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September 27, 2017

NOTICE TO OFFERORS

Conowingo Capacity Recovery & Innovative Reuse & Beneficial Use Pilot Project RFP MES HEADQUARTERS

PROJECT ID No. 1-18-3-21-8

Addendum No. 2

REVISED PROPOSAL DUE DATE: November 7, 2017

PROPOSAL DUE TIME: 2:00 PM

TO ALL PROSPECTIVE OFFERORS:

Please find responses to questions from potential offerors. Also attached are the power point presentation from the Pre-Proposal Conference and the Sign-In Sheet. The prospective offerors shall acknowledge on the Bid/Proposal Affidavit the receipt of Addendum No.2. This addendum is hereby made a part of the Contract Documents of which the contract will be based and is issued to modify, explain, and/or correct the original Contract Documents. All offerors shall include any cost impact in their proposal.

ITEM 1: EXTENSION OF BID DUE DATE

The deadline for receipt of responses to this solicitation has been extended from **October 5, 2017** until **November 7, 2017 at 2:00 PM.**

The new deadline for questions to be received by the procurement is **October 24, 2017 at 1:00 PM.**

ITEM 2: QUESTIONS FROM POTENTIAL OFFERORS

Q1. Will the state provide a list of pre-selected beneficial use projects for offerors to consider, so that they can include accurate scope, budget, and timelines for a beneficial use option that comply with the RFP's timeline?

R1. No. Offerors are to propose end use projects in accordance with the most recent version of the Maryland Department of the Environment (MDE) *Innovative Reuse and Beneficial Use of Dredged Material Guidance Document* (<http://mde.maryland.gov/programs/Marylander/Pages/dredging.aspx>).

Q2. If the state will not provide a list of pre-selected beneficial use projects, will the state split the RFP in to two pilot project RFP's – one that asks for Innovative Reuse proposals and one that asks for Beneficial Use proposals with different request/response criteria for Innovative Reuse and Beneficial Use?

R2. No.

Q3. If two RFP's will not be issued, will the state consider responses to the RFP that propose Beneficial Use projects that do not comply with the RFP schedule?

R3. No.

Q4. Currently the Conowingo Dam project is outlined with an end date of March 1, 2018. While this may be reasonable for finishing dredging operations, this is a tough timeline for innovative reuse of the material. If possible would MES consider extending the end use part of the project past March 1st to allow for material use in construction projects which would not operate during the winter months due to weather constraints?

R4. All dredging work must be completed by the end date of March 1, 2018. The entire project must be completed within 365 calendar days of Notice to Proceed.

Q5. If a bidder is a joint venture, what, if any, joint venture documents does the Owner want submitted as part of the proposal?

R5. The article of Incorporation if joint venture is incorporated or a copy of the Joint Venture Agreement.

Q6. We requests that the RFP due date be postponed until all permits have been issued for the project and a staging/processing area has been secured for this project. Based on the RFP date, time required to obtain samples and develop a proposed method, and the lack of permits, it is not practical to develop a complete technical approach for this project. The Contractor cannot be expected to provide a detailed and cost-effective proposal without the information contained in the permits and the location and condition of the staging/processing area.

R6. The RFP due date has changed to November 7, 2017.

Q7. Once a staging/processing area has been secured for this project, We requests that a site visit be scheduled at least 2 weeks prior to the proposal submittal date to review and evaluate the site and submit questions to the MES. Based on the current status of permits

and site acquisition, the March 1, 2018 completion date for dredging operations is unrealistic. This also contradicts the contract completion time of 365 days. We request that this completion date be extended

- R7.** A site visit will be scheduled if allowed by the project timeline. Updates on the status of a site visit will be communicated to the Offerors. There is no change to the project schedule of 365 days after the Notice to Proceed.
- Q8.** A specific date can be determined once the permits for the project are received and the staging/processing area is secured. The revised completion date should also take into account environmental windows during which it is likely that work may not be able to be performed. Based on the current schedule, status of permits and the unsecured staging/processing area, it is likely that hydraulic dredging with integrated dewatering would be required in winter months. The requirement to work/operate in winter/inclement weather for dredging operations should be removed. Hydraulic dredging and integrated dewatering in winter months is not practical, safe nor cost effective and will not assist in developing scaled-up plans which is one of the major goals of this project. For the health and safety of the Contractor's work force and to provide for a more cost-effective work plan, the winter operations requirement should be removed.
- R8.** The current project schedule requires all dredging be completed by March 1, 2018 due to the expected permitting constraints related to time of year restrictions in the Susquehanna River through spring.
- Q9.** As was brought up at the pre-bid conference, would MES consider a two-step procurement process for this solicitation? The first step could be a technical pre-qualification based on technical factors as designated in the existing RFP. Many of the outstanding unknowns such as dredging area and staging area and permits would not affect the timing of this part of the process and it could proceed as scheduled. The second step could be a very short (1-2 week) low price bid by successful pre-qualified bidders only, after important factors have been established such as dredging area, staging area and permits. This would serve to make the process a more even playing field, would be far more efficient, and should grant MES the best value overall.
- R9.** No, the Procurement Method for this RFP is Competitive Sealed Proposal.
- Q10.** The Specifications provided in the RFP are labeled "Draft – Not for Construction." Will you be issuing final Specifications prior to the Bid Date? If not, will a contract change order be allowed for any change to the Specifications after bid/award?
- R10.** The dredging area as shown in the RFP documents will be replaced with a new dredging area that will be provided in additional addenda.

Q11. The Special Provisions (SP-1.0 GENERAL) and Section 1.1.5 – General Information of the RFP both state:

*“All Potential Offerors, contractors, and subcontractors are strictly prohibited from performing any site visits, sampling or investigations in the proposed dredging area or any areas in the Conowingo Pond until notified by the Service. The dredging area as shown on the Contractor Drawings **will change**. There are underwater hazards that have not yet been fully identified. The Service is actively working to finalize the dredging location for the Conowingo Pilot Project and **will notify potential Offerors the final location and permit access as needed for the purposes of developing proposals**; until that time no access is permitted.”<emphasis added>*

It is important that MES provide the actual dredging location and the available dates and process to allow for sampling of sediment well in advance of the bid to allow time for bid preparation. Please advise.

R11. The dredging location has not yet been identified. When the location is identified, Offerors will be notified and can then plan for examination of the area.

Q12. Section 1.1.6 – General Information of the RFP states:

*“The potential staging area described in this RFP and shown on the attached drawings is solely for the purpose of describing the work to be conducted in the staging area, once a final staging area has been identified by MES. Unless otherwise notified by MES, **offerors should not assume** that the staging area described herein will ultimately be selected by MES as the staging area for the project. MES may, in its sole discretion, designate an alternative property to be used for the staging area.”*
<emphasis added>

It is important that MES provide the actual staging location well in advance of the bid to allow time for proper bid preparation, as the location affect various components of pricing. Otherwise bidders may assume different things, providing and uneven playing field. Please advise.

R12. The actual staging location has not yet been identified. When the location is identified, Offerors will be notified and can then plan for examination of the area.

Q13. Please advise whether the MES holds any effective Section 404 dredging permits or PADEP or MDE WQCs for the project. Please provide copies as such have not been provided with the Bid Documents

R13. No, MES does not hold any project-related permits at this time. Offerors will be notified as permits are acquired.

Q14. Section 2.2A – Scope of Work of the RFP states:

“The Contractor shall be provided with a staging area within proximity to the dredging site. The potential staging area is still to be determined and will be located in an area that is within feasible pipeline distance.”

Please define in numeric terms a “feasible pipeline distance.” If the chosen location causes the distance to differ, will the contractor be entitled to a change order?

R14. In numeric terms, a “feasible pipeline distance” would be a maximum of ten (10) miles from the dredging site to the staging location. See R11.

Q15. Section 4.1.1 – Evaluation Committee, Evaluation Criteria - A. Methodology of the RFP states:

“Offeror’s proposal including best practice methods and outline for accomplishing the scope of work contained herein. Higher consideration will be given based on demonstrated potential scalability, project feasibility, and innovation for the proposed IR/BU end use.”

The RFP, however, only requires that an offeror’s “proposed end use(s) applications must be performed in the State of Maryland and adhere to the guidelines described in the most recent version of the Maryland Department of the Environment (MDE) *Innovative Reuse and Beneficial Use of Dredged Material Guidance Document*.” What factor(s) will be used to determine a score or “higher consideration” for the proposed end use? How will innovation be scored? This seems to be very subjective, as something proven and fully commercial elsewhere could still be “innovative” in Maryland, since it may have not yet been accomplished in Maryland. Please provide some clarification.

R15. Points will be assigned at the discretion of the evaluation committee based upon the evaluation criteria and information provided in the proposals.

Q16. “Scalability” is based on technical and economic factors, neither of which are provided in the RFP. Please provide goals/metrics for scalability including cubic yards per hour/day/year and cost in dollars per cubic yard.

R16. See R15.

Q17. Section 4.1.1 – Evaluation Committee, Evaluation Criteria - G. Pricing of the RFP indicates that a total of 20 points are available. No metrics are provided for scoring this criteria. Please provide.

For example, will MES use a ranking of pricing for prospective qualified offerors, such as Lowest price = 20 points, 2nd lowest price = 15 points, 3rd lowest = 10 points 4th lowest = 5 points, 5th lowest and below (if below the engineers estimate) = 3 points? Or will pricing be graded by an alternate criteria/metric. Please discuss.

R17. For price ranking, the lower price receives a higher score.

Q18. Please confirm whether the PRPA holds any effective PADEP or NJDEP WQCs for Pier The Special Provisions (SP-1.0 GENERAL) and Section 1.1.5 – General Information of the RFP both state 122 South, South Berth. Please provide copies as such have not been provided with the revised Bid Documents.

R18. Question is not applicable to this RFP.

Q19. In consideration of the above, and in particular the responsibility of the bidder to obtain a and/or modify permits for its proposed approach, we respectfully request the bid due date be extended two weeks to allow for a complete understanding of the responses to these questions and the potential impact on IR/BU disposal alternatives and schedule.

R19. See R6.

Q20. We respectfully request that an extension of time be granted for the proposal submission that represents five (5) weeks from the time of site selection to facilitate sampling, sample testing for polymer selection, and organic and inorganic characterization of the particular sample.

R20. See R6.

- Q21.** Will there be a Whole Effluent Toxicity (WET) requirement for the discharged water from the dewatering pilot?
- R21.** Toxicity testing is not anticipated to be a requirement for managing water discharges at this time, but final water testing and monitoring requirements for dredging and the staging area will be identified through regulatory coordination prior to the initiation of the project. Any water testing requirements to support the final beneficial use or innovative reuse are the responsibility of the contractor and must be completed within the 1-year timeframe to complete construction.
- Q22.** If there is a WET requirement (reference #2 above), an additional time period will be needed to perform and bio assay analyses.
- R22.** See R21. and R6.
- Q23.** Who is responsible for the cost of any bio assay's of the potentially impacted water ways?
- R23.** Bioassay testing of the potentially impacted waterways is not anticipated to be a requirement at this time. If bioassay testing is required via regulatory coordination at any time over the duration of the project, the Offeror would be responsible for the costs associated with toxicity testing.
- Q24.** The area to be dredged and the properties of those sediments are hyper critical to our cost (dredging production, processing, end use applications, etc.). Since an area is yet to be identified, we request an extension of at least 2 week beyond when this information is provided to bidders.
- R24.** See R6, R10 and R11.
- Q25.** Please detail the equation or process for how the 20 points for cost will be assigned.
- R25.** See R17.
- Q26.** Please detail how scalability and value of end us will be scored. For example, a coastal wetland application may cost more than a commercial application, but the value against storm surge and coastal protection has an intrinsic value.
- R26.** See R15.

Q27. Does the implementation of the end-use application need to be implemented within the 365 day contract window? Some applications may require longer permitting timelines.

R27. Yes.

Q28. Does this job require union or prevailing wage?

R28. Yes, wage rates provided with the original solicitation documents.

Q29. Has the site visit date and time been set yet for the referenced project?

R29. No, not at this time.

Q30. The general conditions could not be located in the bid package. Article VI of the draft contract agreement incorporates the “State of Maryland, Maryland Environmental Service, General Conditions of the Contract between Owner and Contractor, dated July, 2016”. We also couldn’t find this document on the agency’s website. Can you direct as to where this document may be found online or include in an addendum?

R30. The sample contract is an MES Standard Contract with reference to the General Conditions. The General Conditions are attached to this addendum.

Hattie M. Crosby, Assistant Chief of Procurement and Contracts

END ADDENDUM No. 2

**STATE OF MARYLAND
MARYLAND ENVIRONMENTAL SERVICE
GENERAL CONDITIONS OF THE CONTRACT BETWEEN
OWNER AND CONTRACTOR**

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SECTION 1 - DEFINITIONS AND RESPONSIBILITIES:

1.01 DEFINITIONS:

For the purposes of this Contract and the Contract Documents, the following words and terms shall have the meaning set forth below; however, words and terms describing material or work that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract, shall be construed in accordance with such well-known meanings generally recognized by contractors, engineers, and trades.

- A. "Addenda" - shall mean written forms of clarification amending or interpreting the Contract Documents issued by the Engineer or the Service prior to the receipt of Bids.
- B. "Approved Equal" - Those supplies or services, or compatible items of construction whose quality, design or performance characteristics are functionally equal or superior to an item specified and have been authorized by the Owner for use in the execution of the Contract.
- C. "The Bid" - The Bid submitted by the Contractor for the Work setting forth the Lump Sum Cost of each division or combination of divisions of the Work, the alternates (if any) and the Unit Prices (if any) as called for.
- D. "Change Order" - A written order signed by the Director of the Service, directing a Contractor to make changes which the changes clause of the Contract authorizes the Director to order, with or without the consent of the Contractor.
- E. "Construction Agreement" or "Contract" - The written agreement executed between the Service and the successful Bidder, covering the performance of the Work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the Service is obligated to compensate the Contractor therefore at the mutually established and accepted rate or price. The Contract shall include the Bid, Contract Forms and Bonds, General Conditions, Instructions to Bidders, Specifications, Addenda, Supplemental Specifications, all special provisions, all technical provisions, all Plans and Notice to Proceed, and any written Change Orders and Supplemental Agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof. (Said Documents are sometimes referred to as the "Contract Documents").
- F. "Contract Time and Completion Date" - The number of working or calendar days shown in the Construction Agreement indicating the time allowed for the completion of the Work contemplated in the Contract. In case a calendar date of completion is shown in the Construction Agreement, in lieu of the number of working or calendar days, such work shall be completed on or before that date.
- G. "The Contractor" - The person or organization having a direct contractual relation with the Service for the execution of the Work. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

- H. "Critical Path Method (CPM)" - A scheduling/management tool recognizing a network of work elements or activities and a critical path for completion of a construction project.
- I. "Day" - means calendar day unless otherwise designated.
- J. "The Director" - shall mean the Director of the Service.
- K. "The Engineer" - A person registered in the State of Maryland to practice engineering and commissioned by the Service to prepare the Contract Documents for the designated project. Should no independent Engineer have been so commissioned to prepare the Contract Documents, supervise the construction, or should the Engineer no longer be retained in a supervisory capacity by the Service, then the person designated by the Director of the Service shall be the agent referred to by the term "Engineer." Whenever the Contract Documents are prepared by a registered architect in independent practice, and no Engineer is employed, all reference to the Engineer shall be construed to refer to the architect.
- L. "Inspector" - A representative of the Service assigned to review on-site construction activities for the Service in accordance with Sections 4.06 and 4.07.
- M. "Notice to Proceed" - A written notice to the Contractor of the date on which the Contractor shall begin the prosecution of the Work to be done under the Contract. Unless otherwise expressly stated by the Service, the Contract time shall begin to run from the starting date established in the Notice to Proceed.
- N. "Owner" - Any individual, corporation, partnership, limited partnership, joint venture, association, joint-stock company or unincorporated organization, limited liability corporation, governmental unit, agency, or political subdivision which owns fee title to the property under which the project will be contracted, unless otherwise identified by the Service.
- O. "Payment Bond" - The security in the form approved by the Service and executed by the Contractor and the Contractor's surety, and paid for by the Contractor, as a guarantee that the Contractor will pay in full all of its bills and accounts for materials and labor used in the construction of the Work, as provided by law.
- P. "Performance Bond" - The security in the form approved by the Service and executed by the Contractor and the Contractor's surety, and paid for by the Contractor, guaranteeing complete performance of the Contract.
- Q. "Plans" or "Drawings" - The official drawings issued by the Service as part of the Contract Documents, including those incorporated in the Contract Documents by reference.
- R. "Procurement Officer" - (1) the Director; and (2) any person authorized by the Director to formulate, enter into, or administer the Contract, or to make written determinations with respect to the Contract.
- S. "Repair" - Where used in these Contract Documents, repair shall be taken to mean to restore after injury, deterioration, or wear; to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable; or to bring into conformity with the Contract requirements. Upon completion of such

repair it must be, unless otherwise stated, rendered to such conditions as to present a first class finish, to be applied without extra cost to the Service. When the word "Repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient, ready for the normal use for which it was originally intended.

- T. "The Service" - The Maryland Environmental Service.
- U. "Subcontractor" - Except as is otherwise provided herein, "subcontractor" means an entity having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the Plans and specifications for the Work.
- V. "Supplemental Agreement" - A written agreement covering added or changed work which is beyond the scope of the Contract and the changes clause. A Supplemental Agreement becomes a part of the Contract when approved and properly executed by all parties to the Contract.
- W. "Surety" - The corporate body bound with and for the Contractor, for the full and complete performance of the Contract, and for the payment of all debts pertaining to the Work.
- X. "Work" - Work shall mean the furnishing of all labor, materials, equipment, services, utilities and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.
- Y. "Written Notice" - shall be deemed to have been duly served if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is directed, or if delivered to or sent by regular or certified mail or by facsimile transmission to the last business address known to the Service. Written Notice shall be deemed to be given to the Service upon actual receipt of written notice.

1.02 CONTRACTOR'S RESPONSIBILITIES:

- A. The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for (1) all construction means, methods, techniques, sequences, and procedures; (2) coordinating all portions of the Work under the Contract; and (3) to the extent the Contractor or its subcontractors or suppliers at any tier are required to design any portion of the Work, for design. The Contractor must aggressively and diligently pursue completion of the Contract within the Contract Time.
- B. The Contractor shall be responsible to the Service for the acts and omissions of its employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a Contract with the Contractor.
- C. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer in the Engineer's administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the Contractor.
- D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

E. Cutting and Patching of Work.

- (1) The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.
- (2) The Contractor shall not damage or endanger any portion of the Work or the Work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor its consent to cutting or otherwise altering the Work.

F. The Contractor shall perform all Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the Contract Documents, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the Contract Documents.

G. Indemnification.

- (1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Service, the Owner, and the Engineer and their representatives and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (b) is caused in whole or in part by any failure by the Contractor or its subcontractors or suppliers at any tier to perform any requirement of the Contract or by any negligent or willful act, or omission of the Contractor or its subcontractors or suppliers at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this subsection.
- (2) In any and all claims against the Service or the Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (3) The obligations of the Contractor under this paragraph shall not extend to the liability of the Engineer, its agents or employees, arising out of (a) the preparation or approval of maps, Drawings, opinions, reports, surveys,

Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

- (4) The Contractor's responsibilities hereunder are not to be deemed as a waiver of any immunity which may exist in any action against the Service or the Owner.

SECTION 2 - CONTRACT DOCUMENTS - SHOP DRAWINGS:

2.01 CONTRACT DOCUMENTS:

- A. The Contract Documents are complementary. That which is called for by any one shall be as binding as if called for by all.
 - (1) Intent of the Documents is to include all Work necessary for proper completion of the Project ready for continual efficient operation. It is not intended, however, to include any Work not properly inferable.
 - (2) **Clarification.** The Contractor shall obtain clarification of all questions which may have arisen as to intent of the Contract Documents, or any actual conflict between two or more items in the Contract Documents. Should the Contractor fail to obtain such clarification, then the Service or the Engineer may direct that the Work proceed by any method indicated, specified or required by the Contract Documents in the interest of maintaining the best construction practice. Such direction by the Service or the Engineer shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his Bid to the Service and therefore agrees that he is not entitled to claim extra costs as a result of such clarification.
 - (3) **Jargon.** Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.
 - (4) **Identification.** The Contract Documents shall be signed in duplicate by the Service and the Contractor.
 - (5) **Precedence.** In the case of conflict between the specifications and the Drawings, the specifications will control.
- B. **Drawings.** The Contractor shall do no Work without proper Drawings and/or instructions. Drawings are in general drawn to scale, and symbols are used to indicate materials and structural and mechanical requirements. When symbols are used those parts of the Drawings are of necessity diagrammatic, and it is not possible to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, duct work and conduit and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments, at no increased cost to the Service.
 - (1) **Copies Furnished.** The Service will furnish the Contractor without cost, 3 copies of the Drawings (the same which were supplied for bidding purposes)

to the Contractor. Additional copies may be obtained by the Contractor upon payment of the cost of reproduction of the Drawings.

- (2) **Copies at the Site.** The Contractor shall keep in the job site office a complete set of all Drawings, specifications, Shop Drawings, schedules, etc., in good order and available upon request, to the Engineer, and/or other representatives of the Service.
 - (3) **Ownership.** All Drawings remain the property of the Service. They must not be used by the Contractor on other work and they shall be returned to the Service if requested upon completion of the Work.
- C. **Dimensions.** The Contractor shall carefully check all dimensions prior to execution of the particular Work. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Service or the Engineer prior to any construction or demolition. Should any dimensions be missing, the Engineer will be consulted and supply them prior to execution of the Work. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may be in conflict therewith. Whenever a stock size manufactured item or piece of equipment is specified by its normal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra cost will be allowed by reason of Work requiring adjustments in order to accommodate the particular item of equipment.
- D. Whenever new Work, building, additions or portions thereof are not accurately located by plan dimensions, the Service or the Engineer will supply exact position prior to execution of the Work.

2.02 SHOP DRAWINGS:

- A. After complying with applicable procedures specified in the Contract Documents, the Contractor shall submit, for the Service's or Engineer's review, at or before such time as is specified in the Contractor's schedule approved by the Service, Shop Drawings and other submittals required by the Service or the Engineer for the Work, which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the Contract Documents with respect to review of such submissions. The data on each Shop Drawing or submittal must be accurate and complete with respect to quantities, dimensions, specified performance and/or other design criteria, materials and similar data to enable the Service or the Engineer to review the information as required. These documents shall be prepared by the Contractor in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- B. All Shop Drawings must show the name of the Project and the Service's Contract number.
- C. **Size of Drawings.** All Shop Drawings and details submitted to the Service or Engineer for approval shall be printed on sheets of the same size as the Contract Drawings prepared by the Engineer. When a standard of a fabricator is of such size to print more than one Drawing on a sheet of the size of the Engineer's Drawings,

this is acceptable. Sheets larger than the Engineer's Drawings will not be accepted except when specifically permitted by the Service prior to submittal. Shop detail supplied on a sheet of letter size 8-1/2" x 11" is acceptable for schedules and small details.

- D. **Items for which Shop Drawings will be required.** Shop Drawings shall be required for all items which are specifically fabricated for the Work or when the assembly of several items is required for a working unit. Shop Drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware, concrete mix, paving materials, mechanical equipment, electrical equipment, electronics and computers, and all heating, ventilating, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc. Storage and maintenance instructions shall be submitted as required by these General Conditions.
- E. **Copies Required.** Contractor shall supply two copies for the Engineer and two copies for the Service, in addition to such copies as the Contractor may desire to be returned for its own use.
- F. **Review.** The Service or Engineer, with reasonable promptness, will examine Shop Drawings for general conformance with the Contract Documents, noting desired corrections, rejecting them, or indicating that no exceptions are taken. Review of Shop Drawings by the Service or Engineer shall not relieve the Contractor of its obligation to fully comply with all provisions of the Contract Documents.
- G. **Field Dimensions and Conditions.** The Contractor, not the Service or the Engineer, is solely responsible for checking dimensions and existing conditions in the field. See also Section 3.04.
- H. **Resubmission.** When the Engineer or the Service notes desired corrections, or rejects the Drawings, the Contractor shall promptly resubmit the Drawings with corrective changes.
- I. **Contractor's Responsibility.** Unless the Contractor has, in writing, expressly notified the Service and the Engineer to the contrary at the time of the submission, the Service and the Engineer shall consider the shop drawings and other submittals from the Contractor to be in conformity with the Contract Documents and not to involve any change in the Contract price, or any change which will alter the space within the structure, or alter the nature of the Work from that contemplated by the Contract Documents. The Contractor shall be responsible for the completeness and conformance to the Contract Documents of its Subcontractor's Shop Drawings prior to its submittal to the Engineer or the Service.
- J. **Engineer's or Service's Notations.** Should the Contractor consider any rejection, exception, or notation made by the Service or the Engineer on the Shop Drawings to cause an increase in the cost of the Work from that required by the Contract Documents, then the Contractor shall desist from further action relative to the item in question and shall notify the Service and the Engineer in writing, within five days after receiving the reviewed Shop Drawing of the additional cost involved. No work shall be executed until the entire matter is clarified and the Contractor is ordered by the Service to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should

the Engineer's or Service's notation or change involve less work than is covered by the Contract Documents, the Contractor shall allow the Service an equitable credit resulting from the change in the Work. A change made to a Shop Drawing or other submittal shall not modify the requirements of the Contract Documents, unless such change is incorporated into the Contract by an approved Change Order.

2.03 COST AND PRICE CERTIFICATION:

- A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specific date prior to the conclusion of any price discussions or negotiations for:
- (1) a negotiated Contract, if the total Contract price is expected to exceed \$100,000, or smaller amount set by the Procurement Officer, or
 - (2) a Change Order or Contract modification, expected to exceed \$100,000, or smaller amount set by the Procurement Officer.
- B. The price under this Contract and any Change Order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon by the parties, was inaccurate, incomplete, or not current.

SECTION 3 - SCOPE OF THE WORK:

3.01 INTENT OF THE CONTRACT DOCUMENTS:

It is the intent of the Contract Documents to show all of the Work necessary to complete the project.

3.02 GENERAL CONDITIONS CONTROLLING:

In event of a conflict between these General Conditions and any other provision of the Contract Documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary; provided, however, that nothing in the bid, proposal, or other submissions from the Contractor shall prevail over any provision of any document prepared by the Service unless expressly agreed by the Procurement Officer in writing.

3.03 DIFFERING SITE CONDITIONS:

- A. The Contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract. The Procurement Officer shall promptly investigate the conditions, and if the Procurement Officer finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in A. above, provided, however, the time prescribed therefore may be extended by the Procurement Officer in writing.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

3.04 SITE INVESTIGATION:

The Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials, including all exploratory work done by the Service, as well as from information presented by the Drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint itself with information made available by the Service may not relieve the Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Service assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Service.

3.05 CONDITIONS AFFECTING THE WORK:

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing the Work without additional expense to the Service. The Service is not responsible for any representation or purported agreement concerning conditions or Contractor requirements made by any Service employee or representatives prior to the execution of this Contract, unless such understanding or representation is expressly stated in the Contract.

3.06 CHANGES IN THE WORK:

A. Changes

- (1) The Procurement Officer, or the Procurement Officer's designee may, at any time, without notice to the Sureties, if any, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
 - (a) In the specifications (including Drawings and designs);
 - (b) In the method or manner of performance of the Work;
 - (c) In the Service-furnished facilities, equipment, materials, services or site; or
 - (d) Directing acceleration in the performance of the Work.

(2) Any other written order or an oral order, including a direction, instruction, interpretation or determination from the Procurement Officer that causes any such change, shall be treated as a Change Order under this clause, provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a Change Order within 5 days of receipt of the written order from the Service.

(3) Except as herein provided, no order, statement, or conduct of the Service shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(4) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under A(2), above, shall be allowed for any costs incurred more than 5 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the Service is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(5) If the Contractor intends to assert a claim for an equitable adjustment under this Section 3.06, the Contractor shall, within 30 days after receipt of a written order under A(1), above, or the furnishing of written notice under A(2), above, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is expressly extended by the Procurement Officer. The statement of claim hereunder may be included in the notice under A(2) above.

(6) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

B. Miscellaneous

(1) In the event of a dispute between the Service and the Contractor as to whether any Work is included in the scope of the Contract such that the Contractor would be obligated to provide that Work at no additional cost to the Service, the Procurement Officer may order the Contractor under this Section 3.06 to perform the Work (a "Work Order"). If the Contractor considers such an order to be a change in the scope of the Contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide the notice required by this section and initiate a claim therefor in accordance with Contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as a "Change Order," does not necessarily constitute a change in the scope of the Contract or in the Work required under the Contract. The Contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the Contract otherwise requires the Contractor to perform as stated in the order.

(2) A request by the Contractor for additional time or additional costs caused by the impact of an order of the Procurement Officer on the as-built

critical path for completion must be accompanied by (a) a reasonably detailed description of the effect of the order on the adjusted as-planned/as-built critical path and (b) supporting documentation. The mere existence of a Change Order does not entitle Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. Contractor's entitlement thereto shall depend upon the effect of the Change Order on the adjusted as-planned/as-built critical path for completion, even if a schedule other than a CPM schedule is used on the project, and shall be subject to the requirements of Section 7.06. A Change Order granting a time extension may provide (a) that the Contract completion date will be extended only for specific critical activities, (b) that the remaining Contract completion date(s) for all other portions of the Work will not be altered, and (c) for an equitable adjustment of liquidated damages under the new required completion dates.

(3) Upon receipt of a signed written order of the Procurement Officer under this Section 3.06, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor signs or accepts the Change Order. Failure to comply with the order in a timely manner shall constitute a breach of the Contract and grounds for termination for default or any other remedy available to the Service.

(4) The Service may issue a unilateral order on the Service's terms (including a promise to pay the Contractor a "not to exceed" ("NTE" amount) which the Contractor may then dispute in accordance with Sections 3.06A and 6.12. Pending resolution of such dispute, Contractor must proceed diligently with performance of the Contract as ordered by the Procurement Officer.

(5) The terms "not to exceed" and "NTE" when used in a Change Order mean that the amount of the Change Order (whether an increase or a decrease in the Contract amount) will be a reasonable amount not to exceed the amount stated.

3.07 MODIFICATION OF CONTRACT PRICE:

When changes in the Work require modification of the Contract Price, such modification shall be accomplished in accordance with the requirements of Section 3.06 and the following requirements:

- A. The Contractor shall promptly submit in duplicate to the Service and to the Engineer a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
- B. For all changes in the Work to be performed by a Subcontractor, the Contractor shall promptly furnish the Subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the Subcontractor authorized to act for the Subcontractor. If requested by the Service or the Engineer, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.

C. Modification of the Contract Price, when required, shall be determined as follows:

- (1) When applicable unit prices are stated in the Contract or have been subsequently agreed upon, by application of such unit prices.
- (2) A Lump Sum Price agreed upon by both the Service and Contractor.
- (3) If job conditions, or the extent or nature of the change, or failure of the Service and the Contractor to agree upon a lump sum price or application of unit prices, prevent the Service and the Contractor from determining the cost of any proposed change, then the Work shall be done on the basis of a Force Account as hereinafter stated under Section 8.02 FORCE ACCOUNT WORK, if so ordered by the Service.
- (4) If the change involves a credit to the Service, unless the amount must be determined by application of unit prices, then the amount of the credit shall be the greater of (a) the alternate or other itemized price for such work stated in the Contractor's bid, or (b) a reasonable price, including overhead and profit.
- (5) If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the Work.
- (6) The mark-up allowable to the contractor for combined overhead and profit for work performed solely by the contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the contractor's costs (excluding items includable in overhead).
- (7)
 - (a) The markup allowable to a Subcontractor for overhead and profit performed solely by its own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.
 - (b) For work performed solely by a Subcontractor with its own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.
- (8) On all changes in the Work defined in Section 3.06, no Contractor or Subcontractor will be allowed any expenses, overhead or profit for employment of another Contractor to perform Work for it.
- (9) The cost for foremen and superintendents may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic Contract.
- (10) The Contractor shall be allowed the actual, reasonable additional cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the Work required on the change, but no percentages shall be added to this cost.

- (11) If the Contractor and the Service cannot agree on the extent to which the Contract Time shall be increased for extra Work, or the extent to which the Contract Time shall be reduced for Work omitted by the Service, the increase or decrease to the Contract Time, as the case may be, shall be in the same proportion to the original Contract Time as the cost of additional or omitted Work is to the original Contract price, including overhead and profit.
 - (12) No order for change at any time or place shall in any manner, or to any extent, relieve the Contractor of any of the Contractor's obligations under the Contract.
 - (13) The Engineer, with the written approval of the Procurement Officer, shall have authority to make minor changes in the Work not involving extra cost, and not inconsistent with the purposes of the Work. Otherwise, except in any emergency endangering life or property, no extra Work or changes to the Work shall be done unless authorized by the Service prior to any such Work or changes to the Work being done. No claim for addition to the Contract sum or time of completion shall be valued unless so ordered.
- D. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following kinds:
- Job supervision and field office expense required by the Contract, expenses for timekeepers, clerks and watchmen, and insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, rental use of small tools, and rental cost of small trucks generally used for transporting either workmen, materials, tools or equipment to job location, and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly established principal office, branch office or similar facilities.
- E. Contractor's entitlement to compensation or additional time for delays for which the Service is solely responsible or for which an extension is due the Contractor is also subject to Sections 3.06 and 7.06.
- F. No allowance shall be made to the Contractor for loss of anticipated profits on account of changes in the Work.
- G. Execution of a written Change Order by the Contractor, or failure of the Contractor to dispute the terms of a written order of the Procurement Officer strictly in accordance with Contract requirements, shall be binding and conclusive and shall operate as an accord and satisfaction as to (a) all compensation payable to Contractor for the Work associated with the Change Order, and (b) Contractor's right to an extension of the Contract completion time. Contractor may not execute or accept a Change Order subject to any conditions or reservations of rights or claims which have not been agreed to in writing by the Procurement Officer. Any attempt by the Contractor to impose such conditions or reservations shall not be binding on the Service. Contractor's sole remedy for disputing the terms of an order by the Procurement Officer or for making a claim therefore is to follow strictly the procedures stated in this Section 3.07 and Sections 3.06 and 6.12.

- H. Whenever the Contractor is entitled to an increase in the Contract price, the amount of the increase shall not include any amounts for increased costs or premiums of bonds unless: (1) the Service requires an increase in the amount of the penal sum of the bond or bonds, (2) the Contractor actually incurs such cost, (3) the Surety actually increases the penal sum of the bonds, and (4) the Service receives proof in satisfactory form that the Surety has increased the penal sum of the bonds.

3.08 UNAUTHORIZED WORK:

The Contractor shall not be paid for any work outside of the scope of the Contract not authorized in writing by the Procurement Officer.

SECTION 4 - CONTROL OF THE WORK:

4.01 AUTHORITY OF THE ENGINEER:

- A. Under the direction of the Service, the Engineer shall be the initial interpreter of the Contract Documents. The Engineer will furnish with reasonable promptness such clarifications as may be deemed necessary for the proper execution of the Work; such clarifications to be consistent with the intent of the Contract Documents. The Engineer is the agent of the Service only to the extent provided in the Contract Documents and when in special instances the Engineer is authorized by the Service so to act, the Engineer has authority to stop Work whenever such stoppage may be necessary to insure the proper execution of the Contract.
- B. In the event the services of the Engineer are terminated by the Service, the Service shall appoint a capable and reputable Engineer whose authority under the Contract shall be that of the former Engineer; or at its own discretion the Service may assume the role of the Engineer.
- C. Except as otherwise provided in the Contract Documents, all the Engineer's decisions are subject to approval by the Service.

4.02 CONFORMITY WITH CONTRACT REQUIREMENTS:

- A. All Work performed, all construction methods, and all materials furnished shall be in conformity with the Contract requirements.
- B. In the event the Engineer or Service finds the materials, or the finished product in which the materials are used, or the Work performed, are not in complete conformity with the Contract requirements and have resulted in an inferior or unsatisfactory product, the Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.
- C. In the event the Engineer or Service finds the materials or the finished product in which the materials are used are not in complete conformity with the Contract requirements, but have resulted in a satisfactory product, the Engineer or the Service shall then make a determination if the Work shall be accepted. In this event, the Engineer or Service will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment in the Contract price.

4.03 ADJACENT WORK:

- A. The Service shall have the right, at any time, to contract for and/or perform other work on, near, over or under the Work covered by this Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit its own work to such other work as may be directed by the Engineer or the Service.
- B. In event of dispute as to cooperation or coordination with adjacent contractors the Service will act as referee and decisions made by the Service will be binding. The Service shall not be liable to the Contractor for damage to the Contractor's work or inconvenience, delay, or loss caused by another Contractor unless the scope of the Contract between the Service and the other Contractor necessarily required the other Contractor to damage or delay the work of the Contractor. The Contractor agrees to make no claims against the Service for any inconvenience, delay or loss experienced because of the presence and operating of other contractors.

4.04 CONTROL BY THE CONTRACTOR:

The Contractor shall constantly maintain efficient supervision of the Work, using its best skill and coordinating ability. The Contractor shall carefully study and compare all Drawings, specifications and other instructions and check them against conditions existing or being constructed on the project. The Contractor shall at once report to the Engineer and the Service any error, inconsistency or omission which the Contractor may discover.

4.05 COOPERATION WITH UTILITIES:

- A. It is understood and agreed that the Contractor has considered in its Bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delay, inconvenience, or damage sustained by the Contractor due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto if required by the Contract Documents, or by other requirements of the utility company.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.
- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.

- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

4.06 AUTHORITY AND DUTIES OF SERVICE INSPECTORS:

- A. Service Inspectors shall be authorized to inspect all Work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter or waive any requirements of the Contract, nor is the Inspector authorized to approve or accept any portion of the complete project. The Inspector is authorized to call to the attention of the Contractor any failure of the Work or materials to conform to the Contract. The Inspector is authorized to reject materials or suspend the Work until any questions at issue can be referred to and decided by the Engineer or Service.
- B. The Inspector shall in no case act as foreman or perform other duties for the Contractor.
- C. Inspections by the Service or the Engineer are for the sole benefit of the Service. Inspections by the Service or the Engineer, or the presence or absence of an Inspector or the Engineer at any inspection, or the failure of the Inspector or the Engineer to report any deviation by the Contractor from Contract requirements shall not: (1) relieve the Contractor of responsibility for adequate quality control measures, compliance with Contract requirements, or damages to or loss of material; (2) constitute or imply acceptance of any Work; or (3) affect the continuing rights of the Service to hold the Contractor responsible for failure to meet Contract requirements.

4.07 INSPECTION OF THE WORK, TESTS:

- A. As used in this section and elsewhere wherever the context calls for it, "inspection" includes testing and or approval of the Work.
- B. All Work, including the fabrication and source of supply, is subject to observation and inspection by the Engineer and the Service, and those agencies required by law to inspect specific items.
- C. The Contractor shall provide facilities for access and inspection as required by the Service.
- D. If the Specifications, the Service's instructions, the laws, regulations, ordinances or any public authority require any Work to be specially tested or approved, the Contractor shall give the Service timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the Service shall be made promptly and where practicable at the source of supply. Any Work covered without approval of the Engineer must, if required by the Engineer or the Service, be uncovered for examination at the Contractor's expense.
- E. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Engineer and the Service timely

notice of its readiness so the Engineer and the Service may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

- F. If the Service determines that any Work requires special inspection, testing, or approval which the Contract Documents do not include, the Service may direct the Contractor to order such special inspection, testing or approval, and the Contractor shall do so. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including any additional compensation paid or payable, and any other costs incurred by the Service. In all other cases, the Service shall bear such costs, and an equitable adjustment will be made.
- G. Required Certificates of Inspection, Certification of Compliance Testing, or Approval shall be obtained by the Contractor and promptly delivered by the Contractor to the Service.

4.08 REMOVAL OF DEFECTIVE WORK:

- A. All Work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, design error or omission by the Contractor or its subcontractors at any tier, or any other cause attributable to the Contractor or its subcontractors at any tier, shall be promptly removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner authorized by the Engineer and the Service.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the Engineer or Service, made under the provisions of this section, the Service shall have authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from any monies due or to become due the Contractor under this Contract.
- D. Any time lost by the Contractor for correction of the Work not in accordance with the Contract shall be made up by the Contractor at its expense.

4.09 MAINTENANCE OF WORK DURING CONSTRUCTION:

- A. The Contractor shall maintain the Work during construction and until Final Acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the Work be kept in satisfactory condition at all times and protected from damage of any kind.
- B. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such waters and such drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been

removed. Such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.

- C. All cost of maintenance work during construction and before Final Acceptance shall be included in the base bid and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's work is halted by the Service or the Engineer under the provisions of the Contract, the Contractor shall maintain the entire project as provided herein, and provide such ingress and egress as reasonably necessary for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contractor has been declared in default.
- E. On projects where traffic flow is maintained, the Contractor shall be responsible for repair and restoration of all traffic damages to the Work, either partially or totally completed, until such time as Final Acceptance of the Work-by the Service.

4.10 FAILURE TO MAINTAIN ENTIRE PROJECT:

Failure on the part of the Contractor, at any time, to comply with the provisions of Section 4.09 may result in the Service notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance **within 24 hours** after receipt of such notice, the Service may immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due to the Contractor.

4.11 SERVICE'S RIGHT TO DO WORK:

If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the Service may make good such deficiencies at the Contractor's expense, terminate the Contract for default under Sections 7.10, or take such other measures as it considers reasonably necessary.

4.12 PROGRESS MEETINGS - SCHEDULING MEETINGS:

A. Progress Meetings

The Contractor and its major Subcontractors shall hold and attend progress meetings with the Service and the Engineer (unless the Engineer's absence is excused by the Service) at the site at least monthly. The Service may require progress meetings to be held more frequently at no additional cost to the Service. Minutes of the progress meetings shall be prepared and circulated by the Engineer, unless otherwise agreed to by the Service.

B. Scheduling Meetings

See Section 7.06T.

SECTION 5 - MATERIALS:

5.01 GENERAL:

- A. All materials shall meet or exceed all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer or Service in writing, as soon as possible after receipt of notification of award of the Contract, of the sources from which the Contractor proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the Work.
- B. Materials include all: equipment; parts; products; methods of construction or of performing the Work which may be the subject of a patent, copyright or other right or restriction governing its use; and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitations as to use, and requirements for connection, setting, maintenance and operation. Whenever an article, material, or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these Specifications shall be interpreted as authorizing any Work in any manner contrary to applicable laws, codes or regulations.
- C. **Approval.** All materials are subject to the Engineer's and the Service's approval as to conformity with the Specifications, quality, design, color, etc. No Work for which approval is necessary shall be used until written approval is given by the Engineer or the Service. Approval of a Subcontractor or supplier as such does not constitute approval of a material which is other than that included in the Specifications. See also Sections 2.02I and 503.
- D. **New Materials.** Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Engineer and the Service.
- E. **Quality.** Unless otherwise specified, all materials shall be of the best quality of the respective kinds.
- F. **Samples.** The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- G. **Proof of Quality.** The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. The Contractor shall pay for any tests or inspections called for in the Specifications and such tests as may be deemed necessary for "substitutions," as set forth in Section 5.03 of these General Conditions.
- H. **Standard Specifications.** When no Specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then:
 - (1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials specification is the applicable specification.
 - (2) For items generally considered as plumbing, and those items requiring plumbing connections, and those items covered by building codes, the

applicable portions of the latest edition of the State plumbing code are the applicable Specifications.

- (3) For items generally considered as heating, refrigerating, air-conditioning or ventilating, the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. are the applicable Specifications.
- (4) For items generally considered as site work, the applicable portions of the Maryland S.H.A. Standard Specifications are the applicable Specifications.
- (5) For items generally considered as electrical, the applicable provisions of the latest edition of the BOCA Code and the National Electric Code are the applicable Specifications.
- (6) For items generally considered as fire protection, the applicable portions of the latest edition of the State Fire Prevention Code and the National Fire Protection Association Code are the applicable Specifications.

5.02 STORAGE AND HANDLING OF MATERIALS:

- A. The Contractor shall store materials so as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment. At the completion of the project such storage areas must be restored to their original condition by the Contractor at their expense.
- C. The Contractor shall handle materials in such a manner as to preserve their quality and acceptability for the Work.
- D. The Contractor shall confine their tools and equipment and the storage of materials to the area delineated in the Contract Documents as the "Limit of Contract."
- E. The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- F. Explosives.
 - (1) Explosives shall not be stored upon any property belonging to the Owner.
 - (2) Should the Contractor desire to use explosives on any project, the Contractor shall first receive written approval of the Service. The approval will stipulate time, place and quantity to be used and manner of use.
 - (3) The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use or transportation of explosives, as well as complying with any and all ordinances, regulation and restriction in relation to the use of explosives.
- E. Paints.

- (1) Oil base paints and flammable liquids shall not be stored in large quantities on the project. Containers shall be limited to five (5) gallon size. Any liquid with a flash point of less than one hundred (100) degrees Fahrenheit shall be contained in UL approved, safety cans. Liquid with a higher flash point shall be stored in rigid cans. Glass containers shall not be used.
- (2) Oily rags, waste, etc. must be removed from the work site at the close of each working day.

5.03 SUBSTITUTIONS:

- A. Should the Contractor desire to substitute another material for one or more specified by name, the Contractor shall apply to the Service, in writing, for such permission and state the credit or extra involved by the use of such material. The Service will not consider the substitution of any material different in type or construction methods unless such substitution affects a benefit to the Service.
- B. The Contractor shall not submit for approval materials other than those specified without a clear, express written statement that such a substitution is proposed. Approval of a "substitute material" by Engineer when the Contractor has not designated such material as a "substitute," shall not be binding on the Service nor release Contractor from any obligations of this Contract, unless the Service approves such "substitution" in writing.

5.04 APPROVED EQUALS:

The terms "Or Equal," "Equal," and "Approved Equal" are used as synonyms throughout the Specifications. They are implied in reference to all named manufacturers in the Specifications unless otherwise stated. Only materials fully equal in all details will be considered. The Service is the final judge as to equality. The Service does not represent or warrant under any circumstances that there exists an equal to any item specified or that an equal is readily available, even if the words "or equal" are used in the Specifications.

When several products or manufacturers are named in the Specifications for the same purpose or use, then the Contractor may select any of those so named. However, all of the units required for, and used in, the project must be the same in material and manufacture.

5.05 BUY AMERICAN STEEL:

The Contractor must comply with the requirements of the Maryland Buy American Steel Act, Title 17, Subtitle 3, of the State Finance and procurement Article of the Annotated Code of Maryland and COMAR 21.11.02, which are incorporated and made a part of the Contract.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES:

6.01 LAWS TO BE OBSERVED:

- A. The Contractor shall keep fully informed of all Federal, State, and local laws, ordinances, rules, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with all such laws, ordinances,

regulations, orders and decrees. It shall protect and indemnify the Service and the Service's representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Contractor or its employees or Subcontractors at any tier. Wherever the Contract Documents require the Contractor to comply with the provisions of federal, State, or local laws, regulations, ordinances, or codes, the Contractor must comply whether such laws, regulations, ordinances or codes are expressly incorporated into the Contract or not.

- B. The Contractor must comply with the provisions of the Workers' Compensation Act and Federal, State and local laws relating to hours of labor.
- C. This Contract shall be governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any questions arising hereunder.
- D. If the Contractor observes that any of the Contract Documents are at variance with any law, regulation, or ordinance, the Contractor shall promptly notify the Engineer and the Service, in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer and the Service, the Contractor shall bear all costs arising therefrom.
- E. The Service is not responsible for the actions, orders, or interpretations of federal, county, or other local officials or representatives respecting the application to the work of federal, State, or local laws, ordinances, regulations, or codes. The Contractor shall not be entitled to any additional compensation for unanticipated costs of complying with any such actions, orders, or interpretations.

6.02 PERMITS AND LICENSES:

- A. If required by law or the Contract, the Contractor will file with the appropriate local authority Drawings and Specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay any fees to local authorities for inspection or for the privilege or right to execute the Work as called for in the Contract Documents and it shall include the costs of said fees in its bid.
- B. The Contractor must be licensed as required by Laws of the State of Maryland (Business Regulation Article, Title 17, Subtitle 6, Annotated Code of Maryland) and must be qualified by submission and approval of a Qualification Questionnaire on the Service's standard form.

6.03 PATENTS, COPYRIGHTS, TRADE SECRETS, AND PROTECTED MATTER:

- A. The Contractor assumes the risk that any materials, equipment, processes, or other items required under the Contract or furnished by the Contractor (including the CPM software furnished to the Service) are subject to any patent, copyright, trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the Service. The Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property

right of another and shall save the Service harmless from loss or expense on account thereof.

- B. When an item specified by the Service or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Contractor will, at its option, and at no additional cost to the Service, (1) procure for the Service the right to use the item; (2) replace the item with an approved, non-infringing equal; or (3) modify the item so it becomes non-infringing and performs substantially the same as the original term.

6.04 LAND, AIR AND WATER POLLUTION:

- A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. The Contractor's attention is directed to the fact that temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. The Service shall be kept advised of all such off-site control measures taken by the Contractor. This shall not relieve the Contractor of the basic responsibilities for such Work.
- C. In case of failure on the part of the Contractor to control erosion, pollution and/or siltation, the Service reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the Service in the performance of such activities shall be paid by the Contractor and may be withheld from monies due or to become due to the Contractor.
- D. All materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, as amended, modified, or supplemented from time to time where applicable.
- E. The Contractor must submit evidence to the Service that the governing Federal, State and local air pollution criteria will be, and were, met. This evidence and related documents will be retained by the Contractor for on-site examination.
- F. If the performance of all or any part of the Work is suspended, delayed, or interrupted due solely to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, or by the order of any federal or State agency or official enforcing applicable laws, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this Contract under the terms of the "Suspension of Work" clause of this Contract. If it is determined that the suspension, delay, or interruption is due wholly or in part to acts or omissions of the Contractor in breach or violation of the terms of this Contract or acts of the Contractor not required by this Contract, the Contractor shall be responsible for all additional costs and delays resulting from such acts or omissions.
- G. The term "environmental litigation," as used herein, means a lawsuit alleging that the Work will have an adverse effect on the environment or that the Service has not duly

considered, either substantively or procedurally, the effect of the Work on the environment.

6.05 INSURANCE REQUIREMENTS:

A. Insurance During Construction

- (1) The Contractor and its Subcontractors shall purchase and maintain comprehensive third-party legal liability insurance and other such insurance as is appropriate for the Work to be performed on the project. Further, the Contractor shall be responsible for the maintenance of this insurance whether the Work is performed directly by the Contractor, by any Subcontractor, by any person employed by the Contractor or any Subcontractor, or by anyone for whose acts the Contractor may be liable. This insurance shall include protection for:
 - (a) Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death of Contractor's employees. The minimum limits of such coverage shall be required by law.
 - (b) Third-party legal liability claims against the Contractor arising from the operations of the Contractor, Subcontractors and suppliers with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless other limits are stated elsewhere in the Contract Documents.
 - (c) Third-party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on-site and off-site. The minimum combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless other limits are stated elsewhere in the Contract Documents.
- (2) The Contractor shall purchase and maintain property insurance (Builder's Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the owner, the general Contractor and all Subcontractors as their interests may appear.

- B. General:** All insurance required shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Such insurance shall be for limits of liability as specified for the project or legally required, whichever is greater. All required insurance policies other than for Worker's Compensation insurance and motor vehicle insurance shall be endorsed to provide

thirty (30) days prior written notice by certified mail, of any material change, cancellation, or non-renewal to:

Procurement Officer
Maryland Environmental Service
259 Najoles Road
Millersville, Maryland 21108

Proof of the required insurance shall be made by submission to the Service, prior to award of the Contract, or certificates of insurance satisfactory to the Service. All required insurance shall be maintained until Final Acceptance of the Work under the Contract by the Service. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the Contract for default.

6.06 ASSIGNMENTS, NOVATION, CHANGE OF NAME:

- A. **No Assignment.** This Contract is not transferable, or otherwise assignable, without the written consent of the Procurement Officer provided, however, that the Contractor may assign monies receivable from the Service to it under a Contract after due notice to the Service
- B. **Recognition of a Successor in Interest Novation.** When in the best interest of the Service, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:
 - (1) The transferee assumes all of the transferor's obligations.
 - (2) The transferor waives all rights under the Contract as against the Service; and
 - (3) Unless the transferor guarantees performance of the Contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.
- C. **Change of Name.** If a Contractor requests to change the name in which it holds this Contract with the Service, the Procurement Officer shall, upon receipt of a document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect the change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the Contract are changed.

6.07 SEPARATE CONTRACTS:

- A. The Service may let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the Contractor's Work with theirs. The Contractor is entitled to no overhead, profit, or other compensation for work done for the Service by other contractors.
- B. If a part of the Contractor's Work depends on proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the

Engineer and the Service any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to the defects which may develop in the other contractor's work after the execution of the Contractor's Work.

- C. To insure the proper execution of any subsequent Work, the Contractor shall measure work already in place and shall at once report to the Engineer and the Service any discrepancy between the executed Work and the Drawings.

6.08 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES:

- A. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Procurement Officer or other authorized employees and representatives of the Service, it being understood that in all such matters they act solely as representatives of the Service.
- B. The Service may terminate the Contract for default or hold the Contractor liable for damages for breach of the Contract as provided in Section 6.08C if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Service with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Contract.
- C. In the event this Contract is terminated as provided in paragraph B, above, the Service shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- D. The rights and remedies of the Service provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. **Conflict of Interest.** No employee of the State of Maryland, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall become or be an employee of the party or parties hereby contracting with the said State of Maryland, or any department, commission, agency or branch thereof.

6.09 NO WAIVER OF LEGAL RIGHTS; SERVICE'S REMEDIES CUMULATIVE; SERVICE'S DAMAGES:

- A. The Service shall not be precluded or estopped by any measurement, estimate, Change Order, Contract modification, or any payment, including Final Payment, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, Change Order, Contract modification, or any payment (including Final Payment) is untrue or was incorrectly made, or from showing that the Work or materials do not in fact conform to the requirements of the Contract. The Service may recover from the

Contractor or its Sureties, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, Change Order, Contract modification, or any payment, including Final Payment as a result of such failure to comply with the terms of the Contract. The Service's rights in this respect shall not be waived or barred by any inspection, acceptance or approval of the Work, or by payment therefor, or by granting an extension of time, or by taking possession, or by execution of a Change Order based on the erroneous measurement, estimate, or Change Order, Contract modification, or payment (including Final Payment).

- B. The activities of the Engineer and Service personnel respecting this Contract, including inspections of the Work, review of submittals, monitoring of progress, and so forth are for the benefit of the Service only and are not for the benefit of the Contractor. The Service's failure to bring to the attention of the Contractor deficiencies in the Work or the Contractor's performance will not constitute waiver or excuse of the Contractor's failure to comply strictly with Contract requirements.
- C. The waiver by the Service of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach by the Contractor.
- D. The rights and remedies of the Service and the obligations of the Contractor under various provisions of the Contract Documents and under provisions of applicable law are cumulative and not exclusive.
- E. For any claim or cause of action accruing to the Service as a result of or arising out of this Contract, the Service may collect damages of any kind, including consequential damages and damages for purely economic loss.

6.10 ASSIGNMENT OF ANTITRUST CLAIMS:

The Contractor hereby sells, transfers and assigns to the Service all rights, title and interest of, in and to any causes of action arising at any time before the date of this assignment or during the performance of this Contract under the antitrust laws of the United States, including Section 1 of the Sherman Act, and the antitrust laws of Maryland relating to the purchase by the Contractor or the Service of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this Contract. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

6.11 FEDERAL PARTICIPATION:

When the United States government pays all or any portion of the cost of a project, the Work may be subject to the inspection of the appropriate Federal agency. Such inspection shall in no sense make the Federal government a party to this Contract, and will not interfere, in any way, with the rights or obligations of either party hereunder.

6.12 DISPUTES AND CONTRACT CLAIMS:

- A. This Contract is not subject to either the provisions of Title 15, State Finance and Procurement Article of the Code or COMAR 21.10.
- B. Except as may otherwise be provided by law, all disputes arising under or as a result of a breach of this Contract which are not disposed of by mutual agreement shall be resolved in accordance with this Section 6.12.

- C. As used herein, "claim" means a written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.
- (1) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However; if the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, then, on written notice to the Procurement Officer by the Contractor it may be converted to a claim for the purpose of this section.
 - (2) All claims by a Contractor shall be made in writing and submitted to the Procurement Officer for decision.
- D. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor shall file a written notice of a claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier.
- E. Contemporaneously with or within thirty (30) days of the filing of a notice of a claim, but no later than the date that final payment is made, the Contractor shall submit the claim to the Procurement Officer. The claim shall be in writing and shall contain:
- (1) An explanation of the claim, including reference to all Contract provisions upon which it is based;
 - (2) The amount of the claim, and documentation supporting the amount claimed;
 - (3) The facts upon which the claim is based;
 - (4) All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and
 - (5) A certification by a senior official, officer, or general partner of the Contractor or the Subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the Contract adjustment for which the person believes the Service is liable.
- F. In connection with a claim under this clause, and upon written request by the Contractor, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of the Contractor's claim, to the Procurement Officer.
- G. The Procurement Officer shall render a written decision on all claims within ninety (90) days of receipt of the Contractor's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. This decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. If a decision is not issued within ninety (90) days, the Procurement Officer shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

- H. The Procurement Officer's decision shall be final and conclusive. The provisions of this subsection may be waived only by the express written agreement of the parties. No implied waiver shall be valid.
- I. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision, order, finding, or interpretation.
- J. If the Contractor asserts that any instructions by Drawings or otherwise involve, or may involve, extra cost under this Contract, the Contractor shall give the Engineer and Service written notice thereof within fifteen (15) calendar days after receipt of such instructions or other occurrence. No claim shall be valid unless notice is given in accordance with this Section.
- K. Under no circumstances will overhead, profit or other damages be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error, or omission for which the Contractor is responsible.
- L. No profit, delay damages, or overhead, which includes rental of equipment and the salaries of supervisory personnel, will be allowed the Contractor for stoppage of Work when written notice of such stoppage, or impending stoppage is not given to the Service reasonably in advance to prevent such stoppage.
- M. No claim for extra costs, including damages, will be granted which includes cost of delays or work stoppage due to strikes, lockouts, fire, unusually severe weather, avoidable casualties or damage, or delay in transportation for which the Service or its agents are not responsible; only time extensions, in accordance with Section 7.06 will be granted.
- N. No claim for damage caused by a delay will be allowed unless, within five (5) days of the act or omission, which the Contractor alleges, causes the delay, the Contractor notifies the Service of the alleged delay.
- O. No payment will be made for increased payment or performance bond premiums as a result of any act or omission by the Service, which results in a claim.
- P. The Contractor shall take all reasonable action to mitigate or to avoid costs or damages for which the State may be liable.
- Q. (1) As used in this subsection Q, "Subcontractor" includes Subcontractors and suppliers of the Contractor at any tier.
- (2) The Service shall have no liability to the Contractor for any claim of a Subcontractor against the Contractor if the Contractor has no liability therefor to the Subcontractor or if the Contractor has a valid defense against the claim of the Subcontractor. Any agreement between the Contractor and Subcontractor making liability on the part of the Contractor to the Subcontractor contingent upon a determination of liability on the part of the Service to the Contractor shall not make the Service liable to the Contractor for the claim of the Subcontractor if the Contractor would not otherwise be liable therefor. The purpose of this provision is to adopt the

Severin doctrine, without exception, as a matter of Contract between the Service and the Contractor.

6.13 ENTIRE AGREEMENT:

The Contract constitutes the entire agreement between the parties hereto and other communications between the parties prior to the execution of the Contract, whether written or oral, with reference to the subject matter of the Contract, are superseded by the Agreements contained herein. The Contract may not be modified, amended, changed or altered except by written instrument executed by the parties hereto.

6.14 SERVICE PROPERTY NOT SUBJECT LIEN:

Neither the Contractor, nor any Subcontractor or supplier at any tier may have or acquire a lien against Service property.

6.15 SERVICE NOT SUBJECT TO LIMITATIONS:

The Service is not bound by laches or any statute of limitations or repose, and the Contractor may not assert laches, limitations, or a statute of repose against any claim or action brought by the Service.

6.16 POLITICAL CONTRIBUTION DISCLOSURE:

The Contractor shall comply with the Election Law Article, Title 14, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions that cumulatively exceed \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on : (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

6.17 CENTURY COMPLIANCE WARRANTY

The Contractor warrants that the products, software, hardware, equipment or supplies provided, or systems developed (collectively, "the products"), under this Contract are century compliant. "Century compliant" means that the product:

- (1) Is able to process date data accurately - including date data century recognition, calculations that accommodate same century and multi-century formulas and date values (including leap year factors), and date interface values that reflect the century - when used either in a stand-alone configuration or in combination with other century compliant products used by the Service.
- (2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year.

In addition to any other warranties applicable to this Contract or any remedies otherwise available to the Service, the Contractor agrees to promptly repair or replace any product furnished under this Contract that is not century compliant, upon notice by the Service. Nothing in this warranty

shall be construed to limit any rights or remedies the Service may otherwise have under this Contract or any applicable law, with respect to (i) defects other than Year 2000 compliance, or (ii) non-century compliant products the Contractor furnished to the Service prior to the date of this Contract.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK:

7.01 NOTICE TO PROCEED:

After the Contract has been executed, the Service will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin work. The specified Contract time shall begin on the day stipulated in the "Notice to Proceed.". Any preliminary Work started, or materials ordered, before the date specified in the "Notice to Proceed," shall be at the risk of the Contractor. The Contractor is prohibited from doing any Work on the site without the insurance required by this Contract.

7.02 PROJECT SIGNS:

- A. The Service shall provide one project sign for each major entrance to the project. The Contractor shall be responsible for transportation of the sign(s) from its place of origin, placement and maintenance of the sign(s). The location of the sign(s) shall be directed by the Inspector.
- B. Posts for sign(s) shall be supplied by the Contractor and made of 4 x 6 inch construction-grade lumber, pressure preservative treated, 10 feet long. The sign(s) shall be bolted to the posts using at least two 1/2 inch bolts per post. Washers shall be used between the bolts and the sign faces and the posts and nuts. The posts shall be set into the ground to a depth of three feet, six inches with the bottom of the signs two feet six inches above the ground.
- C. The Service shall be responsible for removing the sign(s) after final acceptance of the Work.

7.03 PUBLIC CONVENIENCE AND SAFETY:

The Contractor at all times shall conduct the Work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling to inhibit dust shall be performed at the direction of the Service at no additional cost to the Service. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets, and portions of the project under construction shall not be obstructed more than is absolutely necessary.

7.04 BARRICADES AND WARNING SIGNS:

- A. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.
- B. The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new Work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the Maryland SHA Standards, or as directed.
- C. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Contractor will, at the direction of the Service and at no additional cost to the Service provide suitable substantial guardrail to the extent determined by the Service.

7.05 PRESERVATION, PROTECTION AND RESTORATION OF PROPERTY:

- A. The Contractor shall continuously maintain adequate protection of all its Work from damage and shall protect the Service's and Owner's property from injury or loss arising in connection with this Contract. The Contractor shall repair and indemnify the Service against any such damage, injury or loss, except such as may be solely and directly due to errors in the Contract Documents or solely caused by agents, representatives, or employees of the State. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- B. The Contractor shall box all trees which are liable to injury by the moving, storing, and working up of materials, and shall not use any tree for attachment of any ropes or derricks. The Contractor shall also replace and put in good condition every public way and private way, catch basin, conduit, tree, fence, or any other things or property, injured in carrying out this Contract, unless the same shall be permanently done away with by order of the Service.
- C. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, load hoists, well holes, confined spaces, elevator hatchways, scaffolding, window openings, stairways and falling materials.
- D. To the extent permitted by law, in any emergency affecting the safety of life, or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization is hereby permitted to act, at its discretion, to prevent such threatened loss or injury. If the Contractor is specifically instructed by the Procurement Officer to do work in an emergency, the Contractor shall do the Work and will be paid compensation as outlined in Section 3.06, but compensation will be paid only if emergency was not caused in whole or in part by the Contractor or its officers, employees, representatives, or Subcontractors.

- E. No extension shall be made for delay caused by an emergency and occurring more than five days before claim therefore is made in writing to the Procurement Officer. In the case of continuing cause of delay, only one claim is necessary.

7.06 TIME - PROGRESS SCHEDULE - DELAYS:

A. Time

- (1) All time limits in the Contract documents are of the essence of the Contract.

(2) Contractor and the Service agree that the time stated in the Contract for the completion of the Work is a reasonable time, considering the climatic range and the usual business conditions prevailing in the locality of the project. The Contract time shall be the full time allowed or required for completion of every task involved in completion of the work, including lead-time for ordering and fabrication of equipment and materials.

B. Completion Schedule

(1) Within 30 days after Contract execution and at such other times as required by subsections D and G of this Section, the Contractor shall submit a schedule indicating the time allocated by the Contractor for the performance of each portion of the Work, the submittal information required by subsection C, the dollar value of each work item (dollar loading) properly and reasonably sequenced, and the Contractor's labor requirements (labor loading) for achieving each task shown on the schedule. The schedule shall show completion of the Work within the Contract time. The Service may decline to issue a Notice to Proceed until Contractor has submitted the required schedule and it is approved by the Service. Nothing in this section shall be construed to require the Service to issue Notice to Proceed until the required schedule has been submitted and approved.

- (2) Contractor shall also submit, with the schedule required under (1) above,

(i) identification of sequencing and other restraints such as manpower, material, and equipment;

(ii) a listing of the proposed work days, holidays and any special non-work days being used for the computer reports (schedules and updates).

C. The Contractor's schedule shall include as separate Work activities, all necessary activities relating to submittals, including but not limited to the Work or materials covered by the submittal, the Subcontractor involved, the submittal required, the activity or event number as shown in the CPM schedule (if required), and all necessary dates for submittal, review and response, resubmittal (if necessary), and final review by the Engineer and/or Service.

D. Subject to the requirements of subsection I, Contractor shall submit with each application for payment a revised schedule accurately updated to reflect all: (1) revisions to the schedule; (2) changes made or planned in the construction sequence; (3) actual construction activities to date including (i) commencement and completion date for activities started or completed during the reporting period, (ii)

current progress of activities started in prior reporting periods including completion dates for activities completed during the reporting period; (4) delays and their effects on the critical path (whether or not a CPM schedule is required); (5) extensions of time granted by the Service; and (6) the Contractor's planned schedule for completing remaining activities. This required schedule update shall be furnished monthly whether or not Contractor submits an application for payment each month.

E. All of Contractor's schedules, including monthly schedule updates and recovery schedules under subsection G, shall be reviewed by the Engineer and Service and shall be approved or disapproved by Service. Approval by Service of an schedule submitted under this Section 7.06 shall constitute approval of the schedule only for general conformity with Contract requirements and *shall not constitute* approval, acceptance, or admission of the reasonableness, accuracy, achievability, or feasibility of the schedule or of the Contractor's ability to meet the schedule, or waiver or excuse of default or delay by the Contractor, extension of the time for completion, waiver or modification of Contract requirements, admission of fault or responsibility for delay on the part of the Service or the Engineer, or acceptance or admission on the part of the Service of any liability or responsibility for the schedule or for acceleration or other costs or delay damages of the Contractor which are inferable from the Contractor's schedule or update.

F. Contractor agrees that accurate schedules and updates are critical to the Service's ability to complete the project efficiently and economically; to judge the impact of alleged delays, differing site conditions, Change Orders and other events; and to deal fairly with the Contractor. If the Contractor fails to submit reasonable schedules, or revisions, including recovery schedules under subsection G, as required by the Contract: (1) the Service is not obligated to pay the Contractor for Work completed until proper, accurate diagrams, schedules, and updates are furnished as required; and (2) the Service is not liable for and Contractor is not entitled to damages, compensation, or time extensions for delays starting, occurring or continuing during the period when an accurate and reasonable schedule or update was due but not furnished by the Contractor.

G. Whenever the project shall be behind schedule or alleged by either party to be behind schedule, the Procurement Officer may require the Contractor to furnish, at no additional cost to the Service, a revised schedule (hereinafter called a "recovery schedule") showing how the Contractor will finish the project by the Contract completion date. This revised schedule shall include all of the information required under subsection D above, subject to the requirements of subsection I.

H. The Contractor's construction schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the required date of final completion of the project as stated in the Contract documents. Float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or the Service, but is jointly owned. Delay for which the Service is responsible in any portion of the Work shall not automatically mean that the extension of the completion date is warranted or due the Contractor. Contractor agrees that a delay in any given activity at any given time may not necessarily affect critical activities and may not necessarily cause noncritical activities to become critical. The effect of any given delay may be only to absorb float and may not necessarily delay critical activities. Extensions of time for delays for which the Service is responsible will be granted only to the extent that affected activities exceed the total float along their paths on the current approved CPM schedule.

I. CPM Scheduling

(1) Unless the Contract documents expressly permit the Contractor to use a schedule other than a CPM schedule, the schedules to be furnished by the Contractor under this Section 7.06 shall be CPM schedules. Contractor's CPM schedule must be submitted within 30 days after the Contract is executed. Following rejection by the Service or conditional approval subject to correction, the Contractor shall make the necessary corrections, and resubmit proper schedules within 14 calendar days.

(2) (a) Scheduling of construction is the responsibility of the Contractor. CPM scheduling is required to assure adequate planning and execution of the Work and to assist the Service, the Engineer and the Contractor in evaluating the progress of the Work and the impact on the schedule of events, which could affect the completion date.

(b) Logic or network diagrams shall show the order and interdependence of activities and the sequence in which the Work is to be accomplished as planned by the Contractor. These diagrams must show how the start of a given activity is dependent on preceding activities and how its completion restricts the start of the following activities.

(c) Detailed logic or network activities shall include, in addition to construction activities, the submittal and review of samples of materials and shop drawings, the procurement of critical materials and equipment and their installation and testing. All activities of the Service and the Engineer that affect progress, and the dates for completion of all or part of the Work under the Contract will be shown.

(d) The selection and number of activities shall be subject to the Service's approval. Logic or network diagrams need not be time scaled but shall be drafted to show continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event number, description of the activity, and activity duration in calendar days. A summary schedule, plotted on a single sheet, shall also be provided.

(e) The mathematical analysis of the network shall include a tabulation of each activity. The following information will be furnished, at a minimum, for each activity:

- (i) I, J numbers if Arrow Diagramming Method (ADM) is used.
- (ii) Activity and Precedence relationships if Precedence Diagramming Method (PDM) is used.
- (iii) Activity Description
- (iv) Estimated duration of activity (in calendar days).
- (v) Percent of activity completed.
- (vi) Earliest start date (by calendar date).
- (vii) Earliest finish date (by calendar date).

- (viii) Actual start date (by calendar date).
 - (ix) Actual finish date (by calendar date).
 - (x) Float or slack (by calendar date).
- (f) Work elements should be broken down into activities of duration from 1 to 21 calendar days. No activity should ever represent more Work than can be accomplished in 21 calendar days.
- (g) In addition to the requirements of subsection D, updates shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payments made to the Contractor will be based on the total value of such activities completed or partially completed after verification by the Service and the Engineer, and this updated schedule analysis shall be used as a basis for partial payment. The update will state the percentage of the work actually completed and schedule as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. The Contractor also shall submit a narrative report with the updated analysis, which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.
- (h) All schedules, including the initial schedule, recovery schedules, and monthly updates, shall be submitted in three (3) paper copies and one (1) copy on diskette.
- (i) The Contractor shall be prepared to effect schedule revisions in the network in response to changes to the Contract under the terms thereof, at the direction of the Service. In the event that Change Orders are experienced, they shall be reflected as new activities in the network, or as changes in logic and/or time framing of existing activities. They shall be introduced at the next updating after receipt of a Change Order, and shall be subject to the approval of the Service. Change Order logic shall affect only those intermediate activities and performance dates directly concerned. Adjustments required in completion dates for those intermediate dates, or for the Contract as a whole, will be considered only to the extent that there is not sufficient remaining float to absorb the additional time which may be authorized for completion of individual activities.
- (3) CPM schedules and updates, including recovery schedules, shall include the following: (a) list of activities showing early and late start and finish dates; (b) a brief time-impact comparison in graph form (preferably on one page) comparing the critical path as-built to date and as-planned for the remainder of the Work (as shown on Contractor's last schedule or update) with the critical path as-built and as-planned as of the time and of the schedule or update currently being submitted; and (c) all other information normally provided in a reasonable CPM schedule or update.

J. Unless otherwise directed by the Service, the Contractor shall submit photographs monthly to the Service, taken on or about the first of each month showing the status of the Work. Unless otherwise directed by the Service, only one

print, 5" x 7" of each negative is necessary but the negatives should be sufficient in number to properly record the Work. A job map showing where the photo was taken and in which direction the photo was taken must accompany the submittal. The Contractor shall photograph all disputed items of the Work.

K. Delays set forth in Section 7.10D shall be noncompensable even if an extension of time is granted.

L. Except as may be expressly agreed otherwise by the Procurement Officer in writing, no action or inaction by the Service or its representatives shall constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor or agreement of the Service for pay for alleged delays or acceleration of construction, including: (1) a request for a revised schedule, a recovery schedule, or an anticipated completion date from Contractor, (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.

M. Contractor must take all reasonable action to avoid or to mitigate the effects of delays, including but not limited to: (1) rescheduling or resequencing the Work, (2) accepting other work and (3) reassigning personnel. When the Contractor is responsible for any delay, the Service may order the Contractor to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to the Service. The Contractor does not have the unilateral right to complete the Work late and pay liquidated or other damages.

N. Failure of the Contractor to request, as required by Section 3.06B and this Section 7.06, a time extension to which it might otherwise be entitled, shall constitute a waiver of Contractor's right to an extension of the required completion date.

O. Liquidated Damages

For each day the work shall be uncompleted after the Contract completion date, as extended by the Procurement Officer, the Contractor shall be liable for liquidated damages in the amount specified in the Contract Documents. Prior to and after expiration of the Contract completion time, the Service may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of the Service, is behind schedule so as not reasonably to be able to complete the Contract on time. Due account shall be taken of excusable delays, extensions of the time reasonably due the Contractor for completion of additional Work under Change Orders, and for delays for which the Service is responsible, provided that the Contractor has properly requested time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the Contract.

P. (1) The term "delay" shall mean any act, omission, occurrence, event, or other factor, which necessarily extends the time reasonably required for completion of the Contract. This Section 7.06 covers every such act, omission, occurrence, event, or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, constructive suspension, extension or otherwise.

(2) Whenever the Service shall be liable to the Contractor for an equitable adjustment for delay, the amount of the equitable adjustment shall be determined in accordance with this subsection P and other applicable provisions of this Section 7.06.

(3) Only the following items may be recoverable by the Contractor as compensation or damages for delay: (a) direct costs, consisting of (i) actual additional salaried and non-salaried on-site labor expenses; (ii) actual additional costs of materials; (iii) actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment; (iv) actual additional extended field office expenses, excluding those which are to be included in overhead; (v) actual additional reasonable costs of Subcontractors and suppliers at any tier for which the Contractor is liable, subject to Section 3.07C(7)(a); (b) actual additional costs, proven by clear and convincing evidence, resulting from labor or other inefficiencies proven by clear and convincing evidence; and (c) an additional percentage, determined in accordance with Section 3.07C, of the total of items (a)(i) through (v) above, for overhead and profit.

(4) No other compensation or damages are recoverable by Contractor for compensable delays or extensions of the completion time except as expressly stated in this subsection P. In particular, the Service will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a Subcontractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorney fees, costs of claims preparation and presentation, and costs of litigation.

(5) There shall be deducted from the compensation payable to the Contractor under this section for delay, all costs, expenses, and overhead recoverable by the Contractor under Change Orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.

(6) Contractor shall be entitled to no compensation or damages for delay unless, within ten (10) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay, the Contractor notifies the Procurement Officer in writing of (a) the alleged delay and its anticipated duration, and (b) the act, omission, occurrence, event or other factor allegedly causing the delay. Knowledge on the part of the Service of the act, omission, occurrence, event, or other factor, or of the delay allegedly resulting therefrom, shall not excuse Contractor's failure to give the State the notice required by this subsection P(6).

Q. (1) Except as provided in paragraph (2) below, if the Service fails to issue a Notice to Proceed within 90 days following completion of the award, the Contractor will have as its sole remedy the option of (a) declaring the Contract void without any liability or obligation on the part of the Service, or

(b) accepting an extended period, at no additional cost to the Service, for issuance of a Notice to Proceed.

(2) If the failure of the Service to issue a Notice to Proceed within 90 days following completion of award is caused, wholly or in part, by breach or default of the Contractor or other fault of the Contractor or his Subcontractors or suppliers at any tier, the Contractor shall be entitled to no relief under paragraph (1) above based on delay in issuance of the Notice to Proceed. In such a case, the Contractor shall be bound to perform the Contract within the time allowed following actual issuance of the Notice to Proceed, at no additional cost to the Service.

R. Requests for time extensions must be filed and supported as provided in Section 3.06 and other applicable provisions of the Contract.

S. **Unusually Severe Weather.**

(1) Rain. To qualify as unusually severe weather due to rain, the number of actual weekdays lost due to rain days and drying days must be greater than that calculated for the month in question using the following procedure:

(a) Using the last ten (10) years of weather data from the nearest weather station to the construction site, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and the standard deviation from the average.

(b) Contractor shall then add the average number of weekdays lost to the standard deviation. The sum (the average plus the standard deviation) shall be considered normal for the month in question.

(c) Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days for the month to determine the net number of weekdays lost to rain:

- rainfall occurred on a non-work weekday such as a holiday;
- rainfall occurred at a time when no weather-dependent work was in progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
- Contractor was still working or able to work on all weather dependent activities to the extent that production was or could have been within actual normal levels established on the project (average plus or minus the standard deviation).

(2) Time adjustments for rain. If the net number of weekdays lost to rain is less than the normal number in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain is more than the normal number for the month in question, an excusable and noncompensable time extension will be granted. No adjustments will be made for the time between the starting date stated in the Notice to Proceed and the first day of the following month or for the last partial month.

(3) Other weather conditions. Time extensions for delays due to unusual conditions other than rain (such as snow, extreme cold or heat, high winds, etc.) will be considered only to the extent Contractor can prove (a) conditions were unusually severe, and (b) they caused delay to the adjusted as-planned/as-built critical path.

T. Scheduling Meetings

The Contractor shall meet with the Service and the Engineer (unless the Engineer's absence is excused by the Service) at least monthly to discuss in detail the Contractor's updating of the schedule, the necessity for revisions or corrections in the schedule or updates, and all other issues relating to the scheduling of the project and the Contractor's obligations under the project respecting the scheduling. This meeting may, at the sole discretion of the Service, be in addition to the progress meetings required in Section 4.12.

7.07 SUSPENSION OF THE WORK:

- A. The Procurement Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for a period of time as the Procurement Officer may determine to be appropriate for the convenience of the Service.
- B. If the performance of all or any part of the Work is for an unreasonable period of time suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of the Contract, or by the Procurement Officer's failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence in whole or in part of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

7.08 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

If the Work should be stopped under an order of any court, or other public authority, for a period of three continuous months, through no act, omission, or fault of the Contractor or any subcontractor or of anyone employed by them, then the Contractor may, upon seven days' written notice to the Service and the Engineer, stop Work or terminate this Contract and receive from the Service payment for all complete Work in accordance with Section 7.09 of these General Conditions.

7.09 SERVICE'S RIGHT TO TERMINATE FOR ITS CONVENIENCE:

- A. The performance of Work under this Contract may be terminated by the Service in accordance with this clause in whole, or from time to time in part, whenever the Procurement Officer shall determine that such termination is in the best interest of the Service. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Officer, the Contractor shall:
 - (1) Stop Work under the Contract on the date and the extent specified in the Notice of Termination;
 - (2) Place no further orders or Subcontracts for materials, services or facilities except as may be necessary for completion of the portion of the Work under the Contract as is not terminated;
 - (3) Terminate all orders and Subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
 - (4) Assign to the Service in the manner, at the times, and to the extent directed by the Procurement Officer, all of the right, title, and interest of the Contractor under the orders and Subcontracts so terminated, in which case the Service shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and Subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and Subcontracts, with the approval or ratification of the Procurement Officer to the extent required, which approval or ratification shall be final for all the purposes of this clause;
 - (6) Transfer title and deliver to the Service in the manner, at the times, and to the extent, if any, directed by the Procurement Officer, (a) the fabricated or unfabricated parts, Work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and (b) the completed or partially completed Plans, Drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Service;
 - (7) Use its best efforts to sell, in the manner, at the time, to the extent, and at the price or prices directed or authorized by the Procurement Officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b)

may acquire any such property under the conditions prescribed by and at a price or prices approved by the Procurement Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Service to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Procurement Officer may direct;

- (8) Complete performance of such part of the Work as may not have been terminated by the Notice of Termination; and
- (9) Take any action that may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Service has or may acquire an interest. The Contractor shall submit to the Procurement Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Procurement Officer, and may request the Service to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Service shall accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Procurement Officer upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer its termination claim, in the form and with certification prescribed by the Procurement Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Procurement Officer determines that the facts justify such action, the Procurement Officer may receive and act upon any such termination claim at any time after the one year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Procurement Officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit a termination claim, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of paragraph C., above, the Contractor and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced Contractor by the Contract price of Work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph E. of this clause, prescribing the amount to be paid to the Contractor in the event of failure of

the Contractor and the Procurement Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. In the event of the failure of the Contractor and the Procurement Officer to agree, as provided in paragraph D., upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, the Procurement Officer shall pay to the Contractor the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph D.:

(1) With respect to all Contractor work performed before the effective date of the Notice of Termination, the total without duplication of any item of:

- (a) The reasonable costs of the completed Work;
- (b) The reasonable and ordinary cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in paragraph B. (5), above, (exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors before the effective date of the Notice of Termination of Work under this Contract, which amounts shall be included in the costs on account of which payment is made under (a) above; and
- (c) a sum, as profit on (a) above, determined by the Procurement Officer, to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (d) The reasonable cost of the preservation and protection of property, incurred pursuant to paragraph B(9); and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

(2) The total sum to be paid to the Contractor under (1) above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Service shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E(1) above, the fair value, as determined by the Procurement Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Service, or to a buyer pursuant to paragraph B (7).

- F. Costs claimed, agreed to, or determined pursuant to paragraphs C., D., E. and I. hereof shall be in accordance with COMAR 21.09 as in effect on the date this Contract is made.
- G. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the Procurement Officer under paragraphs C., E., or I., hereof, except that if the Contractor has failed to submit its claim within the time provided in paragraph C. or I., hereof, and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Procurement Officer has made a determination of the amount due under paragraphs C., E., or I. hereof, the Service shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Procurement Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advances or other payments or account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (2) any claim which the Service may have against the Contractor in connection with this Contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Service.
- I. If the termination hereunder be partial, the Contractor may file with the Procurement Officer a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within thirty (30) days from the effective date of the termination notice, unless an extension is granted in writing by the Procurement Officer.
- J. The Service may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Procurement Officer, the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Service upon demand, together with interest computed at the legal rate for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the Service; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Procurement Officer by reason of the circumstance.
- K. Unless otherwise provided in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this Contract, preserve and make available to the Service at all reasonable times at the office of the Contractor but without direct charge to the Service all the Contractor's books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the

Work terminated hereunder or, to the extent approved by the Procurement Officer, photographs, microphotographs, or other authentic reproductions thereof.

7.10 TERMINATION FOR DEFAULT--DAMAGES FOR DELAY--TIME EXTENSIONS:

- A. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said Work within this time, the Service may, by written notice to the Contractor, terminate its right to proceed with the Work or the part of the Work as to which there has been delay. In this event the Service may take over the Work and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the Work the materials, appliances, and plant as may be on the site of the Work and necessary therefor. Whether or not the Contractor's right to proceed with the Work is terminated, the Contractor and its sureties shall be liable for any damage to the Service resulting from the Contractor's refusal or failure to complete the Work within the specified time.
- B. If fixed and agreed Liquidated Damages are provided in the Contract and if the Service so terminates the Contractor's right to proceed, the resulting damage shall consist of such Liquidated Damages until a reasonable time as may be required for final completion of the Work together with any increased costs occasioned by the Service in completing the Work.
- C. If fixed and agreed Liquidated Damages are provided in the Contract and if the Service does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these Liquidated Damages until the Work is completed or accepted.
- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
 - (1) The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in its sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the Service, fires, floods, epidemics, quarantine restrictions, strikes by persons not employed by the Contractor or a Subcontractor, freight embargoes, unusually severe weather, or delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or suppliers; and
 - (2) The Contractor, within ten (10) days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the Contractor), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the Procurement Officer's judgment, the findings of fact justify such an extension, and these findings of fact shall be final and conclusive on the parties subject only to appeal as provided in the "Disputes" clause of this Contract.
- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the

provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the Service, be the same as if the notice of termination had been issued pursuant to the clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of the Service, the Contract shall be equitably adjusted to compensate for the termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes."

- F. The rights and remedies of the Service provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- G. As used in paragraph D (1) of this clause, the term "Subcontractors or suppliers" means Subcontractors or suppliers at any tier.

H. The Service may terminate for default under this Section 7.10 at any time when the Contractor is in default or breach of any material obligation of the Contract, including default arising after substantial completion, such as for failure in a timely manner to complete a punch list, to perform warranty work, or to perform any other substantial requirement of the Contract.

7.11 PARTIAL OCCUPANCY AND PARTIAL ACCEPTANCE:

- A. If, in its sole discretion, during the construction of Work, the Service desires to occupy any portion of the project, the Service shall have the right to occupy and use those portions of the project which in the opinion of the Procurement Officer can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the Service for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the Service. The Service has no obligation to accept the project in portions.
- B. Partial occupancy shall in no way relieve the Contractor of its responsibilities under the Contract.

7.12 SUBSTANTIAL COMPLETION AND FINAL INSPECTION:

- A. When the Work is substantially completed, the Contractor shall notify the Procurement Officer and the Engineer that the Work will be ready for final inspection and test on a definite date. Sufficient notice shall be given to permit the Engineer and the Procurement Officer to schedule the final inspection.
- B. On the basis of the inspection, if the Procurement Officer determines that the Work appears to be substantially complete and the project appears suitable for occupation and use for its intended purpose, the Procurement Officer shall establish the date of substantial completion and shall state the responsibilities of the Service and the Contractor for maintenance, heat, utilities, and insurance and shall fix the time for which the warranties will begin.
- C. If the Procurement Officer determines that substantial completion has been achieved, the Procurement Officer shall fix the time within which the Contractor shall complete any remaining items of Work which will be indicated on a list ("punch list") prepared by the Engineer and the Procurement Officer. If the Contractor fails to complete the

remaining items so listed in the time stipulated, the Service shall have the undisputed right to complete the Work at the Contractor's expense, including deducting any cost incurred by the Service from any monies it retained under the Contract. The Contractor may be required to complete multiple punch lists until the Contract is performed in its entirety. Failure to complete punch list work in a timely fashion shall constitute grounds for termination of the Contract by default.

- D. Final payment shall not be made until all Contract Work is complete to the satisfaction of the Service in accordance with the final payment provisions of Section 8.
- E. Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract Documents.
- F. The Work shall not be considered substantially complete until (1) all electrical, mechanical, and life safety systems shall be completed and successfully tested and successfully inspected for conformity to all requirements of the Contract documents and all applicable codes and standards, and (2) all other requirements for substantial completion are met.

7.13 CLEANING UP:

The Contractor shall at all times keep the construction area, including storage areas used by the Contractor, free from accumulations of waste material or rubbish and prior to completion of the Work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the Service. Upon completion of the construction, the Contractor shall leave the Work and premises in a clean, neat and workmanlike condition satisfactory to the Service.

7.14 WARRANTY:

A. Except to the extent the Contract Documents impose greater warranty obligations on the Contractor for all or any part of the Work, the Contractor warrants for a two year period (unless another period is specified), commencing on the date of substantial completion of the Work as a whole or on such other date agreed between by the parties:

- (1). that the Work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- (2). that all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner;
- (3). that the Contractor will re-execute, correct, repair, or remove and replace with proper Work, without cost to the Service, any Work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other Work or materials in the process of complying with this Section;
- (4). that the entire Work shall be water-tight and leak-proof in every particular.

- B. This Section 7.14 provides for a period during which the Contractor is bound to replace the Work in addition to being liable for the failure to perform the Contract in accordance with its terms. Nothing herein releases or limits the Contractor's liability for latent defects or for any substantial failure to perform the Work in accordance with the Contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

7.15 NOTICE TO SERVICE OF LABOR DISPUTES:

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor agrees to insert the substance of this clause, including this paragraph B., in any Subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

SECTION 8 - PAYMENTS:

8.01 SCOPE OF PAYMENT; VARIATIONS IN ESTIMATED QUANTITIES:

- A. Payments are made on the valuation of Work accomplished and on account of materials delivered to the site for incorporation in the Work which are suitably stored and protected.
- B. Payments shall also be made on account of materials for incorporation in the Work but stored at some off-site location agreed upon by the Service, such payment to be conditioned upon submission by the Contractor of bills of sale, paid invoices, or such other procedures satisfactory to the Service to establish the Service's title to such materials or otherwise protect the Service's interest in the materials including proof of applicable insurance, transportation to site, and freedom from liens and other security interests.
- C. Prior to application for first payment, the Contractor shall submit to the Service and the Engineer a schedule of values of the various parts of the Work, including quantities, aggregating the total sum of the Contract. This schedule shall be so divided as to facilitate payments to Subcontractors. The form of this submission shall be as the Contractor and the Service have agreed upon and shall be supported by such evidence as to its correctness as the Service may direct. This schedule shall be used as a basis for Certificates of Payments unless at a later date found by the Service to be in error.
- D. Application for payment shall be submitted on or about the 25th day of each month but not less than 30 days after the " Preconstruction Meeting" nor before ten days of the start of Work performance (shutdown days excluded). The updated Work schedule shall accompany such application for payment.

- E. In applying for payments the Contractor shall submit a statement, based upon the schedule of values, (C. above) itemized in such form and supported by such evidence as the Service may require, showing the Contractor's right to the payment claimed. Each invoice shall prominently display the Contractor's Federal Employers Tax identification number, or (if it has no such number) its Social Security Number.
- (1) In applying for all payments, excluding the first payment and final payment, the Contractor shall submit in addition to the above, a certificate that the Contractor has paid:
- (a) All labor to date.
- (b) All vendors and material suppliers in full for all items received, including all items in its previous statement and for which the Contractor received payment from the Service.
- (c) All Subcontractors in full, less any retained amount, to the amount included in its previous statement and for which the Contractor received payment from the Service.
- (2) In applying for the final payment, the Contractor shall submit in addition to the statement required in the first part of Paragraph (E) above, the following:
- (a) Such evidence as will establish the Service's title to materials and give reasonable assurance that liens and other security interests do not exist.
- (b) All other guarantees as called for by the Contract Document.
- (c) All required equipment, training, maintenance, and other manuals and parts lists.
- (d) A complete set of all drawings indicating as-built conditions to either the Engineer or the Service, as directed by the Service.
- F. Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer may, upon receipt of a written request for an extension of time within ten (10) days from the date the variation in quantity is known or should have been known by the Contractor, or within a further period of time which may be granted by the Procurement Officer before the date of Final Settlement of the Contractor, ascertain the facts and make the adjustment for extending the completion date.

8.02 FORCE ACCOUNT WORK:

- A. When the Contractor is required to perform Work as a result of additions or changes to the Contract for which there are no applicable Unit Prices in the Contract, the

Service and Contractor shall make every effort to come to an agreed upon price for the performance of such Work. If an agreement cannot be reached, the Service may require the Contractor to do such Work on a force account basis to be compensated in accordance with the following:

- (1) **Labor.** For all labor employed directly by the Contractor in the performance of the specified work, and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such Work. The Contractor shall receive the actual costs paid by the Contractor, or on behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
- (2) **Materials.** For materials accepted by the Engineer or the Service and incorporated into the Work, the Contractor shall receive the actual cost of such materials delivered on the Work, including transportation charges paid by the Contractor (exclusive of machinery rentals as hereinafter set forth).
- (3) **Equipment.** For any machinery or special equipment (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such Work is begun, or the Contractor shall receive those rates, which may be specified elsewhere in the Contract. For purpose of definition, equipment with a new cost of \$500 or less will be considered "small tools."
- (4) **Materials and Supplies Not Incorporated in the Work.** For materials and supplies expended in the performance of the Work (excluding those required for rented equipment) and approved by the Engineer or the Service, the Contractor shall be reimbursed for amounts paid for the actual cost of such materials and supplies used.
- (5) **Bond, Insurance, and Tax.** For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes all directly related to the force account work, the Contractor and the Service shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
- (6) **Superintendence.** No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of foreman may be added only when the notification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the Contract.
- (7) **Contractor's Overhead and Profit.** The markup allowable to the Contractor for combined overhead and profit for Work performed solely by the Contractor with its own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs (excluding items includable in overhead).

- (8) **Subcontractors.** For work done solely by a Subcontractor, the Subcontractor's cost shall be determined as stipulated in Section 8.02, A. (1) through (6) above.
- (9) (a) The markup allowable to a Subcontractor for overhead and profit performed solely by its own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.
- (b) For work performed solely by a Subcontractor with its own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.
- B. **Compensation.** The compensation as set forth above shall be received by the Contractor as payment in full for the Work done on a force account basis. At the end of each day, the Contractor's representative and the Service shall compare records of the quantity of Work performed as ordered on a force account basis.
- C. **Statements.** No payment will be made for Work performed on a force account basis until the Contractor furnishes the Service duplicate itemized statements with supporting documentation as required by the Service (which may include copies of canceled checks issued by the Contractor), of the cost of such force account Work detailed as to the following:
- (1) Name, classification, date, daily hours, total hours, rate, and extension for such laborer or foreman.
 - (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
 - (3) Quantities of materials, prices, and extensions.
 - (4) Transportation of materials.
 - (5) Cost of property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and Social Security tax.
 - (6) Payments of items under paragraphs (3) and (4) shall be accompanied by certified invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from the Contractor's stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

8.03 CASH ALLOWANCES:

Whenever an allowance is mentioned in the Contract Documents, then the Contractor shall include in its Contract bid price the entire amount of such specified allowances. The

expenditure of these allowances is at the Service's direction. However, the allowance expenditure is limited to that specified in the Contract Documents. Unexpended balances are to revert to the Service. The cost of installation of materials purchased with these specified allowances and other expenses, and Contractor's profit are not included in the allowance. The Contractor shall install all material purchased under allowances and shall include in the Contract bid price a reasonable amount, in addition to the allowance, to cover the installation, and all other costs and profit.

8.04 RETAINAGE AND PAYMENT :

- A. If the Contractor has obtained a Performance Bond and Payment Bond representing the fully security for performance and payment for all labor and materials, including leased equipment and the contract amount equals Two Hundred Fifty Thousand Dollars (\$250,000) or more, the Service may retain no more than five percent (5%) of each payment due to the Contractor as retainage.
- B. No payment made to the Contractor, nor partial or entire use or occupancy of the Work by the Service, shall be an acceptance of any Work or materials not in accordance with this Contract.

8.05 PAYMENTS WITHHELD:

- A. The Service may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any Contractor payment to such extent as may be necessary to reimburse or protect the Service from loss on account of:
 - (1) Defective or damaged Work not remedied;
 - (2) Failure of the Contractor to make payments properly to Subcontractors for material or labor;
 - (3) A reasonable doubt by the Service that the Contract can be completed by the completion date or for the balance of the Contract price then unpaid;
 - (4) Damage to the Service or another contractor.
- B. When the Contractor remedies or removes the aforementioned conditions for withholding payment, the Service shall pay the Contractor the amounts so withheld.

8.06 CORRECTION OF WORK BEFORE FINAL PAYMENT:

- A. The Contractor shall promptly remove from the premises or replace, all materials determined by the Engineer or the Service as failing to conform to the Contract, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute work not in accordance with the Contract, without expense to the Service and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
- B. If the Contractor does not remove or replace such non-conforming Work and materials within a reasonable time, fixed by written notice, the Service may remove them and may store the materials at the expense of the Contractor.

8.07 FINAL PAYMENT:

- A. (1) Upon completion of the Work, the Contractor shall prepare final payment forms and submit them.
- (2) The Service will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The Service will then reply to the Contractor's request for final payment, informing the Contractor of the amount of final payment considered to be due the Contractor. Such reply shall inform the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by the Service and the reason therefor.
- B. Notwithstanding subsection A(1) above, prior to or in the absence of a request from Contractor for final payment, the Service may determine under subsection A(2) the amount of the final payment it considers to be due the Contractor.
- C. If the Contractor disputes the amount determined by the Service to be due the Contractor, the Contractor shall initiate a claim under the Disputes procedures.
- D. Acceptance by the Contractor of any payment identified by the Service as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against the Service arising out of or connected with the Contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Officer.
- E. No claims by the Contractor may be asserted for the first time after application is made by the Contractor for final payment or after final payment is made by the Service.

8.08 PAYMENT OF INTEREST:

The Service shall remit payment to the Contractor within 45 days after receipt of a "proper invoice." The Service's failure to remit payment within this period may allow the Contractor to request payment of interest at the rate specified in §15-104 of the State Finance and Procurement Article in effect on the date the Contract becomes effective, beginning on the 31st day.

A proper invoice shall include a description of items or services provided; the date the goods were received by the Service or the inclusive dates the services were rendered; the price agreed upon pursuant to the Contract; the basis for the billing; the purchase order or Contractor identification number; the Contractor's Federal Employers Identification Number or Social Security Number; and the name and address of the Service.

For purposes of this Contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:

- A. The amount invoiced is consistent with the amount agreed upon by the parties to the Contract pursuant to the Contractual Agreement.
- B. The goods and/or services have been received by the Service and the quantity received agrees with the quantity ordered.

- C. The goods and/or services meet the qualitative requirements of the Contract.
- D. The invoice is not in dispute.
- E. If the Contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the schedule contained in the Agreement.
- F. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have been met.
- G. In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date of the amount on which the interest accrued. The Service is not liable for interest (1) if a claim has been filed under Section 6.12 of these General Conditions, (2) accruing for more than one year following the 31st calendar day after the date that a proper invoice is received by the Service, or (3) on an amount representing unpaid interest.

8.09 AUDITS BY THE STATE:

- A. The Contractor agrees that the Service or any of its duly authorized representatives, or any entity authorized by law to conduct audits of the Service, shall, until the expiration of five (5) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract.
- B. The Contractor further agrees to include in all its Subcontracts hereunder a provision to the effect that the Subcontractor agrees that the State or any of its duly authorized representatives shall, until the expiration of three years after final payment under the Subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Subcontractor, involving transactions related to the Subcontract.

SECTION 9 - EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS:

9.01 EMPLOYEES AND WORKMANSHIP:

- A. **Qualification of Employees.** Only personnel thoroughly trained and skilled in the task assigned them may be employed on any portion of the Work. Any employees found to be unskilled or untrained in its work shall be removed from the Work.
- B. **Licensed Employees.** When Municipal, County, State or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the Work including subcontractors and their employees, shall be so licensed.
- C. **Quantity of Labor.** The Contractor shall employ on the Work, at all times, sufficient personnel to complete the Work within the time stated in the Contract.
- D. **Work Areas.** The Contractor shall confine the operations of its employees to the limits as provided by law, ordinance, permits, or directions of the Service. Generally, the work area will be the same as the "Limit of Contract" line indicated in the Contract Documents.

E. Methods and Quality.

- (1) Whenever the method of the Work or manner of procedure is not specifically stated in the Contract Documents, the best practice shall be followed. Unless the Contract Documents expressly require stricter standards for application, installation, connection, erection, use, cleaning or conditioning, recommendations of the manufacturer of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. If any such manufacturer's recommendations are defective, faulty, inaccurate, or negligently made, Contractor shall be responsible for all loss resulting therefrom, including liability for loss incurred by the Service.
- (2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced, coursed, etc. Under no circumstances, either in new or old Work shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
- (3) All methods, procedures, and results are subject to the Engineer's and to the Service's approval; provided that such approval is not interpreted as placing upon the Engineer or the Service any responsibility for management of the Contract.

F. Scheduling

- (1) The Contractor shall schedule the Work to: 1) ensure efficient and uninterrupted progress and 2) to minimize to the maximum extent possible the cutting and patching of new Work. The Contractor shall schedule all cutting, patching, and digging necessary to the execution of the Work.
- (2) The Contractor shall schedule the construction performed by each group or trade so that each installation or portion of the construction shall join all new or old Work as required for complete installation, all according to accepted good construction practice.

- G. Superintendent.** The Contractor shall keep on the Work, at all times during its progress, a competent, English-speaking Superintendent and any necessary assistants, all approved by the Service prior to commencement of the Work. The Contractor shall submit in writing to the Service the name of the person it intends to employ as Superintendent for the execution of this Contract with a statement of the proposed Superintendent's qualifications. This data will be reviewed by the Service and an approval or rejection given in writing. Persons who have previously proved unsatisfactory on Work executed for the Service or who are without proper qualifications, will not be approved. Should it be necessary to change the Superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same location or close to each other only when approved by the Service in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Important directions shall be confirmed in

writing to the Contractor. Other directions shall be so confirmed on written request in each case. Should the Superintendent be complained of by the Service for cause, the Superintendent shall be removed as the Superintendent and a new Superintendent obtained and approved as described above.

- H. **Discipline.** The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ or permit to remain on the Work any unfit person. The Contractor shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, or the Service. The Contractor's employees must not be allowed to loiter on the premises before or after working hours.
- I. **Employee Safety.** The Contractor shall designate a responsible member of its organization, on the Work, whose duty it shall be, in addition to other duties, to prevent accidents and to enforce the standards of Section 9.06 of these General Conditions. The name and position of the person so designated shall be reported to the Service, by the Contractor at the pre-construction meeting.

9.02 NON-DISCRIMINATION-EMPLOYMENT POLICIES:

- A. The Contractor agrees:
 - (1) not to discriminate in any manner against an employee or applicant for employment on the basis of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability unrelated in nature and extent so as reasonably to preclude the performance of such employment;
 - (2) to include a provision similar to that contained in Subsection (1) above in any Subcontract, except a Subcontract for standard commercial supplies or raw materials; and
 - (3) to post and to cause Subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- B. Contractor shall be subject to and shall comply with all other requirements of §13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland, which provisions are incorporated into and made a part of the Contract.
- C. Contractor shall comply with all other applicable Federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.

9.03 SUBCONTRACTS:

- A. The Contractor shall, upon submittal of the Bid Form, notify the Engineer and the Service in the form supplied, of the names of subcontractors proposed for the principal parts of the Work and for such other parts of the Work as the Service may direct and shall not employ any person that the Engineer or the Service may object to as incompetent or unfit.
- B. The Contractor agrees that it is as fully responsible to the Service for the acts and omissions of its subcontractors and of persons either directly employed by them, as it is for the acts and omissions of persons directly employed by it.

- C. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Service, and nothing in the Contract Documents is intended to make the subcontractor a beneficiary of the Contract between the Service and the Contractor.

9.04 RELATION OF CONTRACTOR AND SUBCONTRACTOR:

- A. The Contractor agrees to bind every subcontractor, and will insure that every subcontractor agrees to be bound by the terms of this Agreement, the General Conditions, the Drawings and Specifications as far as applicable to its Work, unless specifically noted to the contrary in a subcontract between Contractor and Subcontractor, which has been approved in writing by the Service prior to the Subcontract's execution.
- B. The Contractor must include the following provisions in all subcontracts and supply contracts applicable to the Work:
 - (1) Subcontractor or supplier agrees to be bound to the Contractor by the terms of the Contract between the Contractor and the Service, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by the Contract, assumes toward the Service.
 - (2) The subcontractor or supplier agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of these General Conditions.
 - (3) The subcontractor or supplier agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Service, except that the time for making claims for extra cost is one (1) week.
 - (4) The subcontractor or supplier agrees, upon completion of its Work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, and to permit simultaneous final payment by the Contractor.
 - (5) The provisions required by Section 9.06A through D of this Contract.
- C.
 - (1) Except as otherwise provided in (2) below, Contractor shall not be relieved of any obligation to the Service under the Contract by any action, inaction, delay, default, breach, omission, or neglect, on the part of the Contractor's Subcontractors and suppliers at any tier or by any defect in their materials, whether the Subcontractors, suppliers, or materials were selected or specified by the Service or by the Contractor.
 - (2) If the Contract or the Procurement Officer requires the Contractor to furnish a certain product or material and no other, then and only then will the Service be responsible for damages or delays caused by a design defect or other defect in the product; provided, however, that in such event the Service shall be subrogated to all rights and claims of the Contractor and his Subcontractors and suppliers at any tier against the seller, the manufacturer,

the designer of the product, and any other entity which may be liable for the defect.

D. The Contractor also agrees to:

- (1) pay the Subcontractor or supplier, upon the payment from the Service, the amount allowed to the Contractor on account of the Subcontractor's Work or supplier's materials to the extent of the Subcontractor's or supplier's interest therein.
- (2) pay the Subcontractor or supplier, upon the payment by the Service, so that at all times the Subcontractor's or supplier's total payments shall be as large in proportion to the value of the Work done by it as the total amount paid to the Contractor is to the value of the Work done by the Subcontractor or supplier.
- (3) pay the Subcontractor or supplier to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.
- (4) pay the Subcontractor or supplier on demand for its Work or materials as far as executed and fixed in place, less the retained percentage, at the time the payment is due from the Service, whether or not payment is made wholly or in part by the Service, unless the Service's failure to issue payment wholly or in part is due to the fault or unsatisfactory materials of the Subcontractor or supplier.
- (5) pay the Subcontractor or supplier an equitable share of any insurance money received by the Contractor on account of damage to the Work.
- (6) make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
- (7) give the Subcontractor or supplier an opportunity to be present and to submit evidence in any matter involving its rights.

E. No claim for services rendered, or materials furnished, by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten days of the calendar month following that in which the claim originated.

F. The Contractor and the subcontractor agree that nothing in this section shall create any obligation on the part of the Service to pay to or to see to the payment of any sums to any subcontractor.

G. Every Subcontractor, supplier, or other entity at any tier furnishing any work, labor, services, materials or supplies to or for use in the project, by virtue of furnishing same shall be bound to and does accept and agree to all terms and provisions of the Contract between Contractor and the Service.

H. The Service will not be liable to the Contractor for any loss or additional cost suffered as a result of the inability of any Subcontractor or supplier at any tier to continue work on the Contract as a result of debarment of the Subcontractor or

supplier under Title 16 or Title 17, Subtitle 2 of the Procurement Statutes, or regulations adopted thereunder.

9.05 PREVAILING WAGE RATES:

- A. Unless otherwise provided in the Contract Documents, Prevailing Wage is required in all Contracts in the amount of \$500,000 or more. Contracts where Prevailing Wage is required shall be subject to the provisions of Sections 17-201, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland as amended. If the Contract is in an amount less than \$500,000 then the terms of the statute shall not apply, even where subsequent Change Orders shall increase the total Contract in excess of \$500,000. Wage rates applicable to projects of \$500,000 or more shall be distributed to the Bidders upon receipt from the Maryland Department of Labor, Licensing and Regulation or its successors. Federal wage rates shall be in effect where applicable.
- B. Should the Prevailing Wage Law apply to this Contract, the Contractor shall submit two complete copies of its payroll records and the payroll records of each of its subcontractors -- one copy to the Service, and the second to the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202, where they will be available for inspection during regular business hours. These payroll records must be submitted within two (2) weeks after each payroll period, and shall contain the following employee information: name, address and social security number; work classification; hours straight time and overtime worked each day; total hours worked; rate of pay; and gross amount earned. The Contractor shall be responsible for the submission of all subcontractor's payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor, or the subcontractor, as the case may be, indicating that payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the Contract, that the classification set forth for each workman or apprentice conforms with the work being performed, and that the Contractor or the subcontractor, as the case may be, has complied with the provisions of this Section 9.05.
- C. If the Contractor is delinquent in submitting its own or any of its subcontractor's payroll records, processing of invoices may be held in abeyance pending receipt of the payroll records. In addition, if the Contractor is delinquent in submitting its own or any of its subcontractor's payroll records, the Contractor shall be liable to the Service for liquidated damages. The liquidated damages shall constitute the sum of two hundred fifty dollars (\$250.00) for each calendar day that the payroll records are late.

9.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS:

- A. The Contractor shall provide and maintain work environments and procedures, which will:
 - (1) Safeguard the public, workers on the site, and Service personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) Avoid interruptions of Service operations and delays in project completion dates; and

(3) Control costs in the performance of this Contract.

B. For these purposes, the Contractor shall:

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the provisions of the Maryland Occupational Safety and Health Act;

(3) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR. Part 1910; and

(4) Comply with all requirements of the Contract and any additional safety measures the Procurement Officer determines to be reasonably necessary.

C. Whenever the Procurement Officer becomes aware of any noncompliance with these requirements or any condition, which poses a serious or imminent danger to the health or safety of the public, workers on the site, or Service personnel, the Procurement Officer shall notify the Contractor orally, with written confirmation, and demand immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representatives at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Procurement Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the Contract price or extension of the performance schedule on any stop work order issued under this clause.

D. The Contractor shall include in all subcontracts a provision imposing on all Subcontractors the same obligations to the Contractor as the Contractor has to the Service under subsections A through D of this Section 9.06.

E. (1) This subsection E applies to all contracts in the amount of \$500,000 or greater and to all other contracts determined by the Procurement Officer to pose higher than normal safety or health risks.

(2) Before commencing the work, the Contractor shall:

(a) Submit to the Service a written Employer Safety and Health Program for implementing this clause, following the MOSH "Suggested Employee Safety and Health Program" format and including an analysis of the significant hazards to life, limb, and property inherent in Contractor work performance and a plan for controlling these hazards; and

(b) Meet with the Service to discuss and develop a mutual understanding of the overall safety and health program for the project.

SECTION 10 - MINORITY BUSINESS ENTERPRISE UTILIZATION:

10.01 PURPOSE:

The Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) subcontract participation goal stated in the Invitation for Bids. MBE performance must be in accordance with this Exhibit, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. The Bidder agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

10.02 DEFINITIONS:

As used in this Section, the following words have the meanings indicated.

- A. "Certification" means a determination through the procedures outlined in COMAR 21.11.03 that a legal entity is a minority business enterprise.
- B. "Certified Minority Business Enterprise" means a minority business enterprise that holds a certification.
- C. "Control" means the exercise of the power to manage and operate a business enterprise.
- D. "Joint Venture" means an association of two or more persons to carry out a single business activity for a limited purpose or time. A joint venture itself can never be certified as a minority business. The money invested in a joint venture reflects the percentage of participation by the parties in the joint venture. Only the money paid to a certified MBE in a joint venture may be credited by a prime Contractor toward reaching an MBE goal. The joint venture agreement must reveal the scope of the MBE's managerial and financial responsibilities.
- E. "Minority Business Enterprise" or "MBE" means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.
- F. (1) "Minority person" means a member of a socially or economically disadvantaged minority group, and includes African Americans, Hispanics, American Indians, Asians, women, and the physically or mentally disabled.

(2) "Minority person" includes, for contracts funded wholly or in part by federal funds, a federal definition of "minority person" if the use of the definition in Section 10.2 F(1) above is not acceptable to the federal government and the use of the federal definition is required as a condition of federal participation in the Contract.
- G. "MBE Liaison Officer" means the employee designated by the Service to administer the Service's MBE Program.
- H. "Ownership" means:
 - (1) For a sole proprietorship, that the sole proprietor is a minority person. If the ownership interest held by a minority person is subject to formal or informal

restrictions such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interest, agreements, etc., held by the non-minority person or business entity may not significantly impair the minority person's ownership interest.

- (2) For a partnership, that at least 51 percent of the partnership's assets or interests are owned by a minority person or minority persons. If the ownership interest held by a minority person is subject to formal or information restrictions such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by a non-minority person or business entity may not significantly impair the minority person's ownership interest.
 - (3) For a corporation, that legal and equitable ownership of at least 51 percent of all classes of stock, bonds, or other securities issued by the corporation is owned by a minority person or minority persons. If an ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity may not significantly impair the minority person's ownership interest.
- I. "Solicitation notice" means public notice of a solicitation for bids, offers, or expressions of interest which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice must consist of but is not limited to:
- (1) Legal advertisement;
 - (2) Newspaper notice;
 - (3) Bid Board Notice; or
 - (4) Bid or proposal documents including the invitation for bids or request for proposals.

10.03 CONTRACTOR RESPONSIBILITIES:

- A. If a MBE subcontract participation goal has been established in the Service's solicitation documents, the Contractor agrees that this amount of the Contract will be performed by Maryland State Certified Minority Business Enterprises.
- B. The MBE prime contractor shall to put forth a good faith effort to achieve the established MBE subcontract goal and that Maryland State Certified Minority Business Enterprises will perform the tasks identified and assigned by the Bidder.
- C. The documentation requirements of F, below, are applicable only if Maryland State Certified MBE subcontractors are to be utilized in the performance of the Contract.

- D. Only Maryland State certified MBE subcontractors may be utilized to meet the established MBE subcontract participation goal on this contract.
- E. Each bid or offer submitted in response to this solicitation shall be accompanied by a completed MBE Utilization Affidavit (MBE Attachment A), whereby the bidder acknowledges the certified MBE participation goal, and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process. Whether or not the MBE Utilization Affidavit is filed with the bid, by submission of a bid each bidder acknowledges the MBE goal stated in the solicitation and promises to make a good faith effort to achieve the goal.
- F. The bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The bidder or offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE Participation Schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals. A Bidder/Offeror requesting a waiver should review Attachment E (Waiver Guidance) and F (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.
- G. To achieve the result of meeting the contract minority business enterprise subcontract participation goal, the contractor shall:
- (1) Identify specific work categories appropriate for subcontracting;
 - (2) At least ten (10) days prior to the bid opening, solicit minority business enterprises, through written notice that describes the categories of work to be subcontracted and provide specific instructions on how to submit a bid;
 - (3) Attempt to make personal contact with MBE firms;
 - (4) Assist MBE firms with bonding requirements or to obtain a waiver of those requirements;
 - (5) In order to publicize contracting opportunities to minority business enterprises, attend pre-bid meetings or other meeting scheduled by the agency.

H. Documentation

The following documentation shall accompany the Bid and shall be part of the Contract:

- (1) MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (MBE Attachment A)

If the bidder is unable to achieve the MBE subcontract participation goal, the Bidder shall submit, in conjunction with MBE Attachment A, a request for a full or partial waiver.

The following documentation shall be submitted within ten (10) working days from notification that the Contractor is the apparent low Bidder or within ten (10) working days following the award, whichever is earlier and shall be part of the Contract:

- (1) Outreach Efforts Compliance Statement (MBE Attachment B)
- (2) MBE Subcontractor Project Participation Certification (MBE Attachment C) signed by both the Bidder and each MBE listed in the schedule of participation and MBE Prime Project Participation Certification (Attachment C-Page 2) (if applicable).
- (3) Any other documentation considered appropriate by the Service to ascertain bidder responsibility in connection with the contract MBE participation goal.
- (4) The amount and type of bonds required of MBE Contractors, if any.
- (5) The Contractor, by submitting its bid or offer, consents to provide such documentation as requested by the Service and to provide right of entry at any reasonable time for purposes of the Service's representatives verifying compliance with the MBE Subcontractor requirements.

If the bidder is requesting a full or partial waiver of the MBE subcontract participation goal, the Bidder shall submit, instead of or in conjunction with MBE Attachment B, a fully documented written request for a full or partial waiver to include the following:

- (a) A detailed statement of the efforts made to select portions of the Work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal;
- (b) A detailed statement of the efforts made to contact and negotiate with MBEs and non-MBEs including the names, addresses, dates and telephone numbers of MBEs contacted, and a description of the information provided regarding the Plans, Specifications, and anticipated time schedule for portions of the Work to be performed. **(Complete Good Faith Efforts Attachment F- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);**
- (c) **Rejected MBE Firms (Complete Good Faith Efforts Attachment F, Part 3)** As to each MBE that placed a Subcontract quotation which the bidder considers not to be acceptable, a detailed statement of the reasons for this conclusion; and
- (d) A list of minority Subcontractors found to be unavailable. This should be accompanied by a **Minority Contractor Unavailability Certificate (MBE Attachment F, Part 4)** signed by the minority business refused to give the written certification.

If each completed document is not returned within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

10.04 RECORDS AND REPORTS:

- A. The Contractor shall maintain such records as are necessary to confirm compliance with its Minority Business Enterprise utilization obligations. These records shall indicate the identify of minority and non-minority Subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work, services and procurement achieved by each Contractor and Subcontractor.
- B. The Contractor shall submit information with his monthly cost breakdown for progress payments which indicates the dollar value of Contracts awarded to Minority Business Enterprises as the Contract Work occurs. (MBE Attachment G) This information will be submitted as a supplement to the Cost Breakdown For Progress Payments form. Failure of the Contractor to submit the required supplementary MBE participation information may result in delays in processing progress payments.
- C. All records concerning MBE participation must be retained by the Contractor and will be available for inspection by the Service for a period of three years after final completion of the Contract.

10.05 ENFORCEMENT:

- A. The Service is responsible for conducting inspections to confirm compliance with the terms of this Section. If the Service determines that the Contractor or Subcontractors are not in compliance with this Section, the Service will notify the Contractor of those measures which the Contractor must take to restore the Contractor to a state of compliance.
- B. If the documentary material submitted by the Contractor or Subcontractor to determine minority business status contains false, misleading information or other misrepresentations, the matter will be referred to the Attorney General for appropriate action.

10.06 CONTRACTOR ASSISTANCE:

- A. Contractors requiring assistance in locating Minority Business Enterprises are encouraged to contact the following offices:

Minority Business Enterprise Office
Department of Transportation
7201 Corporate Center Drive
P.O. Box 548
Hanover, Maryland 21076
410-865-1241

The State of Maryland Minority Business Enterprise Directory is available to Contractors online and at the location listed above. The Directory contains information about currently certified Minority Business Enterprises.