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105-14 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS. It is the goal of the Department to resolve disputes that may arise under the contract in a timely, just and fair manner consistent with the terms of the contract. Towards this goal, the Department is specifying these dispute resolution and disputed work provisions. The dispute resolution process may be undertaken at any time from the contract award to the submission of the final estimate for payment by the Office of the State Comptroller. The process recognizes and will take into consideration the risks and controls inherent in construction which the Contractor or the Department have agreed to assume pursuant to the terms of the contract.

If the Contractor considers its disputes unresolved after following the requirements of this Section then at any time prior to the submission of the final agreement for payment to the Office of State Comptroller, the Contractor may request in writing a meeting with the Commissioner, or his/her designated representative, to review any outstanding dispute or items of a dispute that have not been previously resolved to the satisfaction of the Contractor through the dispute resolution process. If requested by the Contractor, the Department will schedule a contract closeout meeting to review outstanding disputes or items of dispute that have not previously been resolved. Unresolved disputed item(s) or portions thereof shall only be considered in connection with the contract closeout process set forth in paragraph F of this Section. If, after the payment of the final agreement, any dispute(s) or portion thereof remain unresolved, the Contractor shall retain the option of filing a claim in accordance with law. If the Contractor fails to comply with the requirements of this section, any claim of the Contractor with respect thereto shall be deemed waived.

The notification and record-keeping provisions in this Contract shall be strictly complied with for disputes of any nature and are a condition precedent to any recovery. This affords the Department the opportunity to initiate measures that will mitigate damages to all parties and/or to agree to terms and conditions for timely payment for any eligible added costs. Disputes of any nature shall be made in strict accordance with the contract provisions. In the case of any dispute, it shall be the Department’s right to modify specifications or delete portions of the work being disputed to mitigate damages. In addition, the Contractor is encouraged under the contract, when raising a dispute, to provide information concerning measures that may be taken for mitigating the damages. If the Contractor fails to strictly comply with either the notification or the record keeping provisions of this section, any claim of the Contractor with respect thereto shall be deemed waived.

A. Time Related Disputes. Whenever the Contractor believes that it is or will be entitled to additional compensation for time related disputes, whether due to delay, extra work, disputed work, breach of contract, or other causes, the Contractor shall follow the procedures set forth in this Section. All subcontracts, supply or equipment contracts shall incorporate the provisions of §105-14, Dispute Resolution and Disputed Work Provisions. If such subcontracts or supply or equipment contracts do not have similar provisions, then the State payments to the Contractor for such subcontract or supply or equipment work shall be limited to only that which are provided by the provisions of this Section as if it were in effect for such subcontract or supply or equipment contract.

1. a. The term “dispute” shall mean a matter of contract performance or contract compensation, including granting of extensions of time, in which there is or may be disagreement between the Contractor and the Department and which may involve adjustment of contract items or the addition of new items to the contract, extension of time for performance and/or adjustments in compensation necessitated by the resolution of such disagreement.

b. The term “time related dispute” shall mean any dispute arising from any event not within the Contractor's control, performance, action, force, or factor which affects the scheduled time of performance depicted in the Contractor's most recent Department approved progress schedule submitted to the Department. This Subsection is intended to
cover all such events which include termination under §105-07, Termination Clause, major deductions or increases to quantities of work whether or not covered by §104-02, Alterations and Omissions and §104-03, Contingencies, Extra Work, Deductions, and suspension of work and cancellation of contract under §103-02, Right to Suspend Work and Cancel Contract, as well as actions, forces or factors, whether they be termed “delay,” “disruption,” “interference,” “inefficiencies,” “impedance,” “hindrance,” “acceleration,” or otherwise. This subsection shall cover all such applicable events under §109-16.

2. Strict compliance with the notice provisions of this Section and compliance with the recordkeeping provisions of this section and §109-05, Extra, Force Account Work, Dispute Compensation and Recordkeeping, shall be an essential condition precedent under the contract provisions to any recovery of time related damages by the Contractor whether it be under the contract provisions, court actions and proceedings or otherwise.

3. Except for situations that come within the terms of §109-16(A)(2) Suspensions of Work Ordered by the Engineer, within ten work days after the Contractor has knowledge or should have had knowledge of an event, matter or occasion that will result in time related damages, the Contractor shall provide the Engineer with written notice of a dispute for time related damages.

   The Department shall have no liability and no adjustment will be made for any time related damages which accrued more than ten (10) working days prior to the filing of such a notice with the Engineer. Failure of the Contractor to give such written notice in a timely fashion will be grounds for denial of the dispute and the Department does not have to show prejudice to its interest before such denial is made. In the event the Contractor fails to provide the required written notice within the ten work day period and in the event the Contractor fails to maintain and submit such specified records set forth in these provisions, the Contractor hereby agrees to waive the dispute for compensation, notwithstanding the fact that the Department may have actual notice of the facts and circumstances which comprise such dispute and is not prejudiced by said failure.

   As directed by the Engineer, the work shall continue during the pendency of the dispute. The Engineer shall make the initial determination in writing on the dispute and the Contractor, if it considers the issue unresolved, shall promptly notify, within ten (10) work days after receipt of the Engineer's decision, the Regional Director in writing of its position relative to the dispute. If the Regional Director does not resolve the dispute to the satisfaction of the Contractor, the latter shall promptly, within ten work days after receipt of the Regional decision, notify the Commissioner, in writing with copies to the Engineer and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Engineer and the Regional Director and its rebuttal of their previous findings or determinations. The Commissioner, or his/her designee, shall make a finding thereon and notify the Contractor of same in writing.

   Adjustments of contract items, or adjustments to the time of performance, or the addition of new items to the contract necessitated by such dispute determination may be made until the time the final agreement is submitted for payment to the Office of the State Comptroller, provided that the requirements of this Section are complied with.

4. If time related damages are presumed to have been incurred and after giving the Department notice of a dispute for time related damages, the Contractor must keep daily records of all labor, material, and equipment costs and hours incurred for the affected operations. These daily records must identify each operation affected and the specific locations where work is affected. On a “weekly basis,” beginning the week following the week of giving notice of a dispute for time related damages, the Contractor shall meet with the Engineer and present the daily records for the preceding week. If the Engineer disagrees with the accuracy,
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applicability, or reasonableness of any portion of the Contractor's submission, he/she shall promptly notify the Contractor who shall correct its records. If there is a dispute as to records, the Contractor must follow the requirements of §105-14C. The dispute shall first be submitted to the Regional Director and if unresolved will be submitted in writing to the Commissioner or his/her designee whose decision shall be final and conclusive subject to the Contractor's right to assert a claim in New York State Court of Claims. Lack of substantial compliance with the requirements to attend weekly meetings or present its records will constitute a waiver by the Contractor of said dispute for time related damages.

5. After giving notice of a dispute for time related damages, the Contractor shall prepare and submit to the Engineer, if requested, weekly written reports until complete resolution of the dispute, which shall be available at the next scheduled job meeting, providing the following information:

a. Potential effect to the Contractor's schedule caused by the time related dispute;

b. Identification of all operations that have been affected or delayed, or are or may be affected or delayed;

c. Explanation of how the Department's act or omission affected or delayed each operation, and estimation of how much more time is required to complete the project;

d. Itemization of all extra costs being incurred, including:

   (1) An explanation as to how those extra costs relate to the effect or delay and how they are being calculated and measured.

   (2) Identification of all project employees for whom costs are being compiled.

   (3) Identification of all manufacturer's numbers of all items of equipment for which costs are being compiled.

6. In addition, after submitting the required notice specified in this section, the contractor shall complete its dispute submission by complying with §109-05 E, Required Content of Dispute Submission, when such information is ascertainable by the contractor and §109-05 F, Required Certification of Disputes.

   See Subdivision E of this Section for the Review Time Periods for Disputes to the Commissioner and Subdivision F of this Section for the Closeout Process.

B. Accelerated Disputes. The Contractor may not maintain a dispute for costs associated with acceleration of the work unless the Department has given prior express written direction by the Engineer to the Contractor to accelerate its effort. The Contractor shall always have the basic obligation to complete the work in the time frames set forth in the contract. For purposes of this Subsection, lack of express written direction on the part of the Department shall never be construed as assent.

   If the Contractor does accelerate its work efforts pursuant to a written order or express written approval by the Regional Director, the Contractor shall be compensated for its effort, in the same manner and as limited by §109-05(D). The Department, in determining whether or not any compensation under this Section is warranted, will evaluate the facts and circumstances which led to the acceleration to determine whether they were in the Contractor's control.

   If the contractor is claiming a "constructive acceleration," it must follow the requirements of §105-14(A).

   See Subdivision E of this Section for the Review Time Periods for Disputes to the Commissioner and Subdivision F of this Section for the Closeout Process.

C. Disputed Work. If the Contractor is of the opinion that any work ordered by the Engineer to be done as contract work is extra work and not contract work, or that any order of the Engineer exceeds the work requirements of the provisions of the contract, the Contractor shall promptly, within ten work days of receipt of the order or direction, notify the Engineer in writing of its contentions thereto. The Contractor must progress the work as required and ordered. In the
meantime, the Contractor, if it considers the issue unresolved, shall promptly, within ten work days of receipt of the Engineer's written decision, notify the Regional Director in writing of its position relative to the dispute. If the Regional Director does not resolve the dispute to the satisfaction of the Contractor, the latter shall promptly, within ten work days of receipt of the Regional Director's written decision, notify the Commissioner, in writing with copies to the Engineer and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Engineer and the Regional Director and its rebuttal of their previous findings. The Commissioner, or his/her designated representative, shall make a finding thereon and notify the Contractor of same in writing. If such work is determined by the Commissioner or his/her designee to be extra work pursuant to the provisions of this Section, compensation will be made pursuant to §109-05B. In addition, after submitting the required notice specified in this section, the contractor shall complete its dispute submission by complying with §109-05E, Required Content of Dispute Submission, when such information is ascertainable by the contractor and §109-05F, Required Certification of Disputes. This subsection shall cover all such applicable extra work under §109–16. During the progress of such disputed work, the Contractor and Engineer shall keep daily records and make reports of all labor, material and equipment used in connection with such work and the cost thereof as specified in §109-05C, Force Account Reports. If the Engineer or Regional Director fails to reply within 60 days, the Contractor may take the dispute to the next level.

If the Commissioner or his/her designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct the Contractor to continue the disputed work and the Contractor must promptly comply. The Contractor's right to pursue a dispute under this Section for extra compensation or damages will not be affected in any way by the Contractor's complying with the directions of the Commissioner or Engineer to proceed with the work, provided the Contractor continues to keep and furnish the Engineer with Force Account Reports as specified in §109-05C.

If the Commissioner, or his/her designated representative, determines that such work is extra work and not contract work, or that the order complained of is not proper, then the Commissioner or his/her designated representative shall have prepared, if necessary, an order on contract covering such work as soon as is practical after the determination is made. Payment will be made for such work via agreed price or force account pursuant to §109-05 B, New Item Charges. The Commissioner, or his/her designee, will notify the Contractor in writing of the date upon which the Department has approved the order on contract. Performance of work until receipt of the order on contract by the Contractor shall be considered disputed work. The Contractor must progress the work of the contract, including the work covered by any such order on contract, as directed by the Engineer. Adjustments to contract items, or adjustments to the time of performance, or the addition of new items to the contract necessitated by such determination may be made up until the time the final agreement is submitted for payment to the Office of the State Comptroller, provided that all the requirements of §109-05, Extra and Force Account Work, Dispute Compensation and Recordkeeping and §104-03, Contingencies, Extra Work, Deductions, are complied with. In addition, documented, additional, actual and reasonable costs incurred by the Contractor pursuant to following a written order to perform work (that was subsequently contained in an order on contract which was disapproved) will be considered as reimbursable. This work will be considered disputed work for which the Contractor will be compensated. Eligibility for compensation shall cease upon notification of the order on contract's disapproval. Failure by the Contractor to promptly notify, in writing, the Engineer, the Regional Director, and the Commissioner of its contentions relative to any dispute or to maintain and furnish force account reports for disputed work shall constitute a waiver of the disputed work.

See Subdivision E of this Section for the Review Time Periods for Disputes to the Commissioner and Subdivision F of this Section for the Closeout Process.

D. Auditing of Records. The Contractor who has filed a dispute must have the following
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records available for audit at any time following the filing of such dispute, whether or not such dispute is part of a suit pending in the courts of this State. If a dispute is filed on behalf of a subcontractor or supplier, such subcontractor or supplier must also have substantially the following records available for audit any time following the filing of such dispute, whether or not such dispute is part of a suit pending in the courts of this State. The audit may be performed by employees of the Department or by an independent auditor appointed by the Department. The audit may begin on ten days’ notice to the Contractor, subcontractor, or supplier as is appropriate. The Contractor, subcontractor, or supplier shall cooperate with the auditors. The Department will maintain the audit, its backup, reports, schedules and conclusions as confidential material. Failure of the Contractor, subcontractor, or supplier to maintain and retain sufficient records shall constitute a waiver of that portion of such dispute that cannot be verified and shall bar recovery thereunder.

Without limiting the generality of the foregoing, the auditors shall have available to them and the Contractor agrees to provide access to substantially the following documents:

1. Daily time sheets, job superintendent diaries or log sheets and foreman’s daily reports.
2. Union agreements and reports, if any.
3. Insurance policies, welfare and benefits records or plans for union and non-union personnel.
4. Payroll register.
5. Individual employee earnings records.
6. Payroll tax returns.
7. Material invoices, purchase orders, and all material and supply acquisition contracts.
9. Equipment records (list of company equipment, rates, depreciation schedules, daily equipment reports or logs, fueling logs or records, equipment lease purchase agreements, and equipment purchase invoices).
10. Vendor rental agreements, subcontractor invoices, agreements and back charge records.
11. Subcontractor payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost ledger or report.
15. General ledger, general journal (if used), and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
17. Audited and unaudited financial statements for all years reflecting the operation on this project.
18. Depreciation records on all company equipment whether such records are maintained by the company involved, its accountant, or others.
19. If a source other than depreciation records is used to develop costs for the Contractor’s internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
20. All documents which reflect the Contractor’s actual overhead during the years this Project was being performed.
21. All documents related to the preparation of the Contractor’s bid including the final calculations on which the bid was based.
22. All documents which relate to each and every dispute together with all documents which support the amount of damages as to each dispute.
23. Work sheets used to prepare the dispute establishing the cost components for items of the dispute including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.
In the event the Contractor fails to substantially furnish the above required reports and accounting records, such failure shall constitute a waiver of the dispute for payment other than for payment at contract unit prices for the work performed.

E. Review Time Periods for Disputes to the Commissioner.

1. For all disputes of $50,000.00 or less, the Department shall respond in writing within 45 days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute is required, the Department may request said documentation in writing within 30 days of receipt of the dispute. The Contractor shall provide such information within 30 days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Contractor within 15 days after receipt of said additional documentation or within a period of time no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. Upon the Contractor's request, the Department shall schedule a meeting or conference. By agreement between the Department and the Contractor, such time periods may be modified.

2. For disputes over $50,000.00 and less than or equal to $250,000.00, the Department shall respond in writing within 60 days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute is required, the Department may request said documentation in writing within 30 days of receipt of the dispute. The Contractor shall provide such information within 30 days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Contractor within 30 days after receipt of said additional documentation, or within a period of time no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 15 days of receipt of the Department's response, or within 15 days of the Department's failure to respond. Upon the Contractor's request, the Department shall schedule a meeting or conference. Within 30 days the Contractor will be notified of the date of the meeting or conference. By agreement between the Department and the Contractor, such time periods may be modified.

3. For disputes over $250,000.00, and disputes that have an undetermined value, the Department shall respond in writing within 90 days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute is required, the Department may request said documentation in writing within 30 days of receipt of the dispute. The Contractor shall provide such information within 30 days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Contractor within 60 days after receipt of the said additional documentation, or within a period of time no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 30 days after the receipt of the Department's response, or within 30 days of the Department's failure to respond. Upon the Contractor's request, the Department shall schedule a meeting or conference. Within 30 days the Contractor will be notified of the date of the meeting or conference. By agreement between the Department and the Contractor, such time periods may be modified.

4. If any dispute or portion thereof remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Contractor may file a claim in accordance with law and the provisions of the Contract.

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F. Closeout Process.

1. A dispute or claim, or a portion thereof, that has been previously submitted to the Department under the provision of subdivision C. of this Section, which remains unresolved to the satisfaction of the Contractor, may be submitted for Department review in connection with the closeout procedure. The closeout meeting process involves meeting(s) with the Contractor and its representatives and Department personnel to amicably resolve all remaining disputes of the Contract. In lieu of pursuing the closeout meeting process the Contractor may elect to utilize the following process.

2. The Commissioner, after consultation with the four major contractor associations in New York State who represent the majority of the contractors performing work for the Department, shall appoint a department employee to determine what method of dispute resolution is appropriate for each Contract that has unresolved disputes over $50,000.00. Such person, referred to as the Gate-keeper, shall establish universal criteria, subject to approval of the Commissioner after consultation with the four major contractor associations, that will be used in connection with the review of the disputes. The outcome of the review will either be the closeout meeting process, or alternate dispute resolution methods that are consistent with law, including but not limited to facilitation methods or a Disputes Review Board as such is described hereafter. The Gate-keeper shall advise the Department and the Contractor how he or she would proceed with processing such dispute(s) in an attempt to resolve the matter. The decision of the Gate-keeper shall be final and shall not be subject to review under Article 78 of the C.P.L.R., except for the option of filing a claim in accordance with law.

3. A facilitator may be used, or a Dispute Review Board ("DRB") may be established, to assist in resolving disputes arising out of the performance of the contract. The facilitator shall consist of one person, agreed to by the Department and the Contractor, who is knowledgeable in public works construction matters and who shall try to bring the parties to a mutually agreeable resolution of the disputes. The DRB shall consist of one or more persons, agreed to by the Department and the Contractor, who are knowledgeable in public works construction matters. For the DRB to consist of more than one person, all parties must agree. In the event the DRB consists of three persons, one shall be selected by the Department, one selected by the Contractor and one mutually selected by the Department and the Contractor. The DRB shall make a recommendation as to the resolution of the disputes. The expenses of the facilitator, or DRB, or any other method shall be equally shared by the Department and the Contractor. The records made, and recommendations or action of the facilitator, the DRB, or any other dispute resolution method, shall be off the record, non binding, confidential, and may not be used in any future litigation.

4. If any dispute or claim, or portion thereof, remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Contractor may file a claim in accordance with law and the provisions of the Contract.

105-15 CONTRACTOR’S RESPONSIBILITY FOR WORK. The Contractor is responsible for carrying out the provisions of the contract at all times, regardless of whether an authorized inspector is present or not. Any work or item that is, at any time, found to be out of specification or not in compliance with the plans shall remain the responsibility of the Contractor and shall be subject to such corrective measures that are approved in writing by the Engineer.
105-16 APPROVAL OF SHOP DRAWINGS, INSTALLATION METHODS AND CONSTRUCTION DETAILS. Approval by the Department of shop drawings, methods of installation or Contractor's construction detail(s) does not relieve the Contractor of the responsibility for compliance with the contract specifications, or relieve the Contractor of the responsibility for providing adequate quality control measures and does not relieve the Contractor of the responsibility for providing proper and sufficient materials, equipment and labor to complete the approved work in accordance with the contract documents.

Unless otherwise stated in the contract documents, no portion of the work requiring shop drawings or a sample of the work shall be commenced until the submission has been approved by the Department. Should, for any reason, the contract not be awarded, the Contractor will not be entitled to reimbursement for work performed prior to the contract award. Subsequent to award, the Contractor will not be entitled to reimbursement for changes made to the contract documents unless changes occur after approval of the submission.

Unless otherwise stated in the contract documents, review of shop drawings, erection plans and demolition plans will begin only after the submission of a complete set of information required to complete a discrete item of work. The review process will allow two work days per drawing submitted or a minimum of 10 days, unless stated otherwise in the contract documents. A drawing shall be defined as a sheet of similar size and scale as the plan sheets prepared and offered for sale to potential bidders, or sheet provided on a different size media and using a proportional scale. Submission of materials directly to a reviewing unit shall be done only with the prior approval of the Engineer. Complete copies of all submissions shall be provided to the Engineer.

105-17 MAINTENANCE AND PROTECTION OF TRAFFIC FOR MOBILE OPERATIONS. For contracts that involve mobile operations, but do not include separate pay items for the maintenance and protection of traffic, a maintenance and protection of traffic sequence shall be provided by the Contractor in accordance with the MUTCD, or as directed by the Engineer. When last following vehicle and/or trailing vehicles are required by these provisions, they shall meet the requirements of Section 619 for Shadow Vehicles. No separate payment will be made for this work, the cost shall be included in prices bid for the various contract items.

SECTION 106 - CONTROL OF MATERIAL

106-01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS. All materials used in the work shall meet the quality requirements described in Section 700, Materials Details, unless the same are altered by specific requirements under any itemized specification or by notes shown upon the plans, or in the proposal.

Immediately upon award of the contract, the Contractor shall furnish in writing to the Regional Director the sources of supply, types and kinds of materials which it proposes to use in the work. No change shall be made in the sources of supply or types and kinds of materials except upon written approval by the Regional Director.

Within seven (7) days of contract award, the Contractor shall notify the Deputy Chief Engineer (Structures) of the name and address of the fabricator of all Prestressed Concrete Units (Structural), Structural Steel, Bridge Bearings, Armored Bridge Joint Systems, Bridge and Culvert Railings and Sign Structures. This notification shall list the actual shop or shops in which the materials will be manufactured and/or fabricated. It shall be the responsibility of the Contractor to notify the Engineer of the proposed sources of materials sufficiently in advance of their use so that proper tests may be made.

The Contractor shall provide to the Engineer a Material Safety Data Sheet (MSDS) meeting current requirements of 29 CFR 1926 for materials to be used in the work, before each material is first used in the project. The requirement to provide a MSDS shall apply to all materials to which workers are exposed, to the extent that 29 CFR 1926.59 requires a MSDS for that material. This applies to those
materials brought to the job site to be incorporated into the work, as well as to all materials that are encountered at the job site as a result of the use or incorporation of the other materials. This requirement will be waived for commonly used generic construction materials such as portland cement and asphalt cement. The Engineer will provide the Contractor, upon request, a list of materials for which SDS sheets do not need to be provided. Such waiver, however, does not relieve the contractor from the responsibility to maintain a copy of the SDS for each material to which the contractor's workers will be exposed, as required by 29 CFR 1926.

106-02 SAMPLES, TESTS AND CITED SPECIFICATIONS. All materials and products proposed to be used in construction shall be inspected, sampled, and tested by the Department, or its designated representative, as described in Section 700, Materials Details, of the specifications, as indicated by notes in the contract documents, or by procedural directives issued by the Department. Whenever any specification provides for “Certification” or “Approved List” as a Basis of Acceptance, the Department reserves the right to sample and/or test material in any shipment prior to incorporation in the work.

Test specimens shall be removed from sampled items in the presence of the Department representative, prepared for testing, and shipped to the Department as directed by the Department. The cost of all samples, and any other expenses incurred in making materials or products ready for inspection, sampling and/or testing shall be included in the unit prices bid for the various items in the contract. Where testing methods are not described in the specifications, details of test methods may be obtained by application to the Department.

The expense of all required inspection, sampling and testing performed in the forty-eight contiguous states of the United States and the provinces of Canada, including the shipment of samples by the most economical means, shall be paid for by the Department unless specifically excluded elsewhere in the contract documents or procedural directives.

The expense of all required inspection, sampling, testing and qualification of plants and manufacturers or fabricators outside of the contiguous forty-eight states of the United States and the provinces of Canada, shall be borne by the Contractor. These expenses shall include the costs of wages and benefits, travel, meals, lodging, communication and all other direct costs of inspection, sampling and testing paid by the Department to perform these services using Department employees or designated representatives under contract to the Department. These expenses, which exclude the costs of tests performed in the Department Laboratory, shall be taken into account by the Contractor in the preparation of its bid. Reimbursement to the Department shall be made in the form of a deduction from payments due the Contractor. The shipment of samples to the Department Laboratory from outside of the forty-eight contiguous states of the United States and the provinces of Canada shall be a direct cost borne by the Contractor or its agent and all such shipments shall be made under provisions established by the Department to insure identity and security of the sample.

The location of inspection, sampling and/or testing materials and products manufactured, produced and/or fabricated outside of the contiguous forty-eight states of the United States and the provinces of Canada shall be at the option of the Department, be performed at the site of manufacture, production and/or fabrication at a site within the contiguous forty-eight states of the United States and the provinces of Canada, designated by the Contractor and approved by the Department.

Materials and products manufactured, produced and/or fabricated outside of the contiguous forty-eight states of the United States and the provinces of Canada and deemed by the Department to require inspection, sampling and/or testing at the site of manufacture, production and/or fabrication shall be subject to qualification of the plant and manufacturer or fabricator by the Department prior to the required inspection, sampling and/or testing during manufacture, production and/or fabrication. These materials and products include fabricated structural steel for bridges, precast concrete slabs, beams and piles and any other item specified in the contract documents or by procedural directives, to require such services outside of the contiguous forty-eight states and the provinces of Canada. The Contractor shall notify the Department 50 calendar days in advance of beginning of the work in any mill, plant, shop or other manufacturing location to allow time for a qualification inspection and
arrangements for inspection, sampling and/or testing during the work.

Materials and products manufactured, produced and/or fabricated outside of the contiguous forty-eight states of the United States and the provinces of Canada whose conformance with the requirements of the contract documents may be determined, in the judgment of the Department, by visual inspection and tests of specimens may be presented within the contiguous forty-eight states in specifically defined lot quantities as directed by the Department for inspection, sampling and testing subsequent to manufacture, production and/or fabrication. Such materials or products shall be offered for inspection not less than 30 days prior to their intended shipment to the project. All expenses attendant to making such materials or products available for inspection, sampling and/or testing shall be paid by the Contractor.

All communications with the Department, written or verbal, shall be in English. The instructions for the use of all materials and products, as well as all identifying information required by the specifications (i.e., labels, tags, certifications, etc.) shall be in the English language.

Mechanical property measurements, dimensions, and all other numerical data included in documents such as shop drawings and computations prepared specifically for the contract, Material Details, and Manufacturer’s Safety Data Sheets shall include the International System (SI) of units, consisting of meters, kilograms, and seconds, but they may also include U.S. customary units as a second set of measurements. Dimensioning in dual unit submissions shall be complete in both systems. The S. I. Units should be the units listed first, and the U.S. Customary Units should be included within parenthesis. The S.I. Units will take precedence and reviews will be based on these units. Failure to adhere to this convention may result in the rejection of the drawing. Shop drawings prepared for bridge rehabilitations, however, shall include both S. I. Units and U. S. Customary Units.

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

After January 2, 2003, documents which are relevant to the production and acceptance of HMA and PCC mixtures shall be submitted in S.I. Units only. This refers to mix design forms, production monitoring (QC) forms, batching tickets, delivery tickets, and all other mix design and production related documents.

All references to costs, charges, prices, etc., shall be in United States dollars.

Unless otherwise directed by the Department, no materials shall be used until the Engineer-in-Charge of the contract has received written notification of acceptance of that material and such material shall be used only so long as the quality remains equal to that of the accepted sample. This initial acceptance of a material shall in no way preclude further examination and testing of a material at any time the Engineer suspects that the material is no longer properly represented by the accepted sample. The acceptance at any time of any materials shall not bar its future rejection if it is subsequently found to be defective in quality or uniformity.

Contractors shall furnish the names of companies from whom they purchase materials which are inspected at manufacturing plants, with the Item Number, the Contract Number, and the destination for each shipment of material so ordered. If any part of the contract is sublet, the subcontractor shall also conform to the foregoing requirements.

Unless otherwise designated, when a reference is made in these specifications to a specification or test designation either of the AASHTO, ASTM, Federal Specifications, or any other recognized non-proprietary national organization, it shall mean the specification or test method (including Provisional AASHTO and Tentative ASTM) which is current on the date of advertisement for bids.

Where plant inspection is not maintained, the method and procedure for sampling, inspecting and reporting shall conform to that established by the Department.

The U.S. Standard Screen Sieves meeting ASTM E11, shall be used on all materials requiring
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gradation tests.

106-03 PLANT ACCEPTED MATERIAL. Any material which has been plant inspected and accepted by this Department for any Department contract, shall not be shipped to other work unless authorized by the Department.

106-04 REJECTION. Any material which is rejected because of failure to meet the required tests or that has been damaged so as to cause rejection, shall be immediately removed from the site of the work.

106-05 STORAGE OF MATERIALS. Materials shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials, even though accepted before storage, shall be inspected prior to their use in the work and shall meet the requirements of the contract at the time of their use.

106-06 TRANSPORTATION OF MATERIALS. Railroad cars, barges and other containers used for the transportation of materials shall be clean when any materials are deposited therein.

106-07 BASIS FOR MEASUREMENT. Weight shall be used in all cases for percentage determination unless otherwise specified.

106-08 REMOVAL OF REJECTED MATERIAL. Material which has been rejected on the results of Department tests will not be resampled or retested unless otherwise directed by the Department. Rejected materials shall be removed immediately from the site of the work by the Contractor at its expense unless otherwise directed by the Engineer. No rejected materials, the defects of which have been subsequently corrected, shall be used until written notification of the acceptance of the material has been received by the Engineer.

106-09 EQUIVALENTS. The requirements for apparatus, articles, or materials shall be specified, if feasible, in generic terms which afford competition for equivalent products or items. When no generic specification can be found or devised, a minimum of at least three, if available, known acceptable trade names or proprietary products shall be provided for the Contractor's benefit and to afford the desired competition. The Commissioner shall be the sole judge of the qualifications of the products and will determine all questions regarding the conformance of any item with the specifications.

106-10 INDEPENDENT ASSURANCE SAMPLING AND TESTING. Independent Assurance Sampling and Testing (IAST) is a Federally mandated program that assures that when acceptance testing is performed on Department Projects, proper procedures are followed and all equipment used is in proper working order and calibration. IAST is separate and independent from acceptance testing. Testing performed for IAST will in no way affect any acceptance or payment decision. The results of IAST testing will be used to determine the qualifications of inspectors performing acceptance testing and the condition of equipment used in acceptance testing on Department projects.

The IAST program will evaluate the personnel and equipment responsible for performing quality control sampling and testing that is used to make acceptance decisions. The Contractor and all personnel, organizations, who are responsible for performing acceptance sampling and testing on behalf of the Contractor shall cooperate with and accommodate this program by performing, and allowing State representatives to perform sampling and testing at the times and locations requested by the Regional IAST personnel. The required sampling and testing procedures are listed in the Department's Independent Assurance Sampling and Testing Manual. The IAST personnel will observe the tester obtaining samples and performing the tests. The IAST personnel will also take split samples to the Regional Laboratory for testing.
106-11 BUY AMERICA.

A. General Buy America Bid Requirement and Definition. In accordance 41 U.S.C. §10a et. seq. and Section 146 of the State Finance Law, as amended, all permanently incorporated steel and/or iron materials materials shall be domestically produced regardless of the percentage they comprise in a manufactured product or form they take. The Bidder shall submit a bid based on permanently incorporating only domestic steel and/or iron materials in the construction of the contract.

The Bidder may also submit a bid based on being allowed to permanently incorporate foreign steel and/or iron materials into the work of the contract. If the Bidder chooses to submit a bid based on the use of foreign steel and/or iron materials, the Bidder should purchase an additional proposal for the contract and shall legibly print the following in ink on the proposal cover and at the bottom of the proposal sheet which contains the phrase “Total gross sum written in words”: TOTAL BID BASED ON USING FOREIGN STEEL AND/OR IRON MATERIALS.

When bids are submitted based on domestic and foreign steel and/or iron materials, both bids shall be submitted in the same envelope. Award of the contract will be made in accordance with §103-01.

To qualify as domestic, all manufacturing processes, including manufacture, fabrication, grinding, drilling, welding, finishing, coating and assembly of any product containing steel and/or iron materials, must have been performed in the United States. To further define the coverage, a domestic product is a manufactured steel and/or iron materials construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States. Raw materials used in the steel and/or iron materials may be imported. Raw materials are materials such as iron ore, limestone, waste products, etc., which are used in the manufacturing process to produce the steel and/or iron materials products. Waste products would include scrap; i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks and the like. Also steel trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw materials which is customary to prepare them for transporting are exempt from Buy America. The use of foreign source steel or iron billets is not acceptable under Buy America.

In the event that the contract is awarded based on being allowed to permanently incorporate foreign steel and/or iron materials in the work, the Contractor may supply either domestic or foreign steel and/or iron materials and will be paid the foreign bid prices. If the contract is awarded based on the domestic bid, the Contractor may permanently incorporate in the construction of this contract a minimal amount of foreign steel and/or iron materials if the combined cost of such materials does not exceed one-tenth of one percent (0.1 %) of the total contract cost or $2,500, whichever is greater. The combined cost of foreign steel and/or iron materials will be that shown to be the value of the steel and/or iron products as they are delivered to the project.

B. Control of Materials. All items, regardless of origin, shall comply with their individual specification requirements and with the requirements stated elsewhere in this subsection. In the event the contract is awarded based on using only domestic steel and/or iron materials, the Contractor shall supply only domestic steel and/or iron materials and will be paid the domestic bid prices. The Contractor will be responsible for ensuring the domestic steel and/or iron materials are supplied in conformance with the above referenced laws. Such responsibility extends to informing all affected subcontractors and material suppliers of these specific requirements and ascertaining that steel and/or iron materials being supplied is in conformance with the standard specifications.

C. Waivers. In addition to the award of a bid based on foreign steel and/or iron materials, waivers to the Buy America requirement may be requested by the State to the Regional Federal Highway Administration if it can be demonstrated that the use of domestic steel and/or iron materials would be inconsistent with the public interest, such materials and products are not
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produced in the United States in sufficient and reasonably available quantities and of satisfactory quality.

Provided one or more of the above requirements are met, the Contractor may submit a request for a waiver to the Engineer. The request shall include copies of all documentation verifying the unavailability of the material or product, and/or justification of the application for a waiver.

For Federally Aided contracts, final approval of the Buy America Waiver request will be made by the Regional Federal Highway Administration and concurred with by the Director, Construction Division. For non-Federally Aided contracts, upon final approval of the affected Department program areas, notification and approval of the Buy America Waiver request will be made by the Director, Construction Division.

The following is a list of materials or products which are exempt from the Buy America provisions, and do not require submission of a waiver request:

1. Hollow "I" shaped, steel extrusions.

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-01 LAWS, PERMITS AND LICENSES. The Contractor shall observe all Federal, State and applicable local laws and regulations. Attention is directed to the regulations of Federal and State Agencies in regard to agricultural insects and diseases. In particular, the Contractor's attention is directed to Federal and State Department of Agriculture regulations for plant pest control which require that equipment operating in infested areas be thoroughly cleaned before moving to non-infested areas. In addition, the Contractor agrees to procure all necessary licenses and permits.

107-02 PATENTED DEVICES, MATERIALS AND PROCESSES. It is mutually understood and agreed that the contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Contractor is required or desires to use any device, material or process covered by letters, patent or copyright, the Contractor shall indemnify and save harmless the State from any and all claims for infringement by reason of the use of any such patented device, material, or process to be performed under the contract, and shall indemnify the said State for any costs, expenses and damages which may be obligated to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the work.

107-03 FEDERAL AID. In all contracts in which the Federal Government participates financially, which contracts are designated as Federal-Aid contracts the Contractor shall conform in all respects in accordance with the true intent and meaning of each and all of the requirements contained in the "Required Contract Provisions Federal Aid Construction Contracts," a copy of which will be found incorporated in each proposal for contracts so classified. When any of such Federal Provisions may be in conflict with any other provisions of the contract the Federal Provisions shall prevail and take precedence and be of force over and against any said conflicting provisions of said contract.

107-04 SANITARY CODE. The Contractor shall comply with the provisions of the State Sanitary Code relating to camps and obtain from the local health officers permits for the construction, maintenance and operation of labor camps, if used.

107-05 SAFETY AND HEALTH REQUIREMENTS

A. General. The Contractor shall perform all work in the contract with due regard to the safety and health of the employees and of the public. The Contractor shall comply with 29 CFR 1926, Safety and Health Regulations for Construction, administered by the Federal Occupational Safety and Health Administration (OSHA) regarding the safety and protection of persons employed in construction and demolition work.