

TO:  
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# ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

**SUPERSEDED BY EB 98-045**  
EFFECTIVE 12/1/98

SUBJECT: PS&E Preparation for Buildings on  
State Financed Contracts

Subject Code: 7.26-2-21

FULLIM NARY PLAN REVIEW  
BUREAU

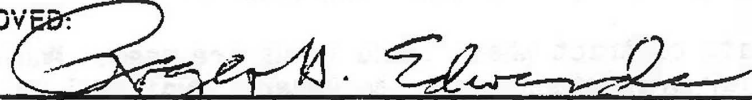
Distribution:

A Main Office     D Regions     H Special

Code: NOV 5 1979  
EI 79-42

Date: NOV 24 1979

APPROVED:

  
Roger A. Edwards, Facilities Design Subdivision

Supersedes:  
EI 79-32

This instruction supersedes EI 79-32. The courts have ruled that the language of Section 135 of the State Finance Law does not permit a contracting agency to delegate to one of the prime Contractors supervision and coordination responsibility and authority. Accordingly, EI 79-32 and the Special Note have been revised to eliminate the requirement that the General Construction Contractor coordinate the activities of the other prime Contractors.

The requirement that the construction of any building which exceeds \$50,000 in cost must comply with Section 135 of the State Finance Law remains unchanged. This will require preparation of separate PS&E's to permit separate and independent bidding for a general construction contract and for each of three subdivisions of specialty work described in Section 135 as follows:

1. Plumbing and gas fitting.
2. Steam heating, hot water heating, ventilating and air conditioning apparatus.
3. Electric wiring and standard illuminating fixtures.

The purpose of Section 135 of the Finance Law is to insure some form of expertise in those areas of construction. However, it also creates problems in contract preparation and administration for projects such as comfort stations, parking garages, toll plazas, or other buildings which exceed \$50,000 in cost. Instead of one Contractor on the site who is responsible for all the work to be performed, we could have as many as four Contractors - a General Construction Contractor as well as three Contractors who specialize in the subdivisions of work listed above. For such projects, it is necessary that the following guidelines be used:

1. If the project includes highway work, the general building construction may be included in the prime highway construction contract, or it can be set up as a separate contract.
2. All contracts - general construction and each of the applicable specialties, will be let on the same date. This will permit the Specialty Contractors to order materials early and plan their work. All contracts will also have the same completion date.
3. The General Construction Contractor and the Specialty Contractors will be required to prepare a Work Plan in accordance with the attached Special Note, Relationship Between General Building Contractor and Specialty Contractors. This Special Note shall be placed in the Proposal for each contract.

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4. The PS&E submission for each of the four contracts will be in accordance with the requirements of EI 79-29. Individual sets of plans and proposals shall be prepared for each contract indicating all the work for that particular contract, along with any details and notes necessary for a Contractor to properly bid and coordinate his work with the other Contractors. These documents must be prepared very carefully to ensure that the work responsibility of each Contractor is clearly spelled out. A separate estimate must be prepared for each contract which includes only the work in that contract.

The Finance Law applies to any State contract where State funds are used. Municipalities are also covered by similar provisions under the General Municipal Law. These laws generally do not apply to building contracts using only Federal funds or funds provided by a non-State or municipal authority such as the Thruway Authority.

Attachment

## SPECIAL NOTE

### Relationship Between General Building Contractor and Specialty Contractors

This building is to be constructed under more than one contract. In addition to the general construction contract, there will be one or more specialty contracts for the following special types of work:

Plumbing and gas fitting  
Heating, ventilating, and air conditioning  
Electrical work

Therefore, each Contractor will not have exclusive occupancy of the territory within or adjacent to the building site. The General Construction Contractor and the Specialty Contractors will be required to coordinate their work schedules to ensure the orderly and timely progression of the work. Their respective operations shall be arranged and conducted so that delays will be avoided and the work will be performed in an efficient and workmanlike manner.

- A. The General Construction Contractor and the Specialty Contractors shall prepare a Work Plan as hereinafter described, for the express purpose of providing a means for the Engineer to coordinate and monitor the activities of all the Contractors.
1. As soon as possible after the opening of bids, the Department shall schedule a pre-award conference with all of the Contractors for the purpose of discussing their work schedules and establishing a Work Plan that is acceptable to all Contractors. The Work Plan shall be a coordinated progress schedule, in graphic format to a suitable scale. It shall include the time of performance and completion date for each significant activity. After the General Construction Contractor and the Specialty Contractors have developed a Work Plan that is agreeable to all Contractors, the General Construction Contractor will furnish the Department with six copies signed by all the Contractors. If such a Work Plan is not submitted within 25 days of the bid opening, the Department reserves the right to establish a reasonable Work Plan which will be binding on all the Contractors, or to reject all bids.
  2. The General Construction Contractor shall progress his own activities so as to permit all Contractors to complete their work in accordance with the Work Plan. Each Contractor shall notify the Engineer when he completes each significant activity. The Engineer shall inspect such work, and if it is satisfactory, he shall document this fact, and advise the Contractors. If a Contractor's work is not completed to the satisfaction of the Engineer, the Contractor shall perform any additional work required to allow the next contract activity to start. Should the Work Plan become obsolete, the Engineer shall notify the General Construction Contractor to meet with the other Specialty Contractors in order that they provide an acceptable, updated schedule.
- B. The State cannot guarantee the responsibility, efficiency, unimpeded operations or performance of any Contractor. The State shall not be held responsible or be in any way liable for damages or delays caused to any Contractor in the performance of his work, by reason of another Contractor's acts or omissions, or

by reason of another Contractor's default in performance. Any affected Contractor shall look to the offending Contractor or Contractors in order to recover any resulting damages caused thereby, and the State shall be held harmless from any liability arising by reason of such delays, acts, omissions, or default.

- C. Liquidated damages shall be assessed for each calendar day that any work shall remain uncompleted after the completion date provided for in all contracts, provided that due account shall be taken of any extension of time granted by the Commissioner of Transportation. The liquidated damages for each Contractor will be established at the daily rate listed in Table 108-1 of Section 108-03 of the Standard Specifications. In addition to liquidated damages, Engineering Charges shall be assessed as provided for in Section 102-12 of the Specifications. The number of days of liquidated damages and engineering charges levied against each Contractor will be dependent upon how much the late completion of that Contractor's activities contributes to the total delay in completing the contract.
- D. No separate payment will be made for any of the work required in this Special Note. The cost of such work shall be included in the price bid for the various items of the respective contracts.