
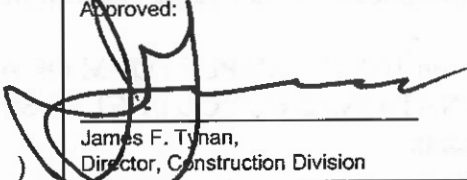


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| To: <p style="text-align: center;">SUPERSEDED BY EB02-024 EFFECTIVE 7/11/02</p> |  | New York State Department of Transportation ENGINEERING INSTRUCTION | <p style="font-size: 2em;">EI</p> <p style="font-size: 1.2em;">01-018</p> |
| Title: Revisions to Section 100 of the Standard Specifications - Phase 3 | | | |
| Distribution: <input checked="" type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Main Office (30) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Regions/Agencies (32) | <input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Contractors (39) <input type="checkbox"/> () | Approved:  James F. Tynan, Director, Construction Division | <p style="font-size: 1.5em; text-align: center;">7-20-01</p> <p style="text-align: center;">Date</p> |

ADMINISTRATIVE INFORMATION: This Engineering Instruction (EI) is effective with projects submitted for the letting of November 1, 2001. This EI supersedes EI 90-038, EI 93-034, EI 98-022, EI 00-018 and EI 00-041. This EI supersedes the portion of the attachment to EI 99-033 labeled "A. MODIFICATIONS TO STANDARD SPECIFICATION PROVISIONS", and the shelf note attached to EI 01-006. The attached shelf notes will be incorporated into the next reprinting of the Standard Specifications or addendum. Associated revisions to the MURK Part 1A, Contract Administration Manual (CAM) for §104-10, Value Engineering Change Proposal have been concurrently released via EB 01-036. Additional revisions will be issued at a later date.

PURPOSE: This EI issues revisions to Addendum No.1 (Adopted April 8, 1999) To the Standard Specifications of January 2, 1995. All previously issued revisions to Addendum No. 1 have been incorporated into this EI.

TECHNICAL INFORMATION: These revisions include several substantive changes, the incorporation of several special notes that are currently in use, several new subsections, revisions relating to changes in federal DBE regulations, general reorganization and editorial/typographical corrections. The attached revisions to Section 100 will be included as a shelf note to contract proposals by Main Office DQAB for all contracts beginning with those submitted for the letting of November 1, 2001.

TRANSMITTED MATERIALS: Shelf Notes to implement the following specification changes. These shelf notes will be incorporated into the next reprinting of the Standard Specifications or addendum.

1. Subsection 101-01 ABBREVIATIONS, updates several abbreviations.
2. Subsection 101-06 to 101-60, updates and adds definitions of numerous terms.
3. Subsection 102-03 PROPOSAL SHALL SPECIFY GROSS SUM, adds alternate language for A+B Bidding from EI 99-033.
4. Subsection 102-04 NO MISUNDERSTANDING, issues minor formatting edits.
5. Subsection 102-10 LABOR AND, adds overtime requirements from §110-03.
6. Subsection 102-17 SAMPLE FORM OF AGREEMENT, Article 1, clarifying the assumptions made when bidding the contract. This change was originally issued by EI 00-041.

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7. Subsection 102-17 SAMPLE FORM OF AGREEMENT, ARTICLE 7 & 9, adds language regarding retainage as required by Section 38 of the Highway Law.
8. Subsection 102-17 SAMPLE FORM OF AGREEMENT, Article 9, informs the Contractor that additional agencies other than the NYSDOT may review and accept the work performed by the Contractor. This change was originally issued by EI 00-041.
9. Subsection 102-17 SAMPLE FORM OF AGREEMENT, adds ARTICLE 14, INTERNATIONAL BOYCOTT CLAUSE. This clause currently appears in contract agreements.
10. Subsection 102-22 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION, was revised to incorporate federal requirements. This subsection, and the accompanying Form AAP-21c previously underwent clearance review.
11. Subsection 103-01 CONTRACT AWARD, adds alternate language for A+B Bidding from EI 99-033, alternate language for Buy America previously in §110-10.02 and Contractor certification requirements for structural paint removal and painting.
12. Paragraph 103-04(A) Faithful Performance Bond, adds alternate language for A+B Bidding from EI 99-033.
13. Subsection 104-03 CONTINGENCIES, EXTRA WORK, DEDUCTIONS, adds permission for the Contractor to proceed with work based upon an order-on-contract approval from the Construction Division. Duplicate language was eliminated by EI 00-041.
14. Subsection 104-06 SITE HOUSEKEEPING, adds requirement for the Contractor to keep the work site clean on an ongoing basis, not only upon completion.
15. Subsection 104-07 METHODS AND EQUIPMENT, changes D.C.E.C. to Director, Construction Division.
16. Subsection 104-08 WARRANTIES AND GUARANTEES, expands the requirements for warranties provided to the Department.
17. Subsection 104-10 VALUE ENGINEERING CHANGE PROPOSALS (VECP), was moved from §110-02, renamed, and significantly expanded upon. Major changes include: mandatory submission of conceptual and formal proposals and submission requirements, guidance on significant changes, force accounts are not allowed, notification that any VECP work prior to approval is at Contractor's risk, expanded descriptions of conditions and of method of payment, and guidance on omitted work. For clarification, VECP are different from Value Engineering (VE) Studies. VECP are Contractor submitted alternative construction designs, methods, or procedures. VE Studies are systematic studies typically performed during the design phases of a project.
18. Subsection 105-01 STOPPING WORK, adds guidance and consequences should a Contractor choose to disregard a written stop work order from the Engineer. This change was originally issued by EI 00-041.

19. Subsection 105-05 PROJECT RECORDS, changes D.C.E.C. to Director, Construction Division.
20. Subsection 105-10 SURVEY AND STAKEOUT, deletes outdated references and adds references to current contract pay item.
21. Subsection 105-12 CONSTRUCTION EQUIPMENT, revises authorization for overweight from the Engineer to the Department, and outlines requirements for different situations.
22. Paragraph 105-14(A)(3) of DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS, strictly limits the Contractor's time frame for notifying the Department. This change was originally issued by EI 00-041.
23. Subsection 105-14 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS, reinforcing the Departments rights and the Contractor's obligations under the contract. This change was originally issued by EI 00-041.
24. Subsection 105-16 APPROVAL OF SHOP DRAWINGS, INSTALLATION METHODS AND CONSTRUCTION DETAILS, adds default requirements for shop drawing review.
25. Subsection 105-17 MAINTENANCE AND PROTECTION OF TRAFFIC FOR MOBILE OPERATIONS, was moved from §110-06.
26. Subsection 106-01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS, clarifies waiver of MSDS requirements for commonly used materials. Adds requirement for the Contractor to notify DCES of fabricator for prestressed concrete units, bridge bearings, armored bridge joints, railings and sign structures.
27. Subsection 106-02 SAMPLES, TESTS AND CITED SPECIFICATIONS, deletes references to Class B concrete, which was eliminated in 1985; MUTCD and SCM, which are added to the definitions under Section 101. Dual unit dimensioning for shop drawings, details, etc was originally issued by EI 00-041.
28. Subsection 106-10 INDEPENDENT ASSURANCE SAMPLING AND TESTING, was originally issued by EI 01-006.
29. Subsection 106-11 BUY AMERICA, was moved from §110-10, contains minor edits and reformatting. §110-10.02 relating to Contract Award was incorporated into §103-01. Paragraph 106-11(C) Waivers, establishes a waiver policy for Buy America.

30. Subsection 107-05 SAFETY AND HEALTH, is a major revision, which covers a variety of topics that were previously inserted into proposals as special notes, and some new notes, including:

| | | |
|----|--|----------------------|
| A. | General | (Existing) |
| B. | Project Safety and Health Plan | (Existing) |
| C. | Emergency Contact Person | (Existing) |
| D. | Accident Reporting | (New) |
| E. | Imminent Danger and Emergency Actions | (New) |
| F. | Restricted Areas | (Existing) |
| G. | Work Site Access | (New) |
| H. | Fall Protection | (Special Notes) |
| I. | Working over Water | (Special Notes) |
| J. | Electrical Safety | (Special Notes) |
| K. | Histoplasmosis | (Special Notes) |
| L. | Hazardous Materials | (Partially Existing) |
| M. | Demolition of Buildings and Structures | (New) |
| N. | Drilling and Blasting | (Existing) |
| O. | Equipment Safety Procedures | (Memo Issuance) |
| P. | Lifting Operations | (New) |
| Q. | Confined Spaces | (New) |
| R. | Fire and Explosion Prevention | (New) |
| S. | Pavement Striping | (New) |

31. Subsection 107-07 PROTECTION OF UNDERGROUND UTILITIES, is an updated and expanded subsection on underground utilities, including the material previously contained in §110-07. The existing §107-07 was deleted. The new paragraphs are:

- One-Call (New)
- Verification (New)
- Contact or Damage (New)
- Pressure Pipes (New)

32. Subsection 107-09 DAMAGE, to insure prompt handling of public claims of damage to personal property. This change was originally issued by EI 00-041.

33. Subsection 107-12 WATER QUALITY PROTECTION, was renamed, updated, and the portion relating to air quality was moved to §107-15.

34. Subsection 107-15 AIR QUALITY PROTECTION, is a new subsection that includes material that was moved from §107-12.

35. Subsection 107-16 SOLID WASTE MANAGEMENT, is a new subsection that includes material that was moved from §110-08 and expanded upon.

36. Subsection 108-01 START AND PROGRESS OF WORK, inserts headings for paragraphs A-D.

37. Subsection 108-03 FAILURE TO COMPLETE WORK ON TIME, issues a new Table 108-01, Schedule of Liquidated Damages. This change was originally issued by EI 00-041.

38. Subsection 108-05 SUBLETTING OR ASSIGNING THE CONTRACT, adds the material previously contained in §110-04.
39. Subsection 108-06 COMMENCEMENT OF ACTIONS ON STATE PUBLIC WORKS CONTRACTS, was moved from §110-05.
40. Subsection 109-01 ESTIMATES AND PAYMENTS, changes Regional Construction Engineer to Engineer.
41. Subsection 109-02 FINAL ADDITIONS, makes minor clarifications to price definitions.
42. Subsection 109-03 PAYMENTS ON CONTRACT, includes revisions to require submission of AAP-21c to fulfill legal requirements for Contractor to certify payment of subcontractors and material suppliers. Notice to the Contractor that payment may be made by more than one agency was originally issued by EI 00-041.
43. Subsection 109-04 PARTIAL PAYMENTS, clarifies that individual components may be combined to meet the \$5,000 minimum and adds bridge bearings to the bulleted list.
44. Subsection 109-05 EXTRA WORK, FORCE ACCOUNT WORK, DISPUTE COMPENSATION AND RECORDKEEPING, adds \$1,000 limit to quantity changes in non-major items before seeking new unit prices. Minor edit to §109-05.C.1.(a.)
45. Paragraph 109-05(D) TIME RELATED DISPUTE COMPENSATION, stipulates the method of computing the compensation due. This change was originally issued by EI 00-041.
46. Subsection 109-09 FINAL ACCEPTANCE OF THE WORK, informs the Contractor that additional agencies other than the NYSDOT may review and accept the work performed by the Contractor. This change was originally issued by EI 00-041.
47. Subsection 109-10 UNCOMPLETED WORK AGREEMENT, clarifies inclusion of non-pay item work required in the agreement.
48. Subsection 109-11 FINAL AGREEMENT, corrects typographical error, changing claims to disputes.
49. Subsection 109-12 PROMPT PAYMENT BY THE CONTRACTOR, adds requirements for Contractor to certify payment of Subcontractors and DBE Vendors.
50. Subsection 109-13 FINAL PAYMENT, now includes the material previously contained in §110-01.
51. Paragraph 109-16.A.3.iv.(c), creates a new definition for major items based upon original bid quantity.
52. Subsection 109-17 MATERIALS NOT INCORPORATED INTO THE CONTRACT, establishes payments allowed for materials not incorporated into a contract due to revisions by the State.

53. Section 110 MISCELLANEOUS REQUIREMENTS, material was moved to other subsections and the entire section was deleted.
- §110-01 was edited and moved to §109-12.
 - §110-02 was edited and moved to §104-10.
 - §110-03 was edited and moved to §102-10.
 - §110-04 was incorporated into §108-05.
 - §110-05 was edited and moved to §108-06.
 - §110-06 was edited and moved to §105-17.
 - §110-07 was edited and incorporated into §107-07.
 - §110-08 was edited and incorporated into §107-16.
 - §110-09 was deleted, the material is currently contained in §619-3.06.
 - §110-10 was edited and moved to §106-11.
 - §110-11 was incorporated into §106-11.

BACKGROUND: The Department is involved in a continuous improvement effort to clarify our specifications. This effort began with the adoption of Addendum No. 1 to the Standard Specifications. The following is a continuation of that effort.

CONTACT: Questions concerning this EI may be addressed to Brian DeWald or Rob Howland of the Construction Division at 518-457-6472 or via e-mail at BDeWald@gw.dot.state.ny.us or RHowland@gw.dot.state.ny.us (for external e-mail users).

Make the following changes to Addendum No. 1 to the Standard Specifications dated January 2, 1995:
Page i, **Delete** the entire page and **Replace** with the following:

"Section 100 GENERAL PROVISIONS

101 - ABBREVIATIONS AND DEFINITIONS OF TERMS

101-01 ABBREVIATIONS.

101-02.1 TO 101-62 DEFINITIONS OF TERMS

102 - BIDDING REQUIREMENTS AND CONDITIONS

102-01 LOCATION OF REGIONAL OFFICES.

102-02 PROPOSALS.

102-03 PROPOSAL SHALL SPECIFY GROSS SUM.

102-04 NO MISUNDERSTANDING.

102-05 SUBSURFACE INFORMATION.

102-06 MODIFICATION OR WITHDRAWAL OF PROPOSAL.

102-07 BID DEPOSIT.

102-08 CONTRACT CLAUSES REQUIRED IN PUBLIC WORK.

102-09 OTHER CONTRACTS, COORDINATION AND ACCESS.

102-10 LABOR AND EMPLOYMENT.

102-11 FORMS.

102-12 (VACANT)

102-13 SAMPLE FORM OF PROPOSAL TITLE SHEET.

102-14 SAMPLE FORM OF PROPOSAL.

102-15 (VACANT)

102-16 SAMPLE FORM OF LABOR RATES.

102-17 SAMPLE FORM OF AGREEMENT.

102-18 SAMPLE FORM OF FAITHFUL PERFORMANCE BOND.

102-19 SAMPLE FORM OF LABOR AND MATERIAL BOND.

102-20 SAMPLE FORM OF BID BOND.

102-21 MINORITY/WOMEN'S BUSINESS ENTERPRISE UTILIZATION FOR NON-F.A. CONTRACTS.

102-22 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION.

102-23 STATE AND LOCAL SALES TAX EXEMPTION.

103 - CONTRACT AWARD AND EXECUTION

103-01 CONTRACT AWARD.

103-02 EXECUTION OF CONTRACT.

103-03 RIGHT TO SUSPEND WORK AND CANCEL CONTRACT.

103-04 BONDS.

104 - SCOPE OF WORK

104-01 WORK REQUIRED.

104-02 ALTERATIONS AND OMISSIONS.

104-03 CONTINGENCIES, EXTRA WORK AND DEDUCTIONS.

104-04 CLOSING OF HIGHWAY.

104-05 RESTRICTED USE OF HIGHWAY.

104-06 SITE HOUSEKEEPING.

104-07 METHODS AND EQUIPMENT.

104-08 WARRANTIES AND GUARANTEES.

104-09 RETENTION OF RECORDS.

104-10 VALUE ENGINEERING CHANGE PROPOSAL.

105 - CONTROL OF WORK

- 105-01 STOPPING WORK.
- 105-02 ORDERS TO FOREMAN.
- 105-03 ACCURACY OF PLANS AND SPECIFICATIONS.
- 105-04 CONFORMITY WITH PLANS AND SPECIFICATIONS.
- 105-05 PROJECT RECORDS.
- 105-06 INTERPRETATION OF PLANS.
- 105-07 TERMINATION CLAUSE.
- 105-08 COOPERATION BY THE CONTRACTOR.
- 105-09 WORK AFFECTING RAILROADS.
- 105-10 SURVEY AND STAKEOUT.
- 105-11 INSPECTION.
- 105-12 CONSTRUCTION EQUIPMENT.
- 105-13 WINTER EARTHWORK OPERATIONS.
- 105-14 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS.
- 105-15 CONTRACTOR'S RESPONSIBILITY FOR WORK.
- 105-16 APPROVAL OF SHOP DRAWINGS, INSTALLATION METHODS AND CONSTRUCTION DETAILS.
- 105-17 MAINTENANCE AND PROTECTION OF TRAFFIC FOR MOBILE OPERATIONS.

106 - CONTROL OF MATERIAL

- 106-01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS
- 106-02 SAMPLES, TESTS AND CITED SPECIFICATIONS.
- 106-03 PLANT ACCEPTED MATERIAL.
- 106-04 REJECTION.
- 106-05 STORAGE OF MATERIALS.
- 106-06 TRANSPORTATION OF MATERIALS.
- 106-07 BASIS FOR MEASUREMENT.
- 106-08 REMOVAL OF REJECTED MATERIAL.
- 106-09 EQUIVALENTS.
- 106-10 INDEPENDENT ASSURANCE SAMPLING AND TESTING
- 106-11 BUY AMERICA.

107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

- 107-01 LAWS, PERMITS AND LICENSES.
- 107-02 PATENTED DEVICES, MATERIALS AND PROCESSES.
- 107-03 FEDERAL AID.
- 107-04 SANITARY CODE.
- 107-05 SAFETY AND HEALTH REQUIREMENTS.
- 107-06 INSURANCE.
- 107-07 PROTECTION OF UNDERGROUND UTILITIES.
- 107-08 PRESERVATION OF PROPERTY.
- 107-09 DAMAGE.
- 107-10 RESTORATION OF DISTURBED AREAS OUTSIDE THE RIGHT-OF-WAY.
- 107-11 RESTORATION OF DISTURBED AREAS WITHIN THE RIGHT-OF-WAY.
- 107-12 WATER QUALITY PROTECTION.
- 107-13 OPENING HIGHWAY TO TRAFFIC PRIOR TO ACCEPTANCE.
- 107-14 FURNISHING RIGHT-OF-WAY.
- 107-15 AIR QUALITY PROTECTION.
- 107-16 SOLID WASTE MANAGEMENT.

- 108 - PROSECUTION AND PROGRESS
 - 108-01 START AND PROGRESS OF WORK.
 - 108-02 DATE OF COMPLETION AND CLOSING.
 - 108-03 FAILURE TO COMPLETE WORK ON TIME.
 - 108-04 EXTENSION OF TIME.
 - 108-05 SUBLETTING OR ASSIGNING THE CONTRACT.
 - 108-06 COMMENCEMENT OF ACTIONS ON STATE PUBLIC WORKS CONTRACTS.

- 109 - MEASUREMENT AND PAYMENT
 - 109-01 ESTIMATES AND PAYMENT.
 - 109-02 FINAL ADDITIONS OR DEDUCTIONS.
 - 109-03 PAYMENTS ON CONTRACT.
 - 109-04 PARTIAL PAYMENTS.
 - 109-05 EXTRA WORK, FORCE ACCOUNT WORK, DISPUTE COMPENSATION AND RECORDKEEPING.
 - 109-06 PROGRESS PAYMENTS.
 - 109-07 PAYMENT OF ESTIMATES.
 - 109-08 NO ESTIMATE ON CONTRACTOR'S NON-COMPLIANCE.
 - 109-09 FINAL ACCEPTANCE OF WORK.
 - 109-10 UNCOMPLETED WORK AGREEMENT.
 - 109-11 FINAL AGREEMENT.
 - 109-12 PROMPT PAYMENTS BY THE CONTRACTOR.
 - 109-13 FINAL PAYMENT.
 - 109-14 ACCEPTANCE OF FINAL PAYMENT.
 - 109-15 CONTRACTOR'S COST RECORDS.
 - 109-16 CHANGED CONDITIONS AND DELAY PROVISIONS.
 - 109-17 MATERIALS NOT INCORPORATED INTO THE CONTRACT.

Page 1-1, **Delete** line 3 and **Replace** with the following:

"SECTION 101 - ABBREVIATIONS AND DEFINITIONS OF TERMS"

Page 1-1, **Delete** lines 28-29 and **Replace** with the following:

"C.R.U. – Contract Review Unit
D.C.E.D. – Deputy Chief Engineer for Design"

Page 1-1, after line 35, **Insert** the following:

"M.U.R.K. – Manual for Uniform Record Keeping"

Page 1-1, after line 37, **Insert** the following:

"N.Y.S.D.E.D. – New York State Department of Economic Development
O.E.O.D.C. – Office of Equal Opportunity Development and Compliance
O.S.H.A. – Occupational Safety and Health Administration, U.S. Department of Labor"

Page 1-3, **Delete** line 27-29 and replace with the following:

"101-06 CALENDAR DAY. Every day shown on the calendar. The calendar day begins at 12:00AM (Midnight).

101-06.1 CFR. - Code of Federal Regulations published by the U.S. Office of the Federal Register, written TT CFR PPP.SS. TT refers to the Title, PPP refers to the Part and SS refers to the section. For example: 29 CFR 1926.1 refers to Title 29, Code of Federal Regulations, Part 1926, Section 1.

101-07 CHIEF ENGINEER. The Chief Engineer of the New York State Department of Transportation."

Page 1-4, **Delete** lines 23-24 and **Replace** with the following:

"101-18.1 DIRECTOR, CONSTRUCTION DIVISION. The Director of the Construction Division of the Office of Operations.

101-19 DIVISION. Any of the divisions of the Office of Engineering or the Office of Operations of the New York State Department of Transportation."

Page 1-4, **Insert** after line 42:

"101-24.1 FABRICATOR. A Fabricator assembles, constructs or otherwise substantially alters materials or supplies into assemblies, components or finished items for inclusion into the work prior to resale."

Page 1-5, **Insert** after line 29:

"101-32.1 MANUAL FOR UNIFORM RECORD KEEPING On Construction Contracts (MURK). Manual setting up uniform project record keeping procedures to be followed by the Engineer, current on the date of contract award.

101-32.2 MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). The New York State Manual of Traffic Control Devices, as amended, that is current on the date of advertisement for bids. The Manual of Traffic Control Devices prescribes standards for the design, location, use and operation of traffic control devices.

101-32.3 MANUFACTURER. A Manufacturer operates or maintains a factory or establishment that produces, on the premises, materials or supplies of the general character described by the specifications."

Page 1-5, **Insert** after line 31:

“101-33.1 MATERIAL SUPPLIER. A Material Supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A Material Supplier is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. A Material Supplier who deals in bulk items such as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Packagers, brokers, manufacturer’s representatives or other persons who arrange or expedite transactions are not Material Suppliers.”

Page 1-5, **Delete** lines 37-38 and replace with the following:

“101-35.1 NEAR. When used in reference to an underground facility, within 4.5 m (15 feet) of the outside perimeter or diameter of an underground facility or its encasement.

101-35.2 NYCRR. Official Compilation of Codes, Rules and Regulations of the State of New York, written TT NYCRR PPP. TT refers to the Title, and PPP refers to the Part of the official compilation.

101-35.3 ONE-CALL NOTIFICATION SYSTEM. Organization(s) whose purpose is to establish and carry out procedures to protect underground facilities from damage due to excavation and demolition, including receiving notices of intent to perform excavation and/or demolition and transmit the notices to the operators of underground facilities in the specified area.”

Page 1-6, **Delete** lines 1-3 and **Replace** with the following:

“101-36.1 OFFICE OF ENGINEERING. The New York State Department of Transportation, Office of Engineering, consisting of five divisions; the Design Division, the Real Estate Division, the Structures Design and Construction Division, the Technical Services Division, and the Traffic Engineering and Highway Safety Division; the Office of Equal Opportunity Development and Compliance and the Environmental Analysis Bureau.

101-36.2 OFFICE OF OPERATIONS. The New York State Department of Transportation, Office of Operations, consisting of three divisions, as follows: the Construction Division, the Equipment Management Division and the Transportation Maintenance Division.”

Page 1-6, **Insert** after line 15:

“101-38.1 PRESTRESSED CONCRETE CONSTRUCTION MANUAL (PCCM). The New York State Prestressed Concrete Construction Manual published by the Structures Design and Construction Division, which is current on the date of advertisement for bids. The Prestressed Concrete Construction Manual is a mandatory supplement to the contract documents for projects which include Prestressed Concrete Units (Structural).”

Page 1-7, **Insert** after line 34:

“101-54.1 STEEL CONSTRUCTION MANUAL (SCM). The New York State Steel Construction Manual published by the Structures Design and Construction Division, which is current on the date of advertisement for bids. The Steel Construction Manual is a mandatory supplement to the contract documents for projects which include items which require the Contractor to furnish or rehabilitate structural metals.”

Page 1-7, **Delete** line 40 and **Replace** it with the following:

“101-59 METRIC TON. Metric ton of 1000 kilograms. The metric ton is also referred to as the Megagram (Mg).

101-59.1 TOLERANCE ZONE. When used in reference to an underground utility, the tolerance zone shall be a distance of 0.6m on either side of the designated centerline, plus one-half of the utility diameter, if the utility diameter is known.”

Page 1-7, **Delete** lines 41-42 and **Replace** with the following:

“101-60 UTILITY. Person, corporation, municipality or public authority engaged in the distribution of electricity, gases, petroleum products, water, steam, the collection of wastewater, the operation of traffic control systems, or the provision of telecommunication service. For the purposes of these Specifications, the term Utility will apply to organizations that operate utilities owned by others.”

Page 1-9, **Delete** the first paragraph of §102-03 and **Replace** it with the following:

“102-03 PROPOSAL SHALL SPECIFY GROSS SUM. Each proposal shall specify the correct gross sum, in the manner hereafter described for which the work will be performed according to the plans and specifications and any amendment to the specifications if the same are issued prior to the date of receipt of the proposal, together with a unit price for each of the separate items as called for.

The lowest bid shall be determined by the Commissioner on the basis of gross sum for which the entire work will be performed, arrived at by a correct computation of all items specified in the proposal therefore at the unit prices stated in the proposal. For contracts subject to A+B Bidding, the lowest bid shall be determined by the Commissioner on the basis of the gross sum, which will be arrived at by a correct computation of all items specified in the proposal at the unit prices stated in the proposal (A portion), plus the total number of calendar days proposed by the bidder to complete the portion of work to which the incentive/disincentive is applicable, times the daily cost (B portion).

The Commissioner of Transportation reserves the right to reject any proposal in which any of the bid prices are significantly unbalanced to the potential detriment of the Department. An unbalanced bid is considered to be one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question.”

Page 1-10, §102-04, **Delete** lines 40-41 and **Replace** with the following:

“A. Base Line Data. The Department will make available relevant project specific information and engineering data...”

Page 1-11, §102-04, **Delete** line 1 and **Replace** it with the following:

“B. Contract Document Components. The following components of the contract documents complement one another in this declining...”

Page 1-16, **Delete** §102-10 and **Replace** it with the following:

“102-10 LABOR AND EMPLOYMENT. On those projects financed without Federal Aid, the provisions of State Labor Law, as amended, and referred to in §102-08, *Contract Clauses Required in Public Work*, shall be applicable. In accordance with Section 85 of the State Highway Law, on projects financed with Federal Aid, any provisions of State Labor Law that are in conflict with mandatory Federal-aid construction contract compliance requirements, as contained in 23 CFR 635.117 are superseded.

A. Overtime Dispensation. All bidders, in submitting their bids, should base their bids and work progression on the assumption that Overtime Dispensation pursuant to Article 8 of the New York State Labor Law, for any workers, laborers, and mechanics to work more than 8 hours in any one calendar day or more than five days in any one week will not be granted for any operation for the contract duration. Regardless of approval or disapproval of overtime by the Department of Labor, no adjustment will be made in any bid prices.

Subsequent to award, where the contract proposal has imposed specific scheduling and/or phasing requirements or where it is determined by the Department to be in the best interest of the public, the Department may process, for approval by the New York State Department of Labor (NYSDOL), requests for Overtime Dispensation on certain specific operations.

The Department will review applications for overtime dispensation submitted by the Contractor associated with contracts subject to (A+B) Bidding, Incentive/Disincentive (I/D) or Lane Rental work favorably, but the application should not request more than 60 hours per week. The 60 hours per week may be either 6 - 10 hour days or 5 - 12 hours days. Overtime dispensations will be supported by the Department to advance Department goals and priorities, subject to specific circumstances and conditions associated with each contract. An APPLICATION FOR DISPENSATION FOR HOURS will be provided by the Engineer upon request.

The Department cannot guarantee that the NYSDOL will grant dispensation from restrictions pursuant to the provisions of Article 8 of the State Labor Law, however with the Department's certification, it is anticipated that they will act favorably, provided that the Contractor is in compliance with Labor Law requirements at the time of application.

B. Payrolls. The Contractor and subcontractor shall furnish the Engineer, each week, its payroll records and statement of compliance with respect to the wages paid each of its employees, (including apprentices, trainees, watch persons and guards) engaged on work during the preceding weekly payroll period. Appropriate forms will be provided, by the Department, for this purpose. At the Contractor's option computer printed payroll records, which supply the required data, may be used.

C. Public Notices. The Contractor shall post, in a location designated by the Engineer, a copy of the NYSDOL schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the NYSDOL notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the Engineer directs. The Contractor shall provide a surface for such notices which is satisfactory to the Engineer. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

D. Worker Notices. The Contractor shall distribute a notice to each worker, in a form provided by the Engineer, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of the Contractor and all subcontractors. Such notice shall be distributed to each worker before he or she starts performing any work on the contract. At the time of distribution, the Contractor shall have each worker sign a statement, in a form provided by the Engineer, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by this section.

E. Federal-Aid Requirements.

1. Wage rates, Federal-aid Projects. The advertisement or call for bids on any contract for the construction of a project on the federal-aid system either shall include the minimum wage rates determined therefore by the U.S. Secretary of Labor or shall provide that such rates are set out in the advertisement, specifications, proposal, or other contract document, and shall further specify that such rates are a part of the contract covering the project.

2. Convict Labor. No convict labor unless performed by convicts who are on parole, supervised release, or probation, shall be employed in construction or used for maintenance or any other purpose at the site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the Department.

3. Selection of Labor. No procedures or requirement shall be imposed by any state which will operate to discriminate against the employment of labor from any other state, possession or territory of the United States, in the construction of a federal-aid project. The selection of labor to be employed by the Contractor on any federal-aid project shall be of his/her own choosing.

4. Non-Discrimination. Employment shall be provided without regard to race, color, religion, sex, or national origin."

Page 1-24, §102-17, Article 1, Insert the following after line 27:

"The Contractor further agrees their bid proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for Specified Construction Materials and Methods will be allowed; or any Value Engineering Change Proposals will be approved by the New York State Department of Transportation."

Page 1-26, §102-17, Article 7, **Insert** the following at the end of line 6:

“When a performance bond is approved, 5% shall be retained from each progress payment or estimate until final acceptance of the work.”

Page 1-26, §102-17, Article 9, line 15, **Delete** the second sentence in the first paragraph and **Replace** it with the following sentences:

“If the Commissioner accepts the recommendation of the Regional Director, he/she shall thereupon by letter notify the Contractor of such acceptance, and in accordance with Subdivision 7, Section 38 of the Highway Law, release up to 70% of the money held as retainage. Copies of such acceptance shall be sent to other interested parties. Prior to the final acceptance of the work by the Commissioner or his/her designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance”.

Page 1-27, §102-17, **Insert** the following after line 9:

“ARTICLE 14. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Chapter 406 of the Laws of 1981, the Contractor hereby promises, asserts and represents that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

It is understood further that the State in awarding a contract does so in material reliance upon the promise and representation made by the Contractor in the forgoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the Contractor or such owned or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations.

The Contractor agrees to and shall notify the Commissioner of Transportation and the Director of the Contract Management Bureau and State Expenditures in the Office of the State Comptroller of any such conviction or final determination of violation within five (5) days thereof.”

Page 1-42, **Delete** §102-22 and **Replace** it with the following:

“102-22 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION. The Department seeks to achieve the following:

- To ensure nondiscrimination in award and administration of Department contracts;
- To ensure that only firms that fully meet DBE eligibility standards are permitted to participate in the Department’s DBE program;
- To help remove barriers to the participation of DBEs in the performance of Department contracts;
- To create a level playing field on which DBEs can fairly compete for Department contracts; and
- To assist in the development of DBE firms that can compete successfully in the construction industry outside the DBE program.

The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules and regulations cited in this subsection to promote the objectives outlined above. The Department and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Department contracts. This policy shall be made a part of all subcontracts and agreements entered into as a result of this contract.

The Congress of the United States, to this end, has enacted the Surface Transportation Assistance Act (STAA) of 1982, Pub. L. 97-424, §105(f), the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, §106(c), the Intermodal Surface Transportation Efficiency Act of 1991 and Regulations have been promulgated under 49 CFR 26. New York State, to this end, has enacted Section 85 of the Highway Law, Section 428 of the Transportation Law, and 17 NYCRR 35. The parties to this contract shall comply with these laws, rules and regulations and the following DBE Program requirements:

GENERAL PROVISIONS

A. Goals

1. Established Goals. The Department may have established a contract utilization goal for DBEs, expressed as a percentage of the total contract price. The goal is stated in the proposal and remains in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that he/she subscribes to the utilization goal and shall meet the goal or demonstrate that he/she could not meet it despite his/her best efforts. Failure to meet the established goal for the contract and failure to meet the good faith efforts, as defined in paragraph F, may be grounds for rejection of the bid as non-responsive. When the contract is awarded with DBE participation that is less than the contract goal, the Contractor shall continue good faith efforts, as defined in paragraph F, throughout the life of the contract.

2. Zero Percent Goal. When the Department has established a zero goal for participation by DBEs and the Bidder proposes the use of a subcontractor or the purchase of goods from a material supplier at any time during the life of the contract, the Contractor agrees to promote the objectives outlined in this subsection by providing opportunities for DBEs to participate in these areas, with such participation to be credited towards the race-neutral component of the Department's DBE Program.

B. Counting DBE Participation Towards the DBE Goal. The value of work actually performed by the DBE in the amounts set forth below will be counted toward the goal. The cost of supplies purchased or materials obtained by the DBE, except for supplies purchased or equipment leased from the Contractor, will also be counted. The proposed utilization shall be considered to be a commercially useful function, as defined in paragraph C(1). If the Department determines that some or all of the DBE's work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal. The DBE has the ability to rebut a determination by the Department that the DBE is not performing a commercially useful function. The Department's determination is subject to review by FHWA but is not appealable to USDOT.

DBE participation shall be counted toward meeting the DBE goal in accordance with the following:

1. Eligibility. Only those DBE firms that are certified by the Department or, at the Department's discretion, DBE firms that are certified by other entities that are certifying agencies approved by USDOT, are eligible to be used for goal attainment on this contract. DBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a DBE.

2. Subcontracting. The total agreed value of work to be performed by the DBE's own forces is counted toward the applicable DBE goal, except as provided in numbers 3 and 4 below.

3. Joint Ventures. The total dollar value of the contract equal to the distinct, clearly defined portion of the work in the contract that the DBE performs with its own forces will be counted toward the DBE contract goal, subject to approval by the Department of the joint venture agreement to be furnished by the Bidder before award of the contract. The joint venture agreement shall include a detailed breakdown of the following:

- a. Contract responsibility of the DBE for specific contract items of work;
- b. Capital participation by the DBE;
- c. Specific equipment to be provided to the joint venture by the DBE;
- d. Specific responsibilities of the DBE in the control of the joint venture;
- e. Specific staffing and skills to be provided to the joint venture by the DBE; and
- f. Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

4. Manufacturers, Fabricators and Material Suppliers. Expenditures for materials and supplies obtained from DBE Manufacturers, Fabricators and Material Suppliers in the amounts noted below will be counted toward the DBE goal. The DBE Manufacturer, Fabricator or Material Supplier shall assume the actual and contractual responsibility for the provision of the materials and supplies.

- a. Count 100% of the expenditure to a DBE Manufacturer or Fabricator.
- b. Count 60% (sixty percent) of the expenditure to a DBE Material Supplier. Packager's, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not Material Suppliers within the meaning of this paragraph.

c. With respect to materials or supplies purchased from a DBE which is neither a Manufacturer nor a Fabricator nor a Material Supplier, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies required on a job site, toward the DBE goals, provided they are determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves are not counted.

5. Trucking Operations. Count toward the DBE goal the expenditure for trucking operations provided by certified DBEs in accordance with the following:

a. To satisfy the criterion of performing a commercially useful function as a subcontractor, a DBE shall own and operate at least one fully licensed, insured, and operational truck used on the contract and shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goals.

b. The DBE receives credit for 100 % of the value of the trucking operations it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

c. The DBE may lease trucks from another DBE, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for 100% of the value of the trucking operations the lessee DBE provides on the contract.

d. The DBE may lease trucks from a non-DBE, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the value of the trucking operations provided by the lessee, because these operations are not provided by a DBE.

For purposes of paragraph (d.), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Lease trucks shall display the name and identification number of the DBE.

e. The Bidder shall provide the following with the utilization package as described in paragraph E.

- (1) Copies of all lease agreements utilized by the DBE; and
- (2) Calculations and any pertinent documentation that supports the dollar value of the proposed DBE trucking operations; e.g., method of payment (hour, ton or load hauled), the number of trucks required to perform the trucking operations listed on the Form AAPHC-89 (Part 1), D/M/WBE Utilization Worksheet, and the duration of the trucking operations to be performed.

f. The DBE trucking firm of record is the firm that is listed on the Form AAP-19, D/M/WBE Schedule of Utilization. The DBE trucking firm of record shall control the day-to-day trucking operations on the project, and is responsible for:

- (1) Negotiating and executing rental/leasing agreements;
- (2) Hiring and firing the work force;
- (3) Coordinating the daily trucking needs with the Contractor;
- (4) Scheduling and dispatching trucks.

6. Other. Count the entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

C. Conditions of Participation. DBE participation will be counted toward meeting the DBE contract goal, subject to all of the following conditions:

1. Commercially Useful Function. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the goal and may be required to backfill the participation in accordance with paragraph I. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

2. Work Force. The DBE shall employ a work force, (including administrative and clerical) separate and apart from that employed by the Contractor, other subcontractors on the project, or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

3. Supervision. All work performed by the DBE shall be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor or other subcontractors. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the work of the contract.

4. Equipment. DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. However, no more than 50% of the cost of the equipment required to perform the work of the subcontractor may be obtained from the Contractor, other subcontractors on the project, or their affiliates. If the DBE obtains equipment from any of those sources, the DBE shall provide the Department documentation demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

PRE-AWARD PROVISIONS

D. Requests For Waiver. A potential bidder may request a waiver of all or part of a contract's DBE goal by submitting a written request to OEODC. A potential bidder is defined as one who has purchased the contract documents. The request shall be submitted no later than fourteen (14) calendar days prior to the contract letting, in order to allow sufficient time for a review and issuance of an amendment of the established goal, if necessary, in accordance with the Department's schedule for contract amendments. The request should contain sufficient justification as to why the goal should be waived or reduced, and should at least address the following factors: the potential Bidder's method of accomplishing the work, the subcontracting opportunities associated with the proposed method, and the availability of certified DBEs for the work to be subcontracted.

E. DBE Utilization Package. The Bidder shall submit a complete utilization package within seven (7) calendar days after the bid opening. The DBE utilization package consists of:

1. Form AAP-19, D/M/WBE Schedule of Utilization;
2. Form AAPHC-89 (Part 1), D/M/WBE Utilization Worksheet (NOTE: Form AAPHC-89 shall be co-signed by both the Contractor and the Subcontractor/DBE Vendor); and
3. Documentation that substantiates good faith efforts as described in paragraph F.

If the Bidder has met or exceeded the established DBE goal for the contract utilizing certified DBEs, or if the Bidder is a certified DBE, it is not necessary to submit documentation of good faith efforts as described in paragraph F.

F. Good Faith Efforts. To determine whether a bidder that has failed to meet the DBE contract goal may receive the contract, the Department will decide whether the efforts the Bidder made to obtain DBE participation were "good faith efforts" to meet the goal. Efforts that are merely pro forma are not good faith efforts to meet the goal. Efforts to obtain DBE participation are not good faith efforts to meet the goal, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal. In order to award a contract to a bidder that has failed to meet the DBE contract goal, the Department will determine that the Bidder's efforts were those that, given all relevant circumstances, a bidder actively and aggressively seeking to meet the goal would make.

In order to evaluate the Bidder's conformance to this subsection, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The following is a list of types of actions which the Department will consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exhaustive or exclusive. Other factors, or types of efforts may be relevant in appropriate cases.

The following is a list of the kinds of efforts that the Department will evaluate to determine if the Bidder has demonstrated a good faith effort:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidder shall solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder shall determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2.
 - a. The Bidder shall, at a minimum, seek certified DBEs in the same geographic area where the project is located. This is defined as a one hundred (100) kilometer radius around the city, town or borough where the project is located as identified in the contract proposal. For specialty work such as pavement markings, guide rail, etc. (as defined in the contract proposal) the Bidder shall, at a minimum, solicit on an upstate or downstate basis, depending upon the location of the project.
 - b. The Department has facilitated identification of these areas through its *Automated Registry* program, which is accessible via the Internet on the Department's Web Page at www.dot.state.ny.us. For more information please contact the NYSDOT Help Desk at (518) 485-8111. For those bidders who do not have this automation capability, a solicitation report (i.e., paper copy) for a specific contract can be requested by contacting OEODC's Contract Management Unit at (518) 457-1129.
3. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
4. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
5.
 - a. Negotiating in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and material suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

6. Rejecting DBEs as being unqualified, based on sound reasons, only after a thorough investigation of their capabilities. The Bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the project goal.
7. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the recipient or the Bidder.
8. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance.
9. Effectively using the services of available minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
10. Record of solicitation effort. All bidders shall keep records of efforts to solicit and negotiate with DBEs, using Form AAP-10, Solicitation Log as a continuing record of pre- and post-letting solicitation activity. When submitting a Form AAP-19, D/M/WBE Schedule of Utilization to the Department, the Apparent Low Bidder will attach the log, together with the supplemental information specified in the instructions for the Form AAP-10, Solicitation Log as evidence of good-faith efforts. Such supplemental efforts shall include at least the following:
 - a. All envelopes of solicitation inquires that were returned as undeliverable; and
 - b. Any quotations submitted by DBEs that are not included in the Form AAP-19, D/M/WBE Schedule of Utilization with an explanation for the Bidder's action in each case.

G. Bidder's Failure to Comply. The Department's acceptance of the Bidder's proposal is conditioned upon the Bidder's fulfillment of the requirements of this subsection. If the Bidder fails to submit a complete utilization package as defined in paragraph E within seven (7) calendar days after the bid opening and/or fails to attain the DBE utilization goal, and to satisfactorily document his/her good faith efforts as defined in paragraph F above, the bid may be declared incomplete and the deposit may be subject to forfeiture pursuant to §103-02. The Bidder, upon receipt of written notification of his/her failure to comply with the requirements of this subsection shall have five (5) business days to carry out the corrective action(s) described in the notification.

If the Department determines that the Apparent Low Bidder has failed to meet the good faith efforts requirements of paragraph F, the Department will, before awarding the contract, provide the Apparent Low Bidder an opportunity for administrative reconsideration by an official who did not take part in the original determination that the Apparent Low Bidder failed to meet the goal or make adequate good faith efforts to do so. As part of this reconsideration, the Apparent Low Bidder shall have the opportunity to provide written documentation or argument and to meet in person with the Department's reconsideration official concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department will send the Apparent Low Bidder a written decision on reconsideration, explaining the basis for finding that the Apparent Low Bidder did or did not meet the goal or make adequate good faith efforts to do so.

POST AWARD PROVISIONS

H. Conformance to DBE Schedule of Utilization. The Contractor shall execute subcontracts or agreements with the DBEs identified on the approved Form AAP-19, D/M/WBE Schedule of Utilization, for work of the kind and amount identified therein. The Engineer will monitor the work of the contract to ensure that the DBEs identified on Form AAP-19, D/M/WBE Schedule of Utilization perform the work. Any direction by the Engineer to comply with the Schedule is a lawful direction under Article 8 of the contract. While such direction is not complied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment, nor shall any estimate be rendered on account of work done or material furnished.

I. Revisions in DBE Utilization. After award of the contract, any change in DBE utilization must be approved by the Department through submission of a revised Form AAP-19, D/M/WBE Schedule of Utilization, and a revised Form AAPHC-89 (Part 1), D/M/WBE Utilization Worksheet signed by both parties. The Contractor shall obtain this approval prior to implementing any proposed change. In the cases of reduction, removal or substitution, the Contractor shall provide written justification with a substantive basis for the change. It is not intended that a Contractor's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for change.

If the reduction of the DBE's work or the removal of the DBE including for reasons of commercially useful function violations, causes the DBE utilization to fall below the goal, the Contractor will be required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. This requirement also applies to reductions of creditable participation resulting from determinations that work does not meet the commercially useful function criteria set forth in paragraph C.(1.).

A DBE may be substituted if its intended work is deleted or diminished by the Department and the total contract work has not progressed beyond the point where not enough work remains to substitute an equal amount to the affected DBE. If the work has significantly progressed, the Department may relieve the Contractor from attaining that portion of the goal.

J. Monitoring Contractor Compliance. The Contractor shall allow authorized representatives of the Department to conduct periodic inspections of the Contractor's DBE participation efforts during the performance of this contract. In order to determine whether the Contractor has complied with the requirements of this subsection, the Commissioner may proceed by order to show cause, or may direct the Contractor to attend a hearing before the Contract Review Unit, or may follow any other lawful procedure upon due notice in writing to the Contractor. When a Contractor has been found to have failed to meet the contract goal, to exert a good-faith effort, or otherwise failed to comply with this subsection, the contract may be canceled, terminated, or suspended in whole or in part in accordance with Article 11 of the contract and Section 40 of the Highway Law. The Contractor may also be referred to the USDOT for possible suspension or debarment as provided in 49 CFR 29 and such other sanctions as may be imposed and remedies invoked as provided under the authority of 49 CFR 26, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

Goal attainment will be measured based on payments made to DBE's. The Contractor shall report payments made to all DBE's participating in the contract on a monthly basis and at completion of the contract, in a format approved by the Department.

K. Prompt Payment. The Contractor shall pay the DBE in accordance with §109-03 and §109-12 and failure by the Contractor to do so may result in the withholding of future estimated payments by the Department.

L. Non-discrimination. The Contractor shall not use the requirements of these Specifications to discriminate against any qualified company or group of companies.

M. Reporting Violations of Program Rules. If the Contractor becomes aware of any violations of this Specification, the Contractor shall promptly report the violations to the Engineer."

Page 1-48, Delete lines 14-22, §103-01 and Replace it with the following:

"SECTION 103 CONTRACT AWARD AND EXECUTION

103-01 CONTRACT AWARD. The award of contract will be made only to the lowest responsible bidder as will best promote the public interest as provided by Section 38 of the Highway Law. For contracts subject to A+B Bidding, the lowest responsible bidder will be as determined under the Special Note "Provisions for A+B Bidding". For contracts containing steel and/or iron, award of the contract will be made to the lowest responsible bidder who submits the lowest total bid based on furnishing domestic steel unless such total bid exceeds the lowest total bid based on furnishing foreign steel by more than 25 percent, in which case award will be made to the lowest responsible bidder based on furnishing foreign steel.

The Department reserves the right to reject any or all proposals, or, pursuant to Section 38 of the Highway Law, award to other than the low bidder, waive minor informalities, advertise for new proposals, or proceed to do the work otherwise, if, in its opinion, the best interest of the State will thereby be promoted.

If requested by the Department, the bidder shall present evidence of ownership, corporate structure, ability and financial standing, as well as a statement as to equipment."

As a condition of award, Contractors performing structure paint removal and painting work shall be certified in accordance with the following requirements of the Painting Contractor Certification Program (PCCP), of the Steel Structures Painting Council (SSPC), Pittsburgh, PA., except for those performing the following: bridge superstructure removal and other work under Section 202, paint removal that is incidental to the main work under an item, small quantities of paint removal under Section 570, localized paint removal from structural steel necessary for safe progress of other work on the structural steel, localized painting of bare structural steel and containment for localized steel repair and painting.