
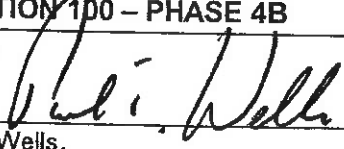


To: <p style="text-align: center;">SUPERSEDED BY <i>EI 05-005</i> EFFECTIVE 05/05/05</p>		<p style="text-align: center;"><i>New York State</i> <i>Department of</i> <i>Transportation</i> ENGINEERING INSTRUCTION</p>	<p style="text-align: center;">EI 04-026</p>
Title: REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 – PHASE 4B			
Distribution: <input type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Agencies (32) <input checked="" type="checkbox"/> Contractors (39) <input type="checkbox"/> _____ ()	Approved:  Paul T. Wells, Asst Commissioner and Chief Engineer Date: 6/3/04		

ADMINISTRATIVE INFORMATION:

- This Engineering Instruction (EI) is effective with projects submitted for the letting of September 9, 2004.
- This EI supersedes EI 03-022 and shelf note 01370_M38F issued by that EI.
- The 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 are being issued concurrently, and in support of EI 04-027, *Special Specification 691.02---02 Training Requirements*.
- §102-08 includes revisions to Appendix A, *Standard Clauses for All New York State Contracts* provided by the NYS Attorney General's Office.
- §102-10 clarifies and relocates requirements pertaining to apprentices and trainees.
- §102-11 clarifies and formalizes EEO reporting requirements, both preconstruction and during a contract.
- §102-25 adds reciprocity and sanction provisions for non-Federal Aid contracts (which are not acceptable for use in Federal Aid contracts) taken from Appendix A, *Standard Clauses for All New York State Contracts* provided by the NYS Attorney General's Office.
- Section 691 is deleted.

IMPLEMENTATION:

- Main Office Design Quality Assurance Bureau will insert the standard specification shelf note beginning with projects submitted for the letting of 09/09/04.

TRANSMITTED MATERIALS:

This EI transmits a standard specification shelf note for Section 100.

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

REVISIONS TO SECTION 100 – PHASE 4B

Make the following changes to Volume 1 of 3 of the Standard Specifications dated January 2, 2002: Delete §102-08 issued with EI 03-006 and Replace it with the following:

- 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 (or the minimum thresholds agreed to by the Office of the State Comptroller 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 when the value or reasonably estimated value of such consideration exceeds \$10,000, 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. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).
 - 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.** To the extent required by 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, sexual orientation, age, disability, genetic predisposition or carrier status, 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.

REVISIONS TO SECTION 100 – PHASE 4B

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.

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 and 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.

REVISIONS TO SECTION 100 – PHASE 4B

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.

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.

REVISIONS TO SECTION 100 – PHASE 4B

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 NYS Department of Economic Development's Division of Minority- and Women-Owned 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.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

REVISIONS TO SECTION 100 – PHASE 4B

Delete §102-10D. through §102-10F. issued with EI 03-006 and **Replace** it with the following:

D. Training. An apprentice is defined as an individual who is enrolled in an apprenticeship training program that is registered with the NYS 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 number of sources to obtain training for apprentices/trainees are available. These include:

- A NYSDOL-approved apprenticeship program sponsored by a union or a temporary project level agreement with a union which has a NYSDOL approved apprenticeship program.
- A NYSDOL-approved apprenticeship program sponsored by a contractor.
- A NYSDOL-approved apprenticeship program sponsored by a contractor signatory with an apprenticeship sponsor consortium for certain services.
- An FHWA-approved OJT program (where applicable).

Approved OJT Programs are currently limited to apprenticeable occupations as determined by NYSDOL or USDOL. A list of approved OJT 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.

In order to fulfill training requirements required under §102-11 *Equal Employment Opportunity Requirements* and/or Training Special Provisions, training should begin as early as possible during a construction contract. The Department recommends that all bidders have an approved apprenticeship or OJT program prior to bidding.

E. Training Coordinator and Trainer. When training is required under §102-11 *Equal Employment Opportunity Requirements* and/or Training Special Provisions, the Contractor shall designate to the Engineer, at the preconstruction meeting, a person (or persons) from its existing workforce as the Trainer and Training Coordinator for any apprentice(s)/ trainee(s).

The Trainer shall:

1. Be located on the job site generally on a daily basis; and
2. Be responsible for the day-to-day supervision and training of persons on the contract; and
3. Be responsible for the preparation and submission of a monthly training progress report, after consultation with designated apprentices/trainees.

The Training Coordinator shall:

1. Be knowledgeable about the contract and the Apprenticeship/OJT programs to be used; and
2. Be responsible for ensuring on-the-job orientation of apprentice/trainees; and
3. Be responsible for ensuring meaningful and effective training for the duration of training.

The Contractor shall furnish the apprentice/trainee a copy of the program to be followed in providing the training. The Contractor shall provide each apprentice/trainee with a certification showing the type and length of training satisfactorily completed.

F. Public Notices. Before commencing any work on the site, the Contractor shall provide a satisfactory weather resistant surface, and post, in a location accessible to all workers, a copy of the NYSDOL schedules of prevailing wages and supplements for this contract, a copy of all redeterminations of such schedules for the contract, the Workers' Compensation Law notice, required safety notices, and all other notices required by law to be posted at the site. 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 Notices shall be maintained until all work on the site is complete.

REVISIONS TO SECTION 100 – PHASE 4B

Delete §102-11C.6. *Reports and Records* issued with EI 03-006 and Replace it with the following:

6. Workforce and Training Utilization. At the time of the pre-construction meeting, the Contractor shall submit a Form AAP 35 *Workforce and Training Utilization Schedule* covering the Contractor's workforce and the workforce of all its subcontractors, together with the contract progress schedule with which the AAP 35 has been coordinated.

At a minimum, the *Workforce and Training Utilization Schedule* shall address the following:

a. Equal Employment Opportunity goals in accordance with §102-11 *Equal Employment Opportunity Requirements*.

b. Training goals in accordance with §102-11 *Equal Employment Opportunity Requirements* and Training Special Provisions, and specifically:

(1) A listing of the approved OJT/apprenticeship program(s) the Contractor proposes to use;

(2) The name of any individual proposed by the Contractor to be trained as soon as it is possible to provide the name. If that person is a registered apprentice, evidence of apprentice registration (NYSDOL Form AT 401) and the approved apprenticeship program shall be included;

(3) The proposed starting dates for the training of each individual, the operation(s) in which the individual is to begin training, and the proposed training duration.

No work shall be started until the Department and the Contractor have agreed upon the *Workforce and Training Utilization Schedule*. The Contractor shall submit a revised schedule when a significant work force build up or reduction will substantially affect goal attainment, or when a revised schedule is requested by the Department. Such revised *Workforce and Training Utilization Schedule* must be agreed upon by the Department or the original will remain in effect.

7. 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. *Utilization Reports.* 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 a monthly basis and at contract completion. Cumulative records of total employee utilization from the start of the contract up to and including the current month shall be submitted with each report. The employment and training hours worked by a minority female shall only be used once, under either the minority or female category, but not both, nor shall the hours be split between categories. A minority female shall be reported as either a minority or a female for the duration of a contract, and shall not be changed.

b. *Annual EEO Report.* The Contractor shall submit an annual equal opportunity employment report to the Engineer not later than the second Friday in August covering the last payroll period in July, for all ongoing Federal-Aid contracts.

REVISIONS TO SECTION 100 – PHASE 4B

D. Employment Goals. A goal(s) for minorities and a separate goal(s) 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 goal(s) 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. 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.

The Department, in evaluating the Contractor's good faith efforts to meet the goal(s), will analyze first the Contractor's goal attainment on an individual contract. If the Contractor is not meeting the goal(s) for a single craft or contract, the Department will analyze, progressively, the Contractor's goal attainment on all contracts held by the Contractor within the county, a Region, and/or the State. This method of analysis shall be applied primarily but not solely to contracts with small population numbers. Other factors to be considered include, but are not limited to the following: the location of the contracts, the relative proximity of the contracts to each other, and the nature of the work of the contracts.

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 Requirements, 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 shall 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 contracts.

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.

Delete §102-25 issued with EI 03-006 and Replace it with the following:

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.

A. New York State Contractor Participation. 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.

REVISIONS TO SECTION 100 – PHASE 4B

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:

1. 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.
2. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:
 - a. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned businesses, or
 - b. Contacted the Empire State Development Corporation to obtain listings of New York State business enterprises, or
 - c. Placed notices for subcontractors and material suppliers in newspapers, journals and other trade publications distributed in New York State, or
 - d. Participated in bidder outreach conferences.
 - e. 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.
 - f. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.
3. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.
4. 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.

B. Reciprocity and Sanctions Provisions. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

Make the following changes to Volume 2 of 3 of the Standard Specifications dated January 2, 2002:

Page 6-234, line 23 to Page 6-239, line 31 **Delete** Section 691 and **Replace** it with the following:

SECTION 689 THRU 696 (VACANT)