

**SUPERSEDED BY EB 01-010
EFFECTIVE 2/6/01**

Director,
Preliminary Plan Review Bureau

ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

**SUBJECT: BUILDING REQUIREMENTS AND USE AGREEMENTS
FOR THE INSTALLATION OF TEMPORARY
INFORMATION CENTERS IN REST AREAS**

Subject Code: 7.28

Distribution:

Main Office Regions Special

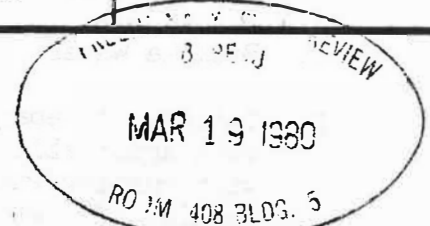
Code: E.I. 80-13

Date: March 5, 1980

Supersedes:

APPROVED:

J. M. Sullivan Chief Engineer



There is a lot of interest in highway information centers throughout New York State. In response to this demand, the DOT has proposed a statewide system of traveler information centers. It may be some time, however, before this system is approved, funded and implemented.

It is reasonable to assume that some localities may want to open an information center sooner than one can be constructed under the statewide system. Others may want to "test the market" before entering into a long term agreement with the Department of Transportation. In these instances, the Department may issue a permit for the temporary installation of an information center building in an existing rest area. The purpose of this instruction is to describe the size and quality of an acceptable structure and how to get it approved.

There are other procedural requirements, such as a public notice and issuance of a highway work permit, that also apply but are not included here.

Temporary information center buildings shall meet the following minimum requirements:

1. General. The structure shall be a weatherproof building or mobile trailer, and must be approved in writing by the Department. The building shall provide a minimum of 330 square feet of floor space with two outside doors and six windows. It shall have a minimum ceiling height of 7 feet, and shall be partitioned to provide two rooms with an adjoining door. The smaller room shall be not less than 96 square feet in floor area, and shall contain two of the six windows. All of the doors and windows shall be weatherproof, and each shall be equipped with adequate locking devices. Each window shall have a minimum area of eight square feet, shall be screened and of a type that will open and close to provide adequate ventilation.

PREL	FINAL
RECEIVED	
FACILITIES DESIGN SUBDIVISION	
MAR 19 1980	
FILE	DESIGN

Subject: BUILDING REQUIREMENTS AND USE AGREEMENTS FOR THE INSTALLATION OF TEMPORARY INFORMATION CENTERS IN REST AREAS

2. Building Requirements

- A. Lighting. Lighting is required. Only electrical lighting will be permitted.
- B. Heating and Cooling. Adequate equipment to maintain an ambient air temperature of 70° F +5°. (Negotiable where only seasonal operation is intended.)
- C. Potable Water
- D. Toilet. A separately enclosed room, properly ventilated and complying with applicable sanitary codes, with a flush type toilet and lavatory with running water. Toilet facilities are not to be used by the public. Toilet is not required if the information center building is located in a rest area with an existing comfort station.
- E. Fire Extinguisher. Non-toxic, dry chemical fire extinguisher meeting Underwriters Laboratories, Inc., approval for Class A, Class B and Class C fires with a minimum rating of 2A:10B:10C.

3. Site Requirements

- A. The location of the center in the rest area will be determined by the Department.
- B. The center will be separate from any other building in the rest area.
- C. A paved walk shall be provided between the existing sidewalk and the public entrance to the center. Minimum width of this walk shall be 8 feet.
- D. Steps are required if the entrance is more than 9 inches above the paved walk. Steps shall be as wide as the paved walk, have handrails on both sides, and a landing at the top large enough to allow the door to open without forcing anyone on the landing to retreat down the steps.
- E. Additional site and building requirements are contained in the Use and Occupancy Agreement (Agreement form is enclosed).

The Landscape Architecture Bureau will approve the location of the structure in the rest area, and will obtain the necessary concurrences from the FHWA. The permit may be denied based solely on the Department's aesthetic assessment of the building. Three copies of the following material shall be submitted to the Landscape Architecture Bureau for review:

1. An accurate description of the location of the rest area.
2. A description of the structure to include size, color, floor plan and architectural elevations, perspectives or color photographs.
3. Plot plan showing the location of the structure in the rest area.

USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 19____, by and between the NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Department"), located in the Administration and Engineering Building, 1220 Washington Avenue, State Campus, Albany, New York, and the _____ (hereinafter referred to as "Operator"), with its principal office at _____.

WITNESSETH:

WHEREAS, the Department desires to provide information for the traveling public within the State of New York by providing for the operation of information centers; and

WHEREAS, the Operator desires to place and operate an information center building at _____.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the parties agree as follows:

1. LOCATION: Subject to prior approval of this Agreement by the U. S. Department of Transportation, Federal Highway Administration, the Department does hereby permit the Operator to place an information center building at the aforementioned location and to operate the same as specified in paragraph 2 below.

2. TERM: This Agreement shall run for a term of five (5) years from the date hereof and shall terminate, unless renewed as provided in paragraph 3, at 12 o'clock noon on the month and day of this Agreement in the year _____.

3. OPTIONS: The Operator shall, upon giving the Department written notice at least ninety (90) days prior to the expiration of this Agreement contingent upon all terms of this Agreement having been faithfully performed by the Operator and subject to the prior approval of the U. S. Department of Transportation, Federal Highway Administration, have the option to extend the term of this Agreement for an additional five (5) years under the same terms and conditions as contained herein. This Agreement may be extended upon the written consent of both parties herein for as many additional five (5) year periods as may be deemed beneficial by both parties.

4. COMPLIANCE: Operator shall comply with all laws of the State of New York and the United States of America, all rules and regulations of the Department, the State of New York and the U. S. Department of Transportation, and shall not discriminate on the grounds of race, color or national origin in accordance with the conditions set forth in Exhibit A attached hereto and made a part hereof nor shall the Operator permit advertising on the premises by advertisers who do not provide their services without regard to race, color or national origin.

5. PURPOSE: This Agreement is for the sole purpose of the placement and operation by the Operator, at its sole expense, of an information center to aid the traveling public without charge to those seeking information and services.

6. STRUCTURE: The Operator shall provide a structure that shall be aesthetically compatible with the safety rest area and the surrounding area. During the term of this Agreement, the Operator shall provide and pay for all operating costs particular to said structure. The Operator shall place the structure to be utilized in a location for which prior approval has been obtained from the Department.

7. RULES: The State may, in its discretion, promulgate reasonable rules and regulations on the conduct of the information center in the interests of the public.

8. INTERIOR OF INFORMATION CENTER: Forty (40) percent or more of the display area and audible communications in the center shall be devoted free of charge to providing information to the traveling public and public service announcement.

9. EXTERIOR OF INFORMATION CENTER: The Operator shall not erect, or permit the erection of, any advertising or advertising symbol or logo on the exterior of the structure. Identification of the operator shall also be restricted to the interior of the structure.

10. PROPERTY GUARANTEE: Any property of the State damaged or destroyed by the Operator incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Operator to the satisfaction of the Department.

11. DEPARTMENT ACCESS: The right is hereby expressly reserved to the Department, its officers, agents, and employees to enter upon the said premises at any time and for any purposes necessary or convenient in connection with the operation of the highway system or information center.

12. INDEMNIFICATION: The Operator shall assume all liability associated with the information center and shall defend, indemnify and hold harmless the State and the Department, its officials and employees, from and against any and all claims, suits, actions, damages and costs and expenses, including attorney's fees, arising in whole or in part, from any act or acts of whatsoever nature, including acts of negligence or omission on the part of the Operator in the operation or maintenance of the information center.

13. PUBLIC LIABILITY INSURANCE: The Operator will provide and keep in effect, during the term of this Agreement, a policy or policies of public liability insurance in standard form wherein the liabilities of the Operator, the State of New York, and the Department, for injury or death arising directly or indirectly from the use of the premises, shall be insured. Such insurance shall be in the amount of not less than three

hundred thousand dollars (\$300,000) for one injury or death resulting from any one occurrence, and in the amount of not less than one million dollars (\$1,000,000) for more than one injury or death resulting from any one occurrence, and the amount of not less than twenty-five thousand dollars (\$25,000) for property damage as the result of any one occurrence. All policies of such insurance shall provide that the same may not be cancelled except upon ten (10) days prior written notice to each names insured. The Operator shall furnish the Department with a certificate of insurance or with a certified copy of each policy of insurance obtained in compliance herewith.

14. CANCELLATION: The Operator and the Department may each unilaterally cancel this Agreement at any time by giving the other party ninety (90) days notice in writing. It is further agreed that upon termination of this Agreement or cancellation thereof, the improvements upon the realty shall remain the sole property of the Operator and shall be removed from the premises. The premises shall thereupon be restored to the satisfaction of the Department within 14 calendar days. The Department waives any right to title or possession of the information center it might have upon termination, revocation or cancellation of this Agreement.

15. CONSIDERATION: Consideration for the use and occupancy of the demised premises shall be One Dollar (\$1.00) for the original term of this Agreement, and One Dollar (\$1.00) for each extension thereof, payment of which is hereby waived by the Department.

16. RESTRICTIONS ON ADVERTISING AND USE OF INFORMATION CENTER: The Operator assures the State that all advertising will be limited to places, facilities, goods and services which relate to and are of reasonable interest to the traveling public. The Operator assures the State that equal access will be allowed to all qualified advertisers at reasonable rates. The Operator assures the State that advertising will be restricted to the interior of the information center and will be in good taste. The Operator assures the State that all services to the traveling public, except pay telephone facilities, will be provided without charge. The Operator assures the State that the structure will be clean, sanitary and adequately maintained. The Operator assures the State that it will not accept advertising from advertisers who do not provide their services without regard to race, color or national origin.

17. The Operator further agrees that the information center will be open and available to serve the traveling public according to the following schedule of hours which, the State and Operator agree, may be modified by subsequent agreement:

IN WITNESS WHEREOF, this Agreement has been executed by the Department, acting by and through the Commissioner of Transportation, and _____, acting by and through _____ who has executed this Agreement effective the day and year first above written.

NEW YORK STATE DEPARTMENT OF
TRANSPORTATION

BY _____
Commissioner of Transportation

BY _____

FORM APPROVED

Attorney General

STATE OF NEW YORK)
) SS:
COUNTY OF ALBANY)

On this _____ day of _____, 19____, before me personally came _____, to me known and known to me to be the Commissioner of Transportation, the person described as such in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as such Commissioner of Transportation for the purpose therein mentioned.

Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

On this _____ day of _____, 19____, before me personally came _____, to me known and known to me to be the _____ of the _____, the person described as such in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as such _____ for the purpose therein mentioned.

Notary Public

NEW YORK STATE REQUIRED STANDARD CLAUSES

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

(a) no laborer, workman, 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 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.

(b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.

(c) the minimum hourly rate of wage to be paid shall not be less than that stated in the specifications, 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.

1.) The Labor Law provides that 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, subdivision 3, as amended or

(b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:

(a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.

(b) no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color or national origin.

(c) there may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person

for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and

(d) this contract may be canceled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and

(e) the aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order No. 45, dated Jan. 4, 1977, effective February 4, 1977, that:

(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 programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) if the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC), the contractor shall request each employment agency, labor union, or authorized representative of workers with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because 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 hereunder and the purposes of Executive Order No. 45 (1977).

(c) the contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

* (d) the contractor will comply with all the provisions of Executive Order No. 45 (1977) and of rules, regulations and orders issued pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

* (e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order No. 45 (1977), or with

such rules, regulations or orders, this contract or any portion thereof, may be canceled, terminated, or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order No. 45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

(f) the contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order No. 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

**NOTE: Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.*

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1.) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any

matter relating to such prices with any other bidder or with any competitor:

2.) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor:

3.) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder can not make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such time, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

VIII. This agreement shall be void and of no effect unless the contractor shall secure compensation insurance for the benefit of, and keep insured during the life of this agreement, such employees engaged therein as are required to be insured by the provisions of the Workmen's Compensation Law of the State of New York.

IX. 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 workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

Bidder agrees to allow CASH DISCOUNT as follows:

For payment within FIFTEEN days of delivery at destination and/or receipt of Voucher

For payment within THIRTY days of delivery at destination and/or receipt of Voucher

A BIDDER MAY SUBMIT ALTERNATE PROPOSAL CONTAINING DEVIATIONS IN DETAILED SPECIFICATIONS, CONTRACT PERIOD, QUANTITY, ETC. BIDDER SHALL STATE IN DETAIL WHEREIN IT DIFFERS FROM THE TERMS OF THE PROPOSAL AND SPECIFICATIONS AS ISSUED, AND CONSIDERATION MAY BE GIVEN TO ANY OR ALL SUCH DIFFERENCES PROVIDED SUCH ACTION IS IN THE BEST INTEREST OF THE STATE.

All of the quantities indicated herein are subject to overrun and underrun not to exceed 20% at the discretion of the Department of Transportation.

Shipment must be made only on definite quantities set forth in order.

Yours respectfully,

NAME OF BIDDER _____

DATE _____

BY _____