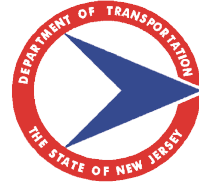


New Jersey Department of Transportation
1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600



Baseline Document Change Announcement

ANNOUNCEMENT: BDC18S-19

DATE: April 02, 2019

SUBJECT: Civil Rights Requirements
- **Revision to the 2007 Standard Specifications for Road and Bridge Construction, Subsections 102.13, 102.15, 105.02, 108.01, and 109.05.**

Subpart 102.13.01, Subsection 102.15, Subpart 105.02.05, and Subsection 108.01 of the 2007 *Standard Inputs* have been revised to clarify various pre-award and post-award requirements related to the DBE/ESBE, the SBE program, and the types of records and reports to be submitted. Also, Subsection 109.05 is revised to be consistent with the New Jersey Prompt Payment Statute.

The following revisions have been incorporated into the Standard Inputs (SI 2007).

102.13 CONSIDERATION OF BIDS

THE FOLLOWING SUBPART IS ADDED:

102.13.01 Bidder Pre-Award Requirements

A. Federal Aid Projects

1. **Contract DBE Goal.** On projects having a Contract DBE goal, all Bidders shall ensure that DBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts in Federal aid projects with the Department. All Bidders shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26 to ensure that DBEs are given equal opportunity to compete for and to perform on the Department's Federal aid projects. All Bidders shall not discriminate in the award and performance of any Contract obligation including, but not limited to, their performance of their obligations on USDOT assisted contracts as specified in Section 107.
 - a. All Bidders shall demonstrate commitment of meeting the Contract DBE goal that is specified in the Contract.
 - (1) Submit to DCR/AA at time of Bid, or within 5 days after bid opening as a matter of responsibility:
 - (i) a completed and signed Form CR-266 – Schedule of DBE/ESBE/SBE Participation listing each DBE firm being used to meet the Contract goal. Revisions to the CR-266 will not be accepted after its initial submission and before award of the Contract.
 - (ii) a completed and signed Verification of DBE/ESBE/SBE Firm (Form CR-273) for each firm listed on the CR-266 to demonstrate direct written confirmation from each DBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and, if applicable,

- (iii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the CR-266 form, and, if applicable,
- (iv) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for all DBE trucking firms listed on the CR-266.

Firms listed on the CR-266 will not be counted toward the Contract DBE goal unless completed and signed CR-273 form(s), and applicable CR-272 and CR-274 form(s) are submitted to the DCR/AA within the 5 days after bid opening. The CR-273, CR-272, and CR-274 forms must be completed and signed by each respective DBE firm. The Bidder shall not complete any portion of the CR-273, CR-272 and CR-274 forms.

These forms must be submitted through a designated email - DOT-CR.Verifications@dot.nj.gov.

If the last day for a Bidder's submission of the CR-266, CR-273, and applicable CR-272 and CR-274 forms falls on a Saturday, Sunday or Federal holiday, the CR-266, CR-273, and applicable CR-272 and CR-274 forms are due on the next day that is not a Saturday, Sunday or Federal holiday. In circumstances where the Department is closed for all or part of the day the forms are due, the submission of the forms is due on the next day.

- (2) If, at time of Submission, the commitment to meet the Contract DBE goal is not shown on the CR-266, the Bidder must submit at time of Bid, or within 5 days after bid opening, documented evidence of good faith effort(s) to attain the Contract DBE goal, for review and approval by the DCR/AA. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Bidder met the Contract DBE goal or made adequate good faith efforts to do so.
 - (i) Good faith efforts are actions taken to achieve a DBE goal or other requirement of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement, including affirmative action measures designed to implement the established objectives of an affirmative action plan that a Bidder may utilize to obtain DBE participation. Efforts to include firms not certified as DBEs in New Jersey are consequently not good faith efforts to meet the DBE Contract goal. A promise to use DBEs after contract award is not considered to be responsive and does not constitute good faith efforts. Good faith effort actions include, but are not limited to:
 - (a) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the New Jersey Unified Certification Program Vendor Certification database of transportation firms that specialize in the areas of work desired (as identified by North American Industry Classification system (NAICS) code) noted in the New Jersey Unified Certification Program Vendor Certification database) and which are located in the area or surrounding areas of the project. The Bidder shall solicit this interest as early in the bidding process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - (b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
 - (c) Providing interested DBEs with adequate information about the Plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

- (d)i Negotiating in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.
 - (d)ii Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - (e)i Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the Contract DBE goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract goals.
 - (e)ii A Bidder's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the Bidder has the ability and/or desire to perform the Contract work with its own forces does not relieve the Bidder of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
 - (f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Bidder.
 - (g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, but not directly or indirectly providing equipment, supplies or materials to the DBE.
 - (h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (3) If the Department determines that the apparent lowest responsive Bidder has failed to commit to meet the Contract DBE Goal and made adequate good faith efforts to do so, the Department must, before awarding the Contract, provide the Bidder an opportunity for Administrative Reconsideration.

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

Within 1 working day of being notified by the Department that it is not a responsible bidder because it failed to meet the Contract DBE goal and made adequate good faith efforts to do so, a Bidder may make a request for administrative reconsideration in writing to the New Jersey Department of

Transportation, Director, Division of Procurement, PO Box 605, Trenton, New Jersey, 08625-0605. The Bidder must specify one of the following types of administrative reconsideration in its request:

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

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

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

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

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

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

B. State Funded Projects

- 1. **Contract SBE Goal.** On wholly State funded contracts having a Contract SBE goal, all Bidders shall ensure that SBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts financed in whole with state funds in performing work with the Department. All Bidders shall take all necessary and reasonable steps to ensure that SBEs are given equal opportunity to compete for and to perform on the Department's wholly state funded projects. All Bidders shall not discriminate in the award and performance of any Contract obligation including, but not limited to, their performance of their obligations on wholly state funded contracts as specified in Section 107.
 - a. All Bidders shall demonstrate commitment of meeting the Contract SBE goal that is specified in the Contract.
 - (1) Submit to DCR/AA at time of Bid, or within 5 days after bid opening as a matter of responsibility:
 - (i) a completed and signed Form CR-266 - Schedule of DBE/ESBE/SBE Participation listing each SBE firm being used to meet the Contract goal. Revisions to the CR-266 will not be accepted after its initial submission and before award of the Contract.
 - (ii) a completed and signed Verification of DBE/ESBE/SBE Firm (Form CR-273) for each firm listed on the CR-266 to demonstrate direct written confirmation from each SBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and, if applicable,
 - (iii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the CR-266 form, and, if applicable,
 - (iv) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for all SBE trucking firms listed on the CR-266.

Firms listed on the CR-266 will not be counted toward the Contract SBE goal unless completed and signed CR-273 form(s), and applicable CR-272 and CR-274 form(s) are submitted to the DCR/AA within the 5 days after bid opening. The CR-273, CR-272, and CR-274 forms must be completed and signed by each respective SBE firm. The Bidder shall not complete any portion of the CR-273, CR-272 and CR-274 forms.

These forms must be submitted through a designated email: DOT-CR.Verifications@dot.nj.gov.

If the last day for a Bidder's submission of the CR-266, CR-273, and applicable CR-272 and CR-274 forms falls on a Saturday, Sunday or Federal holiday, the CR-266, CR-273, and applicable CR-272 and CR-274 forms are due on the next day that is not a Saturday, Sunday or Federal holiday. In circumstances where the Department is closed for all or part of the day the forms are due, the submission of the forms is due on the next day.

- (2) If, at time of Submission, commitment to meet the Contract SBE goal is not shown on the CR-266, the Bidder must submit at time of Bid, or within 5 days after bid opening, documented evidence of good faith effort(s) to attain the Contract SBE goal, for review and approval by the DCR/AA. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Bidder met the Contract SBE goal or made adequate good faith efforts to do so.
- (i) Good faith efforts are actions taken to achieve a SBE goal or other requirement of the SBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement, including affirmative action measures designed to implement the established objectives of an affirmative action plan that a Bidder may utilize to obtain SBE participation. Efforts to include firms not registered as SBEs in New Jersey are consequently not good faith efforts to meet the SBE Contract goal. A promise to use SBEs after contract award is not considered to be responsive and does not constitute good faith efforts. Good faith effort actions include, but are not limited to:
- (a) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified SBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all SBEs listed in the New Jersey Selective Assistance Vendor Information (NJSAVI) database of transportation firms that specialize in the areas of work desired (as identified in the NJSAVI database) and which are located in the area or surrounding areas of the project. The Bidder shall solicit this interest as early in the bidding process as practicable to allow the SBEs to respond to the solicitation and submit a timely offer for the subcontract. The Bidder should determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
 - (b) Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate SBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates SBE participation.
 - (c) Providing interested SBEs with adequate information about the Plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
 - (d) Negotiating in good faith with interested SBEs. It is the Bidder's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected

for subcontracting; and evidence as to why additional Agreements could not be reached for SBEs to perform the work.

- (d)ii A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.
- (e)i Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the Contract SBE goal. Another practice considered an insufficient good faith effort is the rejection of the SBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract goals.
- (e)ii A Bidder's inability to find a replacement SBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original SBE. The fact that the Bidder has the ability and/or desire to perform the Contract work with its own forces does not relieve the Bidder of the obligation to make good faith efforts to find a replacement SBE, and it is not a sound basis for rejecting a prospective replacement SBE's reasonable quote.
- (f) Making efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- (g) Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, but not directly or indirectly providing equipment, supplies or materials to the SBE.
- (h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

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

102.15 DISQUALIFICATION OF BIDDERS

THE ENTIRE SUBSECTION IS CHANGED TO:

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

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

1. Evidence of collusion among Bidders.
2. Uncompleted work, which in the opinion of the Department, might hinder or prevent completion of additional work if awarded.
3. Failure to submit at time of bid or within 5 days of bid opening, a completed and signed CR-266 – Schedule of Disadvantaged Business Enterprise/Emerging Small Business Enterprise/Small Business Enterprise Participation.
4. Failure to submit within 5 days of bid opening, proof of documented evidence of good faith efforts to meet the Contract goal, if the Bidder fails to meet the Contract DBE, ESBE or SBE goal.

5. Failure to submit within 5 days of bid opening, a completed and signed Confirmation of DBE/ESBE/SBE Firm (Form CR-273) for each DBE/ESBE/SBE firm listed on the CR-266. The Bidder shall not complete any portion of the CR-273 form.
6. Failure to submit within 5 days of bid opening, a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for each DBE/ESBE/SBE firm listed on the CR-266, if applicable. The Bidder shall not complete any portion of the CR-274 form.
7. Failure to submit within 5 days of bid opening, a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for each DBE/ESBE/SBE Regular Dealer/Supplier listed on the CR-266, if applicable. The Bidder shall not complete any portion of the CR-272 form.
8. Failure of the bidder to meet the Contract DBE, ESBE or SBE goal as determined by the DCR/AA, or make adequate good faith efforts to do so.
9. Submission of a materially unbalanced bid. A materially unbalanced bid is a bid where there is a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid, which is structured on the basis of nominal prices for some work and inflated prices for other work, will result in the lowest ultimate cost to the Department.
10. Lack of competency or lack of adequate machinery, plant, or other equipment.
11. Unsatisfactory performance on previous or current contracts.
12. Questionable moral integrity as determined by the Attorney General of New Jersey or the Department.
13. Any other outward actions or lack of action that demonstrates the Bidder is not responsible.
14. Disqualification, suspension, or debarment of an individual, firm, partnership, corporation, joint venture, or any combination as required by N.J.A.C. 16:44-11.1 for state projects.
15. Disqualification, suspension, or debarment of an individual firm, partnership, corporation, joint venture, or any combination as required by N.J.A.C. 16:44-11.1 or Federal Government's System for Award Management (SAM), located at <https://www.sam.gov/portal/SAM/#1> for federally assisted contracts.

THE FOLLOWING SUBPART IS ADDED:

105.02 RESPONSIBILITIES OF THE CONTRACTOR

105.02.05 Civil Rights Requirements

The Contractor is obligated to comply with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21 and 28 CFR Section 50.3, 2 C.F.R. Part 200 and 2 C.F.R. Part 200 Appendix II and any other Rules relative to Nondiscrimination as they may be amended from time to time, which are herein and incorporated by reference and made part of the Contract. The Contractor in the performance of the Contract agrees to comply with nondiscrimination regulations and other requirements as specified in Section 107. Failure of a Contractor to comply with the nondiscrimination provisions of the Contract may result in the actions as set forth as specified in Sections 105, 108 and 109.

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

1. **Federal Aid Projects.** On contracts containing Federal funding, Federal EEO regulations and goals apply as specified in Federal Aid Project Attachments 1 through 11. The DCR/AA monitors and reviews these projects on behalf of the Federal Highway Administration (FHWA), under Federal statutes (23 USC 140) and rules (23 CFR 230, 2 CFR Part 200).

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

Ensure compliance with the labor standards provisions of the Contract. Submit weekly certified payrolls and Statement of Compliance as required in the Contract. Monitor and verify the owner-operator status of all DBE and non-DBE truckers working on Federal aid projects used for the Contract. Submit the DBE Trucking

Verification (Form CR-274) to the Department. Failure of a Contractor to meet the requirements of this paragraph may result in payment being delayed or withheld as specified in Section 105, default as specified in Section 108, disqualifying the Contractor from future bidding as non-responsible, or termination of the Contract as specified in Section 108.

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

The Contractor is responsible for compliance by any subcontractor, lower tier subcontractor as specified in Section 108. On Federal aid construction contracts, utilize a DBE that performs a commercially useful function (CUF) and performs the work committed to at the time of Contract award. Monitor and report DBE participation on the Contract, on a monthly basis utilizing the CR-267 - Monthly Report of Utilization of DBE/ESBE or SBE form. Failure of a subcontractor or lower tier subcontractor may result in denial or limit of credit toward the Contract DBE goal, payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

The Contractor is required to make good faith effort as defined in 23 CFR Part 230 and 41 CFR Part 60 in meeting the Equal Employment Opportunity, Affirmative Action, on-the-job training and female and minority work hour goals. Ensure compliance by subcontractors and lower tier subcontractors. Failure of the Contractor, subcontractor or lower tier subcontractor to meet these requirements may result in payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

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

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

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

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

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

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

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

A Contractor is deemed to have satisfied the requirements of the DBE Program if the Contractor meets the Contract DBE goal or the approved DBE commitment utilizing the approved, certified DBEs for the kind and type of work shown on the most recent approved CR-266 – Schedule of Disadvantaged Business

Enterprise/Emerging Small Business Enterprise/Small Business Enterprise Participation form, or demonstrates an adequate GFE. DCR/AA will determine whether or not the Contractor met the Contract DBE goal or demonstrated adequate GFE. Failure to meet the Contract DBE goal or the approved DBE commitment, without demonstrating an adequate GFE, is considered a material breach of the Contract.

The Contract DBE goal may be changed by the Department based on changes in the Work that increase or decrease work assigned to approved DBEs, or to create potential DBE subcontracting opportunities regarding the Contract. The Department's DCR/AA will evaluate these changes in the Work in the same manner that the original Contract DBE goal or the approved DBE commitment was established. When the Contract DBE goal or the approved DBE commitment is increased or decreased due to changes in firms, type of work, work items or subcontract value, submit to DCR/AA:

- (i) a completed and signed Form CR-266 – Schedule of DB/ESBE/SBE Participation listing each DBE firm being used to meet the Contract goal.
- (ii) a completed and signed Verification of DBE/ESBE/SBE Firm (Form CR-273) for each firm listed on the CR-266 to demonstrate direct written confirmation from each DBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and, if applicable,
- (iii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the CR-266 form, and, if applicable,
- (iv) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for all DBE trucking firms listed on the CR-266.
- (v) a written explanation of each revision, and why

In such circumstances, do not complete any portion of the CR-273, CR-272 or CR-274 forms, and the Contractor shall meet the Modified DBE goal or demonstrate an adequate GFE.

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

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

Where:

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

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

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

b. Trainees

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

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

Comply with the SBE program, rules and regulations in the administration of the Contract. Failure to do so is a material breach of the Contract and may result in termination of the Contract, or other such actions that the Department deems appropriate which may include, but is not limited to, rejection of bids, denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions, liquidated damages as specified in Section 108, default as specified in Section 108, disqualifying the

Contractor from future bidding as non-responsible, or termination of the Contract as specified in Section 108. Deliberate attempts by the Contractor or subcontractor to circumvent or commit fraud in the SBE program may result in termination of the Contract as specified in Section 108, investigation by the Department's Inspector General, and prosecution by the State Attorney General's Office.

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

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

The Contractor is responsible for compliance by any subcontractor, lower tier subcontractor as specified in Section 108. Utilize a SBE that performs a commercially useful function (CUF) and performs the work committed to at the time of contract award. Monitor and report SBE participation on the Contract, on a monthly basis utilizing the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form. Failure of a subcontractor or lower tier subcontractor may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105; default as specified in Section 108, or termination of the Contract as specified in Section 108.

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

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

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

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

a. Small Business Goals for This Project

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

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

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

If a prospective Small Business Enterprise fails to meet the eligibility standards for participation the department's Small Business Program, the Contractor shall, make reasonable outreach efforts to replace

that ineligible subcontractor with a registered Small Business whose participation is sufficient to meet the goal for the contract.

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

A Contractor is deemed to have satisfied the requirements of the SBE Program if the Contractor meets the Contract SBE goal utilizing the approved, certified SBEs for the kind and type of work shown as the SBE commitment on the most recent approved CR-266 – Schedule of Disadvantaged Business Enterprise/Emerging Small Business Enterprise/Small Business Enterprise Participation form, or demonstrates an adequate GFE. DCR/AA will determine whether or not the Contractor met the Contract SBE goal or demonstrated adequate GFE. Failure to meet the Contract SBE goal or the approved SBE commitment, without demonstrating an adequate GFE, is considered a material breach of the Contract.

The Contract SBE goal may be changed by the Department based on changes in the Work that increase or decrease work assigned to approved SBEs, or to create potential SBE subcontracting opportunities regarding the Contract. The Department’s DCR/AA will evaluate these changes in the Work in the same manner that the original Contract SBE goal was established. When the Contract SBE goal or the approved SBE commitment is revised due to changes in firms, type of work, work items or subcontract amounts, submit to DCR/AA:

- (i) a completed and signed Form CR-266 – Schedule of DB/ESBE/SBE Participation listing each SBE firm being used to meet the Contract goal. Revisions to the CR-266 will not be accepted after its initial submission and before award of the Contract.
- (ii) a completed and signed Verification of DBE/ESBE/SBE Firm (Form CR-273) for each firm listed on the CR-266 to demonstrate direct written confirmation from each SBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor’s CR-266, and, if applicable,
- (iii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the CR-266 form, and, if applicable,
- (iv) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) for all SBE trucking firms listed on the CR-266.
- (v) a written explanation of each revision, and why

In such circumstances do not complete any portion of the CR-273, CR-272 or CR-274 forms, and, the Contractor shall meet the Modified SBE goal or demonstrate an adequate GFE.

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

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

Where:

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

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

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

108.01 SUBCONTRACTING

↑*****↑
 INCLUDE DETAILS, IN THE APPROPRIATE SECTIONS, REGARDING: SPECIALIZED KNOWLEDGE, EXPERIENCE, CRAFTSMANSHIP, AND/OR EQUIPMENT REQUIRED. THE SUBCONTRACTOR MUST BE QUALIFIED TO PERFORM CERTAIN SPECIALTY ITEMS (SUCH AS: SEGMENTAL BRIDGE, DRILLED SHAFTS, BLASTING, ETC.).

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THE ENTIRE SUBSECTION IS CHANGED TO:

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

The Department will not permit subcontracting without Department approval. The Contractor is responsible for the work performed by subcontractors. Ensure that no work is performed by a subcontractor before receiving written approval for each subcontractor from the Department. Ensure that DBEs/ESBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds in performing work with the Department. Ensure that SBEs have an equal opportunity to receive and participate in the performance of contracts financed in whole with State funds in performing work with the Department. Utilize the specific DBEs, ESBEs or SBEs listed to perform work and supply materials for which each is listed unless the written consent of DRR/AA is provided. Ensure that work reserved for a subcontractor designated as a DBE, ESBE, or SBE, is not performed by any other firm, including the Contractor’s own organization. Submit requests for approval to subcontract on Department forms to the Department at least 20 days before the anticipated start of the work with the following:

1. A certified copy of the executed subcontract agreement between the Contractor and the subcontractor.
2. Proof of the subcontractor’s valid business registration with the Department of Treasury, Division of Revenue according to N.J.S.A. 52:32-44.
3. Proof of the subcontractor’s valid Public Works Contractor Registration with the Department of Labor, Division of Wage and Hour Compliance according to N.J.S.A. 34:11-56.18.

Make available on request, a copy of all DBE, ESBE and SBE subcontracts. Ensure that all subcontracts or agreements with DBEs or ESBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 CFR 26.53.

On Federal aid projects, the Contractor shall not terminate a DBE subcontractor, lower tier DBE subcontractor, DBE transaction expeditor, DBE regular dealer, DBE supplier, DBE manufacturer and DBE trucker or an approved substitute DBE firm without good cause as listed in 49 CFR 26.53(f)(1)(ii)(3), and prior written consent of DCR/AA. Prior to replacement of the DBE or ESBE firm, the Contractor shall in writing, notify the DBE or ESBE firm and the DCR/AA of its intent to request to terminate and/or substitute a DBE or ESBE firm, the reason for the request, and that the DBE/ESBE has 5 days to respond to the Contractor’s notice and advise the DCR/AA and the Contractor of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor’s action. Give the DBE or ESBE 5 days to respond to the Contractor’s notice and advise the DCR/AA and the Contractor of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor’s action. If required in a particular case as a matter of public necessity (e.g., safety), the DCR/AA may provide a response period shorter than five days. At the time the Contractor requests termination or replacement of a DBE or ESBE firm, the Contractor must submit to the DCR/AA, documented evidence of its good faith efforts in accordance with 49 CFR Part 26.53 if they are replacing the terminated DBE or ESBE with a non-DBE or non-ESBE firm. The DCR/AA must approve the termination and substitution of all DBE or ESBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers. The Contractor needs to show they began good faith efforts to replace or substitute with another DBE or ESBE well in advance of the request to terminate or substitute. The Department’s DCR/AA has sole authority to approve the termination, replacement or substitution of DBE and ESBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers.

On wholly state funded projects, the Contractor shall not terminate a SBE subcontractor, lower tier SBE subcontractor, SBE transaction expeditor, SBE regular dealer, SBE manufacturer and SBE trucker, or an approved substitute SBE firm, without good cause and prior written consent of DCR/AA. Prior to replacement of the SBE firm, the Contractor shall in writing, notify the SBE firm and the DCR/AA of its intent to request to terminate and/or substitute a SBE firm, the reason for the request, and that the SBE has 5 days to respond to the Contractor’s notice and advise the DCR/AA and the Contractor of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor’s action. Give the SBE 5 days to respond to the Contractor’s notice and advise the Department

and the Contractor of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor’s action. If required in a particular case as a matter of public necessity (e.g., safety), the DCR/AA may provide a response period shorter than 5 days. At the time the Contractor requests termination or replacement of a SBE firm, the Contractor must submit to the DCR/AA, documented evidence of its good faith efforts if they are replacing the terminated SBE firm with a non-SBE firm. The DCR/AA must approve the termination and substitution of all SBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers. The Contractor needs to show they began good faith efforts to replace with another SBE well in advance of the request to terminate or substitute. The Department’s DCR/AA has sole authority to approve the termination, replacement or substitution of SBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers.

If requesting approval for a third tier subcontract, submit a letter from the subcontractor permitting subcontracting to a third tier, and submit the request for approval to subcontract, completed by the second tier subcontractor. Ensure that no work is performed by a third tier subcontractor before receiving written approval from the Department.

The Department will allow the Contractor to subcontract work as follows:

- 1. **Values and Quantities.** The total value of the work subcontracted may not exceed 50 percent of the Total Contract Price, except as follows:

- 1. The Contractor may deduct the value of work for Items designated as Specialty Items as specified in the Special Provisions from the value of the Total Contract Price.

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**LIST “SPECIALTY ITEMS”
ITEMS MAY BE CONSIDERED “SPECIALITY ITEMS” DUE TO SPECIALIZED KNOWLEDGE,
CRAFTSMANSHIP, OR EQUIPMENT REQUIRED TO PERFORM THE WORK. OBTAIN APPROVAL OF
APPROPRIATE SME.**

2*****2

SELECT ONE OF THE FOLLOWING.

There are no Specialty Items in this Project.

*******OR*******

Specialty Items are as listed below:

3*****3

SME CONTACT – GEOTECHNICAL ENGINEERING

Drilling and blasting.

3*****3

3*****3

SELECT APPROPRIATE ITEM(S).

SME CONTACT – TRAFFIC SIGNAL AND SAFETY ENGINEERING

Above ground highway lighting items.

*******AND/OR*******

Above ground sign lighting items.

******* AND/OR *******

Above and below bridge deck lighting items.

******* AND/OR *******

Electrical wire items.

3*****3

3*****3

SME CONTACT – MOBILITY AND SYSTEMS ENGINEERING (MSE).

ITS items, except for foundations, standards, and junction boxes.

3*****3

3*****3

LIST ADDITIONAL "SPECIALTY ITEMS" AS APPROVED BY THE SME

3*****3

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- 2. The Contractor may deduct the value of work subcontracted to certified DBE, ESBE, and SBE firms indicated on the original DBE/ESBE/SBE Form A approved by the Department from the value of work subcontracted.

The total value of the work subcontracted may not exceed 70 percent of the Total Contract Price less the value of Specialty Items as noted above.

If a partial quantity of work for a unit price Item is subcontracted, the Department will determine the value of the work subcontracted by multiplying the price of the Item by the quantity of units to be performed by the subcontractor.

If only a portion of work of an Item is subcontracted, the Department will determine the value of work subcontracted based on the value of the work subcontracted as indicated in the subcontract agreement and as shown in a breakdown of cost submitted by the Contractor.

If a portion of a lump sum Item, an Item that includes specialty work, or a sign support structure is subcontracted, the Department will determine the value of work subcontracted based on the value of the work subcontracted as indicated in the subcontract agreement and as shown in a breakdown of cost submitted by the Contractor.

2. **Limits and Restrictions.** The Department will permit subcontracting of work with the following restrictions:

- 1. The Contractor is barred from subcontracting MOBILIZATION.
- 2. The Contractor may only subcontract electrical, blasting, asbestos removal, landscaping, and lead paint abatement work to subcontractors having the required certificates and licenses. Submit copies of required certificates and licenses with the request for approval to subcontract.
- 3. The Contractor is barred from subcontracting to firms and individuals suspended or debarred by the Department or included in the State of New Jersey Consolidated Debarment Report maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification. The Contractor must certify that neither the individual, partnership, corporation, joint venture, or limited liability corporation applying to do subcontract work nor any of its corporate officers, stockholders, partners, or members are collectively or individually suspended, debarred, proposed for debarment, disqualified, declared ineligible, or voluntarily excluded from doing business by this or any other State or sub-division thereof or listed in the Federal Government's System for Award Management (SAM), located at: <https://www.sam.gov/portal/SAM/#1>.
- 4. Subcontractors are barred from making claims against the Department, its agents, officers, or employees.

3. **Subcontract Requirements.** Ensure that subcontract agreements include the following Contract provisions:

- a. **Federal Aid Projects.** When subcontracting work on a Federal Aid project, physically incorporate the following in the subcontract agreement, and inform subcontractors of their requirement to physically incorporate the information in lower tier subcontract agreements.
 - 1. Disadvantaged Business Enterprise Utilization (Federal Aid Project Attachment 1), or Emerging Small Business Enterprise Utilization (Federal Aid Project Attachment 1).
 - 2. Specific Equal Employment Opportunity Responsibilities on NJDOT Federal Aid Projects (Federal Aid Project Attachment 2).
 - 3. Requirements for Affirmative Action to Ensure Equal Employment Opportunity on NJDOT Federal Aid Projects (Federal Aid Project Attachment 3).
 - 4. Federal Equal Employment Opportunity Contract Specifications for NJDOT Federal Aid Projects

- (Federal Aid Project Attachment 4).
5. State of New Jersey Mandatory Equal Employment Opportunity Language on NJDOT Federal Aid Projects (Federal Aid Project Attachment 5).
 6. Investigating, Reporting, and Resolving Employment Discrimination and Sexual Harassment Complaints on NJDOT Federal Aid Projects (Federal Aid Project Attachment 6).
 7. Payroll Requirements for NJDOT Federal Aid Projects (Federal Aid Project Attachment 7).
 8. FHWA-1273 Required Contract Provisions, Federal Aid Construction Contracts as amended or supplemented (Federal Aid Project Attachment 8).
 9. State Mandatory Addendum to FHWA-1273 Required Contract Provisions, Federal Aid Construction Contracts as Amended or Supplemented (Federal Aid Project Attachment 9).
 10. Federal Mandatory Equal Opportunity Language on Federal Aid Projects (Federal Aid Project Attachment 10).
 11. Byrd Anti-Lobbying Certification (Federal Aid Project Attachment 11).
 12. The Standard Title VI Assurance found in Subsection 107.02, as amended or supplemented.
 13. General Wage Determinations Issued Under the Davis-Bacon and Related Acts.
 14. New Jersey Department of Labor Prevailing Wage Rate Determination.
 15. New Jersey Department of Transportation Code of Ethics for Vendors.
 16. Subsection 107.04 as amended or supplemented.
 17. Subsection 106.10 as amended or supplemented.
 18. The Contract Assurance found in Subsection 107.03, as amended or supplemented.

b. Wholly State Funded Projects. When subcontracting work on a wholly State funded project, physically incorporate the following in the subcontract agreement, and inform subcontractors of their requirement to physically incorporate the information in lower tier subcontract agreements.

1. Small Business Enterprise Utilization on Wholly State Funded Projects (State Funded Project Attachment 1).
2. State of New Jersey Equal Employment Opportunity Special Provisions for Wholly State Funded Projects (State Funded Project Attachment 2).
3. Requirements for Affirmative Action to Ensure Equal Employment Opportunity on Wholly State Funded Projects (State Funded Project Attachment 3)
4. Investigating, Reporting and Resolving Employment Discrimination and Sexual Harassment Complaints on Wholly State Funded Projects (State Funded Project Attachment 4)
5. Payroll Requirements for Wholly State Funded Projects (State Funded Project Attachment 5).
6. Americans with Disabilities Act Requirements for Wholly State Funded Projects (State Funded Project Attachment 6).
7. New Jersey Department of Labor Prevailing Wage Rate Determination.
8. New Jersey Department of Transportation Code of Ethics for Vendors.
9. Subsection 107.04 as amended or supplemented.
10. The Standard Title VI Assurance found in Subsection 107.02, as amended or supplemented.

109.05 ESTIMATES

THE ENTIRE SUBSECTION IS CHANGED TO:

The Department will make monthly payments to the Contractor for work performed and for materials delivered, as specified in 109.06. The RE will calculate the payment in an Estimate consistent with the provisions of the Contract. If not otherwise described in the Contract, the RE will be the sole judge of the amount of progress payment due for partially completed work. The quantities provided in the Estimate may be approximations and may not be based on as-built quantity measurements. The Department will establish the date of the month that the Estimate is processed.

Pay subcontractors and suppliers for satisfactory performance of their work no later than 10 days from receipt of each payment made by the Department.

Pay subcontractors and suppliers the full amount of retainage no later than 10 days from receipt of payment made by the Department for the subcontractor's or supplier's work.

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

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

If the certification indicates that the Contractor has withheld or will withhold payment from a subcontractor or supplier, provide written notice, according to N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, of such non-payment to the subcontractor or supplier. Provide a copy of the notice to the Department and to the Surety that holds the performance bond. Include the reason for withholding payment and state the amount of payment withheld in the notice.

The date that the Department receives the certification will initiate the 20-day approval period under N.J.S.A. 2A:30A-1, *et seq.* The Department will not accept the certification before being requested by the RE.

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

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

If no valid basis exists for withholding payment, N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41 authorize any subcontractor or supplier from whom payment is withheld to receive from the Contractor, in addition to any amount due, interest at a rate equal to the prime rate plus one percent if the subcontractor or supplier is not paid within 10 days after receipt by the Contractor of payment by the Department for completed work that is the subject of a subcontract or a material supply agreement. This interest begins to accrue on the tenth day after receipt of payment by the Contractor.

If court action is taken by a subcontractor or supplier to collect payments withheld by a Contractor and it is determined that a valid basis existed for the withholding of those payments, the subcontractor or supplier shall be liable for any court costs incurred by the Contractor in connection with the action.

The Department will not make payment for an Estimate having a value less than \$5000, unless it is for the Final Certificate.

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

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

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INCLUDE THE FOLLOWING FOR WHOLLY LANDSCAPE PROJECTS

SME CONTACT – LANDSCAPE ARCHITECTURE

THE THIRTEENTH PARAGRAPH IS CHANGED TO:

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

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The RE has the right to not process an Estimate when, in the judgment of the RE, the Work is not performed or proceeding as specified in the Contract or following the Department giving the Contractor and Surety notice of default as specified in 108.14.

The Department's processing or payment of an Estimate is not an approval of defective or improper work. The Department, upon determining that any payment under a previous Estimate was improper or unwarranted for any reason, has the right to recover erroneous payment from the Contractor.

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:

Approved By:



Paul F. Schneider
Director
Capital Program Support



Snehal Patel, P.E., PMP
Assistant Commissioner
Capital Program Management
and State Transportation Engineer