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(Acknowledgment by Surety Company)
STATE OF NEW YORK

ss:
COUNTY OF ........................................

On this ...... day of ........................................ 19......, before me personally came ........................................, to me known, who being by me duly sworn, did depose and say that he/she resides in ........................................; that he/she is the ........................................ of the ........................................; the corporation described in and which executed the within instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

102-21 MINORITY / WOMEN'S BUSINESS ENTERPRISE UTILIZATION FOR NON - F.A. CONTRACTS. It is the policy of the United States and of the State of New York that Minority and Women's Business Enterprises (M/WBEs) shall have the maximum opportunity to participate in the performance of State contracts for construction. The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules and regulations cited in this section to ensure that M/WBEs have the maximum opportunity to compete for and perform contracts. The Department and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of NYSDOT contracts. This policy shall be made a part of all subcontracts and agreements entered into as a result of this contract.

New York State, to this end, has enacted Article 15-A of the Executive Law, Part 540, Subtitle N of Title 9 of the NYCRR, and Chapter 2, Title 17 of the Official Compilation of Codes, Rules, and Regulations. The parties to this contract are required to comply with these laws, rules and regulations and the following M/WBE Program requirements.

A. Eligibility of M/WBEs - Only those M/WBE firms that are certified by the New York State Department of Economic Development (NYSDED) are eligible to be used for goal attainment on this contract. M/WBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a M/WBE.

In the event that the apparent low Bidder, in good faith, proposes to use a firm that is listed as a certified M/WBE in the project proposal, and that firm is later found by the Department to be ineligible or unable to perform, then the apparent low Bidder will be required to substitute another certified firm of the kind needed to meet the goal, before award, at no additional cost to the Department.

B. Goal - The Department has established utilization goals for M/WBEs which are expressed as a percentage of the total contract price. These goals are stated in the proposal and remain in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that he/she subscribes to the utilization goals and must meet or exceed the goals or demonstrate that he/she could not meet them despite his/her best efforts. The contract goals are then considered to be a target or a minimum figure to which the Contractor commits as part of his/her bidding for a 100% State funded project. When the contract is awarded with M/WBE participation that is less than the contract goals, the Prime Contractor is required to continue good faith efforts, as defined in Section F, throughout the life of the contract in order to increase the M/WBE participation to
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meet or exceed the contract goals.

C. Zero Percent Goals - For contracts which have 0% (zero percent) goals, the Bidder agrees to make good faith efforts to utilize certified M/WBEs for any subcontracts awarded by the Bidder in connection with the contract.

D. Counting M/WBE Participation Towards M/WBE Goals - M/WBE participation shall be counted toward meeting the M/WBE goals in accordance with the following:

1. Subcontracting. If a firm is determined to be an eligible M/WBE, as defined in Section A, the total M/WBE agreed amount of the items of work to be performed by the M/WBE is counted toward the applicable M/WBE goal except as provided in paragraphs 2, 3 and 4 below.

2. Joint Ventures. Joint ventures between certified M/WBE firms and non-M/WBE firms as subcontractors will be counted toward the M/WBE contract goal in proportion to the percentage of ownership and control of each firm within the joint venture, subject to approval by the Department of the joint venture agreement to be furnished by the Bidder before award of the contract. The joint venture agreement must include a detailed breakdown of the following:

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

In addition to these requirements, the M/WBE joint venturer must perform a commercially useful function as a M/WBE subcontractor as defined in Section E.

3. Suppliers (Regular Dealers), Manufacturers, and Fabricators. Count toward the M/WBE goals the expenditures for materials and supplies obtained from M/WBE suppliers (regular dealers) and manufacturers in the amount noted below. The M/WBE supplier or manufacturer must assume the actual and contractual responsibility for the provision of the materials and supplies.

   a. Count the entire expenditure to a M/WBE manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

   b. Count the entire expenditure to a M/WBE fabricator. A fabricator is a firm that substantially alters materials or supplies before resale.

   c. Count 60% (sixty percent) of the expenditure to a M/WBE supplier. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. It is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. One who deals in bulk items such as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

   d. The Bidder must indicate in the form of an explanation on the AAPHC-89, M/WBE Utilization Worksheet, the item number(s) for the material to be supplied.

EXAMPLE:
ITEM NUMBER | NAME | LESS THAN 100% | AMOUNT
--- | --- | --- | ---
619.17 M | Supply Temporary Concrete Barrier | XX% | $ VALUE

4. **Trucking Services.** Count toward the M/WBE goals the expenditure for trucking services provided by certified M/WBEs in accordance with the following:

   a. Count the pro-rated value of trucking services provided by trucks owned or leased on a long-term basis by the M/WBE trucking firm that appears on the AAPHC-89. For purposes of this Section, a long-term lease is a lease of six (6) months or more. Also, trucks that are leased on a long-term basis are leased without an operator.

   b. Count the pro-rated value of trucking services provided by trucks hired or rented from other certified M/WBE trucking firms by the M/WBE trucking firm that appears on the AAPHC-89. Hired or rented trucks may include operators.

   c. No credit will be received for the value of trucking services that are provided by trucks that are not owned, leased on a long-term basis, hired or rented from certified M/WBE trucking firms.

**EXAMPLE:**

Ten (10) trucks are needed to perform $50,000 of trucking services. The M/WBE who appears on the AAPHC-89 will provide two (2) self-owned trucks and three (3) trucks hired from M/WBE trucking firms for a total of five (5) certified M/WBE trucks providing trucking services. The remaining five (5) trucks are not obtained from certified M/WBE trucking firms. In this situation, 50% (fifty percent), or $25,000, can be counted toward the M/WBE goals.

   d. The Bidder must indicate in the form of an explanation on the AAPHC-89 the item number(s) for which the trucking services are to be performed, the type of trucking service to be performed (on-site vs. off-site), and the corresponding dollar value for those services (per item).

**EXAMPLE:**

ITEM NO. | NAME | LESS THAN 100% | AMOUNT
--- | --- | --- | ---
402.255901 M | Off-site Trucking Svc. For Item 402.255901 M | XX% | $VALUE

   e. The Bidder must provide before award, the calculations and any pertinent documentation that support the dollar value of the proposed M/WBE trucking services. The Bidder must also provide before award a list of all proposed M/WBE trucking firms to be used on the project and the number of trucks to be provided by each proposed M/WBE trucking firm.

   f. On-Site Trucking. For purposes of this Section, on-site trucking is defined as: 1. Within the boundaries of the physical place where the construction will remain. 2. Off-site facilities that are dedicated exclusively to the performance of the contract and are so located in proximity to the actual construction location that it would seem reasonable to include them. Trucking services provided for on-site trucking are considered to be a subcontracting...
activity. The M/WBE trucking firm that appears on the AAPHC-89 may not subcontract any portion of their on-site trucking operations.

g. Off-Site Trucking. For purposes of this Section, off-site trucking is defined as: 1. Outside of the boundaries of the physical place where the construction will remain. 2. Off-site facilities that were established by a commercial supplier or material supplier prior to award of the project and used for multiple customers.

Trucking services provided for off-site trucking are not considered to be a subcontracting activity; it is considered to be a service.

h. The M/WBE trucking firm that appears on the AAPHC-89 must control the day-to-day trucking operations on the project. The M/WBE is responsible for:
   (1) Negotiating and executing rental/leasing agreements;
   (2) Hiring and firing the work force;
   (3) Coordinating the daily trucking needs with the Prime Contractor;
   (4) Scheduling and dispatching trucks.

5. The Bidder must explain in writing the scope of work to be performed by the M/WBE for all items indicated as partial items on the AAPHC-89 at the time the low Bidder submits the Utilization Package.

6. A M/WBE that holds a Department contract may not count its own utilization in the contract toward the M/WBE contract goals.

E. Conditions of Participation - M/WBE participation will be counted toward meeting the M/WBE contract goals, subject to all of the following conditions:

1. Commercially Useful Function. The Prime Contractor is responsible for ensuring that M/WBEs performing work on the contract perform a commercially useful function. A M/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out his/her responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice (except where such practices are inconsistent with the M/WBE regulations). Regardless of whether an arrangement between the Contractor and the M/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the M/WBE or in any other way does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the goal.

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

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

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

F. Good Faith Efforts - To ensure that M/WBE firms are given the maximum practical
opportunity to participate in the work of the contract, the Bidder must make good-faith efforts to
obtain M/WBE participation in order to fulfill the M/WBE contract goals. The Bidder's
demonstration of good-faith efforts must be at least as extensive as, but not limited to, the
following:

1. Efforts to utilize the services of minority and women community organizations; minority
and women contractors groups; local, State and Federal minority and women business
assistance offices; and other organizations that provide assistance in the recruitment and
placement of M/WBEs.

2. Attendance by a representative of the Bidder who is knowledgeable of the contract work at
pre-bid, pre-award, and/or other meetings, if any, scheduled by the Department to inform
M/WBEs of subcontracting and other opportunities for participation in a specific contract. At
these meetings, the Bidder's representative will explain the required contract work and solicit
the interest of the M/WBE attendees in any specific portions of the work.

3. Efforts to secure participation by certified M/WBE firms. Only M/WBEs certified by the
NYSDED shall be used to fulfill goals on 100% State funded projects.

4. Written solicitation of M/WBEs. A written solicitation inquiry, using the form prescribed
in the contract proposal, and including a copy of the list of items and estimated quantities for
the contract and a copy of Form AAP-11, Solicitation Response, pre-addressed for return to
the Bidder, will be sent to all M/WBE firms and, when necessary, minority and women's
business associations located within the NYSDOT regions when necessary in order to meet
M/WBE goals. Notification must be made in a timely fashion such that the M/WBEs
contacted have a reasonable period of time in which to respond. The Bidder's solicitation will
cover certified M/WBEs listed in the New York State Directory of Certified Minority and
Women-Owned Business Enterprises maintained by NYSDED. Such geographic limits are not
acceptable as good faith efforts for work typically subcontracted to non-M/WBE firms on a
statewide basis, e.g., pavement markings, guide rail, etc. It will be mandatory for the Bidder
to contact all M/WBEs who have expressed interest in the specific contract to the Bidder and
to document efforts taken to secure their participation in the contract and in any future work.

5. Efforts to select portions of the work proposed to be performed by M/WBEs in order to
increase the likelihood of achieving the stated contract goal. Where certified M/WBEs have
expressed interest to the Bidder in performing certain work that the Bidder normally performs
with his/her own forces, and the contract goal has not otherwise been attained, the Bidder will
be required to subcontract such work or portions of it in order to meet the goal.

6. Efforts to negotiate with M/WBEs for specific subcontracts. Price alone will not be an
acceptable basis for rejecting M/WBE bids, unless it can be shown that no reasonable price
can be obtained from a M/WBE.

7. Efforts to assist the M/WBEs contacted which needed assistance in obtaining bonding or
insurance required by the Bidder or the Department. Difficulties encountered by the M/WBE
in obtaining bonding or insurance required by the Bidder will not be acceptable reasons for the
Bidder's failure to meet the contract goal.
8. Providing interested M/WBEs with adequate information about the plans, specifications and requirements of the contract.

9. Record of solicitation effort. All Bidders must keep records of efforts to solicit and negotiate with M/WBEs, using Form AAP-10, Solicitation Log, as a continuing record of pre- and post-letting activity. When submitting a D/M/WBE Schedule of Utilization (Form AAP-19) to the Department, the apparent low Bidder will attach the log, together with the supplemental information specified in the instructions for the AAP-10, as evidence of good-faith efforts. Such supplemental efforts must include at least the following:
   a. All Solicitation Responses, Form AAP-11, returned to the Bidder by M/WBEs;
   b. All envelopes of solicitation inquires that were returned as undeliverable; and
   c. Any quotations submitted by M/WBEs that are not included in the M/WBE Schedule of Utilization with an explanation for the Bidder's action in each case.

G. M/WBE Utilization Package - The Bidder shall submit a complete utilization package within seven (7) calendar days after the bid opening. The M/WBE utilization package consists of:
   1. Form AAP-19, D/M/WBE Schedule of Utilization;
   2. Form AAPHC-89, D/M/WBE Utilization Worksheet (NOTE: Form AAPHC-89 must be co-signed by both the Prime Contractor and the Subcontractor); and
   3. All of the information listed in Section F.

H. Bidder's Failure to Comply - The Department's acceptance of the Bidder's proposal is conditioned upon the Bidder's fulfillment of the requirements of this Section. If the Bidder fails to submit a complete utilization package as defined in Section G by the seventh calendar day after the bid opening and/or fails to attain the M/WBE utilization goals, and to satisfactorily document his/her good faith efforts as defined in Section F above, the bid may be declared incomplete and the deposit may be subject to forfeiture pursuant to §103-02 of the Standard Specifications.

I. Minority/Women's Business Enterprise Officer - The Bidder shall designate a Minority/Women's Business Enterprise Officer who will have the responsibility to, and be capable of, effectively administering and promoting an active M/WBE Program, and who is assigned adequate authority to do so.

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

K. Revisions in M/WBE Utilization - If, after the award of the contract, a subcontract or purchase order held by a M/WBE or joint venture involving a M/WBE is modified or terminated, the Contractor shall immediately notify the Department of such modification or termination and the reasons therefor or an alternative subcontract or purchase order for a commensurate dollar amount furnished by another M/WBE. Any change in M/WBE utilization must be approved by the Department through submission of a revised AAP-19 and an AAPHC-89/AAPHC-89-1 (Amended) signed by both parties. The Contractor must receive this approval prior to implementing any proposed change. Failure by the Contractor to obtain approval could result in appropriate sanctions.

For purposes of this Section, a revision in M/WBE utilization is considered to be any of the
following modifications:

1. Reducing the dollar value of or eliminating the M/WBE's item(s) of work. In the event that this results in a shortfall in goal attainment, the Contractor will be required to make good faith efforts to backfill in accordance with Section F.

2. Removing one M/WBE and substituting another M/WBE for the same item(s) of work.

3. Increasing the dollar value of (an) item(s) of work or adding (a) new item(s) of work to a M/WBE already participating on the contract.

4. Adding a M/WBE to the contract.

L. Monitoring Contractor Compliance. The Contractor will allow the Director of EODC and other authorized representatives of the Department to conduct periodic inspections of the Contractor's M/WBE participation efforts during the performance of this contract. In order to determine whether the Contractor has complied with the requirements of this Section, the Commissioner may proceed by order to show cause, or attend a hearing before the Contract Review Unit, or may file a complaint with the Division of Minority and Women's Business Development of the NYS Department of Economic Development pursuant to Section 316 of Article 15-A of the Executive Law, or may follow any other lawful procedure upon due notice in writing to the Contractor. When the Contractor has been found to have failed to meet the contract goals, to exert a good-faith effort, or otherwise failed to comply with this Section, the contract may be canceled, terminated, or suspended in whole or in part in accordance with Article 11 of the contract and §40 of the Highway Law. Such other sanctions may be imposed and remedies invoked as provided under the authority of Article 15-A of the Executive Law, Part 540 et seq. of Title 9 of NYCRR, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

M. Prompt Payment - Failure by the Contractor to pay any subcontractor within fifteen calendar days of receipt of payment from the Department for work performed that is accepted by the Department, in violation of Section 139-f of the State Finance Law, could result in the withholding of future estimated payments by the Department. The Contractor shall submit reports on payments made to subcontractors as required by the Department. If it is determined by the Department that a subcontractor has not received payment due and owing in accordance with Section 139-f of the State Finance Law, the Department may direct the Prime Contractor to make such payment. Any such direction by the Department is a lawful direction under Article 8 of the contract. While such direction is not complied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment nor shall any estimate be rendered on account of work done.

N. Required Records - The Contractor shall keep records and documents for three years following performance of this contract to indicate compliance with this Section. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representatives of the Department and will be submitted to the Department upon request, together with other compliance information which may be required.

O. Non-Discrimination - The Contractor shall not use the requirements of this Section to discriminate against any qualified company or group of companies.

P. Reporting Violations of Program Rules - The Contractor is responsible for ensuring that the M/WBE performs a commercially useful function on the contract as defined in Section E. If the Contractor becomes aware of any violations of this section, the Contractor is required to promptly report the violations to the Engineer.

Q. Requests for Waiver - The Contractor may request a waiver of all or part of a contract's M/WBE goals by submission of all the information required by Section 543.7 of Title 9 of NYCRR to EODC. The submission of such a request and any appeal of the Department's decision are governed by Part 540 of Subtitle N of Title 9 of NYCRR.
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R. Contractor Agreement - The Contractor agrees as a condition of this contract to be bound by the provisions of Section 316 of Article 15-A of the Executive Law.

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

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

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

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

GENERAL PROVISIONS

A. Goals

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

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

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

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

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

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

3. **Joint Ventures.** The total dollar value of the contract equal to the distinct, clearly defined portion of the work in the contract that the DBE performs with its own forces will be counted toward the DBE contract goal, subject to approval by the Department of the joint venture agreement to be furnished by the Bidder before award of the contract. The joint venture agreement shall include a detailed breakdown of the following:
   a. Contract responsibility of the DBE for specific contract items of work;
   b. Capital participation by the DBE;
   c. Specific equipment to be provided to the joint venture by the DBE;
   d. Specific responsibilities of the DBE in the control of the joint venture;
   e. Specific staffing and skills to be provided to the joint venture by the DBE; and
   f. Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

4. **Manufacturers, Fabricators and Material Suppliers.** Expenditures for materials and supplies obtained from DBE Manufacturers, Fabricators and Material Suppliers in the amounts noted below will be counted toward the DBE goal. The DBE Manufacturer, Fabricator or Material Supplier shall assume the actual and contractual responsibility for the provision of the materials and supplies.
   a. Count 100% of the expenditure to a DBE Manufacturer or Fabricator.
   b. Count 60% (sixty percent) of the expenditure to a DBE Material Supplier. Packager's, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not Material Suppliers within the meaning of this paragraph.
   c. With respect to materials or supplies purchased from a DBE which is neither a Manufacturer nor a Fabricator nor a Material Supplier, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies required on a job site, toward the DBE goals, provided they are determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves are not counted.

5. **Trucking Operations.** Count toward the DBE goal the expenditure for trucking operations provided by certified DBEs in accordance with the following:
   a. To satisfy the criterion of performing a commercially useful function as a subcontractor, a DBE shall own and operate at least one fully licensed, insured, and operational truck used on the contract and shall be responsible for the management and
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supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidder shall solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder shall determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

2. a. The Bidder shall, at a minimum, seek certified DBEs in the same geographic area where the project is located. This is defined as a one hundred (100) kilometer radius around the city, town or borough where the project is located as identified in the contract proposal. For specialty work such as pavement markings, guide rail, etc. (as defined in the contract proposal) the Bidder shall, at a minimum, solicit on an upstate or downstate basis, depending upon the location of the project.

b. The Department has facilitated identification of these areas through its Automated Registry program, which is accessible via the Internet on the Department's Web Page at www.dot.state.ny.us. For more information please contact the NYSDOT Help Desk at (518) 485-8111. For those bidders who do not have this automation capability, a solicitation report (i.e., paper copy) for a specific contract can be requested by contacting OEO/DC's Contract Management Unit at (518) 457-1129.

3. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.

4. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

5. a. Negotiating in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and material suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. The fact that there may
be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

6. Rejecting DBEs as being unqualified, based on sound reasons, only after a thorough investigation of their capabilities. The Bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the project goal.

7. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the recipient or the Bidder.

8. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance.

9. Effectively using the services of available minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

10. Record of solicitation effort. All bidders shall keep records of efforts to solicit and negotiate with DBEs, using Form AAP-10, Solicitation Log as a continuing record of pre- and post-letting solicitation activity. When submitting a Form AAP-19, D/M/WBE Schedule of Utilization to the Department, the Apparent Low Bidder will attach the log, together with the supplemental information specified in the instructions for the Form AAP-10, Solicitation Log as evidence of good-faith efforts. Such supplemental efforts shall include at least the following:
   a. All envelopes of solicitation inquires that were returned as undeliverable; and
   b. Any quotations submitted by DBEs that are not included in the Form AAP-19, D/M/WBE Schedule of Utilization with an explanation for the Bidder's action in each case.

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

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

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

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

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

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

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

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

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

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

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

102-23 STATE AND LOCAL SALES TAX EXEMPTION. The Contractor’s attention is directed to the changes made in Section 1115 of the Tax Law by Chapters 513 and 514 of the Laws of 1974. In connection with capital improvement contracts entered into on or after September 1, 1974, all tangible personal property which will become an integral component of a structure, building or real property of the State, or any of its political subdivisions, is exempt from State and local retail sales tax and compensating use tax.

**SECTION 103 CONTRACT AWARD AND EXECUTION**

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

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

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

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

- QP-1, Standard Procedure for Evaluating Qualifications of Painting Contractors: Field Application to Complex Industrial Structures;
- In lieu of SSPC/PCCP certification, the Department will accept documentation that demonstrates that the low bidder has established equivalent processes and procedures conforming to the standards set forth in the procedures for SSPC/PCCP QP-1 and QP-2.

103-02 EXECUTION OF CONTRACT. The person or persons whose proposal is accepted will be required to execute the contract and to comply in all respects with the statutory provisions relating to the contract within ten days of the date of the delivery of the contract form by the Commissioner of Transportation. In case of failure or refusal on the part of the bidder to deliver the duly executed contract to the Commissioner of Transportation within the ten day period herein mentioned, the amount of the deposit made may be forfeited and paid to the State of New York, Department of Transportation.

The Contractor agrees that it will conduct its operations in compliance with all the laws and

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NEW YORK STATE DEPARTMENT OF TRANSPORTATION
STANDARD SPECIFICATIONS of January 2, 2002

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regulations of the United States, State of New York and Public Authorities and the ordinances of any
city, village, town or county and the lawful direction of the officers, agents or representatives of the
United States, the State of New York, the Public Authorities or of said city, village, town or county. All
costs due to compliance with the above described laws, regulations, and ordinances shall be included
in the prices bid for contract items unless otherwise provided for in the contract.

A. Partnering. It is the Department's policy to use the principles of partnering to guide the
management of construction contracts and the construction program, within the parameters covered
by the laws, regulations and other policies that govern work in the public sector.
The partnering principles are intended to promote quality through continuous improvement at all
stages of construction. The goal of the Department is to complete each project in the most
efficient, timely, safe, and cost effective manner, to the mutual benefit of the Contractor and the
Department, meaning a quality project delivered on time, within budget, and without significant
disputes.

Partnering is defined as those actions taken to include all parties with an appropriate and vested
interest in a transportation project in the management of the project such that the project is
completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of
all concerned. Those actions include, but are not limited to, communication, organization,
establishing goals, continuous improvement, problem identification, conflict resolution, and
managing change. Interested parties may include, but are not limited to, the Department, the
contractor, subcontractors, suppliers of goods and services to the project, the community within
which the project is constructed, the community served by the project, federal, state and local
government or other public agencies, and utilities.

None of the actions identified as part of, or taken in the course of partnering shall be construed
to alter, modify, delete or waive any of the provisions or requirements of the Department's Standard
Specifications or any applicable laws or regulations.

The Department with the Contractor will manage each contract in a cooperative manner
utilizing the following principles of project partnering:
- establish communications with all involved parties early in the partnering process;
- establish a relationship of shared trust, equity, and commitment;
- develop strategies for identifying mutual goals;
- develop strategies for timely communications and decision making;
- establish process for timely response to changes or variations in field conditions;
- solve potential problems, at the lowest level, before they negatively impact the project;
- encourage the use of products, technology and processes that provide a demonstrated level
  of improved quality; and
- develop a plan for periodic joint evaluation based on mutually agreed goals.

The specifications are to be implemented in an equitable fashion that recognizes the problems
that are inherent in construction, addresses the different-than-expected field conditions, resolves
disputes in open communications manner, and makes contract adjustments in a timely, and fair
manner consistent with the terms of the contract. These specifications are intended to fairly
allocate risk, resulting in a balanced contractual approach to risk-sharing. The Department will
provide information relevant to preparation of a bid for the contract, and in connection with
submission of its bid, the Contractor has the right to rely on information provided by the
Department in the contract documents.
Generally, an item for formal partnering will be included in the contract proposal for large, more
complex contracts. In addition, the Department will accept requests by successful low bidders to
incorporate formal partnering on any project that requires coordination and cooperation with third
parties such as subcontractors, suppliers, utility companies and railroads, or as otherwise desired
by the Contractor. Finally, the Department is willing to informally partner with the Contractor on
all other contracts. Informal partnering is defined as the application of partnering principles to the
management of the project by the mutual agreement of the interested parties to the project. Although the principles of partnering are to be applied, there is no fixed organization or structure adopted for that purpose.

103-03 RIGHT TO SUSPEND WORK AND CANCEL CONTRACT. The specifications of 102-17, Sample Form of Agreement, Article 11 shall apply.

103-04 BONDS. The Contractor shall procure and deliver bonds to the State and maintain them at its own expense and without expense to the State until final acceptance by the State of the work covered by this contract.

A. Faithful Performance Bond. A bond in the form prescribed by the Commissioner with sufficient sureties, approved by said Commissioner, that the Contractor will perform the work in accordance with the terms of the contract and with the plans and specifications, and that it will commence and complete the work within the time prescribed in the contract, and that it will provide against direct or indirect damages that shall be suffered or claimed on account of such construction or improvement, during the time thereof, and until the contract is accepted. For contracts subject to A+B Bidding, the bond shall be based on the A portion items only.

B. Labor And Material Bond. A bond guaranteeing prompt payment of monies due all persons supplying the Contractor or subcontractor with labor and materials employed and used in carrying out the contract, which bond shall inure to the benefit of the persons supplying such labor and materials.

C. Amount of Bonds. The amount of the Faithful Performance Bond and Labor and Material Bond shall be 100% of the amount of the contract price.

SECTION 104 - SCOPE OF WORK

104-01 WORK REQUIRED. Under the contract the Contractor shall be required to do all work enumerated under the different items of the contract and in addition to this shall be required to protect all adjoining properties, all Utilities and existing highway facilities within the Right-of-Way and to repair or replace any such properties, Utilities and facilities damaged or destroyed by it or its employees through the construction operations, both within and adjacent to the Right-of-Way.

The Contractor’s attention is directed to the fact that during the life of this contract the owners and operators of Utilities may make changes in their facilities. These changes may be made by the Utility employees or by contract within the limits of or adjacent to this contract and may be both temporary and permanent.

The Contractor shall be responsible for the coordination of the work of its various subcontractors. Their respective operation shall be arranged and conducted so that delays will be avoided. Where the work of the Contractor, or subcontractors, overlaps or dovetails with that of other Contractors, materials shall be delivered and operations conducted so as to carry on the work continuously in an efficient and workmanlike manner.

Delays or oversights on the part of the Contractor or subcontractors or Utility owners in getting any or all of their work done in the proper way thereby requiring the cutting, removing and replacing of work already in place, shall not be the basis for a claim of extra compensation. Such work will be performed at the cost and expense of the offending Contractor, subcontractor or Utility owners.

Reference is made to Section 11-102 of the General Obligations Law which concerns the interference and/or delay of the Contractor’s progress of work by utilities.
§104-02

104-02 ALTERATIONS AND OMISSIONS. The specifications of 102-17 Sample Form of Agreement, Article 5, shall apply.

104-03 CONTINGENCIES, EXTRA WORK AND DEDUCTIONS. Whenever the Commissioner of Transportation determines that from any unforeseen cause the terms of any contract should be altered to provide for changes, contingencies or extra work, he/she may issue an order on contract therefor to the Contractor who shall forthwith proceed with the performance of the work and the furnishing of the materials and equipment necessary for its accomplishment in accordance with the pertinent specifications.

No instructions, either written or verbal from any Department employee or agent shall be construed as an order for changes until receipt by the Contractor of written notification that an order-on-contract has been approved by the Department, or written notification from the Engineer that changes in the work are eligible and authorized for payment in accord with Section 697, Interim Payments. The Contractor may proceed with the work in advance of the approved order-on-contract if the Contractor has received an approved Authorization of Additional Work from the Construction Division.

Otherwise, payment for any unforeseen work shall be made only if the contractor complies or has complied with all of the provisions of §105-14, §109-05 and §109-16 as applicable.

104-04 CLOSING OF HIGHWAY. The legal closing of a highway to public travel in the manner provided by 104 of the Highway Law will be done by the Commissioner of Transportation or by the County Superintendent of Highways when requested by the Department. All highways are not so closed during highway construction operations.

When a highway is legally closed and public travel diverted therefrom adequate warning, danger and direction signs and lights shall be erected and maintained by the Contractor to properly protect and direct public travel by day and by night. Suitable barricades shall also be erected at the ends of such closed sections of highways and large signs displayed indicating such closure. All signs, barricades and other traffic control devices used shall conform to the New York State Manual of Uniform Traffic Control Devices.

104-05 RESTRICTED HIGHWAY USE. With the award of a contract the Commissioner of Transportation will, unless otherwise specified, designate the section of highway under contract a “Restricted Highway” pursuant to Section 104A of the Highway Law and Section 1625 of the Vehicle and Traffic Law. Pursuant to these legal sections, the Commissioner has the authority to (1) establish maximum and minimum speed limits at which vehicles may proceed along any such Restricted Highway; (2) establish weight and dimension limits of vehicles; (3) regulate the use of such Restricted Highway by pedestrians, equestrians, and animals; (4) regulate parking, standing, stopping, and backing of vehicles; (5) control persons and equipment engaged in work on such highway. When used on such Restricted Highways, all traffic control devices shall be considered as official traffic control devices and shall conform to the Manual of Uniform Traffic Control Devices.

The Commissioner will therefore cause signs indicating such restrictions to be placed at such points as deemed necessary for the safe use of the Restricted Highway. The traveling public and the Contractor must observe and comply with these restrictions, as posted, except that the Contractor may be allowed greater latitude with respect to size and weight of construction equipment.

Construction equipment or vehicles shall be operated on Restricted Highways as provided under §105-12, Construction Equipment.

104-06 SITE HOUSEKEEPING The project site shall be cleaned up at the close of each work day, and be left in an orderly condition. Waste and debris shall be removed from the work site and surrounding areas cleaned of debris or waste generated from the work site. Containers shall be provided for the collection and separation of waste, and garbage and other waste shall be disposed of at frequent and regular intervals. Any salvaged material not specified to be disposed of otherwise, shall become