
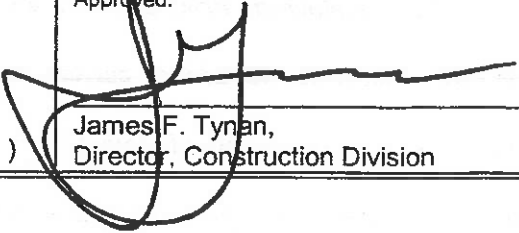


To: MODIFIED BY EI 04-033 EFFECTIVE 8/10/04 SUPERSEDED BY <i>EI 05-005</i> EFFECTIVE 05/05/05		New York State Department of Transportation ENGINEERING INSTRUCTION	EI 03-006
Title: Revisions to Standard Specifications Section 100 - Phase 4			
Distribution: <input checked="" type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Main Office (30) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Contractors (39) <input checked="" type="checkbox"/> Regions/Agencies (32) <input type="checkbox"/> _____ ()	Approved:  _____ James F. Tynan, Director, Construction Division	_____ 2-14-03 Date	

ADMINISTRATIVE INFORMATION:

- This EI is effective with projects submitted for the letting of 05/08/03.
- This EI supersedes EI 90-006, 97-026 and 02-033.
- This EI supersedes the following proposal inserts:
 - M15 MacBride Fair Employment Principles
 - M16 Omnibus Procurement Act of 1992
 - M24 Appendix A
 - M128 Prevailing Wage Rates - State and Federal
 - M129 Prevailing Wage Rates - State
- The Standard Specification revisions issued with this EI will be incorporated into the next update of the Standard Specifications.

PURPOSE:

This EI issues revisions to the Standard Specifications of January 2, 2002.

TECHNICAL INFORMATION:

These revisions include several substantive changes, the incorporation of several current proposal inserts, several new paragraphs, and editorial/typographical corrections.

IMPLEMENTATION:

Main Office Design Quality Assurance Bureau will insert the standard specification shelf note beginning with projects submitted for the letting of 05/08/03.

TRANSMITTED MATERIALS:

Shelf Notes - "Revisions to Standard Specifications Section 100 - Phase 4".

1. §101-02, *Definitions of Terms*, Several new definitions were added, and several were revised.
2. §102-08 *Std Clauses for NY State Contracts*, Majority of existing text was deleted, §102-08 C. was moved to 102-10 A, §102-08 I. & J. were moved to §107-01 B. & C.
3. §102-08 *Appendix A, Std Clauses for all NYS Contracts* was added - current proposal insert.
4. §102-10A. *Wages*, was moved from §102-08C.
5. §102-10D. *Training* paragraph was added.

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6. §102-11 *Equal Employment Opportunity Requirements* was added - current proposal insert(s).
7. §102-12 moved from §102-11.
8. §102-17 Redundant lines were deleted.
9. §102-24 *MacBride Act Fair Employment Principles* was added - current proposal insert.
10. §102-25 *Omnibus Procurement Act* was added - current proposal insert.
11. §105-18 *Warranties* Notice of availability of project level warranties was added.
12. §106-04 *Materials Certification and Approved List* is a combination of:
 - §106-02, pg 1-78, lines 11-13
 - pg 1-79, lines 23-28
 - additional text taken from MURK 2a, Materials Inspect Manual.
13. §106-08 *Rejected Materials* is a combination of §106-04 & §106-08.
14. §107-01 B. & C. were added from 102-08 I. & J.
15. §107-05 L.4. *Silica* was added.
16. §107-05 P. *Lifting* revises lifting requirements. This change was originally issued by EI 02-033.
17. §107-05 T. *Open Excavations and Trenches* was added.
18. §107-07 E. [Underground Utility] *Quality Level Designation* was added - current Special Note.
19. §107-10 Mined Land Reclamation Law cite corrected.
20. §108-05 C. *Owner/Operators* as a recognized activity was added.
21. §108-05 E. *Subcontract Provisions* - requirements elsewhere were summarized for clarity.
22. §108-05 E. *Additional Requirements* was deleted - no longer needed.
23. §109-03 First two paragraphs moved to §109-06.
24. §109-05 Clarification of Minor Item >200% & >\$1,000 is a significant change.
25. §109-06 *Contract Payments* - Combined from 109-03 (first two paragraphs), 109-06, 109-07 & 109-08
26. §109-09 *Final Acceptance and Final Payment* is a combination of 109-02, 109-09, 109-11, 109-13 & 109-14
27. §109-16 Clarification of Minor Item >200% & >\$1,000 is a significant change.

CONTACT:

Direct questions regarding this EI to Brian DeWald of the Construction Division at (518) 457-6472 or via e-mail at BDeWald@dot.state.ny.us.

REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 - PHASE 4

Make the following changes to Volume 1 of 3 of the Standard Specifications of January 2, 2002.

Page 1-3, **Insert** the following new definition after line 2:

"A+B Bidding. A+B Bidding is an time-related form of bidding used by the Department for projects that are time sensitive, either in overall project duration, or the duration of a task or tasks. The total contract bid price consists of the amount bid that will be paid for the work, the "A portion", plus the number of days for completion of the specified work multiplied by the user cost specified in the contract documents, the "B portion"."

Page 1-3, line 7 to 9, Delete the existing definition and **Replace** it with the following revised definition:

"Approved List. List of materials, equipment, Manufacturers, Fabricators or Material Suppliers approved by the Materials Bureau under a particular specification. The Approved Lists are published periodically and are available from the Materials Bureau or on the Department web site.

Page 1-4, line 20, Delete the existing definition and **Replace** it with the following revised definition:

"Department. The New York State Department of Transportation, including staff and managers who have been delegated certain contractual and technical authority by the Commissioner. The Department maintains a web site at www.dot.state.ny.us."

Page 1-5, line 10 to 11, Delete the existing definition and **Replace** it with the following revised definition:

"Federal-Aid Project. An identification applied to Federally aided work for the purpose of the records of the FHWA."

Page 1-5, **Insert** the following new definition after line 22:

"Incentive/Disincentive (I/D). Predetermined adjustment to the total contract amount for each day or portion thereof that the work is completed ahead of or behind a specific milestone, phase or contract completion date."

Page 1-5, **Insert** the following new definition after line 24:

"Land Surveyor. A Land Surveyor licensed or otherwise authorized to practice surveying under Article 145 and registered or otherwise authorized under Article 130 of the New York State Education Law."

Page 1-5, **Insert** the following new definition after line 31:

"Lane Rental. An amount identified as the value of a lane or lanes to be occupied by the Contractor in performance of the contract. The total amount bid for lane rental is the total value that can be used by the Contractor in performance of the contract. If additional value is used by the Contractor, that amount will be deducted from the payments to be made to the Contractor."

Page 1-5, **Insert** the following revised definition after line 35:

"Major Item. Any contract pay item for which the original bid price multiplied by the original bid quantity exceeds the following minimum major item value based on total contract bid price or 2% of the total contract bid price, whichever is greater:

<u>Total Contract Bid Price</u>	<u>Minimum Major Item Value</u>
≤ \$1,000,000.	\$20,000
> \$1,000,000 - \$5,000,000	\$50,000
> \$5,000,000 - \$20,000,000	\$200,000
> \$20,000,000	\$500,000

Note: The total contract bid price shall not include the value of any Field Change Order item. For contracts subject to A+B Bidding, the total contract bid price will include only the "A" portion of the bid. For contracts containing Incentive/Disincentive provisions, Lane Rental provisions, or any similar provisions, the total contract bid price will exclude any incentive/disincentive, lane rental, or similar items."

REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 - PHASE 4

Page 1-5, line 36 to 38, Delete the existing definition and **Replace** it with the following revised definition:
“Manual for Uniform Record Keeping on Construction Contracts (MURK). Manual(s) containing uniform project record keeping forms and procedures to be followed by the Engineer, current on the date of contract award. MURK Part 1A is the Contract Administration Manual, Part 1B is the Construction Inspection Manual, Part 1C is the Safety and Health Program Manual, and Part 2A is the Materials Inspection Manual. The MURK manuals are guidance documents, and are not a part of the contract documents.”

Page 1-6, **Insert** the following new definition after line 18:
“Minor Item. Any contract pay item that does not meet the definition of a Major Item.”

Page 1-7, **Insert** the following new definition after line 11:
“Professional Engineer. A Professional Engineer licensed or otherwise authorized to practice engineering under Article 145 and registered or otherwise authorized under Article 130 of the New York State Education Law.”

Page 1-8, line 24 to 25, Delete the existing definition and **Replace** it with the following revised definition:
“Standard Sheets. The standard drawings, issued by the Department, approved for repetitive use, showing details to be used where appropriate. Standard sheets are referenced on the Contract Plan Title Sheet, and comprise a part of the Contract Documents, whether actually referenced or not. Standard sheets are available on the NYSDOT web site in both Adobe Acrobat (pdf) and Bentley Systems MicroStation (dgn) formats.”

Page 1-8, **Insert** the following new definition after line 43:
“Traveled Way. The portion of the highway included in the roadway for the movement of vehicles, exclusive of the shoulders.”

Page 1-9, line 8 to 11, Delete the existing definition and **Replace** it with the following revised definition:
“Work Day. A calendar day, on which weather and other conditions not under the control of the Contractor, will permit construction operations on the principal item or items of work which would normally be in progress at that time to proceed for the major part of the day. Work days exclude Sundays, State recognized public holidays, and days on which the Contractor is specifically prohibited from working, as identified in the contract documents. Days on which the Contractor is prohibited from closing a lane or lanes or impeding traffic are considered work days unless otherwise noted in the contract documents. The public holidays observed by the State of New York are as follows:

New York State Public Holidays	
New Years Day	January 1
Martin Luther King Day	3 rd Monday in January
President’s Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 st Monday in September
Columbus Day	2 nd Monday in October
Veteran’s Day	November 11
Thanksgiving Day	4 th Thursday in November
Christmas Day	December 25

If the holiday occurs on a Saturday, it will be observed the Friday before. If the holiday occurs on a Sunday, it will be observed the Monday after.”

REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 - PHASE 4

Page 1-13, line 9 to Page 1-16, line 42, **Delete** §102-08 and **Replace** it with the following new subsection:

"102-08 STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS. The parties to the attached contract, license, lease, amendment or other Agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

- 1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.
- 4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 5. NON-DISCRIMINATION REQUIREMENTS.** The Contractor agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to employment opportunities, and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
- 6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
- 7. NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, 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 Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:

(a) Federal Employer Identification Number And/or Federal Social Security Number.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(B) Privacy Notification.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 - PHASE 4

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN: In accordance with Section 312 of the Executive Law, if this contract is: (i) a written Agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written Agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written Agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other Agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a Contractor or subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this subsection, the terms of this subsection shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond."

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Page 1-17, line 35 to Page 1-19, line 7, **Delete** §102-10 and **Replace** it with the following:

“102-10 LABOR AND EMPLOYMENT. The provisions of State Labor Law, as amended, and referred to in §102-08, *Standard Clauses for All New York State Contracts*, shall be applicable. 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. Any provisions of State Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements or the Davis-Bacon Act, but are more restrictive, shall apply.

The Contractor shall directly employ those members of its own organization. Employee leasing and other similar arrangements under which workers are employed by another organization will only be considered under a subcontract approved in accordance with §108-05, *Subletting or Assigning the Contract*.

A. Wages. The Department will provide the Contractor with prevailing wage rate schedules. The Contractor shall ensure that workers are paid the appropriate wages. The Contractor shall obtain periodic wage rate schedule updates from the NYS Department of Labor (NYSDOL). Wage rate amendments and supplements are available on the NYSDOL web site at www.labor.state.ny.us. The Contractor shall include the cost of changes in wage rate schedules and supplements over the contract duration in the contract bid prices. In accordance with NYS Labor Law, Sections 220 and 220-d:

1. No laborer, worker, or mechanic, in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
3. The minimum hourly rate of wages to be paid shall not be less than that stated in the contract documents, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
4. On-site Contractor or Subcontractor employees shall be paid prevailing wages required under the Davis-Bacon Act. On-site shall be defined in accordance with relevant existing laws, rules and regulation.
5. The contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
 - a. the stipulated wage scale as provided in Labor Law, Section 220 (3), as amended, or;
 - b. the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

B. 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 NYSDOL, 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 NYSDOL, requests for overtime dispensation on certain specific operations.

The Contractor shall submit requests for overtime dispensation to the Department on Form PW-30, Application for Dispensation for Hours, which will be provided by the Engineer upon request. 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 hour 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.

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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.

C. Payrolls. The Contractor shall furnish the Engineer, each week, a certified payroll and statement of compliance with respect to the wages paid each of its employees, (including apprentices, trainees, watch persons and guards) and a certified payroll from each subcontractor engaged on work during the preceding weekly payroll period.

Certified payrolls shall be annotated by race and gender, and shall be submitted on Form WH-347 or Form HC-231-1 for Federal-Aid contracts, and on HC-231-1 for non Federal-Aid contracts. At the Contractor's option, computer printed payroll records, which supply the required data, may be used.

D. Training. In order to fulfill training requirements, training should begin as early as possible during a construction contract. The Department recommends that all bidders have an approved apprenticeship or on-the-job training (OJT) program prior to bidding.

An apprentice is defined as an individual who is enrolled in an apprenticeship training program that is registered with either the NYS Department of Labor or the U.S. Department of Labor. A trainee is defined as an individual who is enrolled in an On-the-Job Training (OJT) program that is approved by the Federal Highway Administration (FHWA). A list of such approved programs can be found in the On-the-Job Training and Apprenticeship Program Construction Catalogue which is available through the Department's Office of Equal Opportunity Development and Compliance.

A number of sources to obtain training for apprentices/trainees are available. These include:

- A NYSDOL or USDOL approved apprenticeship program through a union local.
- Sponsoring a NYSDOL approved apprenticeship program.
- A temporary project level agreement with a union local which has a NYSDOL approved apprenticeship program.
- As a signatory with an approved apprenticeship sponsor consortium to use their NYSDOL approved apprenticeship programs.
- An FHWA approved OJT program (where applicable).

Only the hours of related classroom training of apprentices or trainees as outlined in the approved apprenticeship or OJT program will be counted toward meeting the goals, provided that such apprentices or trainees were employed by the Contractor during the training period.

E. Public Notices. The Contractor shall post, in a location approved by the Engineer, a copy of the NYSDOL schedules of prevailing wages and supplements for this project, a copy of all redeterminations 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.

F. Worker Notices. The Contractor shall distribute a notice to each worker 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. Workers include 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 certifying that the worker has received the notice required by this section. The signed statement shall be maintained by the Contractor with the payroll records required by this section.

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G. Federal-Aid Requirements.

1. **Convict Labor.** The Contractor shall not use convict labor unless performed by convicts who are on parole, supervised release, or probation for construction, 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.

2. **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 its choosing."

Page 1-19, lines 8-10, Delete §102-11 and §102-12 and Replace it with the following new subsections:

"102-11 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS. The Department seeks to ensure nondiscrimination in employment under all Department contracts. The Contractor shall comply with the following Equal Employment Opportunity (EEO) requirements. The goals for a specific contract are contained in the Special Note "Goals for Equal Opportunity Employment Participation" in the contract proposal. The covered area is the county or counties in which the work is located.

For Federal-Aid contracts, Equal Employment Opportunity provisions are also found on Form FHWA 1273, "Required Contract Provisions Federal-Aid Construction Contracts", or Form FHWA 1316, "Required Contract Provisions Appalachian Development Highway System and Local Access Roads Construction Contracts", one of which is incorporated in the contract proposal.

Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

A. Statutory Authority. The Federal statutory authority for Equal Employment Opportunity provisions is contained in 23 U.S.C. 140(a), 23 CFR 230, 41 CFR 60-1 and 60-4, and Executive Order 11246. State statutory authority is contained in Section 85 of the Highway Law, Section 428 of the Transportation Law, NYS Executive Law Article 15-A, 5 NYCRR 140 and the rules promulgated thereunder.

B. Definitions.

1. For Federal-Aid contracts, a minority group member is defined under this subsection as someone who is, and can demonstrate membership in, one of the following groups::

- a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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2. For non Federal-Aid contracts, a minority group member is defined under this subsection as a United States citizen or permanent resident alien who is, and can demonstrate membership in, one of the following groups:

- a. Black persons having origins in any of the Black African racial groups;
- b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- c. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent, or the Pacific Islands;
- d. Native American or Alaskan native persons having origins in any of the original peoples of North America.

C. Contractor Obligations.

1. **Non-Discrimination.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability or marital status. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, age, disability or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this non-discrimination clause.

The Contractor shall not use the goals or affirmative action requirements to discriminate against any person because of race, color, religion, sex, national origin, age, disability or marital status.

2. **EEO Officer.** The Contractor shall designate to the Engineer, on Form AAP 15, an Equal Employment Opportunity Officer (EEO Officer) who shall have the responsibility for and shall be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so.

3. **Solicitations.** The Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability or marital status.

4. **Collective Bargaining Agreements.** Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations.

5. **Complaints of Alleged Discrimination.** The Contractor shall promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this contract, shall attempt to resolve such complaints, and shall take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include such other persons. Upon completion of each investigation, the Contractor shall inform every complainant of all available avenues of appeal.

6. **Reports and Records.** The Contractor shall furnish information and reports as may be required and shall permit access to its books, records and accounts by the Department for purposes of investigating compliance with these requirements.

- a. The Contractor shall submit employee utilization reports for its workforce, for each subcontractor with a subcontract exceeding \$10,000, and a composite report to the Engineer on Form AAP-33d, Employee Utilization Report, on a monthly basis and at contract completion. Contractors that own CHAMP® software shall submit CHAMP® generated reports. Records of the total employee utilization from the start of the contract up to and including the month being reported shall be submitted with each monthly report. For the purpose of these reports, the hours of female employment and training and the hours of minority employment and training shall be separately calculated.

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b. Annually, in August, the Contractor shall submit an equal opportunity employment report to the Engineer on Form FHWA 1391 for the last payroll period in July, for all ongoing Federal-Aid contracts. Contractors that own CHAMP® software shall submit a signed CHAMP® generated report, and an electronic file as a part of the monthly EEO reporting.

c. Records shall include, as a minimum for each employee; name, address, telephone number, social security number, race, sex, construction trade, union affiliation if any, status (e.g. journeyworker, apprentice or trainee), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form. To the degree that existing records satisfy this requirement, contractors will not be required to maintain separate records.

d. For the purpose of the reports required above, the employment and training hours worked by each person shall only be used once in any one month and the Contractor is cautioned that it shall not discriminate in connection with attaining its affirmative action goals under these requirements.

D. Employment Goals. A single goal for minorities and a separate goal for women are presented in the contract documents. The Contractor shall provide equal employment opportunity and shall take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.

The goals set for the contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft.

If the Contractor fails to meet the employment goals for minorities or women specified in these requirements, the Department may require training of minorities and women to satisfy the employment goals.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its Federally involved and non Federally involved construction.

The transfer of minority or female employees, apprentices, or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract.

E. Affirmative Action Steps. The Contractor shall take specific affirmative actions to promote equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all work site supervisors, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

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3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Department when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by either the NYS Department of Labor or the US Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under E.2. above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general work site supervisors, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
11. Validate all tests and other selection requirements in accordance with state and Federal laws, rules and regulations.
12. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for promotional opportunities through appropriate training, etc.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

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14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

F. Contractor Associations. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling one or more of its obligations, provided that the Contractor actively participates in the group, makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

G. Enforcement. Enforcement of the provisions above includes, but is not limited to, monitoring the Contractor's employment practices, requiring employment related reports to be filed by the Contractor in a timely manner in a form acceptable to the Department, determining the Contractor's compliance with these specifications and taking such actions as authorized by law, rule, or regulation to enforce compliance by the Contractor.

Only the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has the authority to determine compliance with Executive Order 11246 and its implementing regulations.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Federal-Aid contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.

H. Hometown Plans (Federal-Aid Contracts Only). A Contractor participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the USDOL, either individually or through an association, (including heavy highway affirmative action plans) shall comply with its affirmative action obligations, for those trades which have unions participating in the Plan, under Executive Order 11246 by complying with its obligations under the plan: *Provided*, that each Contractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other Contractors toward a goal in an approved plan does not excuse any covered Contractor's failure to take good faith efforts to achieve the Plan goals and timetables. Contractors participating in Hometown Plans must be able to demonstrate their participation and document their compliance with the provision of the Hometown Plan.

If a Contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in 41 CFR 60-4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of 41 CFR 60-4, a Contractor is not participating in a Hometown Plan for a particular trade if it:

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1. Ceases to be signatory to a Hometown Plan covering that trade;
2. Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;
3. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade;
4. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;
5. Is participating in a Hometown Plan for that trade which is no longer acceptable to the OFCCP.
6. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the Contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.

102-12 FORM OF CONTRACT AND BONDS. The form of contract and bond, if given, shall be that provided by the Department.”

Page 1-27, §102-17, **Delete** redundant lines 38-40.

Page 1-51, **Insert** the following two new subsections after line 9:

“102-24 MACBRIDE ACT FAIR EMPLOYMENT PRINCIPLES (NON FEDERAL-AID). Chapter 807 of the Laws of 1992 require employers doing business in Northern Ireland to employ principles relating to nondiscrimination in employment and freedom of workplace opportunity which would:

- Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- Ban provocative religious or political emblems from the workplace;
- Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- Abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement;
- Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

Whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in the MacBride Act, and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the Department will refer such bids to the Commissioner of General Services, who may determine, in accordance with applicable law and rules, that it is in the best interest of the state that the contract be awarded to other than the lowest responsible bidder.

If the bidder conducts business operations in Northern Ireland and DOES NOT agree to stipulate to the conditions set forth in the MacBride Act, so indicate by crossing out Item #5 on the signature page of this bid proposal.

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102-25 OMNIBUS PROCUREMENT ACT (NON FEDERAL-AID). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from the Empire State Development Corporation, Small Business Division, 30 S. Pearl Street, Albany, NY 12245 (800) 782-8369. Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the SIC code, size and location of vendors.

A directory of certified minority and women-owned business enterprises is available from the Empire State Development Corporation, Office of Minority and Women's Business Development (M/WBD), 30 S. Pearl Street, Albany, NY 12245 (800) 782-8369. The Empire State Development Corporation maintains a web site at www.empire.state.ny.us.

Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the state in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

A. The successful contractor shall document efforts to encourage the participation of New York State business enterprises as material suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.

B. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:

1. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned businesses, or
2. Contacted the Empire State Development Corporation to obtain listings of New York State business enterprises, or
3. Placed notices for subcontractors and material suppliers in newspapers, journals and other trade publications distributed in New York State, or
4. Participated in bidder outreach conferences.
5. If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.
6. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.

C. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

D. The contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Community Services Division of the New York State Department of Labor, or proving such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request."

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Page 1-77, after line 28, Insert the following new subsection:

"105-18 WARRANTIES. The Department may make available, subject to express agreement in writing between the Department and the Contractor, with approval from the FHWA when required, warranties associated with the contract for limited circumstances. A prototype warranty specification is available from the Department for the purpose of the Contractor's warranting a particular item, as opposed to warranting an entire contract. The product warranty will be developed between the Department and the Contractor with input from appropriate technical experts and the Office of Legal Affairs in conjunction with the Construction Division, and incorporated into the contract via order-on-contract. The warranty may be used in situations including, but not limited to, work performed not in full compliance with the contract documents, where initial testing does not indicate any deficiency in the end product."

Page 1-78, §106-02, Delete the 2nd sentence of the 1st paragraph on lines 11 to 13.

Page 1-79, §106-02, Delete lines 23 to 28.

Page 1-80, Delete §106-04 on lines 5 to 6 and Replace it with the following:

"106-04 MATERIALS CERTIFICATION AND APPROVED LIST. Whenever any specification provides for "Manufacturer's Certification" or "Approved List" as a Basis of Acceptance, the Department reserves the right to sample and/or test material in any shipment prior to incorporation in the work.

Manufacturers' Certifications and documents prepared for general use, such as catalog cuts and manufacturer's directions, may use S.I. or U.S. customary measurement units, or units from both systems. In drawings and documents containing dual units, the S.I. units will be regarded the primary units, and the U.S. units will be the units reviewed. The Contractor shall be responsible for all annotations on the source documents, conversions between the measurement systems and all errors resulting therefrom.

Some standard specifications reference a Manufacturer's Certification as evidence of acceptability of specific materials or products. A Manufacturer's Certification can only be properly executed by the manufacturer or producer of the material or product. When manufactured products are subsequently provided by a Material Supplier other than the manufacturer, a Material Supplier's Certification shall be provided in addition to the Manufacturer's Certification.

A. Materials Certification. When shipments are made directly to a contract by the manufacturer or producer a Manufacturer's Certification shall include the essential components outlined below. When shipments are made to a contract by a Material Supplier, a Material Supplier's Certification shall accompany the Manufacturer's Certification and shall include the essential components outlined below.

1. Identification of Manufacturer or Producer. Name of the company and address of its manufacturing or producing facility.

2. Identification of Material or Product. Generic name of the material or product and the Department Section 700 materials designation number.

3. Identification of Shipment. Sufficient detail to describe the quantity contained in the shipment, the contract number and a date of shipment. A Material Supplier's Certification shall clearly indicate that the shipment is all or a portion of the quantity detailed on the accompanying Manufacturer's Certification.

4. Statement of Conformance. The certification shall definitively state that the material contained in the shipment meets the requirements of a specific Department specification or a specific specification or standard of another agency (i.e., ASTM, AASHTO, AWWA, etc.). If the material in the shipment contains steel and/or iron, the certification shall definitively state that the material is or is not of domestic origin. An acceptable statement is: "Conforms (or Does not conform) to the requirements of NYSDOT Standard Specification §106-11, *Buy America*."

If the product supplied has been altered subsequent to the certification by the manufacturer, the Material Supplier's Certification shall definitively state that the material or product contained in the shipment meets the requirements of a specific Department specification or a specific specification or standard of another agency.

5. Certification Execution. The certification shall be signed by a person authorized to legally bind the company, as indicated by statement or title/position. Notarization of the signature is not required.

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B. Improper Certification. If the Material Certification does not properly identify conformance to the specification, the product shall be rejected. If the Manufacturer and/or Material Supplier requests to leave the product in place and provide a revised certification only, the revised certification shall be accompanied by a letter of explanation indicating the basis for use of the revised certification. The letter shall also include corrective action to ensure future certifications will be representative of the material or product supplied. The letter shall be signed by a person authorized to legally bind the company, as indicated by statement or title/position.”

Page 1-80, Delete §106-08 on lines 15 to 20 and Replace it with the following:

“106-08 REJECTED MATERIALS. Any material which is rejected because of failure to meet the required tests or that has been damaged so as to cause rejection, shall be immediately removed from the site of the work by the Contractor at no additional cost to the State unless otherwise directed by the Engineer. Material which has been rejected on the results of Department tests will not be resampled or retested unless otherwise directed by the Department. No rejected materials, the defects of which have been subsequently corrected, shall be used until written notification of the acceptance of the material has been received by the Engineer.”

Page 1-82, Delete §107-01 and Replace it with the following:

“107-01 LAWS, RULES, REGULATIONS AND PERMITS. The Contractor shall observe all Federal, State and applicable local laws, rules and regulations and procure all licenses and permits necessitated by the Contractor’s operations.

A. Invasive Species. Federal and State Agencies have promulgated regulations regarding invasive plant species, agricultural insects and diseases. The Contractor shall thoroughly clean all construction equipment and vehicles operating in infested areas prior to moving to non-infested areas in accordance with Federal and State Department of Agriculture regulations for plant pest control.

B. Independent Contractor. The relationship of the Contractor to the State is that of an independent Contractor, and said Contractor, in accordance with its status as such Contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer or employee of the State by reason hereof, and that it will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to workers’ compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

C. Cooperation With Investigations. The Contractor hereby agrees to the provisions of §139-a and §139-b of the New York State Finance Law which require that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State commission or other State agency, or the organized crime task force in the Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract;

1. Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State of any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and;

2. Any and all contracts made with the State or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.”

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Page 1-88, §107-05(L)*Hazardous Materials*, after line 48, Insert the following new paragraph:

“4. Silica. The Contractor shall provide protection to all workers from exposure to hazardous levels of silica in accordance with 29 CFR 1926.55. In accordance with §107-05A., the Contractor shall identify and address silica health and safety in the written Project Safety and Health Plan.

The Contractor’s silica safety efforts shall include exposure assessment to determine the Permissible Exposure Level (PEL). The Contractor shall identify and implement engineering controls and work practice controls to reduce worker exposure to silica to a level at or below the PEL prior to instituting a program based on respirators or protective clothing to protect workers from exposures. Engineering controls shall include, but shall not be limited to; dust suppression through the application of water or other methods, use of general or local ventilation, and containment/isolation. Work practice controls shall include proper use and implementation of supervision, task procedures, employee training, signing, protective clothing, housekeeping, and personal hygiene. If engineering controls and work practice controls cannot reduce exposures below the PEL, the Contractor shall institute a respirator program. Each of these safety components is covered individually by 29 CFR 1926.

Many materials disturbed by the Contractor’s operations may contain hazardous levels of silica. Silica may be in soil, concrete or asphalt pavement, superstructure or substructure materials. Specific operations that may result in worker exposures to silica, include, but are not limited to:

- Saw cutting, grinding, milling, hammering, drilling, or chipping; rock, cement concrete or asphalt concrete.
- Concrete pavement rubblizing.
- Demolition of brick, cement concrete or masonry structures.
- Abrasive blasting if the abrasive contains silica, or of cement concrete, rock or asphalt concrete.
- Dry sweeping or pressurized air blowing of cement concrete, rock, sand or asphalt concrete dust.
- Trenching and excavation.
- Guniting.
- Mixing concrete, mortar or cement.

The Contractor shall provide the Engineer with copies of documentation, as they are completed, to demonstrate full compliance with the OSHA regulations, including, but not limited to; the completed worker training, exposure monitoring results, completed respirator programs and worker medical monitoring results, as applicable.”

REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 - PHASE 4

Page 1-89, line 35 to Page 1-91, line 47, **Delete** §107-05(P) and **Replace** it with the following:

"P. Lifting. The following shall apply for all lifting operations when utilizing lift equipment. Lift equipment for this lifting paragraph shall be defined as equipment capable of lifting an item more than five meters high, has the ability to swing or rotate a boom, and has a maximum rated lifting capacity exceeding one metric ton. All lift provisions of the Steel Construction Manual and the Prestressed Concrete Construction Manual remain in effect. This paragraph does not pertain to lifting operations covered under Section 585, *Structural Lifting Operations*, nor ordinary excavation operations. This paragraph does apply however to cranes with either fixed or swinging leads that are dedicated to pile driving operations.

1. Competent Person. The Contractor shall designate, to the Engineer, one person, who is competent in lifting operations, to be completely in charge of each lifting operation. In general, Competent Person shall mean one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has a authorization to take prompt corrective measures to eliminate them. The Competent Person shall have the authority to take an unsafe piece of equipment out of service until the hazard is eliminated. The Competent Person shall be knowledgeable about lifting equipment and equipment operations, Manufacturer's specifications and recommendations, and have a thorough knowledge of the requirements, regulations and standards governing his/her duties. The Competent Person shall, as a minimum, have the ability to interpret load charts, calculate lift loads, recognize overhead wire hazards and know all aspects of the rigging.

The Competent Person shall inspect all lift equipment prior to and during usage to make sure the equipment is in a safe operating condition.

2. Lifting Equipment. Lift equipment shall have durable, legible load charts which shall have been prepared by either the equipment manufacturer or a Professional Engineer. If manufacturer's load charts are unavailable, charts may be prepared by a Professional Engineer. The Professional Engineer shall utilize the same factors of safety against overturning as the equipment manufacturer. The charts shall be attached to the equipment in a location accessible to the operator while at the controls. The charts shall contain a full range of load ratings at all stated operating radii. The charts shall also note conditions such as outriggers, counter weights, and work area, i.e., over side, over front, or over rear of equipment.

Equipment may lift loads up to those indicated on the manufacturer's or Professional Engineer's load chart if the equipment has the following safety devices and the safety devices are operating:

- a. Load and radius measuring device pre-programmed to continuously relate the measured data to the load radius chart as a direct reading of load or percentage of the rated load, and connected to a warning light and an acoustical signal located at the operator's position or in the cab to indicate overload.
- b. A device that continuously indicates the levelness of the machine and is visible from the operator's controls.

Lift equipment with non-operational safety devices or no safety devices shall be operated at levels not to exceed 78 percent of the Manufacturer's or Professional Engineer's load charts. This equipment shall have a separate load chart labeled "78% Load Chart" and it shall be attached to the equipment.

Lift Equipment with operational safety devices that is operating from a barge shall utilize a manufacturer's or Profession Engineer's load chart that is established specifically for operating from a barge. Lift Equipment on barges with non-operational safety devices or no safety devices shall operate at 78 percent of the Manufacturer's or Professional Engineer's load chart for working on barges. This equipment shall have a separate load chart labeled "78% Load Chart for Equipment on Barges."

Equipment used for lifting over a railroad shall be restricted such that the operational capacity shall be limited to 66 2/3% of its tipping load as specified in §105-09, *Work Affecting Railroads* or be limited to the load limits indicated in the previous three paragraphs, whichever is lower.

3. Lift Plan. A Lift Plan is necessary only when required by a contract pay item specification, the Steel Construction Manual, or Prestressed Concrete Construction Manual. The Contractor shall submit erection drawings, demolition plans or other information as required, which detail the lifting procedure or lift plan. This information shall be submitted to the Engineer 30 days prior to the commencement of erection or demolition