

*New Jersey Department of Transportation*  
1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600



## *Baseline Document Change Announcement*

**ANNOUNCEMENT: BDC16S-06**

**DATE: June 14, 2017**

**SUBJECT: Civil Rights Requirements**  
- **Revision to Sections 101, 102, 104, 105, 107, 108, and 109 of the 2007 Standard Specifications for Road and Bridge Construction**

**REFERENCE: FHWA and State Attachments**  
- **Revisions to FHWA Attachments and State Attachments**  
- **BDC16S-04**

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Sections 101, 102, 104, 105, 107, 108, and 109 of the 2007 Standard Specifications have been revised to improve compliance with 49 CFR 26 requirements for Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Also minor revision/additions/correction to the actual names of the Federal & State Attachments and prompt payment language.

**The following revisions have been incorporated into the Standard Input (SI 2007) as of June 14, 2017.**

### **SECTION 101 – GENERAL INFORMATION**

#### **101.02 ABBREVIATIONS**

THE FOLLOWING ABBREVIATIONS ARE ADDED:

ADA	Americans with Disabilities Act
CFR	Code of Federal Regulations
CUF	Commercially Useful Function
DCR/AA	New Jersey Department of Transportation, Division of Civil Rights and Affirmative Action
EEO	Equal Employment Opportunity
GFE	Good Faith Effort
OJT	On-The-Job-Training
USC	United States Code
USDOL	United States Department of Labor

#### **101.03 TERMS**

THE FOLLOWING TERMS ARE CHANGED:

**Contractor.** The individual, firm, partnership, corporation, joint venture, or any acceptable combination thereof contracting with the Department for performance of the Contract. For the purpose of carrying out the Contract, it also means the Contractor's representative.

**Subcontractor.** An individual, firm, partnership, corporation, joint venture, or any acceptable combination thereof, to which the Contractor subcontracts part of the Work pursuant to 108.01.

THE FOLLOWING TERMS ARE ADDED:

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

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

**Federal Aid Project Attachments.** Attachments to the Contract Special Provision document, used for Federal aid projects.

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

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

## **SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS**

### **102.07 PREPARATION OF THE BID**

THE FOLLOWING IS ADDED AFTER THE FIFTH PARAGRAPH:

On Federal aid projects, all Bidders shall keep records of all DBE and non-DBE firms that provide a bid or quote to the Bidder for the Contract for use in providing the information to the Department in the development of a Bidder's List. The records will include the name, address, phone number, E-mail address, DBE/ESBE status of the firm, NAICS Code(s) applicable to the kind of work the firm would perform on the project and type of work for subcontracted work for each DBE and non-DBE firm that provides a bid or quote for the Contract. This information shall be made available to the Department upon request.

For each Federal aid contract that they submit a Bid, each Bidder shall prepare a CR-261 - DBE and non-DBE Firms Providing a Bid or Quote for the Contract form. All Bidders are required to submit this information on a yearly basis to the Department, with the information submitted to the Division of Civil Rights and Affirmative Action by September 30 of each year.

### **102.10 SUBMISSION OF BIDS**

THE SECOND PARAGRAPH IS CHANGED TO:

The Bidder shall ensure delivery of its bid with all required components and attachments, including, but not limited to the following:

1. Schedule of Items.
2. Proposal Electronic Bidding File with Bidder's Certification.
3. A CR-266 – Schedule of Disadvantaged Business Enterprise/Emerging Small Business Enterprise/Small Business Enterprise Participation, for any project having a DBE, ESBE or SBE Contract goal.
4. For wholly State funded contracts, acknowledgement of compliance with the registrations specified in 102.01.
5. For wholly State funded contracts, acknowledgement of compliance with N.J.S.A. 19:44A-20.13, et seq.
6. Proposal Bond form.
7. Other related documents as specified in the Contract.
8. On the Disclosure of Investment Activities in Iran (Form DC-16) provided by the Department, certify pursuant to N.J.S.A. 52:32-58, that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in

N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities to the Department.

THE FOLLOWING IS AFTER ADDED AFTER THE SECOND PARAGRAPH:

A directory of certified Disadvantaged Small Businesses Enterprise firms can be found in the New Jersey BizNet UCP Directory, online at <http://www.njucp.net/>.

A directory of certified Emerging Small Business Enterprise firms can be found in the State of New Jersey Emerging Small Business Program online directory at [http://50.62.131.238/Productions/NJDOT\\_ESBE/biz\\_esbe/](http://50.62.131.238/Productions/NJDOT_ESBE/biz_esbe/).

A directory of registered Small Businesses Enterprise firms can be found in the New Jersey Selective Assistance Vendor Information (NJSAMI) database online at [https://www20.state.nj.us/TYTR\\_SAMI/vendorSearch.jsp](https://www20.state.nj.us/TYTR_SAMI/vendorSearch.jsp).

All of the above directories are to be used as a source of information only and does not relieve the Bidder of their responsibility to seek out Enterprises not listed, prior to bidding.

## **102.13 CONSIDERATION OF BIDS**

THE FOLLOWING SUBPART IS ADDED:

### **102.13.01 Bidder Pre-Award Requirements**

#### **A. Federal Aid Projects**

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

- a. The Bidder shall demonstrate commitment of meeting the Contract DBE goal that is specified in the Contract.

- (1) Submit with the bid as a matter of responsiveness, a completed Form CR-266- Schedule of DBE/ESBE Participation. Revisions to the CR-266 will not be accepted before award of the Contract. At time of Bid, or within 5 days after bid opening, submit to DCR/AA:
  - (i) a completed and signed Verification of DBE/ESBE/SBE Firm (Form CR-273) for each firm listed on the CR-266 to demonstrate direct written confirmation from each DBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266 and if applicable,
  - (ii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the CR-266 form, and, if applicable,
  - (iii) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for all DBE trucking firms listed on the CR-266.

Firms listed on the CR-266 will not be counted toward the Contract DBE goal unless completed and signed CR-273 form(s), and applicable CR-272 and CR-274 form(s) are submitted to the DCR/AA within the 5 days after bid opening.

These forms must be submitted through a designated email - [DOT-CR.Verifications@dot.nj.gov](mailto:DOT-CR.Verifications@dot.nj.gov).

- (2) If, at time of Bid, the commitment to meet the Contract DBE goal is not shown on the CR-266, the Bidder must submit at time of Bid, or within 5 days after bid opening, documented evidence of good faith effort(s) to attain the Contract DBE goal, for review and approval by the DCR/AA. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Bidder met the Contract DBE goal or made adequate good faith efforts to do so.

- (i) Good faith efforts are actions taken to achieve a DBE goal or other requirement of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement, including affirmative action measures designed to implement the established objectives of an affirmative action plan that a Bidder may utilize to obtain DBE participation. Efforts to include firms not certified as DBEs in New Jersey are consequently not good faith efforts to meet the DBE Contract goal. Good faith effort actions include, but are not limited to:
- (a) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The Bidder shall solicit this interest as early in the bidding process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - (b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
  - (c) Providing interested DBEs with adequate information about the Plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
  - (d)i Negotiating in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.
  - (d)ii Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
  - (e)i Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the Contract DBE goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract goals.

- (e)ii A Bidder's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the Bidder has the ability and/or desire to perform the Contract work with its own forces does not relieve the Bidder of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
  - (f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Bidder.
  - (g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, but not directly or indirectly providing equipment, supplies or materials to the DBE.
  - (h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (3) If the Department determines that the apparent lowest responsive Bidder has failed to meet the Contract DBE Goal and made adequate good faith efforts to do so, the Department must, before awarding the Contract, provide the Bidder an opportunity for Administrative Reconsideration.

The apparent lowest responsive Bidder will have the opportunity to provide written documented evidence or argument concerning the issue of whether it met the Contract DBE goal or made adequate good faith efforts to do so to an official who did not take part in the original determination that the Bidder failed to meet the Contract DBE goal or made adequate good faith effort to do so, pursuant to 49 C.F.R. 26.53(d). The apparent lowest responsive bidder has the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the Contract DBE goal or made adequate good faith efforts to do so.

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

- (i) **Written Review by the Department.** If the Bidder seeks written review by the Department it must submit written documented evidence or argument proving the Bidder met the Contract DBE goal at time of Bid, or submitted adequate good faith efforts to do so within 5 days after bid opening, to the Department within 2 State business days of the Bidder's request for Administrative Reconsideration.
- (ii) **In-Person Meeting.** If the Bidder seeks an in-person meeting by the Department it must submit written documented evidence or argument proving the Bidder met the Contract DBE goal at time of Bid, or submitted adequate good faith efforts to do so within 5 days after bid opening, to the Department within 2 State business days of the Bidder's request for Administrative Reconsideration. The in-person meeting will be scheduled by the Department as soon as time permits.

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

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

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

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

2. **Contract ESBE Goal.** Where a Contract ESBE goal is set, the Bidder shall follow all requirements and the same administrative reconsideration procedures of Section 102.13.

## B. State Funded Projects

1. **Contract SBE Goal.** On wholly State funded contracts having a Contract SBE goal, the Bidder shall ensure that SBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts financed in whole with state funds in performing work with the Department. The Bidder shall take all necessary and reasonable steps to ensure that SBEs are given equal opportunity to compete for and to perform on the Department's wholly state funded projects. The Bidder shall not discriminate in the award and performance of any Contract obligation including, but not limited to, its performance of its obligations on wholly state funded contracts as specified in Section 107.

- a. The Bidder shall demonstrate commitment of meeting the Contract SBE goal that is specified in the Contract.
  - (1) Submit with the bid as a matter of responsiveness, a completed Form CR-266 - Schedule of DBE/ESBE/SBE Participation. Revisions to the CR-266 will not be accepted before award of the Contract. At time of Bid, or within 5 days after bid opening, submit to DCR/AA:
    - (i) a completed and signed Verification of DBE/ESBE/SBE Firm (Form CR-273) for each firm listed on the CR-266 to demonstrate direct written confirmation from each SBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and, if applicable,
    - (ii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the CR-266 form, and, if applicable,
    - (iii) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for all SBE trucking firms listed on the CR-266.

Firms listed on the CR-266 will not be counted toward the Contract SBE goal unless completed and signed CR-273 form(s), and applicable CR-272 and CR-274 form(s) are submitted to the DCR/AA within the 5 days after bid opening.

These forms must be submitted through a designated email: [DOT-CR.Verifications@dot.nj.gov](mailto:DOT-CR.Verifications@dot.nj.gov).

- (2) If, at time of Bid, the commitment to meet the Contract SBE goal is not shown on the CR-266, the Bidder must submit at time of Bid, or within 5 days after bid opening, documented evidence of good faith effort(s) to attain the Contract SBE goal, for review and approval by the DCR/AA. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Bidder met the Contract SBE goal or made adequate good faith efforts to do so.
  - (i) Good faith efforts are actions taken to achieve a SBE goal or other requirement of the SBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement, including affirmative action measures designed to implement the established objectives of an affirmative action plan that a Bidder may utilize to obtain SBE participation. Efforts to include firms not registered as SBEs in New Jersey are consequently not good faith efforts to meet the SBE Contract goal. Good faith effort actions include, but are not limited to:
    - (a) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified SBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all SBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the SBE directory) and which are

located in the area or surrounding areas of the project. The Bidder shall solicit this interest as early in the bidding process as practicable to allow the SBEs to respond to the solicitation and submit a timely offer for the subcontract. The Bidder should determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.

- (b) Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate SBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates SBE participation.
- (c) Providing interested SBEs with adequate information about the Plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- (d)i Negotiating in good faith with interested SBEs. It is the Bidder's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for SBEs to perform the work.
- (d)ii A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.
- (e)i Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the Contract SBE goal. Another practice considered an insufficient good faith effort is the rejection of the SBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract goals.
- (e)ii A Bidder's inability to find a replacement SBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original SBE. The fact that the Bidder has the ability and/or desire to perform the Contract work with its own forces does not relieve the Bidder of the obligation to make good faith efforts to find a replacement SBE, and it is not a sound basis for rejecting a prospective replacement SBE's reasonable quote.
- (f) Making efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- (g) Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, but not directly or indirectly providing equipment, supplies or materials to the SBE.
- (h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

The above pre-award requirements shall be followed on projects where a Contract SBE goal is set.

### **102.15 DISQUALIFICATION OF BIDDERS**

THE ENTIRE SUBSECTION IS CHANGED TO:

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

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

1. Evidence of collusion among Bidders.
2. Uncompleted work, which in the opinion of the Department, might hinder or prevent completion of additional work if awarded.
3. Failure to submit a completed and signed CR-266 – Schedule of Disadvantaged Business Enterprise/Emerging Small Business Enterprise/Small Business Enterprise Participation at time of Bid.
4. Failure to submit within 5 days of bid opening, proof of documented evidence of good faith efforts to meet the Contract goal, if the Bidder fails to meet the Contract DBE, ESBE or SBE goal.
5. Failure to submit within 5 days of bid opening, a completed and signed Confirmation of DBE/ESBE/SBE Firm (Form CR-273) for each DBE/ESBE/SBE firm listed on the CR-266.
6. Failure to submit within 5 days of bid opening, a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for each DBE/ESBE/SBE firm listed on the CR-266, if applicable.
7. Failure to submit within 5 days of bid opening, a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for each DBE/ESBE/SBE Regular Dealer/Supplier listed on the CR-266, if applicable.
8. Failure of the bidder to meet the Contract DBE, ESBE or SBE goal, or make adequate good faith efforts to do so.
9. Submission of a materially unbalanced bid. A materially unbalanced bid is a bid where there is a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid, which is structured on the basis of nominal prices for some work and inflated prices for other work, will result in the lowest ultimate cost to the Department.
10. Lack of competency or lack of adequate machinery, plant, or other equipment.
11. Unsatisfactory performance on previous or current contracts.
12. Questionable moral integrity as determined by the Attorney General of New Jersey or the Department.
13. Any other outward actions or lack of action that demonstrates the Bidder is not responsible.
14. Disqualification, suspension, or debarment of an individual, firm, partnership, corporation, joint venture, or any combination as required by N.J.A.C. 16:44-11.1.

## **SECTION 104 – SCOPE OF WORK**

### **104.03.01 Authority to Make Changes**

THE FOLLOWING PARAGRAPHS ARE ADDED AFTER THE THIRD PARAGRAPH:

DBE, ESBE or SBE goals apply to work performed through Field Orders and Change Orders. On Federal aid projects, the Contractor is responsible for complying with the DBE program, rules and regulations of 49 CFR Part 26, the requirements as specified in 105.02.05, Federal Aid Project Attachments 1 through 7, and FHWA-1273 for this work. On State funded projects, the Contractor is responsible for complying with SBE program rules and regulations, the requirements as specified in 105.02.05, and State Funded Project Attachments 1 through 6 for this work.

Contractor resubmission of CR-266, CR-273, CR-272 and CR-274 may be required on the work performed through Field Orders and Change Orders.



## SECTION 105 – CONTROL OF WORK

### 105.01.01 RE

THE LAST PARAGRAPH IS CHANGED TO:

The RE has the authority to suspend the Work wholly or in part and to suspend Estimates, as specified in [109.05](#), for failure of the Contractor to correct conditions unsafe for the workers or the general public, for failure to carry out provisions of the Contract, including but not limited to DBE/ESBE/SBE program regulations in the administration of the Contract, or for failure to comply with RE direction. The RE also has the authority to suspend the Work wholly or in part for unsuitable weather, for conditions considered unsuitable for the prosecution of the Work or portion of the Work, or for any other condition or reason deemed to be in the interest of the public.

### 105.02 RESPONSIBILITIES OF THE CONTRACTOR

THE FOLLOWING SUBPART IS ADDED:

#### 105.02.05 Civil Rights Requirements

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

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

1. **Federal Aid Projects.** On contracts containing Federal funding, Federal EEO regulations and goals apply as specified in Federal Aid Project Attachments 1 to 7 and FHWA-1273 of the Special Provisions. The DCR/AA monitors and reviews these projects on behalf of the Federal Highway Administration (FHWA), under Federal statutes (23 USC 140) and rules (23 CFR 230).

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

Ensure compliance with the labor standards provisions of the Contract. Submit weekly certified payrolls as required in the Contract. Monitor and verify the owner-operator status of all DBE and non-DBE truckers working on Federal aid projects used for the Contract. Submit the DBE Trucking Verification (Form CR-274) to the Department. Failure of a Contractor to meet the requirements of this paragraph may result in payment being delayed or withheld as specified in Section 105, default as specified in Section 108, disqualifying the Contractor from future bidding as non-responsible, or termination of the Contract as specified in Section 108.

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

The Contractor is responsible for compliance by any subcontractor, lower tier subcontractor as specified in Section 108. On Federal aid construction contracts, utilize a DBE that performs a commercially useful function (CUF) and performs the work committed to at the time of Contract award. Monitor and report DBE participation on the Contract, on a monthly basis.

The Contractor is required to make good faith effort as defined in 23 CFR Part 230 and 41 CFR Part 60 in meeting the Equal Employment Opportunity, Affirmative Action, on-the-job training and female and minority work hour goals. Ensure compliance by subcontractors and lower tier subcontractors. Failure of the Contractor,

subcontractor or lower tier subcontractor to meet these requirements may result in the denial or limit of credit toward the Contract goal, payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

Utilize the specific DBEs listed to perform the work and supply the materials for which each is listed on the CR-266 unless prior written consent from the DCR/AA is obtained. Unless DCR/AA consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

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

The Contractor and subcontractors are required to provide all information and reports as specified in Section 107.

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

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

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

A Contractor is deemed to have satisfied the requirements of the DBE Program if the Contractor meets the Contract DBE goal or the approved DBE commitment, or demonstrates an adequate GFE. Failure to meet the Contract DBE goal or the approved DBE commitment, without demonstrating an adequate GFE, is considered a material breach of the Contract.

The Contract DBE goal or the approved DBE commitment may be changed by the Department based on changes in the Work that increase or decrease work assigned to approved DBEs, or to create potential DBE subcontracting opportunities regarding the Contract. The Department's DCR/AA will evaluate these changes in the Work in the same manner that the original Contract DBE goal or the approved DBE commitment was established. Submit a Revised CR-266 when the Contract DBE goal or the approved DBE commitment is increased or decreased; in such circumstances, the Contractor shall meet the Modified DBE goal or demonstrate an adequate GFE.

If the Contractor fails to meet the Contract DBE goal, without demonstrating an adequate GFE, the Department will make a payment reduction from the total amount of payments made to the Contractor equal to the value of the DBE goal not attained as follows:

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

Where:

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

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

CP = Total Adjusted Contract Price less the payment adjustments for FINAL LAYOUT, PERFORMANCE BOND AND PAYMENT BOND, and DBE Goal Payment Reduction.

**b. Trainees**

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

- 2. Wholly State Funded Contracts.** On contracts containing wholly State funding, State EEO regulations and goals apply as specified in State Funded Project Attachments 1 to 6 of the Special Provisions. The DCR/AA monitors and reviews these projects in conjunction with the New Jersey Department of Labor under New Jersey Statutes N.J.S.A. 10:5-31 et seq. and P.L. 1975 Chapter 27 and their accompanying rules.

The Contractor is obligated to comply with the SBE program, rules and regulations in the administration of the Contract. Failure to do so is a material breach of the Contract and may result in termination of the Contract, or other such remedy that the Department deems appropriate which may include, but is not limited to, rejection of bids, denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions, liquidated damages as specified in Section 108, default as specified in Section 108, disqualifying the Contractor from future bidding as non-responsible, or termination of the Contract as specified in Section 108. Deliberate attempts by the Contractor or subcontractor to circumvent or commit fraud in the SBE program may result in termination of the Contract as specified in Section 108, investigation by the Department's Inspector General, and prosecution by the State Attorney General's Office.

Ensure compliance with the labor standards provisions of the Contract. Submit weekly certified payrolls as required in the Contract. Monitor and verify the status of all truck owner-operators working on wholly State funded highway construction projects used for the Contract. Failure of a Contractor may result in payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

Obtain subcontract agreements as specified in Section 108. Failure of a Contractor may result in payment being delayed or withheld as specified in Section 105, default as specified in Section 108, disqualifying the Contractor from future bidding as non-responsible, or termination of the Contract as specified in Section 108.

The Contractor is responsible for compliance by any subcontractor, lower tier subcontractor as specified in Section 108. Utilize a SBE that performs a commercially useful function (CUF) and performs the work committed to at the time of contract award. Monitor and report SBE participation on the project, on a monthly basis. Failure of a subcontractor or lower tier subcontractor may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

The Contractor is required to make good faith effort as defined in N.J.A.C. 17:27-1.1, et seq. in meeting the Equal Employment Opportunity, Affirmative Action, on-the-job training and female and minority work hour goals. Failure of a subcontractor or lower tier subcontractor may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

Utilize the specific SBEs listed to perform the work and supply the materials for which each is listed on the CR-266 unless prior written consent from the DCR/AA is obtained. Unless DCR/AA consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

The Contractor is responsible for Equal Employment Opportunity requirements of the Contract, including Affirmative Action. EO workforce and On-The-Job Training. Failure by the Contractor to meet the requirements of the Affirmative Action Program for Equal Employment Opportunity may result in payment

being delayed or withheld as specified in Section 105 pending corrective and appropriate measures by the Contractor to the satisfaction of the Department.

The Contractor and subcontractors are required to provide all information and reports as specified in Section 107.

**a. Small Business Goals for This Project**

**NOTE: SUBCONTRACTING GOALS ARE NOT APPLICABLE IF THE CONTRACTOR IS A REGISTERED SMALL BUSINESS ENTERPRISE (SBE) FIRM.**

This Contract includes a goal of awarding a percentage of the Total Contract Price to subcontractors, transaction expeditors, regular dealers, manufacturers and truckers qualifying as SBEs as specified in State Funded Project Attachment 1 – Small Business Enterprise Utilization Attachment for Wholly State Funded Projects, of the Special Provisions.

To receive SBE credit toward meeting a contract goal in the context of the contract award process, a SBE firm must be registered before the due date for bids or offers on the Contract. There may be situations after the award of the Contract, however, in which it is appropriate to count SBE credit for the use of a SBE firm registered after the contract is executed. To be eligible to obtain SBE credit, a SBE firm must be registered before the subcontract on which it is working is executed.

If a prospective Small Business Enterprise fails to meet the eligibility standards for participation the department's Small Business Program, the Contractor shall, make reasonable outreach efforts to replace that ineligible subcontractor with a registered Small Business whose participation is sufficient to meet the goal for the contract.

Prospective Small Businesses whose registration applications are denied or rejected by the New Jersey Commerce and Growth Commission are ineligible for participation on the project to meet Small Business goals, regardless of any pending appeal action in progress.

A Contractor is deemed to have satisfied the requirements of the SBE Program if the Contractor meets the Contract SBE goal or the approved SBE commitment, or demonstrates an adequate GFE. Failure to meet the Contract SBE goal or the approved SBE commitment, without demonstrating an adequate GFE, is considered a material breach of the Contract.

The Contract SBE goal or the approved SBE commitment may be changed by the Department based on changes in the Work that increase or decrease work assigned to approved SBEs, or to create potential SBE subcontracting opportunities regarding the Contract. The Department's DCR/AA will evaluate these changes in the Work in the same manner that the original Contract SBE goal or the approved SBE commitment was established. Submit a Revised CR-266 when the Contract SBE goal or the approved SBE commitment is increased or decreased; in such circumstances, the Contractor shall meet the Modified SBE goal or demonstrate an adequate GFE.

If the Contractor fails to meet the Contract SBE goal, without demonstrating an adequate GFE, the Department will make a payment reduction from the total amount of payments made to the Contractor equal to the value of the SBE goal not attained as follows:

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

Where:

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

AG = Attained SBE Goal percentage = (total dollar amount paid to SBE suppliers and SBE subcontractors divided by CP) plus the percent value attributed to the Contractor's GFE approved by the Department.

CP = Total Adjusted Contract Price less the payment adjustments for FINAL LAYOUT, PERFORMANCE BOND AND PAYMENT BOND, and SBE Goal Payment Reduction

## SECTION 107 – LEGAL RELATIONS

### 107.02 DISCRIMINATION IN EMPLOYMENT ON PUBLIC WORKS

THE TITLE AND ENTIRE SUBSECTION IS CHANGED TO:

#### 107.02 NONDISCRIMINATION

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

Pursuant to N.J.S.A. 10:2-1, the Contractor agrees that in the hiring of persons for the performance of work under the Contract or any subcontract, or for the procurement, manufacture, assembling, or furnishing of materials, equipment, supplies, or services to be acquired under the Contract, the Contractor, subcontractor, or any person acting on their behalf shall not discriminate against any person who is qualified and available to perform the work to which the employment relates by reason of race, creed, color, national origin, age, ancestry, marital or domestic partnership status, gender, disability, liability for military service, veteran's status, or affectional or sexual orientation.

The Contractor, subcontractor, or any person acting on their behalf shall not, in any manner, discriminate against or intimidate any employee engaged in the performance of the Work under the Contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies, or services to be acquired under such Contract, by reason of race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, liability for military service, veteran's status, or affectional or sexual orientation.

The Department has the right to deduct a penalty of \$50 for each person for each day that the person is discriminated against or intimidated in violation of the provisions of the Contract pursuant to N.J.S.A. 10:2-1. The Department has the right to terminate the Contract, and any monies due the Contractor under the Contract may be forfeited, for any violation of this Subsection occurring after notice to the Contractor from the Department of any prior violation of this Subsection.

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

1. **Compliance with Regulations:** The Contractor will comply with the Acts and Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination:** The Contractor, with regard to the Work performed by it during the Contract, will not discriminate on the grounds race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, affectional or sexual orientation, gender identity or expression, religion, liability for military service, veteran's status, income level or ability to read, write or speak English in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Contract and the Acts and Regulations relative to nondiscrimination on the grounds of race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, affectional or sexual orientation, gender identity or expression, religion, liability for military service, veteran's status, income level or ability to read, write or speak English.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-Compliance:** In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this Contract, the Recipient will impose such Contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  1. Withholding payments to the Contractor under the Contract until the Contractor complies; and/or
  2. Cancelling, terminating, or suspending a Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interest of the United States.

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

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252); and 49 CFR Part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601);
3. Section 162(a) of the Federal Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended; and 49 C.F.R. Part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.);
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended;
7. The Civil Rights Restoration Act of 1987, (PL 100-209);
8. Title II and III of the Americans with Disabilities Act (42 U.S.C. § 12131- - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123);
10. Executive Order 12898, Federal Actions to address Environmental Justice in Minority Populations and Low Income Populations;
11. Executive Order 13166, Improving Access to services for Persons with Limited English Proficiency (70 Fed. Reg. at 74087 to 74100);
12. 23 CFR Part 230 (EEO, Affirmative Action & OJT)
13. 49 CFR Part 26
14. Executive Order 11246 as amended
15. Section 503 of the Rehabilitation Act of 1973 as amended
16. Section 4212 of the Vietnam Era Veteran's Readjustment Assistance Act, as amended
17. New Jersey Statutes N.J.S.A. 10:5-31 et seq.
18. New Jersey P.L. 1975 Chapter 27

**107.03 AFFIRMATIVE ACTION, DISADVANTAGED BUSINESS ENTERPRISES, OR EMERGING SMALL BUSINESS ENTERPRISE**

THE TITLE AND ENTIRE SUBSECTION IS CHANGED TO:

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

It is the public policy of the State and of the United States that no individual, group, firm, corporation or joint venture working on or seeking to work on a Public Works Project should be discriminated against on the basis of race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, liability for military service, affectional or sexual orientation, atypical cellular or blood trait, or genetic information (including the refusal to submit to genetic testing). The Department has developed Affirmative Action, Disadvantaged Business Enterprise, or Emerging Small Business Enterprise Programs to implement this policy, and the regulations and requirements applicable to the Contract are contained in the Special Provisions. The Department will resolve conflicts between these regulations and requirements and the other provisions of the Contract to further the above stated public policy.

**Contract Assurance.** The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsive.

## **SECTION 108 – PROSECUTION AND COMPLETION**

### **108.01 SUBCONTRACTING**

THE FOLLOWING PARAGRAPH IS ADDED BEFORE THE FIRST PARAGRAPH:

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

THE FOLLOWING IS ADDED AFTER THE THIRD SENTENCE IN THE FIRST PARAGRAPH:

Ensure that DBEs/ESBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds in performing work with the Department. Ensure that SBEs have an equal opportunity to receive and participate in the performance of contracts financed in whole with State funds in performing work with the Department.

THE FOLLOWING IS ADDED AFTER THE FIRST PARAGRAPH:

On Federal aid projects, the Contractor shall not terminate a DBE subcontractor, lower tier DBE subcontractor, DBE transaction expeditor, DBE regular dealer, DBE supplier, DBE manufacturer and DBE trucker or an approved substitute DBE firm without prior written consent of DCR/AA. Prior to replacement of the DBE or ESBE firm, the Contractor shall in writing, notify the DBE or ESBE firm and the DCR/AA of its intent to terminate and/or substitute a DBE or ESBE firm, and the reason for the request. The Contractor must give the DBE or ESBE 5 days to respond to the Contractor's notice and advise the DCR/AA and the Contractor of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the DCR/AA may provide a response period shorter than five days. At the time the Contractor requests termination or replacement of a DBE or ESBE firm, the Contractor must submit documentation to the DCR/AA

of its good faith efforts in accordance with 49 CFR Part 26.53 if they are replacing the terminated DBE/ESBE with a non-DBE or non-ESBE firm. The DCR/AA must approve the termination and substitution of all DBE or ESBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers. The Contractor needs to show they began good faith efforts to replace or substitute with another DBE or ESBE well in advance of the request to terminate or substitute. The Department's DCR/AA has sole authority to approve the termination, replacement or substitution of DBE/ESBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers.

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

## **2. Limits and Restrictions.**

PART 3 IS CHANGED TO:

1. The Contractor is barred from subcontracting to firms and individuals suspended or debarred by the Department or included in the State of New Jersey Consolidated Debarment Report maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification. The Contractor must certify that neither the individual, partnership, corporation, joint venture, or limited liability corporation applying to do subcontract work nor any of its corporate officers, stockholders, partners, or members are collectively or individually suspended, debarred, proposed for debarment, disqualified, declared ineligible, or voluntarily excluded from doing business by this or any other State or sub-division thereof or listed in the Federal Government's System for Award Management (SAM), located at: <https://www.sam.gov/portal/SAM/#1>.

## **3. Subcontract Requirements.**

THE ENTIRE PART 3 IS CHANGED TO:

3. **Subcontract Requirements.** Ensure that subcontract agreements include the following Contract provisions:
  - a. **Federal Aid Projects.** When subcontracting work on a Federal Aid project, ensure the following are included in the subcontract agreement.
    1. Disadvantaged Business Enterprise Utilization (Federal Aid Project Attachment 1) or, Emerging Small Business Enterprise Utilization (Federal Aid Project Attachment 1).
    2. Specific Equal Employment Opportunity Responsibilities on NJDOT Federal Aid Projects (Federal Aid Project Attachment 2).
    3. Requirements for Affirmative Action to Ensure Equal Employment Opportunity on NJDOT Federal Aid Projects (Federal Aid Project Attachment 3).
    4. Federal Equal Employment Opportunity Contract Specifications for NJDOT Federal Aid Projects (Federal Aid Project Attachment 4).
    5. State of New Jersey Mandatory Equal Employment Opportunity Language on NJDOT Federal Aid Projects (Federal Aid Project Attachment 5).
    6. Investigating, Reporting, and Resolving Employment Discrimination and Sexual Harassment Complaints on NJDOT Federal Aid Projects (Federal Aid Project Attachment 6).
    7. Payroll Requirements for NJDOT Federal Aid Projects (Federal Aid Project Attachment 7)



8. FHWA 1273 Required Contract Provisions, Federal Aid Construction Contracts as amended or supplemented.
  9. The Standard Title VI Assurance found in Subsection 107.02, as amended or supplemented.
  10. General Wage Determinations Issued Under the Davis-Bacon and Related Acts.
  11. New Jersey Department of Labor Prevailing Wage Rate Determination.
  12. New Jersey Department of Transportation Code of Ethics for Vendors.
  13. Subsection 107.04 as amended or supplemented.
  14. Subsection 106.10 as amended or supplemented.
  15. The Contract Assurance found in Subsection [107.03](#), as amended or supplemented.
- b. Wholly State Funded Projects.** When subcontracting work on a wholly State funded project, ensure the following are included in the subcontract agreement.
1. Small Business Enterprise Utilization on Wholly State Funded Projects (State Funded Project Attachment 1).
  2. State of New Jersey Equal Employment Opportunity Special Provisions for Wholly State Funded Projects (State Funded Project Attachment 2).
  3. Requirements for Affirmative Action to Ensure Equal Employment Opportunity on Wholly State Funded Projects (State Funded Project Attachment 3)
  4. Investigating, Reporting and Resolving Employment Discrimination and Sexual Harassment Complaints on Wholly State Funded Projects (State Funded Project Attachment 4)
  5. Payroll Requirements for Wholly State Funded Projects (State Funded Project Attachment 5).
  6. Americans with Disabilities Act Requirements for Wholly State Funded Projects (State Funded Project Attachment 6).
  7. New Jersey Department of Labor Prevailing Wage Rate Determination.
  8. New Jersey Department of Transportation Code of Ethics for Vendors.
  9. Subsection 107.04 as amended or supplemented.
  10. The Standard Title VI Assurance found in Subsection 107.02, as amended or supplemented.

**108.14 DEFAULT AND TERMINATION OF CONTRACTOR'S RIGHT TO PROCEED**  
LIST 11 UNDER THE FIRST PARAGRAPH IS CHANGED TO:

11. Fails to comply with Contract requirements regarding minimum wage payments, 49 CFR Part 26 et seq., the DBE program requirements, SBE program requirements, and equal employment opportunity requirements.

## **SECTION 109 – MEASUREMENT AND PAYMENT**

**109.01 MEASUREMENT OF QUANTITIES**

THE LAST SENTENCE OF THE LAST PARAGRAPH IS CHANGED TO:

The Department will measure quantities for Proposal Items that are designated on the Plans as “if and where directed” for payment when the RE directs work using the “if and where directed” quantity.

**109.05 ESTIMATES**

THE FOLLOWING IS ADDED AFTER THE FIRST PARAGRAPH:

Pay subcontractors and suppliers for satisfactory performance of their work no later than 30 days from receipt of each payment made by the Department.

Pay subcontractors and suppliers the full amount of retainage no later than 30 days from receipt of payment made by the Department for the subcontractor's or supplier's work.

THE SECOND PARAGRAPH IS CHANGED TO:

The RE will provide a summary of the Estimate to the Contractor. Before the issuance of each payment, certify, on forms provided by the Department, that:

1. Each subcontractor or supplier has been paid the amount due, including retainage, from the previous progress payment and will be paid the amount due from the current progress payment, including retainage, for the subcontractor or supplier's work that was paid by the Department.
2. There exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payments from the subcontractor or supplier, and therefore payment is withheld.

THE FOLLOWING IS ADDED AFTER THE FOURTH PARAGRAPH:

If the Contractor fails to pay the subcontractor or supplier within 30 days after the subcontractor or supplier satisfactorily completes the specified work, the Department may withhold progress payments from the Contractor, until the Contractor pays the subcontractor or supplier all delinquent amounts due, or the Contract is terminated, or the matter is resolved under N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41.

If the Department receives an allegation from a subcontractor or a supplier that the Contractor has not paid the subcontractor or supplier the amount due from a previous progress payment, including retainage, submit to the RE within 10 days of a request made by the RE, evidence that payment has been made.

THE EIGHTH PARAGRAPH IS CHANGED TO:

From the total Estimate amount, excluding amounts for subcontracted work on Federal aid projects, the Department will deduct and retain 2 percent until Substantial Completion.


THE NINTH PARAGRAPH IS CHANGED TO:

In the first Estimate following Substantial Completion, the Department will reduce the retainage withheld to one percent of the Total Adjusted Contract Price, excluding subcontracted work on Federal aid projects, unless it has been determined by the Department that the withholding of additional retainage is required. If retainage is held in cash withholdings, the reduction is to be accomplished by payment under the next Estimate. If retainage is held in bonds, the Department will authorize a reduction in the escrow account.

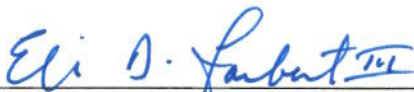
### **Implementation Code S (SPECIAL)**

Changes must be implemented in all applicable Department projects scheduled for bid after June 30, 2017. If necessary, addenda and/or addenda to postpone the receipt of bids must be issued to ensure compliance.

**Recommended By:**

  
\_\_\_\_\_  
Paul F. Schneider  
Director  
Capital Program Support

**Approved By:**

  
\_\_\_\_\_  
Eli D. Lambert III, P.E.  
Assistant Commissioner  
Capital Program Management