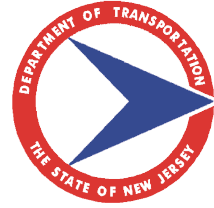


New Jersey Department of Transportation

1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600



Baseline Document Change Announcement

Division 100 – Changes to Intent, Utilities, & Time Extensions, etc

BDC04S-04

August 15, 2005

SUBJECT: Revision to Subsections 101.03, 104.01, 105.03, 105.04, 105.07, 105.09, 105.11, 105.19, 106.03, 106.09, 108.11, 108.16, 109.02, 109.03, 109.04, & 109.06, of the 2001 Standard Specification, both English and Metric Units. Addition of a new Subsection 108.20 to address work on ITS facilities.

Subsections 101.03, 104.01, 105.03, 105.04, 105.07, 105.09, 105.11, 105.19, 106.03, 106.09, 108.11, 108.16, 109.02, 109.03, 109.04, & 109.06 of the 2001 Standard Specification and Subsections have been revised to include significant revisions to corporation with utilities, handling of materials, changes in Contract time, etc. Subsection 108.20 has been added to address working on the fiber optic network and ITS facilities.

The following revisions have been incorporated in both the English unit *Standard Input SI2001E1* and Metric unit *Standard Input SI2001M1* as of August 15, 2005:

The following revisions are incorporated in the English unit *Standard Input SI2001E1*:

101.03 Terms.

THE FIRST SENTENCE IS CHANGED TO:

When the following terms are used in the Contract Documents, the intent and meaning shall be strictly construed as follows:

THE FOLLOWING TERMS ARE CHANGED:

HOT MIX ASPHALT (HMA) PAVEMENT. The combination of base course, intermediate course, and surface course of hot mix asphalt.

ON-DUTY POLICE. The term “on-duty” with regard to municipal police shall mean that the work of providing traffic safety services shall be an extension of regular employment for, and sanctioned by, the municipality, even if it is on an overtime pay rate basis. The municipal police, while so working, shall be covered by the municipality’s liability insurance coverage; and must have successfully completed a traffic safety program approved by the Department.

PAVEMENT STRUCTURE. The combination of surface, intermediate and base courses, and when specified, a subbase course, placed on a subgrade to support the traffic load and distribute it to the roadbed (see Figure 101-1). These various courses are defined as follows:

1. *Surface Course.* One or more layers of specified material of designed thickness at the top of the pavement structure.
2. *Intermediate Course.* One or more layers of specified material of designed thickness placed on the base course.
3. *Base Course.* One or more layers of specified material of designed thickness placed on the subgrade or subbase.
4. *Subbase.* One or more layers of specified material of designed thickness placed on the subgrade.

PLANS. The approved plans, profiles, typical sections, cross-sections, approved working drawings, and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, quantities, and details of the Work to be done. This includes the latest version of all Standard Construction Details in effect at the time of Advertisement. Certified working drawings are not plans and not part of the Contract Documents.

REMEDIAL. The term “remediate” means the process that is approved by the New Jersey Department of Environmental Protection to address all regulated discharges.

SPECIFICATIONS. The compilation of provisions and requirements for the performance of prescribed work contained in the Standard Specifications, as supplemented by the Supplemental Specifications and Special Provisions, and modified by Addenda which, before the receipt of bids, are transmitted to prospective Bidders.

1. *Standard Specifications.* The term “Standard Specifications” means the 2001 Standard Specifications for Road and Bridge Construction of the New Jersey Department of Transportation, which has been approved for general application and repetitive use.
2. *Supplemental Specifications.* Approved additions and revisions to the Standard Specifications.
3. *Special Provisions.* Revisions to the Standard and Supplemental Specifications applicable to an individual project.
4. *Electrical Materials Specifications.* Approved standards for electrical materials, equipment, and installations that are in addition to the above specifications.

SUBSTANTIAL COMPLETION. The term “Substantial Completion” means the point at which the performance of all Work on the Project has been completed except landscaping items (including the planting of trees, shrubs, vines, ground covers, and seedlings), final cleanup, and repair of unacceptable work, and provided the Engineer has solely determined that:

1. the Project is safe and convenient for use by the public, and
2. failure to complete the Work and repairs excepted above does not result in the deterioration of other completed Work; and provided further, that the value of landscaping work remaining to be performed, repairs, and cleanup is less than two percent of the Total Adjusted Contract Price.

104.01 Intent.

THE FIRST PARAGRAPH IS CHANGED TO:

The intent of the Contract Documents is to describe a functionally complete and aesthetically acceptable Project to be constructed and completed by the Contractor in every detail according to the Contract Documents. Any work that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. The Contractor is responsible to provide such elements to complete the Work under the pay items of the Contract for no Additional Compensation as provided under Subsection 109.02. However, as specified in the respective Subsections, adjustments may be allowed when the Department determines there is a discrepancy, error, omission, or latent ambiguity. It is understood that only the best construction practice is to prevail and only materials and workmanship of the first quality are to be used.

105.03 Plans and Specifications.

THE ENTIRE TEXT IS CHANGED TO:

The Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. All components are complementary and describe and provide for the general completion of the Project. The Contractor shall keep one set of Plans, Special Provisions, Addenda, Standard Specifications, Supplemental Specifications, and Standard Details available on the Project site at all times.

In case of discrepancy, calculated dimensions will govern over scaled dimensions; Plans will govern over Specifications; Contract Documents will govern over Working Drawings, Right-of-Way Plans will govern over Plans when setting monuments; Special Provisions will govern over Supplemental Specifications; and Supplemental Specifications will govern over Standard Specifications.

The Contractor shall not take advantage of any apparent discrepancy, error, omission, or patent ambiguity in the Contract Documents. In the event the Contractor discovers any discrepancy, error, omission; or patent ambiguity in the Contract Documents, or if there is any doubt or question as to the intent or meaning of the Contract Documents, the Contractor shall immediately notify the Resident Engineer in writing with sufficient detail. The Department will promptly make, in writing, such corrections and interpretations as deemed necessary. The Contractor shall not be relieved of the obligation of completing an item of Work because of any discrepancy, error, omission, or patent ambiguity, and shall complete the Work as directed with adjustments as specified in Section 104. The Contractor shall not commence with any changes to the Work as provided under the Contract Documents without written authorization from the Department.

105.04 Working Drawings.

THE SECOND SENTENCE OF THE THIRD PARAGRAPH IS CHANGED TO:

Those provisions shall not apply to the review and approval of the design for proprietary walls, noise barriers, temporary sheeting, sheeting left in place, temporary structures, cofferdams, erection plans, traffic control/staging plans and precast concrete culverts or any other items where conceptual plans were included in the Contract Documents and the Contractor is required to complete the final design plans.

THE FOLLOWING IS ADDED TO THE ELEVENTH PARAGRAPH:

The design unit(s) shall be as designated for each Contract by letter from the Department.

105.07 Coordination of Contract Documents.

THE SUBSECTION HEADING AND TEXT ARE CHANGED TO:

105.07 Purchase of Contract Documents.

Request for Plans, Specifications, and Proposal Forms shall be directed to the Cashier of the Department, accompanied by a check for the proper amount, according to the rates on file, drawn to the order of the New Jersey Department of Transportation. Requests for those items furnished without charge shall be directed to the Bureau of Construction Services.

After Award, the successful bidder may request the number of sets of Plans specified below, without charge. One copy of Special Provisions and Addenda is furnished, without charge, with each set of the Plans. Additional sets or additional copies are available upon request, at a charge according to the Department rate.

Table of Plans Furnished Without Charge

Amount of Contract		Sets of Plans
For More Than	To and Including	
\$ 0	\$ 500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	--	5

105.09 Cooperation with Utilities.

THE ENTIRE TEXT IS CHANGED TO:

- A. **General.** It is understood and agreed that the Contractor has considered in its Proposal all of the permanent and temporary utility facilities in their present, new, or relocated positions to the extent required by the Contract Documents and as revealed by its own investigations; is aware that utility service demands, adverse field conditions and emergencies may affect the Utility’s ability to comply with the proposed schedules for utility work; is cognizant of the limited ability of the Department to control

the actions of the Utility(s), and has made allowances in its Proposal that it is not entitled to any Additional Compensation by reasons of delays, inconvenience or damage sustained by the Contractor due to any interference from utility facilities or the operation of moving or installing them. Similarly, the Contractor is deemed to understand that only limited extensions of time may be granted as specified in Subsection 108.11.

The Contractor shall notify, in writing, the Utility(s) involved of the nature and scope of the Project, and of its operations that may affect their facilities or property. The notice shall include an inquiry for all information required to determine the location of the existing utility facilities and the Contractor shall also provide the portion of the approved Preliminary Schedule relative to that respective Utility. Two copies of such notices and the Utility's responses shall be sent to the Resident Engineer prior to the start of Construction Operations. The Contractor shall also attend a Utility preconstruction conference prior to the start of Construction Operations.

The Contractor shall provide each Utility the portion of the approved Baseline CPM Schedule related to the respective Utility and any approved updates or revisions that affect that Utility.

Information on the Utility(s), including the work to be performed by the Utility(s) on the Project, will be provided in the Special Provisions.

The corporations, companies, agencies, or municipalities owning or controlling the utilities, and the name, title, address, and telephone number of their local representative are as listed below:

Bidders are advised to verify the above information as its accuracy and completeness is not guaranteed by the Department.

The Contractor is advised that the design for this Contract did not identify any anticipated utility conflicts. However, this Contract does require the Contractor to perform underground excavation and/or the driving of guide rail posts and is reminded to call the State's One Call System as specified in Subpart C., to verify that a conflict does not exist.

- B. Existing Facilities.** The Contractor shall not proceed with any excavation operations until it has determined the exact location of the existing utility facilities within the Project from examination of the Contract Documents and information provided in Subsection 102.06, through inquiries to the respective Utility(s), and through its own subsurface site investigations, including test pits. Test Pits shall be as specified in Subsection 207.04. The Contractor shall notify the Resident Engineer as specified in Subsection 105.03 if their examinations determine any conflicts to completing the Work.

The Contractor shall notify the Resident Engineer at least 10 State Business Days in advance of the excavation of any test pits, or other subsurface investigations. Bidders shall notify the Department in advance as specified in Subsection 102.06.

Electrical installations, including Intelligent Transportation Systems (ITS) facilities as specified in Section 706, of the Department constructed either before or as part of the Contract shall be considered a Utility, and all provisions of this Subsection and Division 700 shall be applicable.

Examination of Department documents available on existing electrical installations shall be as specified in Subsection 102.06. The Contractor may request markout for the fiber optic network of the Department ITS facilities. Markout will be provided within ten Working Days after the completed, written Traffic Operations Markout Form is received by the Traffic Operations location specified in the Special Provisions in this Subsection. The Contractor shall copy the Resident Engineer on the written request and shall maintain the markout until all operations in the vicinity of the ITS facilities are completed.

- C. Regulations.** The Contractor shall also comply with all other State and Federal rules, and regulations applicable to work on or in the proximity of utilities. Specific attention is made to:
1. The State's Underground Facility Protection Act. The Contractor shall notify the State's One Call System (1-800-272-1000) and identify itself as the State's Contractor and specify the route and contract number of the Project before performing Work on the Project.
 2. High voltage line requirements according to NJSA 34:6-47.1 to 47.9, 29 CFR 1926.550, and the Utility Accommodation Policy, NJSA 16:25. The Contractor shall obtain written approval from the Department of Labor, Office of Safety Compliance, and the respective Utility(s) if

required, for any operations that do not provide the minimum clearances under these regulations. The Contractor shall be responsible for any proposed power outage or de-energization associated with their operations. A copy of the approvals shall be submitted to the Resident Engineer at least 5 State Business Days in advance of starting those operations.

- D. Notices.** The Contractor shall make a written request to the Resident Engineer at least 10 State Business Days in advance of the notice requirements provided in the Special Provisions for the Department to notify Utility(s) to proceed with the Utility(s) utility work. The Contractor shall be cognizant that where joint use poles or duct banks are used, the time frames for work performed by each user are cumulative. The Contractor shall guarantee the site availability for utility operations. The Department will notify the Utility(s) to proceed if in the Department's opinion the site will be available for a particular item of utility work. The Contractor shall permit the Utility(s) or their agents access to their facilities at all times and shall cooperate with them in performing their work.

The Contractor shall cooperate with the Utility(s) concerned and shall notify them, through the Resident Engineer, not less than 10 State Business Days in advance of the time it proposes to construct any utility item or perform any work that may endanger or affect their facilities. The Contractor shall have the contractual obligation of coordinating its activities with those of the Utility(s). The Utility(s) shall be given the opportunity to inspect the actual material to be installed as well as the installation.

The Contractor shall provide 72 hour advance notice to the Resident Engineer of any meetings scheduled with Utility(s) and provide the Resident Engineer with a copy of any correspondence with the Utility(s).

The Contractor shall make separate written notifications, with a copy to the Resident Engineer, a minimum of 4 State Business Days prior to when work may impact or be adjacent to Department electrical installations. For ITS facilities, notification shall be to the Bureau of Traffic Operations at the location and telephone number provided in the Special Provisions. For all other electrical installations, notification shall be made to the Regional Bureau of Electrical Maintenance at the location and telephone number provided in the Special Provisions. No Department-owned installation shall be accessed, modified, removed, or disturbed in any manner, without first making such notifications and attending a meeting with the Department if requested.

Bureau of Electrical Maintenance, North Region
 200 Stierli Court
 Mt. Arlington, NJ 07856-1322
 Telephone: 973-770-5065
 Bureau of Electrical Maintenance, Central Region
 100 Daniels Way
 Freehold, NJ 07728
 Telephone: 732-308-4086
 Bureau of Electrical Maintenance, South Region
 One Executive Campus Route 70 West
 Cherry Hill, NJ 08002
 Telephone: 856-486-6627
 Bureau of Traffic Operations, North Region (TOCN)
 670 River Drive
 Elmwood Park, NJ 07407
 201-797-3575
 Bureau of Traffic Operations, South Region (TOCS)
 1 Executive Campus-Route 70 West
 Cherry Hill, NJ 08002-4123
 856-486-6650

- E. Damages.** The Contractor shall protect, support, and secure all in-place utility facilities so as to avoid damage to them and any interruption of service. The Contractor shall not temporarily move existing or completed utility facilities without the Utility(s) written consent, and the facilities shall be as safe and permanent at completion as they were before the Contractor's involvement. In the event the Contractor damages a utility facility, including property service connections, the Contractor shall notify the Utility(s)

immediately. The Utility(s) may complete the repairs or allow the Contractor to complete the repairs, with the Contractor responsible for any applicable time and expense. Repairs to Department electrical installations shall be as specified in Subsection 105.19 and the additional requirements for the fiber optic network of the Department ITS facilities as specified in this Subsection. The fiber optic network includes the conduit/cable, junction boxes/cabinets, and hubs.

Within two hours of any damage by the Contractor to the fiber optic network, the Contractor shall notify the Resident Engineer, in writing with a copy to the Traffic Operations contact specified in the Special Provisions, that the Contractor shall complete the repairs within 48 hours and have the repairs underway within 12 hours after the damage has occurred. If the written notice has not been received from the Contractor within two hours and/or the commencement of the repairs has not started within 12 hours, the Department may undertake and complete the repairs. The cost of repairs made by the Department for damages that are determined by the Resident Engineer to be the Contractor's responsibility shall be deducted from subsequent estimates. If the Contractor does not complete the repairs within 48 hrs, damages for lost services will be assessed to the Contractor at a minimum of \$1000 per hour, or increased based on costs calculated by the Department, and deducted from subsequent estimates.

For any damages by the Contractor to the fiber optic network along Route _____, MP _____, the Contractor shall also notify the Adesta Network Operations Center at 877-637-2344 within two hours. Only Adesta will be allowed to complete repairs on that respective section of the fiber optic network and the costs for Adesta to complete the repairs and any lost services to the Department will be deducted from subsequent estimates.

Should the Contractor, for its own convenience, cause the Utility(s) to incur costs not covered by the utility agreement, or delay the Utility(s), or incur costs without prior written approval of the Resident Engineer, the Contractor shall be responsible for these costs and delays. The Contractor shall pay the Utility(s) within 30 days of the Utility(s) request for cost reimbursement of any repairs and other incurred costs. If payment has not been made within 30 days, the Department may reimburse the Utility(s) for the Contractor generated costs and deduct these expenses from partial or final payment due the Contractor.

F. Railroads. In addition to the foregoing provisions, the following specific provisions relate to railroads only:

1. Railroad Traffic and Property. Where the Project includes work across, over, under, or adjacent to railroad tracks or railroad ROW, the Contractor shall safeguard the traffic, tracks, and appurtenances, and other property of the railroad that may be affected by its Work. The Contractor shall comply with the regulations of the railroad relating to its Work, shall keep tracks clear of obstructions, and shall provide barricades, warning signs, lights, or other safety devices as required by the railroad. Payment for such safety devices will be made as specified in Section 617. Prior to the commencement of any work within the railroad ROW or on railroad facilities, the Contractor shall obtain the railroad's written approval of access, the method of construction, and the schedule of the Work. The Contractor shall provide a copy of the submittal and approval to the Resident Engineer.

Estimated railroad train schedules will be provided in the Special Provisions.

The safety and continuity of railroad operations shall be the first priority when working in proximity to the railroad. Railroad approval does not release the Contractor from responsibility or liability for any damage that the railroad may suffer, or for which the Contractor may be held liable, by the acts of the Contractor.

Fouling of railroad facilities' track, power lines, and signal systems occurs when the railroad parameters for normal operations are jeopardized because obstructions are in close proximity to the facilities. The Contractor shall obtain from the railroad its fouling parameters for the work site and observe the railroad's regulations concerning fouling. Construction equipment or material shall not be stored or operated within the fouling distance of the railroad facilities without written permission of the railroad, with a copy to the Resident Engineer.

The railroad may assign inspectors, engineers, or flagmen during the time the Contractor is engaged in work on railroad property for the general supervision of construction operations, to ensure adherence to the Contract Documents and applicable railroad requirements, and to ensure the use of approved construction methods.

If materials are to be hauled across the tracks of any railroad, the Contract Documents will provide for any new crossings required or for the use of any existing crossings. If the Contractor elects to use crossings other than those designated, it shall obtain written approval from the railroad with a copy of the approval to the Resident Engineer at least 10 State Business Days in advance.

<u>Location</u>	<u>Speed</u>	<u>Number Per Day</u>	<u>Time</u>
-----------------	--------------	-----------------------	-------------

2. **Railroad Insurance.** The applicable insurance provisions are as specified in Subsection 107.23.

105.11 Construction Stakes, Lines, and Grades.

A. For Projects with Construction Layout as a Pay Item.

THE FIFTH PARAGRAPH IS CHANGED TO:

The Contractor shall complete all utility work layouts required after approval of the insurance certificates as specified in Subsection 107.23 and the Safety and Health Program as specified in Subsection 107.10. The Contractor shall notify the Utility(s) as specified in Subsection 105.09.

105.19 Maintenance During Construction.

THE THIRD PARAGRAPHS IS CHANGED TO:

Any damage to the Roadway due to the Contractor's operations shall be repaired at no Additional Compensation, except as specified in Subsection 107.22. The Contractor shall complete within 24 hours specific repairs directed by the Department, except where the requirements are specified by a Subsection. Nothing in this Subsection shall be construed to limit or change the risks assumed by the Contractor as specified in Subsection 107.22.

THE SIXTH PARAGRAPHS IS CHANGED TO:

The Department may direct the Contractor to construct Bituminous Concrete Patch as specified in Section 402 to maintain sections of traveled way and shoulders in a smooth riding condition at all times including seasonal shutdowns. Payment for Bituminous Concrete Patch will be made as specified in Section 402 except for those areas that are damaged or created by the Contractor's operations.

106.03 Materials, Inspections, Tests, and Samples.

THE SUBSECTION HEADING IS CHANGED TO:

106.03 Materials, Inspections, Tests, Samples and Certified Training.

B. Sampling and Field Testing of Soil Aggregates.

THIS SIXTH PARAGRAPH IS CHANGED TO:

Sampling and testing of aggregates by the Department that meet the Specifications and are used in the Work will be performed without cost to the Contractor.

106.09 Storage and Handling of Materials.

THE ENTIRE TEXT IS CHANGED TO:

Materials shall be stored to ensure the preservation of their quality and fitness. Stored materials, even though approved before storage, may again be inspected before their use on the Project. Stored materials shall be located so as to facilitate their prompt inspection. With the approval of the Department, portions of the ROW may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space must be provided by the Contractor at the Contractor's expense. Equipment and materials shall be placed behind barriers or crash cushions, or stored more than 30 feet from the traveled way. The barriers and crash cushions must be approved before installation. Furnishing, placing, and removing the barriers and crash cushions shall be at no Additional Compensation. No materials shall be stored within restricted areas noted on the plans. No materials shall be stored within 10 feet, plus the extended boom length of the largest crane on site, of overhead high voltage power lines. The high voltage power line is defined as an aerial power line having a voltage differential in excess of 750 volts between any pairs of conductors or between any conductor and ground. The Contractor shall be

responsible for any power outage or de-energization associated with the Contractor's activity in the vicinity of the power lines. Private property shall not be used for storage purposes without written permission of the owner or lessee, and any other approvals, including those as specified in Subsection 107.05. Copies of such written permission shall be furnished to the Resident Engineer before storage. Storage sites shall be restored to their original condition at no Additional Compensation.

108.11 Extensions and Reductions of Contract Time.

THE ENTIRE TEXT IS CHANGED TO:

- A. Basis for Adjustment.** Extensions or reductions to the Contract Time may be provided by Construction Order, however, such extensions or reductions will be allowed only to the extent that the increase or decrease in the Work or delays of the types indicated below affect the Critical Path of the current approved Progress Schedule update and the Completion of the Work and/or Substantial Completion Dates provided in Subsection 108.10. However, when the Finish Milestone(s) for the Substantial Completion Date or Completion of the Work Date identified on the current approved schedule is a date or dates prior in time to the dates specified in the Contract, the Department will consider the time between the dates projected in the schedule and that in the Contract as constituting float in the schedule which shall offset the amount of allowable delay contributable to the actions of the Department, third parties, or the Contractor, or caused by a combination of those factors, and other factors beyond the control of the Contractor as determined by the Department which ever first occurs.

An extension will also provide only for those Working Days adversely impacted where operations were on an approved schedule, including all shifts of Work. No extension can be requested unless all submittals and approvals have been completed as specified in Subsection 108.04.

The Contractor may be granted an extension of Contract Time and not be assessed liquidated damages for any portion of the delay beyond the Completion of the Work and/or Substantial Completion Dates as specified in Subsection 108.10 caused by reasons beyond the control and without the fault or negligence of the Contractor, and subject to all due diligence by the Contractor to avoid and mitigate the delay. Reasons may include, but are not restricted to, those provided for in the Specifications and the following:

1. acts of civil or military authorities, terrorism, war, or riot;
2. fire;
3. floods, tidal waves, earthquakes, cyclones, tornadoes, hurricanes, sustained severe winds exceeding 75 mph, or other cataclysmic natural phenomenon (except on working day contracts);
4. Extreme Weather Conditions (subject to Item 1 of subpart B) (except on working day contracts);
5. epidemics or quarantine restrictions;
6. strikes or labor disputes beyond the control of the Contractor that prevent work on the construction operations that are critical to the completion of the Project;
7. shortages of materials (subject to Item 2 of subpart B) or freight embargoes;
8. acts of the State in its sovereign capacity;
9. court orders or injunctions;
10. discovery of Regulated Hazardous Waste;
11. acts by others consistent with Subsections 105.10 and 107.09;
12. failure of the Engineer to furnish interpretations of the Contract Documents (subject to Item 3 of subpart B).

Unless specifically provided for in the Specifications or where the delay is caused by the negligence, bad faith, active interference, or other tortuous conduct of the Department or its employees, the Contractor shall not make any claim for damages or Additional Compensation for any delay, and agrees that any such delay shall be fully compensated for by an extension of Contract Time if granted. In such a case where the delay is shown by the Contractor to have been caused by such tortuous conduct of the Department or its employees, the Contractor's remedy for Additional Compensation shall be as specified in Subsection 109.04. Negligence of consultants, other contractors, Utility(s), other public entities or any other person or entity, shall not be imputed to the Department. The Contractor shall not be entitled to Additional Compensation or an extension of Contract Time for any delay contemplated or that which should have been contemplated by the Contractor at the time the Contract was awarded.

Extensions of Contract Time will not be granted due to delays caused by, or in any way related to, the financial condition of the Contractor, subcontractors, sub-subcontractors, material, personnel,

fabricators, or suppliers. The Contractor and its surety assume full responsibility for ensuring that the financial condition of any of the above does not delay completion of the Contract.

If the Work required is reduced or altered so that the time required for Completion is reduced, the Department may reduce the Contract Time as specified in Subsection 108.10. The Engineer will evaluate the facts and the extent of the reduction. The Department's findings thereon will be final and conclusive.

The Contractor or surety is not relieved of liability for liquidated damages for any period of delay in completion in excess of that expressly provided for in this Subsection.

B. Requests for Extensions. Request for extension of Contract Time will not be evaluated or granted unless they meet the provisions of A. above and the Contractor has notified the Resident Engineer in writing of the causes of delay within 15 State Business Days from the beginning of any such delay on forms provided by the Department. The effect of the delay on the Progress Schedule shall be documented by the Contractor as specified in Subsection 108.04. The Department will evaluate the facts and the extent of the delay, and the Department's findings will be final and conclusive. Request for extensions shall also be based on the following:

1. If the Contractor submits daily documentation of such conditions, Extensions of Contract Time for Extreme Weather Conditions may be granted according to the following:
 - a. The specified completion dates anticipate that the number of total Working Days available for Construction Operations, subject to the requirements of the Contract Documents, during the period of April through November inclusive is at least 145 for road and bridge work.
 - b. The specified completion dates anticipate that the number of total Working Days available for Construction Operations, subject to the requirements of the Contract Documents, during the four month winter period of December through March inclusive is ____for road work and ____ for bridge work.
 - c. When the actual number of Working Days available for Construction Operations is less than the anticipated number provided for in the Special Provisions, an extension of one day for each day less may be allowed.
2. Extensions of Contract Time will not be granted for a delay caused by a shortage of materials unless the Contractor furnishes the following:
 - a. Documentary proof that it has diligently made every effort to obtain such materials from all known sources within reasonable distance from the Work.
 - b. Proof that the inability to obtain such materials when originally planned, could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials" applies only to raw and fabricated materials, articles, parts, or equipment which are standard items and does not apply to materials, parts, articles, or equipment which are processed, made, constructed, fabricated, or manufactured to meet the specific requirements of the Contract. Only the physical shortage of materials and not the cost of materials will be considered.
3. Extensions of Contract Time will not be granted for failure of the Engineer to furnish interpretations of the Contract Documents unless such request for an interpretation of the Contract Documents is reasonable and made in good faith, and the failure to respond was palpably unwarranted and was furnished more than 20 State Business Days after the written request was received by the Resident Engineer.
4. Extension of Contract Time for utility work delays will only be granted when the Utility does not complete their work within an additional 30% of the estimated durations for the Utility as specified in Subsection 105.09. A day for day extension will be allowed for each day extended beyond the 30% time that the Critical Path is affected.

108.16 Failure to Complete on Time.

THE SUBSECTION HEADING AND TEXT ARE CHANGED TO:

108.16 Liquidated Damages and Incentive Payments For Early Completion.

A. Liquidated Damages. The Contractor and the Department recognize that delay in Completion results in damages to the State in terms of the effect of the delay on the use of the Project, upon the public convenience and economic development of the State, and also results in additional costs to the State for

engineering, inspection, and administration of the Contract. Because it is difficult or impossible to accurately estimate the damages incurred; therefore, the parties agree that if the Contractor fails to complete the Contract within the time stated in these Special Provisions, or within such further time as may have been granted in according to the provisions of the Contract, the Contractor shall pay the State liquidated damages according to those provided in the Special Provisions. Such liquidated damages shall be paid for each and every day, as hereinafter defined, that the Contractor is in default to complete the Contract.

Liquidated damages shall be as follows:

1. For each Calendar Day that the Contractor fails to complete the Work as specified in Subpart A of Subsection 108.10 of these Special Provisions, for Substantial Completion, the Contractor shall pay liquidated damages consisting of Road User Costs and Construction Engineering Costs to the State in the amount of \$_____.
 2. For each Calendar Day that the Contractor fails to complete the entire Work of the Project as specified in Subpart B of Subsection 108.10 of these Special Provisions, for Completion of the Work, the Contractor shall pay liquidated damages consisting of Construction Engineering Costs to the State in the amount of \$_____, provided that the Work as specified for Substantial Completion is actually completed.
1. For each Working Day that the Contractor fails to complete the Work as specified in Subpart A of Subsection 108.10 of these Special Provisions, for Substantial Completion, the Contractor shall pay liquidated damages consisting of Road User Costs and Construction Engineering Costs to the State in the amount of \$_____.
 2. For each Working Day that the Contractor fails to complete the entire Work of the Project as specified in Subpart B of Subsection 108.10 of these Special Provisions, for Completion of the Work, the Contractor shall pay liquidated damages consisting of Construction Engineering Costs to the State in the amount of \$_____, provided that the Work as specified for Substantial Completion is actually completed.

The Department will recover all liquidated damages specified above by deducting the amount thereof from any monies due or that may become due the Contractor, or from the Contractor or from its surety on this or any other contract being performed for the Department.

B. Incentive Payment for Early Completion. As provided for in the Special Provisions.

No Incentive Payment for Early Completion is specified for this project

THE FOLLOWING NEW SUBSECTION IS ADDED:

108.20 ITS Occupancy Charges

The Contractor shall be restricted to when the existing ITS fiber optic facilities will be allowed to be out of operation in order for the Contractor to complete work under the Contract that impacts the Department ITS facilities. An ITS Occupancy Charge shall be assessed at a minimum of \$1000 per hour, or increased based on the costs calculated by the Department, for each hour the Contractor fails to restore ITS operations. The charge will be recorded and collected as specified in Subsection 108.19. The Department may determine not to collect charges when the failure to restore ITS operations meets the conditions specified for extraordinary, exigent circumstances as specified in Subsection 108.19.

109.02 Scope of Payment.

THE SECOND PARAGRAPH IS CHANGED TO:

The "Basis of Payment" clause in the Specifications relating to any Pay Item in the proposal encompasses all compensation for Work to complete that Pay Item and no other Pay Item. All elements of the Work related to that Pay Item will not be measured or paid for under any other Pay Item in the Contract Documents unless it is stated in the "Basis of Payment" clause for that Pay Item that a portion of the Work will be paid for under another Section or Subsection of the Specifications.

109.03 Force Account Payment.

THE FIRST, SECOND, THIRD, AND FOURTH PARAGRAPH ARE CHANGED TO:

When the Department has directed the Contractor to do Work on a Force Account basis it will be compensated as specified in this Subsection.

The total direct costs for labor, materials, equipment, bonds, insurance, and tax as provided below, together with applicable markups constitute full compensation for all direct and indirect costs (including overhead and profit), and are deemed to include all items of expense not specifically designated. Any adjustments to Performance Bond and Payment Bond will be made as specified in Subsection 103.05. Force Account payments will be adjusted for those costs incurred determined to be the fault of the Contractor. The Force Account payment will be further adjusted where the Contractor's prices in its Proposal for any affected original items of work did not properly include all the costs to complete the affected work as originally provided in the Contract Documents.

When Work that is paid on a Force Account basis is performed by forces other than the Contractor's organization, the Contractor shall reach an agreement with such other forces as to the distribution of payments made by the State for such Work, with a copy of all such completely executed agreements to the Resident Engineer. Additional payment will not be made for any reason due to the performance of the Work by a subcontractor or other forces, or for costs outside that covered by the agreement.

It is understood that a Contractor's remedy for Additional Compensation for Extra Work or for any other reason as specified in these Specifications, when an action is brought before the Superior Court as specified in the Contractual Liability Act, NJSA 59:12-1 et seq., shall not exceed the amount that would be specified in these provisions had a Force Account been carried out. However, damages sought by the Contractor in a court proceeding shall be limited to actual additional costs incurred by the Contractor resulting directly from the Extra Work or by other reason specifically permitted under the terms of the Specifications as specified in the Contractual Liability Act. As a condition predicate to seeking Additional Compensation under the claims process or in the Superior Court, the Contractor shall have the burden of proof to demonstrate compliance with the requirements of this Subsection and other applicable Subsections, and shall have kept all records required under this Subsection even if the Department has not directed that the Contractor do such Work on a Force Account basis.

Force Account payment will be limited to the following:

1. Labor.

THE FIRST PARAGRAPH IS CHANGED TO:

For all necessary direct labor and foremen in direct charge of the specific operations, whether the employer is the Contractor, subcontractor, or another, the Contractor shall receive the rate of wage (or scale) actually paid as shown in its certified payrolls for each and every hour that said labor and foremen are actually engaged in such Work.

For specific extraordinary operations the Department may allow supervising or other special type employees to be considered direct labor, but only that time in direct labor or direct charge to complete the specific construction operations.

2. Bond, Insurance, and Tax.

THE ENTIRE TEXT IS CHANGED TO:

For bond premiums; property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes on the Force Account work, the Contractor shall receive the actual incremental cost thereof, necessarily and directly resulting from the Force Account work. For payment, the Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

Payment for Performance Bond and Payment Bond adjustments will be as specified in Subsection 103.05.

4. Equipment and Plant.**a. Contractor Owned Equipment and Plant.**

THE SECOND AND THIRD PARAGRAPH ARE CHANGED TO:

The Blue Book will be used in the following manner:

- (1) The estimated "rental" hourly rate will be determined by dividing the monthly rate by 176 and then applying a 20% reduction factor. The weekly, hourly, and daily rates will not be used.
- (2) The estimated operating costs per hour will be the Blue Book rates.
- (3) The number of hours to be paid for will be the number of hours that the equipment or plant is actually used on a specific Force Account activity each day, as presented in Daily Equipment Work Sheets, received from the Contractor and verified by the Department.
- (4) The current revisions will be used in establishing rates. The current revision applicable to specific Force Account work is as of the first day of work performed on that Force Account work and that rate applies throughout the next six months of the period the Force Account work is being performed. The rates will be adjusted for each six-month period thereafter.
- (5) Area adjustment will not be made. Equipment life adjustment will be made in according to the rate adjustment tables.
- (6) Overtime shall be charged at the same rate indicated in Item (1) and (2) above.
- (7) Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the request of the Engineer and, but for this request, would have left the Project site. Such payment will be made at one-half the rate established in Item (1) above and will be limited to the total hours worked for any Force Account activity on that particular day.
- (8) The rates established above include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, all costs (including labor and equipment) of moving equipment or plant to, on, and away from the site, and all incidentals.
- (9) Operator costs will be paid only as provided in Subheading 1 above.

All equipment shall, in the opinion of the Department, be in good operating condition. The State will not provide payment of any type for equipment that is determined to be unsuitable by the Department for the Force Account Work or that is inoperable during periods of breakdown or repair. Equipment used by the Contractor shall be specifically described and be of suitable size and suitable capacity required for the work to be performed. In the event the Contractor elects to use equipment of a higher rental value than that suitable for the Work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be made a part of the record for Force Account work. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will be that for the suitable equipment.

b. Rented Equipment and Plant.

THE ENTIRE TEXT IS CHANGED TO:

In the event that the Contractor does not own a specific type of equipment or plant and must obtain it by rental, the Contractor shall inform the Resident Engineer of the need to rent the equipment and of the rental rate for that equipment prior to using it on the Work. The Contractor will be paid the actual rental for the equipment as specified in the rental agreements for the time that the equipment is actually used to accomplish the Work, provided that rate is reasonable, plus the cost of moving the equipment to, on, and away from the Project site. The Contractor shall provide the Resident Engineer a copy of the fully executed rental agreement, and a paid receipt or canceled check for the rental expense incurred.

If the rental agreement does not cover operating costs, the Contractor shall be entitled to the rate established in Subheading 4.a. above for each hour that piece of rental equipment is actually operational.

The State will not provide payment of any cost incurred due to equipment that is determined to be unsuitable by the Department for the Force Account Work or that is inoperable during periods of breakdown or repair.

5. Profit.

THE ENTIRE TEXT IS CHANGED TO:

Profit shall be computed at ten percent of the following:

- a. Total material cost excluding transportation, shipping & handling.
- b. Total direct labor cost (actual hours worked multiplied by the regular hourly rate).
- c. Total fringe benefits on total direct labor cost as computed above.

6. Overhead.

THE ENTIRE TEXT IS CHANGED TO:

Any and all overhead for the Contractor is defined to include the following:

- a. All salaries and expenses of executive officers, supervising officers, or supervising employees, except as provided for under Subheading 1 above;
- b. All clerical or stenographic employees;
- c. All charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and
- d. All drafting room accessories such as paper, tracing cloth, and blueprinting.

Any and all overhead costs of the Contractor for Force Account work shall be computed at 15 percent of the following:

- a. Total material cost excluding transportation, shipping & handling.
- b. Total direct labor cost (actual hours worked multiplied by the regular hourly rate), except for the direct labor cost of any supervisory or special employees allowed under Subheading 1. above.
- c. Specific extraordinary overhead expenses, required specifically for the Force Account, may be allowed if approved by the Department prior to incurring any cost. In such instances, the Contractor will be paid only the reasonable costs of such extraordinary overhead expenses.
- d. Total fringe benefits on total direct labor cost as computed above.

The Contractor will be allowed an additional five percent for overhead on the total amount of all work performed by the subcontractors.

THE FOLLOWING IS ADDED:

8. Responsibility.

Where work is performed under a Force Account, responsibility of such work shall remain that of the Contractor. The Department will determine if the Work is eligible for payment.

109.04 Payment for Contractor's Expenses During Delays.

THE FIRST PARAGRAPH IS CHANGED TO:

When the Department has approved an adjustment for Additional Compensation due to a delay, the Contractor will be paid its expenses during that period of delay by Change Order in the following manner:

2. Bond, Insurance, and Tax.

THE ENTIRE TEXT IS CHANGED TO:

For bond premiums; property damage, liability, and, workers compensation insurance premiums; unemployment insurance contributions; and social security taxes during the period of delay, the Contractor is to receive the actual incremental cost thereof, necessarily and directly resulting from the delay. For payment, the Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

Payment for Performance Bond and Payment Bond adjustments will be as provided in Subsection 103.05.

3. Equipment.

THE FIRST PARAGRAPH IS CHANGED TO:

For any idle machinery or special equipment other than small tools which must remain on the Project site, with approval of the Department, during delays of specific operations, the Contractor is to receive compensation at one-half the rate calculated pursuant to Subheading 4 of the fifth paragraph of Subsection 109.03. Should the Department determine that it is not necessary for machinery or equipment

to remain on the Project during delays, the Contractor is to receive transportation costs to remove the machinery or equipment and return it to the Project at the end of the delay period.

4. Miscellaneous.

THE SUBPART HEADING IS CHANGED TO:

4. Overhead.

6. Records.

THE SECOND AND THIRD PARAGRAPH ARE CHANGED TO:

The Department's records will be compared with completed daily reports furnished by the Contractor and any necessary adjustments will be made. When these daily reports are agreed upon and signed by both parties, said reports become the basis of payment for the expenses incurred, but do not preclude subsequent adjustment based on a later audit by the Department.

The Contractor's cost records pertaining to expenses under this Subsection shall be open to inspection or audit by the Department during the life of the Contract and for a period of not less than three years after Acceptance thereof, and the Contractor shall retain such records for that period. Where payment for equipment or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to ensure that the cost records of such other forces are open to inspection and audit by the Department on the same terms and conditions as the cost records of the Contractor. Payment for such cost may be deleted if the records of such third parties are not made available to the Department. If an audit is to be commenced more than 60 days after Acceptance, the Contractor is to be provided with a reasonable notice of the time when such audit is to begin. In case all or a part of such records are not made so available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records will not be allowed, or if payment therefore has already been made, the Contractor shall refund to the Department the amount so disallowed.

109.06 Materials Payments.

THE SUBSECTION HEADING IS CHANGED TO:

109.06 Materials Payments and Storage.

THE FIRST PARAGRAPH IS CHANGED TO:

The monthly estimates and payments made on account thereof may also include, when authorized by the Department, an amount equal to the actual cost of materials furnished but not incorporated into the Work, provided, however, that such amount does not exceed 85 percent of the Contract price for the Pay Item into which the material is to be incorporated, and the quantity allowed does not exceed the corresponding quantity estimated in the Contract Documents. Advance payment will only be for that portion of the price in the Proposal related to the materials and any costs for storage at the facility of manufacture. Any taxes levied by any government against the materials shall be borne by the Contractor. Before including payments for such materials in an estimate, the Department must be satisfied that:

1. The materials have been properly stored and protected along or upon the Project site or have been stored and protected at locations owned or leased by the Contractor or the Department within the State, except that structural steel, prestressed concrete beams, and other large items not suitable for storage on or near the site, may be stored outside the State with the approval of the Department; and
2. The materials have been inspected and appear to be acceptable based upon available supplier's certification and/or materials test reports; and
3. The Contractor has provided the Resident Engineer with an paid invoice or paid bill of sale for the materials and a fully executed Department form "Release of Liens for Materials Stored for Incorporation in Department of Transportation Project" including the transfer of ownership to the Department; and
4. The materials are clearly identified in large letters as being without encumbrances and for use solely on the Project, and if stored on property not belonging to the State or at the facility of manufacture, are fenced in with access limited to the State and the Contractor; and
5. When such materials are stored in a leased area, the lease is made out to the Contractor and provides that it shall be canceled only with the written permission of the Department.

THE FOURTH PARAGRAPH IS DELETED:

The following revisions are incorporated in the Metric unit *Standard Input SI2001M1*:

101.03 Terms.

THE FIRST SENTENCE IS CHANGED TO:

When the following terms are used in the Contract Documents, the intent and meaning shall be strictly construed as follows:

THE FOLLOWING TERMS ARE CHANGED:

HOT MIX ASPHALT (HMA) PAVEMENT. The combination of base course, intermediate course, and surface course of hot mix asphalt.

ON-DUTY POLICE. The term “on-duty” with regard to municipal police shall mean that the work of providing traffic safety services shall be an extension of regular employment for, and sanctioned by, the municipality, even if it is on an overtime pay rate basis. The municipal police, while so working, shall be covered by the municipality’s liability insurance coverage; and must have successfully completed a traffic safety program approved by the Department.

PAVEMENT STRUCTURE. The combination of surface, intermediate and base courses, and when specified, a subbase course, placed on a subgrade to support the traffic load and distribute it to the roadbed (see Figure 101-1). These various courses are defined as follows:

1. *Surface Course.* One or more layers of specified material of designed thickness at the top of the pavement structure.
2. *Intermediate Course.* One or more layers of specified material of designed thickness placed on the base course.
3. *Base Course.* One or more layers of specified material of designed thickness placed on the subgrade or subbase.
4. *Subbase.* One or more layers of specified material of designed thickness placed on the subgrade.

PLANS. The approved plans, profiles, typical sections, cross-sections, approved working drawings, and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, quantities, and details of the Work to be done. This includes the latest version of all Standard Construction Details in effect at the time of Advertisement. Certified working drawings are not plans and not part of the Contract Documents.

REMEDiate. The term “remediate” means the process that is approved by the New Jersey Department of Environmental Protection to address all regulated discharges.

SPECIFICATIONS. The compilation of provisions and requirements for the performance of prescribed work contained in the Standard Specifications, as supplemented by the Supplemental Specifications and Special Provisions, and modified by Addenda which, before the receipt of bids, are transmitted to prospective Bidders.

1. *Standard Specifications.* The term “Standard Specifications” means the 2001 Standard Specifications for Road and Bridge Construction of the New Jersey Department of Transportation, which has been approved for general application and repetitive use.
2. *Supplemental Specifications.* Approved additions and revisions to the Standard Specifications.
3. *Special Provisions.* Revisions to the Standard and Supplemental Specifications applicable to an individual project.
4. *Electrical Materials Specifications.* Approved standards for electrical materials, equipment, and installations that are in addition to the above specifications.

SUBSTANTIAL COMPLETION. The term “Substantial Completion” means the point at which the performance of all Work on the Project has been completed except landscaping items (including the planting of trees, shrubs, vines, ground covers, and seedlings), final cleanup, and repair of unacceptable work, and provided the Engineer has solely determined that:

1. the Project is safe and convenient for use by the public, and
2. failure to complete the Work and repairs excepted above does not result in the deterioration of other completed Work; and provided further, that the value of landscaping work remaining to be performed, repairs, and cleanup is less than two percent of the Total Adjusted Contract Price.

104.01 Intent.

THE FIRST PARAGRAPH IS CHANGED TO:

The intent of the Contract Documents is to describe a functionally complete and aesthetically acceptable Project to be constructed and completed by the Contractor in every detail according to the Contract Documents. Any work that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. The Contractor is responsible to provide such elements to complete the Work under the pay items of the Contract for no Additional Compensation as provided under Subsection 109.02. However, as specified in the respective Subsections, adjustments may be allowed when the Department determines there is a discrepancy, error, omission, or latent ambiguity. It is understood that only the best construction practice is to prevail and only materials and workmanship of the first quality are to be used.

105.03 Plans and Specifications.

THE ENTIRE TEXT IS CHANGED TO:

The Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. All components are complementary and describe and provide for the general completion of the Project. The Contractor shall keep one set of Plans, Special Provisions, Addenda, Standard Specifications, Supplemental Specifications, and Standard Details available on the Project site at all times.

In case of discrepancy, calculated dimensions will govern over scaled dimensions; Plans will govern over Specifications; Contract Documents will govern over Working Drawings, Right-of-Way Plans will govern over Plans when setting monuments; Special Provisions will govern over Supplemental Specifications; and Supplemental Specifications will govern over Standard Specifications.

The Contractor shall not take advantage of any apparent discrepancy, error, omission, or patent ambiguity in the Contract Documents. In the event the Contractor discovers any discrepancy, error, omission; or patent ambiguity in the Contract Documents, or if there is any doubt or question as to the intent or meaning of the Contract Documents, the Contractor shall immediately notify the Resident Engineer in writing with sufficient detail. The Department will promptly make, in writing, such corrections and interpretations as deemed necessary. The Contractor shall not be relieved of the obligation of completing an item of Work because of any discrepancy, error, omission, or patent ambiguity, and shall complete the Work as directed with adjustments as specified in Section 104. The Contractor shall not commence with any changes to the Work as provided under the Contract Documents without written authorization from the Department.

105.04 Working Drawings.

THE SECOND SENTENCE OF THE THIRD PARAGRAPH IS CHANGED TO:

Those provisions shall not apply to the review and approval of the design for proprietary walls, noise barriers, temporary sheeting, sheeting left in place, temporary structures, cofferdams, erection plans, traffic control/staging plans and precast concrete culverts or any other items where conceptual plans were included in the Contract Documents and the Contractor is required to complete the final design plans.

THE FOLLOWING IS ADDED TO THE ELEVENTH PARAGRAPH:

The design unit(s) shall be as designated for each Contract by letter from the Department.

105.07 Coordination of Contract Documents.

THE SUBSECTION HEADING AND TEXT ARE CHANGED TO:

105.07 Purchase of Contract Documents.

Request for Plans, Specifications, and Proposal Forms shall be directed to the Cashier of the Department, accompanied by a check for the proper amount, according to the rates on file, drawn to the order of the New Jersey Department of Transportation. Requests for those items furnished without charge shall be directed to the Bureau of Construction Services.

After Award, the successful bidder may request the number of sets of Plans specified below, without charge. One copy of Special Provisions and Addenda is furnished, without charge, with each set of the Plans. Additional sets or additional copies are available upon request, at a charge according to the Department rate.

Table of Plans Furnished Without Charge

Amount of Contract		Sets of Plans
For More Than	To and Including	
\$ 0	\$ 500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	--	5

105.09 Cooperation with Utilities.

THE ENTIRE TEXT IS CHANGED TO:

- A. General.** It is understood and agreed that the Contractor has considered in its Proposal all of the permanent and temporary utility facilities in their present, new, or relocated positions to the extent required by the Contract Documents and as revealed by its own investigations; is aware that utility service demands, adverse field conditions and emergencies may affect the Utility’s ability to comply with the proposed schedules for utility work; is cognizant of the limited ability of the Department to control the actions of the Utility(s), and has made allowances in its Proposal that it is not entitled to any Additional Compensation by reasons of delays, inconvenience or damage sustained by the Contractor due to any interference from utility facilities or the operation of moving or installing them. Similarly, the Contractor is deemed to understand that only limited extensions of time may be granted as specified in Subsection 108.11.

The Contractor shall notify, in writing, the Utility(s) involved of the nature and scope of the Project, and of its operations that may affect their facilities or property. The notice shall include an inquiry for all information required to determine the location of the existing utility facilities and the Contractor shall also provide the portion of the approved Preliminary Schedule relative to that respective Utility. Two copies of such notices and the Utility’s responses shall be sent to the Resident Engineer prior to the start of Construction Operations. The Contractor shall also attend a Utility preconstruction conference prior to the start of Construction Operations.

The Contractor shall provide each Utility the portion of the approved Baseline CPM Schedule related to the respective Utility and any approved updates or revisions that affect that Utility.

Information on the Utility(s), including the work to be performed by the Utility(s) on the Project, will be provided in the Special Provisions.

The corporations, companies, agencies, or municipalities owning or controlling the utilities, and the name, title, address, and telephone number of their local representative are as listed below:

Bidders are advised to verify the above information as its accuracy and completeness is not guaranteed by the Department.

The Contractor is advised that the design for this Contract did not identify any anticipated utility conflicts. However, this Contract does require the Contractor to perform underground excavation and/or the driving of guide rail posts and is reminded to call the State’s One Call System as specified in Subpart C., to verify that a conflict does not exist.

- B. Existing Facilities.** The Contractor shall not proceed with any excavation operations until it has determined the exact location of the existing utility facilities within the Project from examination of the Contract Documents and information provided in Subsection 102.06, through inquiries to the respective Utility(s), and through its own subsurface site investigations, including test pits. Test Pits shall be as specified in Subsection 207.04. The Contractor shall notify the Resident Engineer as specified in Subsection 105.03 if their examinations determine any conflicts to completing the Work.

The Contractor shall notify the Resident Engineer at least 10 State Business Days in advance of the excavation of any test pits, or other subsurface investigations. Bidders shall notify the Department in advance as specified in Subsection 102.06.

Electrical installations, including Intelligent Transportation Systems (ITS) facilities as specified in Section 706, of the Department constructed either before or as part of the Contract shall be considered a Utility, and all provisions of this Subsection and Division 700 shall be applicable.

Examination of Department documents available on existing electrical installations shall be as specified in Subsection 102.06. The Contractor may request markout for the fiber optic network of the Department ITS facilities. Markout will be provided within ten Working Days after the completed, written Traffic Operations Markout Form is received by the Traffic Operations location specified in the Special Provisions in this Subsection. The Contractor shall copy the Resident Engineer on the written request and shall maintain the markout until all operations in the vicinity of the ITS facilities are completed.

C. Regulations. The Contractor shall also comply with all other State and Federal rules, and regulations applicable to work on or in the proximity of utilities. Specific attention is made to:

1. The State's Underground Facility Protection Act. The Contractor shall notify the State's One Call System (1-800-272-1000) and identify itself as the State's Contractor and specify the route and contract number of the Project before performing Work on the Project.
2. High voltage line requirements according to NJSA 34:6-47.1 to 47.9, 29 CFR 1926.550, and the Utility Accommodation Policy, NJSA 16:25. The Contractor shall obtain written approval from the Department of Labor, Office of Safety Compliance, and the respective Utility(s) if required, for any operations that do not provide the minimum clearances under these regulations. The Contractor shall be responsible for any proposed power outage or de-energization associated with their operations. A copy of the approvals shall be submitted to the Resident Engineer at least 5 State Business Days in advance of starting those operations.

D. Notices. The Contractor shall make a written request to the Resident Engineer at least 10 State Business Days in advance of the notice requirements provided in the Special Provisions for the Department to notify Utility(s) to proceed with the Utility(s) utility work. The Contractor shall be cognizant that where joint use poles or duct banks are used, the time frames for work performed by each user are cumulative. The Contractor shall guarantee the site availability for utility operations. The Department will notify the Utility(s) to proceed if in the Department's opinion the site will be available for a particular item of utility work. The Contractor shall permit the Utility(s) or their agents access to their facilities at all times and shall cooperate with them in performing their work.

The Contractor shall cooperate with the Utility(s) concerned and shall notify them, through the Resident Engineer, not less than 10 State Business Days in advance of the time it proposes to construct any utility item or perform any work that may endanger or affect their facilities. The Contractor shall have the contractual obligation of coordinating its activities with those of the Utility(s). The Utility(s) shall be given the opportunity to inspect the actual material to be installed as well as the installation.

The Contractor shall provide 72 hour advance notice to the Resident Engineer of any meetings scheduled with Utility(s) and provide the Resident Engineer with a copy of any correspondence with the Utility(s).

The Contractor shall make separate written notifications, with a copy to the Resident Engineer, a minimum of 4 State Business Days prior to when work may impact or be adjacent to Department electrical installations. For ITS facilities, notification shall be to the Bureau of Traffic Operations at the location and telephone number provided in the Special Provisions. For all other electrical installations, notification shall be made to the Regional Bureau of Electrical Maintenance at the location and telephone number provided in the Special Provisions. No Department-owned installation shall be accessed, modified, removed, or disturbed in any manner, without first making such notifications and attending a meeting with the Department if requested.

Bureau of Electrical Maintenance, North Region
 200 Stierli Court
 Mt. Arlington, NJ 07856-1322
 Telephone: 973-770-5065

Bureau of Electrical Maintenance, Central Region
 100 Daniels Way
 Freehold, NJ 07728
 Telephone: 732-308-4086

Bureau of Electrical Maintenance, South Region
 One Executive Campus Route 70 West
 Cherry Hill, NJ 08002
 Telephone: 856-486-6627

Bureau of Traffic Operations, North Region (TOCN)
 670 River Drive
 Elmwood Park, NJ 07407
 201-797-3575

Bureau of Traffic Operations, South Region (TOCS)
 1 Executive Campus-Route 70 West
 Cherry Hill, NJ 08002-4123
 856-486-6650

- E. Damages.** The Contractor shall protect, support, and secure all in-place utility facilities so as to avoid damage to them and any interruption of service. The Contractor shall not temporarily move existing or completed utility facilities without the Utility(s) written consent, and the facilities shall be as safe and permanent at completion as they were before the Contractor's involvement. In the event the Contractor damages a utility facility, including property service connections, the Contractor shall notify the Utility(s) immediately. The Utility(s) may complete the repairs or allow the Contractor to complete the repairs, with the Contractor responsible for any applicable time and expense. Repairs to Department electrical installations shall be as specified in Subsection 105.19 and the additional requirements for the fiber optic network of the Department ITS facilities as specified in this Subsection. The fiber optic network includes the conduit/cable, junction boxes/cabinets, and hubs.

Within two hours of any damage by the Contractor to the fiber optic network, the Contractor shall notify the Resident Engineer, in writing with a copy to the Traffic Operations contact specified in the Special Provisions, that the Contractor shall complete the repairs within 48 hours and have the repairs underway within 12 hours after the damage has occurred. If the written notice has not been received from the Contractor within two hours and/or the commencement of the repairs has not started within 12 hours, the Department may undertake and complete the repairs. The cost of repairs made by the Department for damages that are determined by the Resident Engineer to be the Contractor's responsibility shall be deducted from subsequent estimates. If the Contractor does not complete the repairs within 48 hrs, damages for lost services will be assessed to the Contractor at a minimum of \$1000 per hour, or increased based on costs calculated by the Department, and deducted from subsequent estimates.

For any damages by the Contractor to the fiber optic network along Route _____, MP _____, the Contractor shall also notify the Adesta Network Operations Center at 877-637-2344 within two hours. Only Adesta will be allowed to complete repairs on that respective section of the fiber optic network and the costs for Adesta to complete the repairs and any lost services to the Department will be deducted from subsequent estimates.

Should the Contractor, for its own convenience, cause the Utility(s) to incur costs not covered by the utility agreement, or delay the Utility(s), or incur costs without prior written approval of the Resident Engineer, the Contractor shall be responsible for these costs and delays. The Contractor shall pay the Utility(s) within 30 days of the Utility(s) request for cost reimbursement of any repairs and other incurred costs. If payment has not been made within 30 days, the Department may reimburse the Utility(s) for the Contractor generated costs and deduct these expenses from partial or final payment due the Contractor.

F. Railroads. In addition to the foregoing provisions, the following specific provisions relate to railroads only:

1. Railroad Traffic and Property. Where the Project includes work across, over, under, or adjacent to railroad tracks or railroad ROW, the Contractor shall safeguard the traffic, tracks, and appurtenances, and other property of the railroad that may be affected by its Work. The Contractor shall comply with the regulations of the railroad relating to its Work, shall keep tracks clear of obstructions, and shall provide barricades, warning signs, lights, or other safety devices as required by the railroad. Payment for such safety devices will be made as specified in Section 617. Prior to the commencement of any work within the railroad ROW or on railroad facilities, the Contractor shall obtain the railroad’s written approval of access, the method of construction, and the schedule of the Work. The Contractor shall provide a copy of the submittal and approval to the Resident Engineer.

Estimated railroad train schedules will be provided in the Special Provisions.

The safety and continuity of railroad operations shall be the first priority when working in proximity to the railroad. Railroad approval does not release the Contractor from responsibility or liability for any damage that the railroad may suffer, or for which the Contractor may be held liable, by the acts of the Contractor.

Fouling of railroad facilities’ track, power lines, and signal systems occurs when the railroad parameters for normal operations are jeopardized because obstructions are in close proximity to the facilities. The Contractor shall obtain from the railroad its fouling parameters for the work site and observe the railroad’s regulations concerning fouling. Construction equipment or material shall not be stored or operated within the fouling distance of the railroad facilities without written permission of the railroad, with a copy to the Resident Engineer.

The railroad may assign inspectors, engineers, or flagmen during the time the Contractor is engaged in work on railroad property for the general supervision of construction operations, to ensure adherence to the Contract Documents and applicable railroad requirements, and to ensure the use of approved construction methods.

If materials are to be hauled across the tracks of any railroad, the Contract Documents will provide for any new crossings required or for the use of any existing crossings. If the Contractor elects to use crossings other than those designated, it shall obtain written approval from the railroad with a copy of the approval to the Resident Engineer at least 10 State Business Days in advance.

<u>Location</u>	<u>Speed</u>	<u>Number Per Day</u>	<u>Time</u>
-----------------	--------------	-----------------------	-------------

2. Railroad Insurance. The applicable insurance provisions are as specified in Subsection 107.23.

105.11 Construction Stakes, Lines, and Grades.

A. For Projects with Construction Layout as a Pay Item.

THE FIFTH PARAGRAPH IS CHANGED TO:

The Contractor shall complete all utility work layouts required after approval of the insurance certificates as specified in Subsection 107.23 and the Safety and Health Program as specified in Subsection 107.10. The Contractor shall notify the Utility(s) as specified in Subsection 105.09.

105.19 Maintenance During Construction.

THE THIRD PARAGRAPHS IS CHANGED TO:

Any damage to the Roadway due to the Contractor’s operations shall be repaired at no Additional Compensation, except as specified in Subsection 107.22. The Contractor shall complete within 24 hours specific repairs directed by the Department, except where the requirements are specified by a Subsection. Nothing in this Subsection shall be construed to limit or change the risks assumed by the Contractor as specified in Subsection 107.22.

THE SIXTH PARAGRAPHS IS CHANGED TO:

The Department may direct the Contractor to construct Bituminous Concrete Patch as specified in Section 402 to maintain sections of traveled way and shoulders in a smooth riding condition at all times including seasonal shutdowns. Payment for Bituminous Concrete Patch will be made as specified in Section 402 except for those areas that are damaged or created by the Contractor's operations.

106.03 Materials, Inspections, Tests, and Samples.

THE SUBSECTION HEADING IS CHANGED TO:

106.03 Materials, Inspections, Tests, Samples and Certified Training.

B. Sampling and Field Testing of Soil Aggregates.

THIS SIXTH PARAGRAPH IS CHANGED TO:

Sampling and testing of aggregates by the Department that meet the Specifications and are used in the Work will be performed without cost to the Contractor.

106.09 Storage and Handling of Materials.

THE ENTIRE TEXT IS CHANGED TO:

Materials shall be stored to ensure the preservation of their quality and fitness. Stored materials, even though approved before storage, may again be inspected before their use on the Project. Stored materials shall be located so as to facilitate their prompt inspection. With the approval of the Department, portions of the ROW may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space must be provided by the Contractor at the Contractor's expense. Equipment and materials shall be placed behind barriers or crash cushions, or stored more than 10 meters from the traveled way. The barriers and crash cushions must be approved before installation. Furnishing, placing, and removing the barriers and crash cushions shall be at no Additional Compensation. No materials shall be stored within restricted areas noted on the plans. No materials shall be stored within 3 meters, plus the extended boom length of the largest crane on site, of overhead high voltage power lines. The high voltage power line is defined as an aerial power line having a voltage differential in excess of 750 volts between any pairs of conductors or between any conductor and ground. The Contractor shall be responsible for any power outage or de-energization associated with the Contractor's activity in the vicinity of the power lines. Private property shall not be used for storage purposes without written permission of the owner or lessee, and any other approvals, including those as specified in Subsection 107.05. Copies of such written permission shall be furnished to the Resident Engineer before storage. Storage sites shall be restored to their original condition at no Additional Compensation.

108.11 Extensions and Reductions of Contract Time.

THE ENTIRE TEXT IS CHANGED TO:

- A. Basis for Adjustment.** Extensions or reductions to the Contract Time may be provided by Construction Order, however, such extensions or reductions will be allowed only to the extent that the increase or decrease in the Work or delays of the types indicated below affect the Critical Path of the current approved Progress Schedule update and the Completion of the Work and/or Substantial Completion Dates provided in Subsection 108.10. However, when the Finish Milestone(s) for the Substantial Completion Date or Completion of the Work Date identified on the current approved schedule is a date or dates prior in time to the dates specified in the Contract, the Department will consider the time between the dates projected in the schedule and that in the Contract as constituting float in the schedule which shall offset the amount of allowable delay contributable to the actions of the Department, third parties, or the Contractor, or caused by a combination of those factors, and other factors beyond the control of the Contractor as determined by the Department which ever first occurs.

An extension will also provide only for those Working Days adversely impacted where operations were on an approved schedule, including all shifts of Work. No extension can be requested unless all submittals and approvals have been completed as specified in Subsection 108.04.

The Contractor may be granted an extension of Contract Time and not be assessed liquidated damages for any portion of the delay beyond the Completion of the Work and/or Substantial Completion Dates as specified in Subsection 108.10 caused by reasons beyond the control and without the fault or negligence of the Contractor, and subject to all due diligence by the Contractor to avoid and mitigate the

delay. Reasons may include, but are not restricted to, those provided for in the Specifications and the following:

1. acts of civil or military authorities, terrorism, war, or riot;
2. fire;
3. floods, tidal waves, earthquakes, cyclones, tornadoes, hurricanes, sustained severe winds exceeding 121 kph, or other cataclysmic natural phenomenon (except on working day contracts);
4. Extreme Weather Conditions (subject to Item 1 of subpart B) (except on working day contracts);
5. epidemics or quarantine restrictions;
6. strikes or labor disputes beyond the control of the Contractor that prevent work on the construction operations that are critical to the completion of the Project;
7. shortages of materials (subject to Item 2 of subpart B) or freight embargoes;
8. acts of the State in its sovereign capacity;
9. court orders or injunctions;
10. discovery of Regulated Hazardous Waste;
11. acts by others consistent with Subsections 105.10 and 107.09;
12. failure of the Engineer to furnish interpretations of the Contract Documents (subject to Item 3 of subpart B).

Unless specifically provided for in the Specifications or where the delay is caused by the negligence, bad faith, active interference, or other tortuous conduct of the Department or its employees, the Contractor shall not make any claim for damages or Additional Compensation for any delay, and agrees that any such delay shall be fully compensated for by an extension of Contract Time if granted. In such a case where the delay is shown by the Contractor to have been caused by such tortuous conduct of the Department or its employees, the Contractor's remedy for Additional Compensation shall be as specified in Subsection 109.04. Negligence of consultants, other contractors, Utility(s), other public entities or any other person or entity, shall not be imputed to the Department. The Contractor shall not be entitled to Additional Compensation or an extension of Contract Time for any delay contemplated or that which should have been contemplated by the Contractor at the time the Contract was awarded.

Extensions of Contract Time will not be granted due to delays caused by, or in any way related to, the financial condition of the Contractor, subcontractors, sub-subcontractors, material, personnel, fabricators, or suppliers. The Contractor and its surety assume full responsibility for ensuring that the financial condition of any of the above does not delay completion of the Contract.

If the Work required is reduced or altered so that the time required for Completion is reduced, the Department may reduce the Contract Time as specified in Subsection 108.10. The Engineer will evaluate the facts and the extent of the reduction. The Department's findings thereon will be final and conclusive.

The Contractor or surety is not relieved of liability for liquidated damages for any period of delay in completion in excess of that expressly provided for in this Subsection.

B. Requests for Extensions. Request for extension of Contract Time will not be evaluated or granted unless they meet the provisions of A. above and the Contractor has notified the Resident Engineer in writing of the causes of delay within 15 State Business Days from the beginning of any such delay on forms provided by the Department. The effect of the delay on the Progress Schedule shall be documented by the Contractor as specified in Subsection 108.04. The Department will evaluate the facts and the extent of the delay, and the Department's findings will be final and conclusive. Request for extensions shall also be based on the following:

1. If the Contractor submits daily documentation of such conditions, Extensions of Contract Time for Extreme Weather Conditions may be granted according to the following:
 - a. The specified completion dates anticipate that the number of total Working Days available for Construction Operations, subject to the requirements of the Contract Documents, during the period of April through November inclusive is at least 145 for road and bridge work.
 - b. The specified completion dates anticipate that the number of total Working Days available for Construction Operations, subject to the requirements of the Contract Documents, during the four month winter period of December through March inclusive is ____ for road work and ____ for bridge work.

- c. When the actual number of Working Days available for Construction Operations is less than the anticipated number provided for in the Special Provisions, an extension of one day for each day less may be allowed.
2. Extensions of Contract Time will not be granted for a delay caused by a shortage of materials unless the Contractor furnishes the following:
 - a. Documentary proof that it has diligently made every effort to obtain such materials from all known sources within reasonable distance from the Work.
 - b. Proof that the inability to obtain such materials when originally planned, could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials" applies only to raw and fabricated materials, articles, parts, or equipment which are standard items and does not apply to materials, parts, articles, or equipment which are processed, made, constructed, fabricated, or manufactured to meet the specific requirements of the Contract. Only the physical shortage of materials and not the cost of materials will be considered.
3. Extensions of Contract Time will not be granted for failure of the Engineer to furnish interpretations of the Contract Documents unless such request for an interpretation of the Contract Documents is reasonable and made in good faith, and the failure to respond was palpably unwarranted and was furnished more than 20 State Business Days after the written request was received by the Resident Engineer.
4. Extension of Contract Time for utility work delays will only be granted when the Utility does not complete their work within an additional 30% of the estimated durations for the Utility as specified in Subsection 105.09. A day for day extension will be allowed for each day extended beyond the 30% time that the Critical Path is affected.

108.16 Failure to Complete on Time.

THE SUBSECTION HEADING AND TEXT ARE CHANGED TO:

108.16 Liquidated Damages and Incentive Payments For Early Completion.

- A. **Liquidated Damages.** The Contractor and the Department recognize that delay in Completion results in damages to the State in terms of the effect of the delay on the use of the Project, upon the public convenience and economic development of the State, and also results in additional costs to the State for engineering, inspection, and administration of the Contract. Because it is difficult or impossible to accurately estimate the damages incurred; therefore, the parties agree that if the Contractor fails to complete the Contract within the time stated in these Special Provisions, or within such further time as may have been granted in according to the provisions of the Contract, the Contractor shall pay the State liquidated damages according to those provided in the Special Provisions. Such liquidated damages shall be paid for each and every day, as hereinafter defined, that the Contractor is in default to complete the Contract.

Liquidated damages shall be as follows:

1. For each Calendar Day that the Contractor fails to complete the Work as specified in Subpart A of Subsection 108.10 of these Special Provisions, for Substantial Completion, the Contractor shall pay liquidated damages consisting of Road User Costs and Construction Engineering Costs to the State in the amount of \$_____.
 2. For each Calendar Day that the Contractor fails to complete the entire Work of the Project as specified in Subpart B of Subsection 108.10 of these Special Provisions, for Completion of the Work, the Contractor shall pay liquidated damages consisting of Construction Engineering Costs to the State in the amount of \$_____, provided that the Work as specified for Substantial Completion is actually completed.
1. For each Working Day that the Contractor fails to complete the Work as specified in Subpart A of Subsection 108.10 of these Special Provisions, for Substantial Completion, the Contractor shall pay liquidated damages consisting of Road User Costs and Construction Engineering Costs to the State in the amount of \$_____.
 2. For each Working Day that the Contractor fails to complete the entire Work of the Project as specified in Subpart B of Subsection 108.10 of these Special Provisions, for Completion of the

Work, the Contractor shall pay liquidated damages consisting of Construction Engineering Costs to the State in the amount of \$_____, provided that the Work as specified for Substantial Completion is actually completed.

The Department will recover all liquidated damages specified above by deducting the amount thereof from any monies due or that may become due the Contractor, or from the Contractor or from its surety on this or any other contract being performed for the Department.

B. Incentive Payment for Early Completion. As provided for in the Special Provisions.

No Incentive Payment for Early Completion is specified for this project

THE FOLLOWING NEW SUBSECTION IS ADDED:

108.20 ITS Occupancy Charges

The Contractor shall be restricted to when the existing ITS fiber optic facilities will be allowed to be out of operation in order for the Contractor to complete work under the Contract that impacts the Department ITS facilities. An ITS Occupancy Charge shall be assessed at a minimum of \$1000 per hour, or increased based on the costs calculated by the Department, for each hour the Contractor fails to restore ITS operations. The charge will be recorded and collected as specified in Subsection 108.19. The Department may determine not to collect charges when the failure to restore ITS operations meets the conditions specified for extraordinary, exigent circumstances as specified in Subsection 108.19.

109.02 Scope of Payment.

THE SECOND PARAGRAPH IS CHANGED TO:

The "Basis of Payment" clause in the Specifications relating to any Pay Item in the proposal encompasses all compensation for Work to complete that Pay Item and no other Pay Item. All elements of the Work related to that Pay Item will not be measured or paid for under any other Pay Item in the Contract Documents unless it is stated in the "Basis of Payment" clause for that Pay Item that a portion of the Work will be paid for under another Section or Subsection of the Specifications.

109.03 Force Account Payment.

THE FIRST, SECOND, THIRD, AND FOURTH PARAGRAPH ARE CHANGED TO:

When the Department has directed the Contractor to do Work on a Force Account basis it will be compensated as specified in this Subsection.

The total direct costs for labor, materials, equipment, bonds, insurance, and tax as provided below, together with applicable markups constitute full compensation for all direct and indirect costs (including overhead and profit), and are deemed to include all items of expense not specifically designated. Any adjustments to Performance Bond and Payment Bond will be made as specified in Subsection 103.05. Force Account payments will be adjusted for those costs incurred determined to be the fault of the Contractor. The Force Account payment will be further adjusted where the Contractor's prices in its Proposal for any affected original items of work did not properly include all the costs to complete the affected work as originally provided in the Contract Documents.

When Work that is paid on a Force Account basis is performed by forces other than the Contractor's organization, the Contractor shall reach an agreement with such other forces as to the distribution of payments made by the State for such Work, with a copy of all such completely executed agreements to the Resident Engineer. Additional payment will not be made for any reason due to the performance of the Work by a subcontractor or other forces, or for costs outside that covered by the agreement.

It is understood that a Contractor's remedy for Additional Compensation for Extra Work or for any other reason as specified in these Specifications, when an action is brought before the Superior Court as specified in the Contractual Liability Act, NJSA 59:12-1 et seq., shall not exceed the amount that would be specified in these provisions had a Force Account been carried out. However, damages sought by the Contractor in a court proceeding shall be limited to actual additional costs incurred by the Contractor resulting directly from the Extra Work or by other reason specifically permitted under the terms of the Specifications as specified in the Contractual Liability Act. As a condition predicate to seeking Additional Compensation under the claims process or in the Superior Court, the

Contractor shall have the burden of proof to demonstrate compliance with the requirements of this Subsection and other applicable Subsections, and shall have kept all records required under this Subsection even if the Department has not directed that the Contractor do such Work on a Force Account basis.

Force Account payment will be limited to the following:

1. Labor.

THE FIRST PARAGRAPH IS CHANGED TO:

For all necessary direct labor and foremen in direct charge of the specific operations, whether the employer is the Contractor, subcontractor, or another, the Contractor shall receive the rate of wage (or scale) actually paid as shown in its certified payrolls for each and every hour that said labor and foremen are actually engaged in such Work.

For specific extraordinary operations the Department may allow supervising or other special type employees to be considered direct labor, but only that time in direct labor or direct charge to complete the specific construction operations.

2. Bond, Insurance, and Tax.

THE ENTIRE TEXT IS CHANGED TO:

For bond premiums; property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes on the Force Account work, the Contractor shall receive the actual incremental cost thereof, necessarily and directly resulting from the Force Account work. For payment, the Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

Payment for Performance Bond and Payment Bond adjustments will be as specified in Subsection 103.05.

4. Equipment and Plant.

a. Contractor Owned Equipment and Plant.

THE SECOND AND THIRD PARAGRAPH ARE CHANGED TO:

The Blue Book will be used in the following manner:

- (1) The estimated "rental" hourly rate will be determined by dividing the monthly rate by 176 and then applying a 20% reduction factor. The weekly, hourly, and daily rates will not be used.
- (2) The estimated operating costs per hour will be the Blue Book rates.
- (3) The number of hours to be paid for will be the number of hours that the equipment or plant is actually used on a specific Force Account activity each day, as presented in Daily Equipment Work Sheets, received from the Contractor and verified by the Department.
- (4) The current revisions will be used in establishing rates. The current revision applicable to specific Force Account work is as of the first day of work performed on that Force Account work and that rate applies throughout the next six months of the period the Force Account work is being performed. The rates will be adjusted for each six-month period thereafter.
- (5) Area adjustment will not be made. Equipment life adjustment will be made in according to the rate adjustment tables.
- (6) Overtime shall be charged at the same rate indicated in Item (1) and (2) above.
- (7) Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the request of the Engineer and, but for this request, would have left the Project site. Such payment will be made at one-half the rate established in Item (1) above and will be limited to the total hours worked for any Force Account activity on that particular day.
- (8) The rates established above include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, all costs (including labor and equipment) of moving equipment or plant to, on, and away from the site, and all incidentals.
- (9) Operator costs will be paid only as provided in Subheading 1 above.

All equipment shall, in the opinion of the Department, be in good operating condition. The State will not provide payment of any type for equipment that is determined to be unsuitable by the Department for the Force Account Work or that is inoperable during periods of breakdown or repair. Equipment used by the Contractor shall be specifically described and be of suitable size and suitable capacity required for the work to be performed. In the event the Contractor elects to use equipment of a higher rental value than that suitable for the Work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be made a part of the record for Force Account work. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will be that for the suitable equipment.

b. Rented Equipment and Plant.

THE ENTIRE TEXT IS CHANGED TO:

In the event that the Contractor does not own a specific type of equipment or plant and must obtain it by rental, the Contractor shall inform the Resident Engineer of the need to rent the equipment and of the rental rate for that equipment prior to using it on the Work. The Contractor will be paid the actual rental for the equipment as specified in the rental agreements for the time that the equipment is actually used to accomplish the Work, provided that rate is reasonable, plus the cost of moving the equipment to, on, and away from the Project site. The Contractor shall provide the Resident Engineer a copy of the fully executed rental agreement, and a paid receipt or canceled check for the rental expense incurred.

If the rental agreement does not cover operating costs, the Contractor shall be entitled to the rate established in Subheading 4.a. above for each hour that piece of rental equipment is actually operational.

The State will not provide payment of any cost incurred due to equipment that is determined to be unsuitable by the Department for the Force Account Work or that is inoperable during periods of breakdown or repair.

5. Profit.

THE ENTIRE TEXT IS CHANGED TO:

Profit shall be computed at ten percent of the following:

- a. Total material cost excluding transportation, shipping & handling.
- b. Total direct labor cost (actual hours worked multiplied by the regular hourly rate).
- c. Total fringe benefits on total direct labor cost as computed above.

6. Overhead.

THE ENTIRE TEXT IS CHANGED TO:

Any and all overhead for the Contractor is defined to include the following:

- a. All salaries and expenses of executive officers, supervising officers, or supervising employees, except as provided for under Subheading 1 above;
- b. All clerical or stenographic employees;
- c. All charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and
- d. All drafting room accessories such as paper, tracing cloth, and blueprinting.

Any and all overhead costs of the Contractor for Force Account work shall be computed at 15 percent of the following:

- a. Total material cost excluding transportation, shipping & handling.
- b. Total direct labor cost (actual hours worked multiplied by the regular hourly rate), except for the direct labor cost of any supervisory or special employees allowed under Subheading 1. above.
- c. Specific extraordinary overhead expenses, required specifically for the Force Account, may be allowed if approved by the Department prior to incurring any cost. In such instances, the Contractor will be paid only the reasonable costs of such extraordinary overhead expenses.
- d. Total fringe benefits on total direct labor cost as computed above.

The Contractor will be allowed an additional five percent for overhead on the total amount of all work performed by the subcontractors.

THE FOLLOWING IS ADDED:

8. Responsibility.

Where work is performed under a Force Account, responsibility of such work shall remain that of the Contractor. The Department will determine if the Work is eligible for payment.

109.04 Payment for Contractor's Expenses During Delays.

THE FIRST PARAGRAPH IS CHANGED TO:

When the Department has approved an adjustment for Additional Compensation due to a delay, the Contractor will be paid its expenses during that period of delay by Change Order in the following manner:

2. Bond, Insurance, and Tax.

THE ENTIRE TEXT IS CHANGED TO:

For bond premiums; property damage, liability, and, workers compensation insurance premiums; unemployment insurance contributions; and social security taxes during the period of delay, the Contractor is to receive the actual incremental cost thereof, necessarily and directly resulting from the delay. For payment, the Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

Payment for Performance Bond and Payment Bond adjustments will be as provided in Subsection 103.05.

3. Equipment.

THE FIRST PARAGRAPH IS CHANGED TO:

For any idle machinery or special equipment other than small tools which must remain on the Project site, with approval of the Department, during delays of specific operations, the Contractor is to receive compensation at one-half the rate calculated pursuant to Subheading 4 of the fifth paragraph of Subsection 109.03. Should the Department determine that it is not necessary for machinery or equipment to remain on the Project during delays, the Contractor is to receive transportation costs to remove the machinery or equipment and return it to the Project at the end of the delay period.

4. Miscellaneous.

THE SUBPART HEADING IS CHANGED TO:

4. Overhead.

6. Records.

THE SECOND AND THIRD PARAGRAPH ARE CHANGED TO:

The Department's records will be compared with completed daily reports furnished by the Contractor and any necessary adjustments will be made. When these daily reports are agreed upon and signed by both parties, said reports become the basis of payment for the expenses incurred, but do not preclude subsequent adjustment based on a later audit by the Department.

The Contractor's cost records pertaining to expenses under this Subsection shall be open to inspection or audit by the Department during the life of the Contract and for a period of not less than three years after Acceptance thereof, and the Contractor shall retain such records for that period. Where payment for equipment or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to ensure that the cost records of such other forces are open to inspection and audit by the Department on the same terms and conditions as the cost records of the Contractor. Payment for such cost may be deleted if the records of such third parties are not made available to the Department. If an audit is to be commenced more than 60 days after Acceptance, the Contractor is to be provided with a reasonable notice of the time when such audit is to begin. In case all or a part of such records are not made so available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records will not be allowed, or if payment therefore has already been made, the Contractor shall refund to the Department the amount so disallowed.

109.06 Materials Payments.

THE SUBSECTION HEADING IS CHANGED TO:

109.06 Materials Payments and Storage.

THE FIRST PARAGRAPH IS CHANGED TO:

The monthly estimates and payments made on account thereof may also include, when authorized by the Department, an amount equal to the actual cost of materials furnished but not incorporated into the Work, provided, however, that such amount does not exceed 85 percent of the Contract price for the Pay Item into which the material is to be incorporated, and the quantity allowed does not exceed the corresponding quantity estimated in the Contract Documents. Advance payment will only be for that portion of the price in the Proposal related to the materials and any costs for storage at the facility of manufacture. Any taxes levied by any government against the materials shall be borne by the Contractor. Before including payments for such materials in an estimate, the Department must be satisfied that:

1. The materials have been properly stored and protected along or upon the Project site or have been stored and protected at locations owned or leased by the Contractor or the Department within the State, except that structural steel, prestressed concrete beams, and other large items not suitable for storage on or near the site, may be stored outside the State with the approval of the Department; and
2. The materials have been inspected and appear to be acceptable based upon available supplier's certification and/or materials test reports; and
3. The Contractor has provided the Resident Engineer with an paid invoice or paid bill of sale for the materials and a fully executed Department form "Release of Liens for Materials Stored for Incorporation in Department of Transportation Project" including the transfer of ownership to the Department; and
4. The materials are clearly identified in large letters as being without encumbrances and for use solely on the Project, and if stored on property not belonging to the State or at the facility of manufacture, are fenced in with access limited to the State and the Contractor; and
5. When such materials are stored in a leased area, the lease is made out to the Contractor and provides that it shall be canceled only with the written permission of the Department.

THE FOURTH PARAGRAPH IS DELETED:

Implementation Code H (HIGH PRIORITY)

Changes must be implemented in all applicable Department projects scheduled for advertisement at least one month after the date of the BDC announcement.

If necessary, addenda must be issued to incorporate the changes. The changes should NOT be incorporated if issuance of addenda will require a postponement of the receipt of bids.

Recommended By:

ORIGINAL SIGNED

Lynn D. Rich
Director,
Quality Management Services

Approved By:

ORIGINAL SIGNED

F. Howard Zahn
Assistant Commissioner,
Capital Program Management