and practicable execution dates of the various stages of construction. The progress schedule may be revised as required by the conditions of the work, subject to the Department's approval.

14.3 DELAYS AND EXTENSIONS OF TIME

The Contractor is responsible for any delays caused by failing to start a work activity on the earliest date any activity can begin after its predecessors have been completed. The Contractor is also responsible for any delays caused by lack of continuous effort, inadequate allocation or scheduling of resources or coordination of the work, inadequate or insufficient application of resources or inability to meet the contract completion date due to the Contractor's approach to the work. Such delays shall not be considered for an extension of the contract completion date or the revised contract completion date.

If the Contractor finds it impossible, for reasons beyond its control, to complete an activity or the work within the contract time as specified or as extended according to the provisions of this Section, the Contractor shall notify the Engineer or Consulting Engineer, in writing, within seven calendar days of the Contractor becoming aware of the following:

- A problem that develops requiring direction to the Contractor by the Engineer or Consulting Engineer;
- The occurrence of any delay, including delays in critical path activities;
- Delays in the controlling operation during the prosecution of work that the Contractor believes may warrant revision of the contract completion date.

The notification shall set forth the reasons that justify the request and, at a minimum, identify the cause(s) for the delay, the particular critical path activity(ies) or controlling operation(s) affected, the effect of any Department act or omission on each activity or operation delayed, and the significant dates that encompass the periods of delay. On projects with schedules, the Contractor shall submit a schedule update within seven calendar days of becoming aware of the delay and another schedule update when the

Contractor indicates or the Engineer or Consulting Engineer believes the delay has been resolved.

In instances where controlling or critical path activities are claimed by the Contractor or determined by the Department to be delayed, the notification and schedule update shall be considered by the Department as a request by the Contractor for a contract time extension. If the Department does not receive schedule updates relating to the delays as outlined above, the Contractor forfeits its rights to any claims or time extensions.

If the Contractor does not provide the Department notification as prescribed above, or if, having given notification as provided above, the Contractor does not afford the Engineer or Consulting Engineer proper data for keeping strict account of actual costs and loss of time, the Contractor waives any claim for additional compensation and contract time extension. The Department shall not allow delay costs allegedly incurred more than the allowable seven days before the Contractor notifies the Engineer or Consulting Engineer in accordance with this provision.

If the Engineer or Consulting Engineer determines that the work was delayed because of conditions beyond the control of and without the fault or negligence of the Contractor, the Engineer or Consulting Engineer may extend the time for project completion as the conditions justify. Consideration for an adjustment of contract time shall be limited to the number of potential working days lost as determined by the Contract Administrator.

The Department will only consider delays in the critical path activities for a contract time extension, so long as the Contractor has submitted proper notification and supporting documentation justifying the request. As soon as practicable after receipt of the request, the Contract Administrator shall advise the Contractor in writing of the approval or rejection of the time extension request. If approved, the extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

14.3.1 EXCUSABLE NON-COMPENSABLE DELAYS

An excusable non-compensable delay is a delay in the controlling operation that was beyond the Contractor's control and not caused by the Contractor's fault or negligence. The Department may consider an adjustment in contract time, but not for additional monetary compensation. Excusable non-compensable delays include, but are not limited to:

- Delay of Notice to Proceed or Conditional Notice to Proceed more than 30 calendar days after the contract award date for reasons beyond the control of and without the fault or negligence of the Contractor. Consideration for an adjustment of contract time will be limited to the number of calendar days in excess of 30 calendar days, counting from the contract award date to the effective date of the Department's issuance of the Notice to Proceed or Conditional Notice to Proceed.
- Delays due to acts of God, labor strikes not within the Contractor's power to settle, freight embargoes, states of national or State emergency or other reasons beyond the control of the Contractor. Consideration for an adjustment of contract time

shall be limited to the number of potential working days lost as determined by the Department.

- Delays in obtaining materials due to extraordinary market conditions caused by industry-wide strike, natural disaster, area-wide shortage, official federal declaration that a material is critical to national defense efforts or for other reasons beyond the control of the Contractor. Consideration for an adjustment of contract time is limited to the number of potential working days lost as determined by the Department
- Delays due to adverse weather. Lost days due to adverse weather may include:
 - Days with inclement weather or conditions beyond the Contractor's control that prevent the involvement of its normal work forces engaged in performing critical or controlling item(s) of work for at least sixty percent (60%) of the total scheduled daily hours, or
 - Days when weather conditions prevent work from beginning at the regular time and the crew is dismissed, regardless of whether or not conditions improve for the rest of the day.

The Department shall not consider an adjustment of contract time for loss of time due to adverse weather:

- Before the start of construction operations;
- During periods when no on-site work on a controlling operation or critical path activity occurs;
- After November 30 and before April 1 of the following year, provided the Contractor has requested and the Department has approved a Winter Shutdown;
- After the contract completion date or the revised contract completion date.

The Department shall limit consideration for an adjustment of contract time to the number of potential working days lost each month, as determined by the Contract Administrator. Notification by the Contractor of weather related delays may be consolidated into a single request that shall be included in the narrative letter transmitting the monthly schedule update. On projects that do not require schedules, the Department must receive the request within seven calendar days of the end of the month in which the weather delays occurred. If a schedule is not required for the project, any time extensions granted by the Contract Administrator shall be on the basis of an additional working day for each potential working day lost.

14.3.2 EXCUSABLE COMPENSABLE DELAYS

An excusable compensable delay is a delay in the critical path activity or, in the absence of a project schedule, a delay in the controlling operation that was caused solely by the Department. In this case, the Department may consider both an adjustment in contract time and additional monetary compensation, if the Department finds that the Contractor is entitled to the same. Excusable compensable delays include:

- Delays in a critical path activity or, in the absence of a project schedule, a delay in the controlling operation due to contract modifications resulting in the performance of added work, revised work or work in greater quantities than those set forth in the solicitation. The Department reserves the right to negotiate unit prices that include the

cost of additional resources (labor, materials, and equipment) required to complete added work, revised work or work in greater quantities within the originally scheduled dates, thereby negating the need for a contract time adjustment.

- Loss of time due to differing site conditions.
- Loss of time due to any written orders of the Engineer, Consulting Engineer or Inspector suspending work or delaying critical path activities on the project not the fault of the Contractor.
- Loss of time due solely to acts or omissions by the Department and not caused or contributed to by the Contractor's fault or negligence.

Should the Department or the Contractor anticipate a substantial delay, the Department may request the Contractor to submit its costs and conditions for demobilization and remobilization. The Department may pay the Contractor for demobilization/remobilization expenses in lieu of further idle equipment costs.

Consideration for adjustment of contract time for added or revised work shall be limited to the extra time allowances as agreed on and specified in the change order that covers the added or revised work. Mark-up for the added or revised work will be negotiated between the Contractor and the Department and specified in the change order. The adjustment of contract time and the allowable mark-up will be full and just compensation for any and all claims that the Contractor may have regarding the added or revised work. The Department will not give additional consideration for the Contractor's home or field office overhead.

Any adjustment of contract time for work authorized in accordance with the provisions that require the performance of work in greater quantities than those specified in the contract shall be made at the discretion of the Engineer or Consulting Engineer in accordance with one of the two options below:

- The extra time allowances as agreed on and specified in the change order that covers the additional or increased work; or
- The same ratio that the total cost of the added or increased work shall bear to the total contract bid amount, provided that the Department judges the added or increased work to be a critical path activity or, in the absence of a project schedule, a controlling operation.

14.4 FAILURE TO COMPLETE ON TIME AND LIQUIDATED DAMAGES

Time is an essential element of the contract, and it is important that the work is completed within the time specified. The cost to the Department for the administration of the contract, including engineering, inspection, and supervision, will increase as the time required to complete the work is increased.

Therefore, for each working day the Engineer or Consulting Engineer deem the project is not substantially complete after the contract time specified for completion of the work, subject to such extensions of contract time required or permitted, the Department will assess liquidated damages against the Contractor.

With the exception of the winter shutdown or those time extensions approved by the

Department, the Department will deduct daily charges for each working day beyond the contract period. The Department will deduct the total amount of daily charges from any monies due to the Contractor, not as a penalty but as liquidated damages. Unless specified elsewhere in the contract, the amount of the daily charge will be \$1,000.00 per day for each working day of delay.

14.5 DEFAULT AND TERMINATION OF CONTRACT

If the Contractor:

- Fails to begin work as provided by the contract within the time specified in the Notice to Proceed; or
- Fails to perform the work with sufficient employees and equipment or sufficient materials to assure the prompt completion of the work; or
- Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected by the Engineer or Consulting Engineer as unacceptable and unsuitable; or
- Discontinues the prosecution of the work; or
- Fails to resume work that has been discontinued within a reasonable time after notice by the Engineer or Consulting Engineer to do so; or
- Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency, or allows any final judgment to stand against it unsatisfied for a period of ten days; or
- Makes an assignment of the contract for the benefit of creditors; or
- For any other cause whatsoever, fails to carry out the contract terms in an acceptable manner;

then the Contract Administrator will give notice in writing to the Contractor and its surety of such delay, neglect or default and shall set forth within that notice an explanation of how the Contractor or surety can cure the delay, neglect or default. If the Contractor or surety, within a period of ten days after such notice, does not proceed in accordance therewith, the Department will, upon written notification from the Contract Administrator of the failure to cure, have full power and authority, without breaching the contract, to terminate the contract.

The Department may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement with another contractor for the completion of the contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer, Consulting Engineer or Contract Administrator will be required for the completion of the contract in an acceptable manner.

The Department will deduct all cost charges it incurs, together with the cost of completing the work under contract, from any money due or which may become due to the Contractor. If such expense exceeds the sum that would have been payable under the contract, then the Contractor and the surety will be liable and shall pay to the Department the amount of such excess.

15 PAYMENTS AND COMPLETION

15.1 CONTRACT SUM

The contract sum as stated in the Purchase Order, including any adjustment(s) thereto, is the total amount payable by the Department to the Contractor for the performance of the work under the contract.

15.2 SCHEDULE OF VALUES

Before submitting its first pay application, the Contractor shall submit to the Department a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data to substantiate its accuracy, as the Department may require. This schedule shall be used only as a basis for the Contractor's pay application.

15.3 PROGRESS ESTIMATES AND APPLICATIONS FOR PAYMENT

On the fifteenth (15th) and thirtieth (30th) day of each month during which the Contractor has made progress toward final completion of the work under the contract, the Department may require the Contractor to prepare an itemized estimate of the amount of work performed since the date of the last preceding estimate and pay application. The Department may request that the Contractor submit such estimate along with supporting documentation in the form of certified payrolls (not to include Social Security numbers), materials invoices, weight slips, and payment applications. The Contractor shall maintain and have available such records for inspection by the Department upon request.

Upon the Department's approval of the pay application, it shall, as soon thereafter as practicable, process for the Contractor, as a progress payment, a sum equal to the contract value of the work performed since the last preceding estimate and pay application, in accordance with the process outlined below, less the aggregate of previous payments. Neither the pay application for a progress payment nor the progress payment shall constitute acceptance or be deemed or construed as acceptance of any part of the work not in accordance with the contract documents.

The Contractor warrants and guarantees that title to all work, materials, and equipment covered by a pay application, whether incorporated into the project or not, shall pass to the Department upon the Contractor's receipt of such payment free and clear of all liens, claims, security interests or encumbrances, and that no work, materials or equipment covered by a pay application have been acquired by the Contractor or any subcontractors subject to an agreement under which the Contractor or any subcontractor retains an interest therein or an encumbrance thereon.

15.4 PAYMENTS WITHHELD

The Department may decline to approve an estimate or a pay application to the extent necessary to protect the Department from loss because of:

- Unsatisfactory, unrepresentative, and unverified amounts and items included in progress estimates;
- Encumbering or holding an interest in the work, materials or equipment so that title cannot be passed to the Department in accordance with Section 15.3 above;
- Defective work not remedied;
- Unsatisfactory performance of the work by the Contractor or any subcontractors;

- Failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- Reasonable doubt that the remaining work can be completed for the unpaid balance of the contract sum;
- Reasonable indication that the work will not be completed within the contract time;
- Third-party claims filed or reasonable evidence indicating probable filing of such claims; or
- Damage to another contractor.

When the Contractor removes the grounds for withheld payments, the Department shall approve the same for payment.

15.5 ACCEPTANCE AND FINAL PAYMENT

Upon notice from the Contractor that the work is ready for final inspection, the Engineer, Consulting Engineer or Inspector, as applicable, shall promptly make such inspection. At this inspection, the Contractor shall submit to the Department final quantity calculations. If the Engineer, Consulting Engineer or Inspector finds the work acceptable pursuant to the contract documents, the Contractor shall submit a final estimate pay application to the Department for processing.

The Department's processing of final payment and payment of retained percentages constitutes the Department's waiver of all claims, except those arising from unsettled liens, faulty or defective work appearing after the final inspection, failure of the work to comply with the requirements of the contract documents, or the terms of any special warranties required by the contract documents.

The Contractor's acceptance of final payment constitutes the Contractor's waiver of all claims, except those previously made in writing and identified by the Contractor as unsettled at the time of the final pay application. However, no payment, final or otherwise, shall operate to release the Contractor or its sureties from any obligation under the contract documents or the applicable bonds.