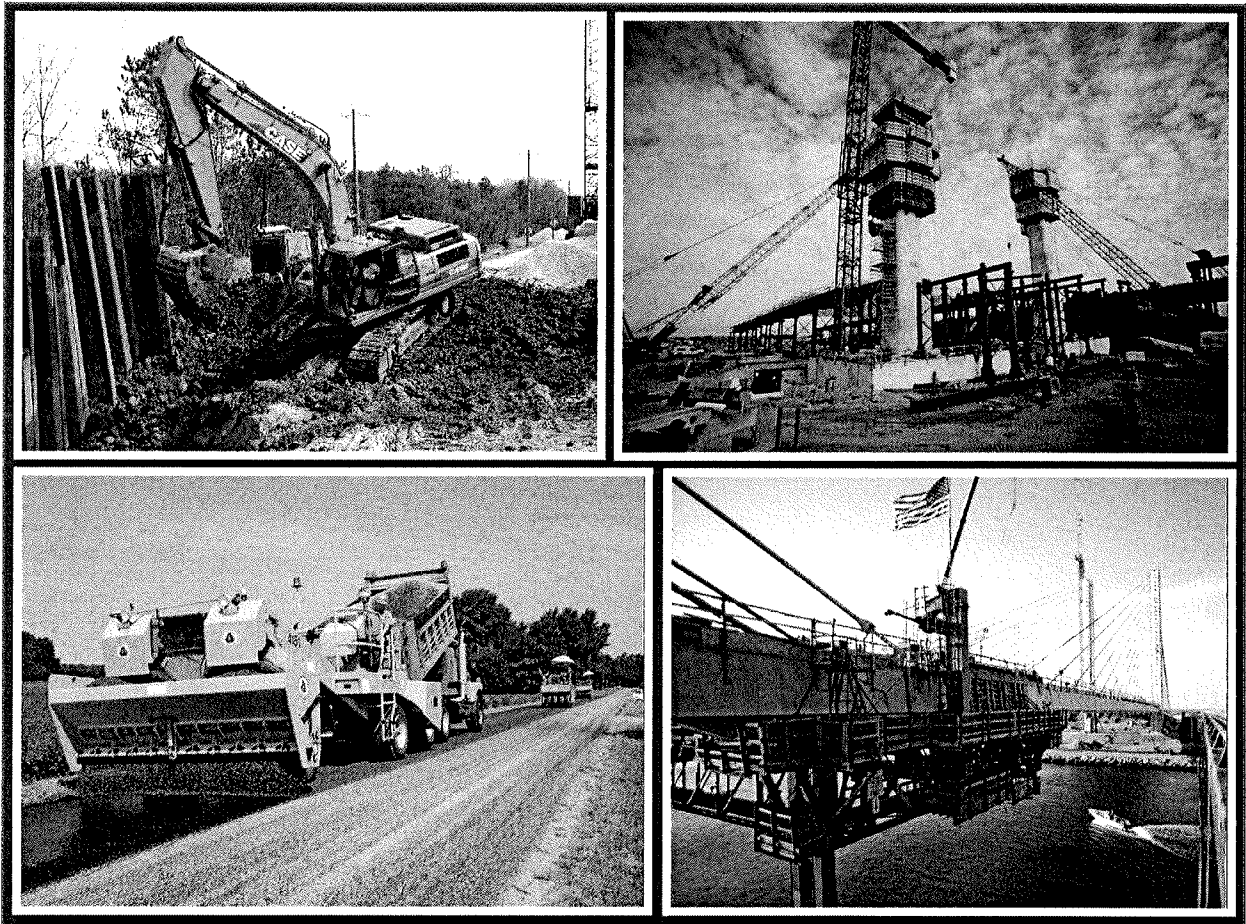


Standard Specifications

for

Road and Bridge Construction

AUGUST 2016



Prepared by

The State of Delaware



DEPARTMENT OF TRANSPORTATION

Excellence in Transportation - Every Trip • Every Mode • Every Dollar • Everyone

Jennifer Cohan, Secretary
Robert McCleary, Chief Engineer

DIVISION 100 - GENERAL PROVISIONS

SECTION 101 – GENERAL INFORMATION, DEFINITIONS, AND TERMS

- 101.01** General
- 101.02** Abbreviations
- 101.03** Definitions
- 101.04** Units of Measure

101.01 General. The titles and headings of the Sections and subparts of Sections are intended for reference and are not to be used to interpret the Specifications. When the Contract references a publication, the reference applies to the most recent date of issue as of the date bids are advertised, including interim publications, unless the reference includes a specified date or year.

Portions of these Specifications are written in the imperative mood. In sentences using imperative mood, the subject "the Contractor" is implied. Also implied in the language are "shall" or "shall be" or similar words and phrases. In all instances where "the Contractor" and "shall" or "shall be" are implied, the actions specified are solely the responsibility of the Contractor. In the referenced Material Sections, the subject may also be a vendor, fabricator, manufacturer, or combination thereof, who may be supplying the Material, products, or Equipment for the Project. Prior to the Execution of the Contract, the implied subject of a sentence using the imperative mood is either "the Bidder" or "the prospective Bidder". The word "will" generally applies to decisions or actions of the Department or Engineer.

In the Contract, the following words: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, satisfactory, unsatisfactory, sufficient, insufficient, rejected, condemned, or words with similar intent; mean by or to the Department.

In the Contract, the words "or equal", referring to a product, Material, or process, mean "equal as determined by the Engineer".

The Specifications may present numerical values in both U.S. customary units (English) and metric units. The Plans will only use one of the two systems. Work entirely within the system set forth in the Plans and do not convert between the two systems. The relationship between the U.S. customary values and the metric values within these Specifications is neither an exact (hard) conversion nor a completely rationalized (soft) conversion.

101.02 Abbreviations. Wherever the following abbreviations, terms or pronouns are used in the Contract, interpret the intent and meaning as follows:

AA	Aluminum Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AED	Associated Equipment Distributors
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ALSC	American Lumber Standard Committee
ANSI	American National Standards Institute

APWA	American Public Works Association
ARA	American Railway Association
AREMA	American Railway Engineering and Maintenance of Way Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CFR	Code of Federal Regulations
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
ISO	International Organization for Standardization
ITE	Institute of Transportation Engineers
MASH	Manual for Assessing Safety Hardware
MIL	Military Specifications
MUTCD	Delaware (DE) Manual on Uniform Traffic Control Devices For Streets and Highways
NASSCO	National Association of Sewer Service Companies
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
PCI	Prestressed Concrete Institute
PTI	Post Tensioning Institute
SAE	Society of Automotive Engineers
SSPC	Steel Structures Painting Council
Temporary Traffic Control (TTC)	Delaware Manual on Uniform Traffic Control, Part 6, Temporary Traffic Control
UL	Underwriters Laboratory, Incorporated

101.03 Definitions. The following definitions apply to the Contract Documents.

Addendum. An Addendum is a Bid Proposal revision issued after Advertisement and before the bid opening.

Additional Work or Extra Work. Additional Work or Extra Work is Work that was not included in the Contract, but is necessary in order to satisfactorily perform the Work required by the Contract or Work that is not included in the Contract, but is desired by the Engineer in order to satisfactorily complete the Work.

Adjustment (or Equitable Adjustment). An Adjustment, Contract Adjustment or Equitable Adjustment is a revision to the Project cost or Project time provided in accordance with Section 109.04 for Project cost and/or 108.07 for Project time.

Advertisement. An Advertisement is a public announcement inviting Proposals for Work to be performed or Material to be furnished.

Award. An Award is the Department's acceptance of a Proposal prior to the execution of a formal, written Contract.

Bidder. A Bidder is any individual or legal entity submitting a Proposal.

Bid Documentation. Bid Documentation includes all writings, working papers, computer printouts, charts, and data compilations that contain or reflect information, data, or calculations used by the Bidder to prepare the Bid Proposal submitted to the Department, including, but not limited to, material relating to the determination and application of:

- A. Equipment rates
- B. Overhead rates and related time schedules
- C. Labor Rates
- D. Efficiency or productivity factors
- E. Arithmetic extensions of Unit Prices
- F. Subcontractor and Material supplier quotations

Any standard manuals used by the Bidder in determining the contents of the Proposal are also considered Bid Documentation. These manuals may be included by reference in the Bid Documentation. In such cases, show the name and date of the publication and the publisher.

The term "Bid Documentation" does not include documents provided by the Department for the Bidder's use in the preparation of the Proposal.

Bid Proposal; Bid Proposal Form. A Bid Proposal is the Department's specific Invitation to Bid and consists of the following documents and any referenced documents: the General Description; General Notices; Supplemental Specifications; Special Provisions including Utility, Right of Way, Environmental and Railroad Statements; Plans, Addendums and any Appendices or Attachments; and the Bid Proposal Form. A Bid Proposal Form is the approved form on which the Department requires formal bids to be prepared and submitted for the Work. The Department may allow or require Bid Proposal Forms to be in an electronic format.

Bond. See Contract Payment and Performance Bond.

Bridge. A Bridge is a Structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway; having a track or passageway for carrying traffic or other moving loads; having an opening of 20 square feet or greater; and a minimum vertical opening of 4 feet.

Calendar Day. A Calendar Day consists of each and every day shown on the calendar, beginning and ending at midnight.

Change Order. A Change Order is a written order issued by the Engineer to the Contractor setting forth any change, reduction of Work, and/or addition of Extra Work required to be undertaken by the Contractor. A Change Order may be issued with or without the consent of the Contractor. The signature line for the Contractor on a Change Order form is for the sole purpose of acknowledging receipt of the Change Order; do not write anything on the form other than a signature and do not modify the form on which the Engineer issues the Change Order. Failure to sign the Change Order does not invalidate the Change Order. A Change Order does not invalidate any other portion of the Contract.

Claim. Refer to Section 105.15 for definition of Claim.

Completion. Completion of the Project occurs when the Work has been satisfactorily concluded under the Contract and the Contractor has satisfactorily executed and delivered to the Engineer all documents, certificates, and proofs of compliance required by the Contract.

Contract; Contract Documents. The Contract is the written agreement between the Department and the Contractor setting forth the obligation of the parties for the performance of the Work. The written agreement constitutes the entire Contract between the parties.

The Contract may include, but is not limited to, the Advertisement; the Contract form; the Contractor's Proposal, the Department's Bid Proposal, Performance, Payment, and other bonds or guaranties; the Specifications; Working Drawings; general and detailed Plans; all required notices with respect to any of the foregoing; Change Orders; Supplemental Agreements; all documents incorporated into the Contract by reference; and the Engineer's written directives. Do not modify, alter, or otherwise change the Contract by any oral promise, statement, or representation made either by the Department or Contractor, unless such modification, alteration, or change is reduced to writing in accordance with the Contract.

Contract Item (Pay Item or Item). A Contract Item, Pay Item, or Item is a specifically described item of Work for which a price is provided in the Contract.

Contract Payment and Performance Bond. A Contract Payment and Performance Bond is the security furnished by the Contractor and the Contractor's Surety or Sureties to guarantee payment and performance of all obligations incurred by the Contractor on or because of the Contract.

Contract Time. The Contract Time is the number of Working Days or number of Calendar Days allowed for the Substantial Completion of the Contract. Achieve Substantial Completion on Calendar Day Contracts on or before the last chargeable Calendar Day even when that date is a Saturday, Sunday, or Holiday.

Contractor. The Contractor is the individual or legal entity contracting with the Department for performance of the Work.

Culvert. A Culvert is either a Structure that is not classified as a Bridge and provides an opening that allows water to flow under a roadway, railway, Embankment or trail or is a Bridge classified as a Culvert in DeIDOT's Bridge Inventory.

Days. Days means Calendar Days.

Department (DeIDOT). Department means Delaware Department of Transportation (DeIDOT).

Differing Site Conditions. Differing Site Conditions are subsurface or latent physical conditions encountered at the site that, 1) differ materially from those indicated in the Contract, or are 2) unknown physical conditions of an unusual nature, differing materially from those conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract. If the Contract contains a definition of Differing Site Conditions in the General Notices, the definition in this Section does not apply and is replaced by the definition found in the General Notices.

District. A District is the subdivision of the Department that is administering the Contract.

District Engineer. The District Engineer is the Department head of the District administering the Contract. The chain of command on a Project will be expressly identified at the preconstruction meeting for the Project.

Embankment. An Embankment is a Structure constructed of Material meeting the requirements of Section 209, as described in Section 202.

Engineer. The Engineer is the Chief Engineer of the Department, acting directly or through an assistant or other authorized representative. The Engineer is responsible for engineering and administrative supervision of the Contract.

Equipment. Equipment is all machinery, tools, and apparatus, and the fuels, lubricants, batteries and other supplies and parts needed to use, operate, and maintain these items for use in constructing and completing the Work.

Extra Work. See Additional Work for the definition of Extra Work.

Falsework. Falsework is any temporary construction Work used to support the weight of a permanent structural element until such element becomes self-supporting. Falsework includes, but is not limited to, steel or timber beams, girders, columns, piles and foundations, and any proprietary Equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

Final Acceptance. Refer to Section 105.16 for definition of Final Acceptance.

Final Inspection. A Final Inspection is the inspection conducted by the Engineer to determine if the Project, or any substantial portion thereof, has been satisfactorily completed in accordance with Contract requirements.

Force Account. Force Account is a method of payment for Work performed by the Contractor at the Engineer's direction, calculated as specified in Section 109.04.

Formwork. Formwork is a temporary Structure or mold used to retain plastic or fluid Material in a designated shape until the Material hardens. Formwork must have enough strength to resist the fluid pressure exerted by the plastic Material during placement and any additional pressure generated by vibration of the Material.

General Description. The General Description is the information that appears in the Bid Proposal before the General Notices that consists of specific Project related information that may include, but is not limited to; Location, Description, Completion Time, Prospective Bidders Notes, anticipated Notices to Proceed, Special Notices, Bidding Criteria, Construction Sequence Notes, Road User Costs, modifications to Liquidated Damages, Addenda issued, Questions and Answers published, Prebid Meeting Transcripts, Construction Items Units of Measure and Table of Contents.

General Notices. General Notices are federal and State regulations contained in the Bid Proposal that govern the Contract. The General Notices do not list every State or federal regulation that may affect the Contract.

Holidays. The following Days are Holidays in the State of Delaware.

- A. New Year's Day
- B. Martin Luther King's Birthday
- C. Good Friday
- D. Memorial Day
- E. Independence Day
- F. Labor Day
- G. General Election Day (biennial)
- H. Return Day (Sussex County only after 12:00 Noon)
- I. Veteran's Day
- J. Thanksgiving Day
- K. Friday after Thanksgiving
- L. Christmas Day

If any Holiday falls on Sunday, the Monday following shall be the Holiday. If any Holiday falls on Saturday, the Friday preceding shall be the Holiday. If any additional Days are designated as legal Holidays for State employees by Executive Order of the Governor, and the Contractor chooses to honor the Days by not working, the State will extend the Contract Time accordingly.

Contractors must receive approval from the Engineer in order to perform Work on a Holiday. The Contractor is not entitled to an extension of Contract Time if the Engineer prohibits Work on a Holiday. Holidays count as Calendar Days on Calendar Day Contracts whether or not the Contractor receives approval to perform Work on those Days.

Inspector. An Inspector is an authorized representative of the Engineer whose duties and authority is defined in Section 105.02.

Invitation for Bids. The Invitation for Bids is the Advertisement of Bid Proposals for Work and/or Materials on which Proposals are requested. The Advertisement will indicate with reasonable accuracy the quantity and location of the Work to be performed and the time and place of the opening of Proposals.

Limits of Construction (LOC). The Limits of Construction (LOC) are boundaries that define the area where the Contractor may perform Work. The Contractor may not bring labor, Equipment or Materials outside of the LOC within the Project limits without written permission from the Engineer. When not specifically identified on the

Plans or in any other part of the Contract, the Limits of Construction shall be the outer boundary of the State's Rights-of-Way and easements within the Project's limits.

Liquidated Damages. Liquidated Damages are an amount due and payable to the Department by the Contractor for additional costs incurred by the Department resulting from (a) Withdrawal of a Bid per Section 103.06 or (b) the Contractor's failure to complete the Work within the Contract Time as set forth in Section 108.08.

Major and Minor Contract Items. A Major Item is any Contract Item whose total bid value equals or exceeds 10 percent of the total price bid for the Contract. All other Items are Minor Items.

Materials. Materials are any substances, other than Equipment, used in the construction of the Project.

Notice of Award. A notice of award is the written notice to the selected Bidder stating that the Bidder's Proposal has been accepted by the Department and that the selected Bidder is required to execute the Contract Agreement and furnish Performance and Payment Bonds that are satisfactory to the Department.

Notice to Proceed (NTP). A Notice to Proceed is a written notice to the Contractor to begin the Contract Work and includes the date on which Contract Time will begin to accrue.

Pavement Structure. A Pavement Structure is the combination of sub-base, base course, and/or surface course placed on a sub-grade to support a traffic load.

- A. Sub-grade. A sub-grade is the top surface of the roadbed upon which the Pavement Structure is constructed.
- B. Sub-grade Treatment. A sub-grade treatment is the modification of roadbed Material by stabilization.
- C. Sub-base. The sub-base is one or more layers of specified material thickness placed on a sub-grade to support a base course (or in the case of rigid pavement, the Portland cement concrete slab).
- D. Base Course. The base course is the layer or layers of specified or selected Material of designated thickness placed on a sub-base or a sub-grade to support a surface course.
- E. Surface Course. A surface course is the layer(s) of a Pavement Structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "Wearing Course".

Plans. Plans are the Contract drawings, typical sections, and supplemental drawings, or exact reproductions thereof, which show the location, character, dimension, and details of the Work to be done, and which are considered to be a part of the Contract.

Profile Grade. A Profile Grade is the elevation of the trace of a vertical plane intersecting the top surface of the finished grade, usually along the longitudinal centerline of the Surface Course.

Project. A Project refers to a specific section of highway or other public improvement together with all appurtenances and construction to be performed thereon under the Contract. The Project may include work performed by others under other contracts.

Proposal. A Proposal is a written offer by a Bidder on Bid Proposal Forms furnished by the Department to perform the Work. The Proposal includes the Bid Proposal Form and all documents submitted by the Bidder, and incorporates by reference all of the documents in the Bid Proposal.

Proposal Guaranty. A Proposal Guaranty is the security furnished with a Proposal to ensure that the Bidder will enter into the Contract if the Contract is Awarded.

Responsive Bid. A Responsive Bid is a Proposal that complies with all requirements of the Invitation to Bid.

Responsible Bidder. A Responsible Bidder is a Bidder determined by the Department to possess the potential to perform the Work.

Right-Of-Way. Right-Of-Way is a general term denoting land, property, or an interest therein possessed by the Department or other entity that was acquired for or devoted to transportation purposes. Rights-of-Way identified in the Contract Documents are presumed to belong to the Department unless the Contract Documents identify such Rights-of-Way as belonging to another entity.

Schedule of Items. The Schedule of Items is the list of Contract Items of Work contained in the Bid Proposal on which Bidders submit their bid prices.

Schedule of Work (Schedule). The Schedule of Work refers to the approved progress Schedule submitted by the Contractor containing dates of commencement and Completion of the various items of Work within the Contract Time.

Secretary. The Secretary is the Secretary of the Department of Transportation of the State of Delaware.

Section. When referring to the Specifications, a numbered article or group of related articles forming a part of the Specifications is considered a Section.

Specifications. Specifications are those parts of the Contract that are the compilation of provisions and requirements for the performance of the prescribed Work.

- A. Standard Specifications are the Department's posted and/or referenced *Specifications for Road and Bridge Construction* current as of the date of Advertisement of a Bid Proposal and contain the Department's requirements and specifications for general application and repetitive use. Standard Specifications include Supplemental Specifications.
- B. Supplemental Specifications are the Department's posted and/or referenced additions and revisions to the Standard Specifications, current as of the date of advertisement of a Bid Proposal and are part of the Standard Specifications.
- C. Special Provisions are special directions, provisions, or requirements particular to the Project not otherwise detailed in the Standard or Supplemental Specifications.

Standard Construction Details. Standard Construction Details are drawings of standard details of construction that have been adopted by the Department for miscellaneous items of Work and are a part of the Bid Proposal.

State. State refers to The State of Delaware.

Structures. Structures are Bridges, Culverts, Embankments, storm sewer appurtenances, slope and retaining walls, sign support structures, buildings and other similar items.

Subcontractor. A Subcontractor is an individual or legal entity contracting with the Contractor or another Subcontractor to perform any part of an Item of Work of the Contractor's Contract with the Department. Subcontractors are subject to the requirements of Section 108.01.

Exceptions to this definition are suppliers limited to delivering and depositing, but not incorporating, Material; suppliers of services that transport Material; and Work performed which does not physically advance the Completion of the Contract and is not considered as an Item of Work.

Substantial Completion. Substantial Completion is the point at which all Contract Items are complete as deemed by the Department excluding any warranties or vegetation growth.

Substructure, Bridge. The Substructure of a Bridge is all of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, including backwalls and wingwalls.

Superintendent. A Superintendent is the Contractor's authorized representative in responsible charge of the Work.

Superstructure, Bridge. The Superstructure of a Bridge includes the approach slabs and the entire Structure except the Substructure.

Supplemental Agreement. A Supplemental Agreement is a written agreement signed by the Department and the Contractor for the performance of Work which is beyond the scope of the original Contract, but which the Department elects to perform in conjunction with the existing Contract.

Surety. A Surety is the legal entity other than the Contractor, in good standing and currently licensed to write surety bonds in the State of Delaware Department of Insurance executing a Surety Bond furnished by the Contractor.

Unbalanced Bid, Materially. A Materially Unbalanced Bid is a Proposal that generates a reasonable doubt that Award to the Bidder submitting a Mathematically Unbalanced Bid will result in the lowest ultimate cost to the Department.

Unbalanced Bid, Mathematically. A Mathematically Unbalanced Bid is a Proposal containing Contract Items that do not reflect the Bidder's reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.

Unit Bid Price (Unit Price). A Unit Bid Price is the price provided by the Contractor in the Proposal for a Contract Item.

Work. Work is the furnishing of all labor, Materials, Equipment, and other incidentals necessary to complete the Contract.

Working Day. A Working Day is any Calendar Day, except: 1) Saturdays, Sundays, and Holidays; 2) Calendar Days where conditions identified in the Contract require the Contractor to suspend construction operations; 3) Calendar Days with inclement weather that prevent prosecution of the scheduled Work; and 4) Calendar Days from December 16 to March 15 inclusive. On inclement weather Days that result in partial prosecution of the Work, partial Working Days will be charged as determined by the Engineer. Partial Working Days will be charged in one-quarter day increments. If the Contractor receives permission from the Engineer to perform Work on any Saturday, Sunday or Holiday, full Working Days will be charged, weather permitting. Should the Contractor prepare to begin Work on any Day on which inclement weather prevents the Work from beginning at the usual starting time and the crew is dismissed as a result, the Contractor will not be charged for a Working Day whether or not conditions change during the day and the rest of the day becomes suitable for construction operations.

Working Drawings. Working Drawings include stress sheets, shop drawings, erection plans, Falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Engineer for approval.

101.04 Units of Measure.

Abbreviation	Description
ACRE	Acre
BAG	Bag
BF	Board Foot
CF	Cubic Foot
cSt	Centistokes
CY	Cubic Yard
EA-DY	Each Day
EA-MO	Each Month
EA-NT	Each Night
EACH	Each
F	Fahrenheit
GAL	Gallon
KIP	Thousand Pounds
LF	Linear Foot
LS	Lump Sum
LB	Pound
MFBM	Thousand Feet of Board Measure
MGAL	Thousand Gallons

PCF	Pounds per Cubic Foot
PSI	Pounds per Square Inch
SF	Square Foot
SY	Square Yard
SY-IN	Square Yard – Inch
TON	Ton

SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS

<u>102.01</u>	Registration of Bidders	<u>102.09</u>	Delivery of the Proposal
<u>102.02</u>	Contents of the Bid Proposal	<u>102.10</u>	Withdrawal or Revision of Proposals
<u>102.03</u>	Issuance of the Bid Proposal	<u>102.11</u>	Public Opening of Proposals
<u>102.04</u>	Interpretation of Quantities in the Bid Proposal Form	<u>102.12</u>	Disqualification of Bidders
<u>102.05</u>	Examination of Plans, Specifications, Bid Proposal, and Site of Work	<u>102.13</u>	Rejection of Proposal
<u>102.06</u>	Preparation of the Proposal	<u>102.14</u>	Materials Guaranty
<u>102.07</u>	Irregular Proposals	<u>102.15</u>	Non-Collusive Bidding Certification
<u>102.08</u>	Proposal Guaranty		

102.01 Registration of Bidders. Obtain registration status prior to submitting a Proposal. In order to obtain registration status, provide the Department with the information requested on the registration form provided by the Department.

Upon receipt of this information, the prospective Bidder will be listed on the Department's registry. Provide the Department on a continuous basis any changes to the information contained in the registry. Failure to provide current information may result in the loss of bidding privileges.

102.02 Contents of the Bid Proposal. The Bid Proposal will state the location and description of the contemplated Work, show the estimate of the various Pay Item quantities, and show the kinds of Work to be performed and/or Materials to be furnished. A Schedule of Items for which Unit Prices are invited will be included along with the specified Contract Time in which the Work must be completed, amount of the Proposal Guaranty, and the date, time, and place of the opening of Bid Proposals. If the basis of Bid Proposal comparisons by the Department is to be other than total cost, the comparison basis to be used will be defined. The Bid Proposal will also include or designate any Addenda, Special Provisions, and any other specifications or requirements that vary from or are not contained in the Standard Specifications.

All papers bound with or attached to the Bid Proposal are part of the Proposal. The Plans, Specifications, and other documents incorporated by reference in the Bid Proposal are part of the Proposal whether attached or not.

102.03 Issuance of the Bid Proposal. Potential Bidders must contact the Department in order to receive the Bid Proposal in electronic format. The Department does not provide printed Bid Proposals; bidders are able to print from the electronic format. The Bid Proposal is also available on the internet at the state's Bid Solicitation Directory; however, the Website Bid Proposal is not valid for submitting bids and the Website documents are marked as such. The Department does provide a printed set of plans and specifications for viewing in the Bidder's Room at the DelDOT Administration Building in Dover. The Department will furnish a Bid Proposal to each prospective bidder. The Department reserves the right to refuse to issue a Bid Proposal to a Bidder for any of the reasons stated in Section 102.12.

All Addenda are posted on the internet at the State's Bid Solicitation Directory and are included by reference in the Bid Proposal. The Bidder is responsible to check the website as needed to ensure that the Bidder is aware of Addenda that are included in the Bid Proposal. If Addenda are issued, the final Addendum will be posted no later than the end of the day two working days prior to the bid date. Each Addendum number and date must be entered on the submitted Certification Form.

102.04 Interpretation of Quantities in the Bid Proposal Form. The quantities appearing in the Bid Proposal Form are estimates used for the bid comparison. Payment to the Contractor will be made for the actual quantities of Work performed and accepted, or for Materials furnished in accordance with the Contract. The estimated quantities of Work to be performed and Materials to be furnished may be increased, decreased, or eliminated in their entirety.

102.05 Examination of Plans, Specifications, Bid Proposal, and Site of Work. Examine the site of the proposed Work, the Bid Proposal, and all Items designated in the Bid Proposal before submitting a Proposal. The Bidder

assumes responsibility for all site conditions that should have been discovered had a reasonable site investigation been performed, whether or not the Bidder actually performed the investigation. The submission of a Proposal will be considered conclusive evidence that the Bidder is aware of and accepts the conditions to be encountered in performing the Work and the requirements of the proposed Contract.

Boring logs and other records of subsurface investigations, when such investigations have been performed, are available for inspection by Bidders. It is understood that such information was obtained and used for Department design and estimating purposes only. The information is made available to Bidders so that all Bidders have access to subsurface information identical to that available to the Department and to other Bidders, and such information is not intended as a substitute for the personal investigation, interpretations, and judgment of the Bidders.

The Department will not be bound by any statements or representations concerning site conditions or descriptions of the Work unless they are included or designated in the Bid Proposal. Oral explanations or instructions given before the bid of the Contract by Department employees or agents will not be binding.

Submit any request for explanation of the meaning or interpretation of the Bid Proposal or Items designated in the Bid Proposal in writing to the Department's e-mail address listed in the Bid Proposal no less than six business Days prior to the Proposal opening date. Interpretations or explanations made by the Department in response to questions asked by prospective Bidders will be dated and posted periodically on Delaware's Bid Solicitation Directory Website. The final questions and answers document will be posted on the Website no later than the end of the day two business Days prior to the bid date. The final posted date must be entered on the submitted Certification Form. All questions and answers posted by the Department on the Website are included in the Contract by reference and become part of the Bid Proposal. The Bidder to whom the Contract is Awarded will receive a hard copy of the final posted questions and answers.

102.06 Preparation of the Proposal. Submit the Proposal either upon the Bid Proposal Forms, or upon approved electronic media as directed by the Contract Documents. When using approved electronic media to submit bids, provide both the electronic copy and a hard copy of the bid unless otherwise directed by the Proposal. Detach the Bid Proposal Forms from the Bid Proposal. Specify a Unit Price in figures for each Contract Item for which a quantity is given and show the product of the respective Unit Price and quantities typewritten or electronically printed in figures in the column provided. The total amount of the Proposal is to be obtained by adding the amounts of the several Contract Items. Type or print the figures onto the form. In case of a discrepancy between the typewritten Unit Prices and the typewritten or electronically printed bid amount, the Department will use the typewritten or electronically printed Unit Prices. In case of a discrepancy between the Unit Prices contained on the approved electronic media and the Unit Prices on the hard copy generated by the electronic medium, the Department will use the hard copy Unit Prices.

Execute last minute handwritten substitutions of the typewritten or electronically printed Unit Prices on the typewritten Bid Proposal Forms or hard copy generated by the approved electronic media by striking a single line through the figure being substituted and legibly writing the new Unit Price in ink. Initial each last minute substitution. Legibility of the substitution will be solely determined by the Department.

Acknowledge all Department Addenda to the Bid Proposal, including questions and answers, in the certification form provided by the Department and submit the form with the modified Bid Proposal Forms. The Proposal submitted must be signed in ink by a representative of the Bidder authorized to execute Proposals. Provide the name and address of the individual signing the Proposal as well as the following names and addresses as applicable:

<i>Type of Bidder</i>	<i>Names and Office Addresses Required</i>
Individual	Individual
Partnership	Each member of the partnership
Joint Venture	Each member or officer of firms represented in the joint venture
Corporation	Corporation officer, corporate name, and corporate address

Bid Proposals, Bid Proposal Forms and approved electronic media are serially numbered and are not transferable. Unless otherwise provided in the Proposal, joint ventures may submit a Proposal for a joint venture of Bidders qualified for that Project on a Bid Proposal issued to the joint venture or on a Bid Proposal issued to any one of the joint participants. The Proposal must be signed by each covenant followed by the title "Joint Venturer".

102.07 Irregular Proposals. Proposals will be considered irregular and will be rejected as non-Responsive for any of the following reasons:

- A. The Proposal is on a form (or in a format if computer generated) other than that approved by the Department, or if the form is altered or any part detached or incomplete.
- B. There are unauthorized additions, interlineations, conditional bids, or irregularities of any kind that may tend to make the Proposal incomplete, indefinite, or ambiguous.
- C. The Bidder adds provisions reserving the right to accept or reject an Award, or to enter into a Contract pursuant to an Award.
- D. If the Bidder specifies a Unit Price of zero or fails to provide a Unit Price for every Pay Item indicated.
- E. The Proposal does not include the Bid Documentation in a sealed container and the affidavit of Bid Documentation if required by the Contract.
- F. The Proposal is Materially Unbalanced.
- G. If any last minute hand written substitution of any Unit Price is illegible, as determined by the Department, or is not initialed by the Bidder authorizing the substitution.
- H. The Bidder fails to provide a Proposal Guaranty.
- I. The Bidder fails to sign the non-collusive bidding certification.
- J. The Proposal fails to comply with any other material requirements of the Invitation for Bids.
- K. A bid will be held to be non-Responsive and not considered if specific DBE information is not provided at the time of bid: failure to present written and notarized assurance that the goals on the Contract will be met or failure to include Good Faith Effort Documentation in place of assurance; or, failure to present written copies of all DBE subcontracts within the prescribed number of Calendar Days after the bid opening.

102.08 Proposal Guaranty. All bids shall be accompanied by a deposit of either a good and sufficient Bond to the State for the benefit of the agency involved, with a corporate Surety authorized to do business in this State, or a security of the Bidder assigned to the Department. The form of the Bond and the Surety to be used must be approved by the Department. The Department will provide a Bond form that complies with the requirements of 29 Del.Code Sec. 6962(d)(8)(a). The sum of the Proposal Guaranty must be equal to at least 10 percent of the bid. The Bid Bond need not be for a specific sum, but may be stated to be for a sum equal to 10 percent of the bid to which it relates and not to exceed a certain stated sum, if said sum is equal to at least 10 percent of the bid. "Securities" include certified checks, cashier's checks, treasurer's check, and other negotiable or transferable instruments evidencing an unconditional debt to the State or Department.

102.09 Delivery of the Proposal. Place the Proposal in a sealed envelope and plainly mark the envelope to indicate its contents, including the Contract designation and the name and address of the Bidder. Deliver Proposals prior to the time and to the place specified in the Advertisement. The Bidder bears the risk of delays in delivery. Proposals received after the specified time will be returned to the Bidder unopened. Proposals must be delivered to:

Contract Administration
DelDOT Administration Building
800 Bay Road
Dover, DE 19901

102.10 Withdrawal or Revision of Proposals. A Bidder may withdraw or revise a Proposal after it has been delivered to the Department, provided the request for withdrawal or revision is received by the Department in writing or in person with proper identifications before the time set for receipt of Proposals. When the Proposals have been read, any low Bidder may withdraw any other unopened Proposal which it may have submitted for another Contract.

Any Bidder exercising the privilege of so withdrawing its Bid or Bids waives all Claims that may arise should it be found that its opened Proposal is irregular or, for any reason, is unacceptable to the Department.

102.11 Public Opening of Proposals. Proposals will be opened and read publicly at the place and time set for the opening of the Proposal by the Department.

102.12 Disqualification of Bidders. The Department may disqualify a Bidder and reject future submissions of Proposals from that Bidder until the Bidder is reinstated as a registered Bidder for the following reasons:

- A. The Bidder has defaulted on previous Contract(s).
- B. Unsatisfactory past performance evaluations(s) as determined and documented by the Department.
- C. Failure to submit required Contract release documents, such as Certification of Payment (CN-91), Release of Contractor (CN-102), Release of Subcontractors (CN-103), or failure to sign a Contract final Change Order for a completed Contract.

The Department requires all releases within 90 Calendar Days after the date of the final Change Order or date of the acceptance of the Contract, or within 30 Calendar Days following the resolution of any Contract Claims, whichever is later.

102.13 Rejection of Proposal. The Department may reject a Proposal for any of the following reasons:

- A. The bidder has submitted more than one Proposal for the same Work from an individual, firm, or corporation under the same or different name.
- B. Participants have colluded with other Bidders.
- C. Work by the Bidder remains uncompleted which, in the judgment of the Department, might hinder or prevent the timely Completion of further Work if Awarded.
- D. Failure of a Bidder to pay or satisfactorily settle all bills due for labor and Materials on Contracts current at the time of bidding.

102.14 Materials Guaranty. The successful Bidder may be required to furnish a complete statement of the origin, composition, and manufacture of Materials used in the construction of the Work, together with a sample to be tested for conformance with the Contract provisions.

102.15 Non-Collusive Bidding Certification. Every Proposal submitted to the Department shall contain a Non-Collusive Bidding Certification subscribed to and affirmed by the Bidder as true under the penalties of Law. Sign the certification, and submit with the Bid Documents.

A Bid Proposal will not be considered for Award nor will any Award be made without a valid certification as provided above.

If the Bidder cannot make the foregoing certification, furnish with the Proposal a signed statement which sets forth in detail the reasons why the certification cannot be made. Where the Bidder has not complied with the provisions of the certification, the Department will neither consider the Proposal for Award nor Award the Proposal unless the Department determines that such disclosure was not made for the purpose of restricting competition.

The fact that a Bidder has 1) published price lists, rates, or tariffs covering items being procured, 2) informed prospective customers of proposed or pending publication of new or revised price lists for such items, or 3) sold the same items to other customers at the same prices being bid does not constitute a disclosure within the meaning of the certification above.

SECTION 103 – AWARD AND EXECUTION OF THE CONTRACT; ESCROW BID DOCUMENTATION

103.01	Consideration of Bids	103.06	Withdrawal of a Bid
103.02	Award of the Contract	103.07	Execution and Approval of the Contract, Proof of Insurance
103.03	Cancellation of an Award	103.08	Failure to Execute the Contract
103.04	Return of the Proposal Security	103.09	Escrow of Bid Documentation
103.05	Performance and Payment Bonds		

103.01 Consideration of Bids. After the Proposals are opened and read, the Department will compare the Proposals on the basis of the summation of the products of the quantities and the Unit Prices unless otherwise defined in the Bid Proposal. The results of the comparison will be available to the public upon Award of the Contract. In the event of a discrepancy between Unit Prices and extensions, the Unit Prices govern. The Department reserves the right to reject Proposals, waive technicalities, proceed to perform the Work otherwise, or advertise for new Proposals. Unit Bid Prices may also be affected by maximum price provisions noted elsewhere in the Contract Documents. In such cases, upon discovery of a discrepancy, the Department will adjust the Unit Bid Price to conform to the maximum permissible Bid Price.

103.02 Award of the Contract. The Award of the Contract will be made within 30 Days after the opening of the Proposals to the Responsible Bidder who submits the lowest Responsive Proposal. The successful Bidder will be notified by letter or electronic means of the acceptance of the Proposal and the Award of the Contract. By mutual consent, the Department and the lowest Responsible Bidder can agree to extend the time within which the Department may make an Award.

103.03 Cancellation of an Award. The Department reserves the right to cancel the Award of any Contract before execution without liability.

103.04 Return of the Proposal Security. Proposal securities, except that of the lowest Bidder, will be returned upon Award of the Contract, but in no event, later than 30 Days after opening of the Bid Proposals. The retained Proposal Guaranty of the lowest Bidder will be returned after the satisfactory Contract Performance and Payment Bond has been furnished and the Contract has been executed. A Contractor will not be released from the obligations to provide a satisfactory Performance Bond and execute the Contract because of an alleged error in the preparation of the Proposal unless the Department retains the Proposal Guaranty.

103.05 Performance and Payment Bonds. Simultaneous with the execution of the Contract, furnish a Surety Bond or Bonds in a sum equal to 100 percent of the Contract price to the State. The Bond shall be for the benefit of the Department, as well as for the use and benefit of the Division of Revenue of the State in the case of Claims under this Bond for any and all taxes due to the State. Have the Bond issued by a corporate Surety authorized to do business in this State.

On a form provided by the Department, obtain a release from the Division of Revenue indicating that all tax obligations for the Division of Revenue have been satisfied. Present this form to the Department as a condition for the release of Bond.

The Bond shall be conditioned upon the faithful compliance and performance by the successful Bidder of each and every term and condition of the Contract, at the time and in the manner prescribed by the Contract, including the payment in full to every person furnishing Material or performing labor or services in the performance of the Contract, and of all sums of money due the furnish or for such labor, services, or Material. The Bond shall also contain the successful Bidder's guarantee to indemnify and save harmless the State, the Department and the Department's employees from all costs, damages, and expenses growing out of or by reason of the successful Bidder's failure to comply with applicable laws and regulations and failure to perform the Work and complete the Contract in accordance with the terms and conditions of the Contract.

The Bond shall provide that every person furnishing Materials or performing labor for the successful Bidder under the Contract may maintain an action on the Bond for its own use in the name of the State in any court of competent jurisdiction, for recovery of such sum or sums of money as may be due the person from the successful Bidder.

The form of such Bond will be provided by the Department. The Surety must also be acceptable to the Department.

103.06 Withdrawal of a Bid. If, at any time after the acceptance of bids by the Department and before full execution of the Contract, the low Bidder determines a need to withdraw its bid, put the request in writing to the Department's representative stating its reason(s) for such withdrawal. The Department reserves the right to accept/reject the Bidder's request to withdraw upon review of the merits. The Department reserves the right to retain the Bid Bond or certified check in full or in part as Liquidated Damages. The Department may then proceed to the next lowest Responsive Bidder, or reject all Proposals and re-advertise for new Proposals.

103.07 Execution and Approval of the Contract; Proof of Insurance. Return the signed Contract and Contract Bond to the Department within 20 Days after the notice that the Contract has been Awarded. If the Contract is not executed by the Department within 15 Days following receipt of the signed Contracts and Bonds, the Bidder has the right to withdraw the bid without penalty or liability. The Contract will not be considered effective until it has been fully executed by all parties to the Contract.

If the successful Bidder is a non-resident corporation, provide proof of compliance with the requirements of Subchapter XVI of Title 8 of the Delaware Code, and as further amended at the time of bid.

Maintain insurance in compliance with the requirements of Sections 2502 and 2503, Title 18 of the Delaware Code. Provide a certificate of insurance to the Department prior to the Execution of the Contract. If the Contract requires the Contractor to provide coverage for additional insureds, provide proof of additional insureds. The Department will not execute the Contract until an acceptable proof of insurance is provided.

103.08 Failure to Execute a Contract. Failure by the successful Bidder to execute the Contract and file an acceptable Bond within 20 Days after the Notice of Award will be considered a revocation of the Notice of Award and a forfeiture of the Proposal Guaranty to the Department. Contract Award may then be made to the next lowest Responsible and Responsive Bidder or the Work may be re-Advertised.

103.09 Escrow of Bid Documentation. If required by the General Notices, Special Provisions, or other language in the Bid Proposal that is specific to a particular Contract, submit to the Department legible copies of the Bid Documentation as set forth in this Section.

- A. *Scope and Purpose.* The purpose of escrowing Bid Documents is to preserve all of the Contractor's Bid Documents for joint use by the Contractor and the Engineer in the resolution of any disputes, Claims, arbitration proceeding, litigation or negotiation arising from this Contract.
- B. *Submittal, Escrow and Return of Bid Documentation.* Prior to the execution of the Contract, submit the Bid Documentation in a sealed container to the Department. Clearly mark the container "Bid Documentation" and show on the face of the container the Contractor's name, address, date of submittal, the Contract number and the Project designation. The Department and the Contractor will jointly deliver the sealed container and an affidavit per Section C. below to a banking institution or other bonded document storage facility selected by the Department for placement in a safety deposit box, vault or other secure accommodation. The escrowed Bid Documents will remain in escrow subject to the terms of this Section until all of the following have occurred:
 1. One hundred eighty Days have elapsed from Final Acceptance;
 2. All disputes between the Department and the Contractor arising from or related to this Contract have been settled or resolved; and
 3. Final payment is made by the Department and accepted by the Contractor.
- C. *Affidavit.* Submit an affidavit on a form provided by the Department, signed under oath by a representative of the Contractor authorized to execute bidding Proposals, listing each bid document submitted by author, date, nature and subject matter. Attest that (1) the affiant has personally examined the Bid Documentation, (2) the affidavit lists all of the documents relied upon by the Contractor in preparing the Proposal for the Project, and (3) all such Bid Documentation is included in the sealed container submitted to the

Department. Include the signed affidavit with the sealed container submitted to the Department per Section B.

- D. *Representation of Accuracy by the Contractor.* The Contractor represents and warrants that the escrowed Bid Documents provided with the Proposal constitute all of the information used in the preparation of its Proposal and agrees that no other Proposal preparation information will be considered in resolving disputes or Claims. The Contractor also agrees that the escrowed Bid Documents are not part of the Contract and that nothing in the escrowed Bid Documents shall change or modify the Contract.
- E. *Contents and Form of the Escrowed Documents.* Clearly itemize in the escrowed Bid Documents the estimated costs of performing each aspect of the Work required by the Contract Documents. Separate all Work into sub-items as required to present a complete and detailed estimate of all costs. Detail all crews, Equipment, quantities and rates of production. Further divide estimates of costs into the Contractor's usual cost categories such as direct labor, repair labor, Equipment ownership and operation, expendable Material, permanent Material, and subcontract costs. Clearly identify allocations of plant and Equipment, indirect costs, contingencies, markup, and other items to each direct cost item. Include all assumptions, quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and suppliers, memoranda, narratives and all other information used by the Contractor to arrive at the Bid Price for the Contract.

Submit the escrowed Bid Documents in the format actually used by the Contractor in preparing the Proposal. The Department does not intend for the Contractor to perform any extraordinary Work in the preparation of these documents prior to the Proposal due date. However, the Contractor represents and warrants that the escrowed Bid Documents related to the Proposal have been personally examined prior to delivery to escrow by an authorized officer of the Contractor and that such documents meet the requirements of this Section.

- F. *Changes to the Contract.* The Department may require all documentary information used in preparation of the quotation of prices for Additional or Extra Work performed on the Contract. If required, the Engineer will request the documents in writing and the Contractor and Engineer will place the additional documents in the sealed container held in escrow. Documents supporting new prices will be subject to all of the requirements of this Specification.
- G. *Availability for Review.* The escrowed Bid Documents shall be available for joint review by the Department and the Contractor for the resolution of disputes and the negotiations of changes to the Contract. The Department will be entitled to review all or any part of the escrowed Bid Documents in order to determine the applicability of the individual documents to the matter at issue. The Department will be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the Department has executed and delivered to the Contractor a confidentiality agreement specifying that all proprietary information contained in such documents will be kept confidential; that copies of such documents will not be distributed to any third parties other than the Department's agents, attorneys, auditors, and experts who are aiding the Department in resolving the issue at hand; and that all documents and copies of documents will be returned to the depository upon resolution of the issue. The Contractor agrees to waive the right to use any Bid Documentation other than that placed in escrow to resolve all disputes arising out of the Contract. The foregoing shall in no way be deemed a limitation on the Department's discovery rights with respect to such documents.
- H. *Confidentiality of Bid Documentation.* The escrowed Bid documents are and shall always remain the property of the Contractor subject to the Department's right to review them as provided herein. The Department acknowledges that the Contractor may consider that the escrowed Bid Documents constitute trade secrets or proprietary information. The Department further acknowledges that the Contractor expended money in developing the information included in the escrowed Bid Documents and that it would be difficult for a competitor to replicate the information contained therein. The Department acknowledges that the escrowed Bid Documents and the information contained therein are being provided to the Department only because it is an express prerequisite to execute this Contract. Thus, the escrowed Bid Documents will at all times be treated as proprietary and confidential information and will be used only for the purposes described herein. At the Contractor's request, confidentiality agreements will be executed and delivered to the Contractor by the Department's employees or agents who review or have access to the escrowed Bid Documents.
- I. *Refusal or Failure to Provide Bid Documentation and Review by the Department.* Failure to provide Bid Documentation will render the Proposal non-Responsive and the Contractor shall forfeit the Proposal Guaranty in accordance with Section 103.08. The Department may, at any time, conduct a review of the escrowed Bid Documents to determine whether they are complete. In the event the Department determines that any data is missing, provide such data within three Working Days of the request and at that time it will be date stamped, labeled to identify it as supplementary material, and added to the escrowed Bid Documents. The Contractor shall have no right to add documents to the escrowed Bid Documents except upon the Department's request.
- J. *Cost and Escrow Instructions.* The costs for complying with this Section are incidental to the Contract. The cost of the storage of Bid Documents will be borne by the Department. The Department will provide escrow instructions to the document depository consistent with this Section.

SECTION 104 – THE CONTRACTOR’S RESPONSIBILITY FOR THE WORK; CHANGES TO THE CONTRACT; SUSPENSION OF WORK; THE USE OF BRIDGES DURING CONSTRUCTION

104.01	Intent of the Contract	104.09	Notification Requirements for Differing Site Conditions, Changes in the Character of the Work and Extra Work
104.02	Existing Signs	104.10	Maintaining Traffic
104.03	Bus Stops	104.11	Rights In and Use of Materials Found on the Work
104.04	Material Testing Notification	104.12	Additional Utility Relocations Required by the Department; Restoration of Surfaces Opened by Permit
104.05	Accident Notification	104.13	Value Engineering Proposals (VEP) by the Contractor
104.06	Contract Revisions, Changes in the Character of Work, and Major and Minor Items	104.14	Final Cleaning of Project Site; Maintenance and Cleanup of Staging areas
104.07	Differing Site Conditions	104.15	Contractor's Responsibility for the Work
104.08	Suspension of Work	104.16	Required Notifications for Disturbing Property and Using Bridges

104.01 Intent of the Contract. Cooperate with the Engineer to complete the Work described in a manner that is safe and poses the least practicable impact to the flow of vehicular and pedestrian traffic. Furnish all labor, Materials, Equipment, tools, transportation, and supplies required to complete the Work in accordance with the Contract. Perform all alterations to the Contract or requests for Extra Work from the Engineer in accordance with the terms of the Contract.

104.02 Existing Signs. Inventory all existing signs (i.e., Traffic, Bus Stops, Street Names, etc.) within the limits of the Contract with the Engineer prior to commencing the Work. Maintain necessary traffic signs as directed by the Engineer during construction, and properly store all other signs. Return all stored signs to the Engineer at the end of the Project. The Contractor is responsible for any loss of, or damage to, stored signs throughout the duration of the Project.

104.03 Bus Stops. Maintain bus stops as prescribed in Section 801.

104.04 Material Testing Notification. For Portland Cement Concrete and Bituminous Concrete material testing, the Contractor must notify the Materials & Research Section of the quantity and time of the scheduled release by 3:00 P.M. the business day prior.

No Portland Cement Concrete or Bituminous Concrete materials shall be shipped to the job without first being released by the DelDOT Inspector. When DelDOT releases materials for shipment, DelDOT does not guaranty that the materials meet the specifications or are suitable for use. The Contractor is solely responsible for the suitability of the materials shipped. DelDOT may waive the release requirements on a case by case basis. Waivers of releases by DelDOT do not waive the release requirements for future shipments.

104.05 Accident Notification. Immediately notify DelDOT’s Transportation Management Center (TMC) at 302-659-4600 and the Engineer’s site representative of any incidents resulting in damage to property or personal injury occurring within the limits of the Project.

104.06 Contract Revisions, Changes in the Character of the Work and Major and Minor Items. The Department reserves the right at any time prior to the Completion of the Contract to issue plan revisions, make adjustments in Contract Item quantities, or make such other alterations considered necessary to satisfactorily complete the Contract. Perform the revised Work immediately upon receiving direction from the Engineer to do so. The Engineer will pay for the revised Work at the Contract Unit Prices unless the revision results in a change to the character of the Work as defined below. In the case of a change to the character of the Work, the Engineer may

revise the Contract as specified in Section 109.04. If the determination that the character of the Work has changed is based solely upon Section 104.06.A.2, the change to the Unit Price applies only to that portion in excess of 125 percent of the original Contract Quantity, or in the case of a decrease below 75 percent, to the actual amount of Work performed under the Item.

Payment for Contract revisions or changes in the character of the Work will exclude any amount for loss of anticipated profits alleged to result from the change. Changes to the Contract do not invalidate the Contract or release the Contract Surety. If, as a result of such changes, the Contractor requires additional time to complete the Work, request an extension of Contract Time. The Engineer will evaluate such a request and will grant an extension of Contract Time if the request is justifiable in accordance with Section 108.07. All Contract revisions will be issued in writing by the Engineer.

- A. If the Engineer alters Contract quantities, the Work, or both as necessary to satisfactorily complete the Project, such an alteration changes the character of the Work if:
 - 1. The alteration requires the Contractor's means and methods in performing the Work to differ materially in kind or nature from that involved or included in the original Contract; or
 - 2. The alteration causes the quantity of a Major Item, as defined in Section 101.03, to increase in excess of 125 percent or decrease below 75 percent of the original Contract Quantity.

104.07 Differing Site Conditions. If Differing Site Conditions, as defined by Section 101.03, are encountered at the Project site, promptly notify the Engineer as specified in Section 104.09. Stop Work in the affected area and preserve the evidence of the alleged Differing Site Conditions so that the Engineer can investigate whether the conditions differ materially from those that the Contractor reasonably should have expected as defined in Section 101.03. Do not proceed with the Work in the affected area until the Engineer provides written notification to continue.

If the Engineer determines that the conditions differ materially from those that the Contractor should have reasonably expected as defined by Section 101.03, and such Differing Site Conditions caused an increase or decrease in the cost or time required for the Contractor to perform the Work, a written Adjustment will be made to the Contract by the Engineer. Adjustments in the Contract price for Differing Site Conditions will be made under Section 109.04, and Adjustments in Contract Time for Differing Site Conditions will be made under Section 108.07. No Adjustments in Contract Price will include loss of anticipated profits. The Engineer will notify the Contractor whether or not an Adjustment of the Contract is warranted.

No Contract Adjustment resulting in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice as specified in Section 104.09 and has afforded the Engineer an opportunity to investigate the alleged Differing Site Conditions before further disturbing the affected area.

104.08 Suspension of Work. The Engineer may suspend the Work in whole or in part by written order to the Contractor for any reason or condition that would be in the best interest of the Department. Immediately comply with the written order of the Engineer to suspend the Work.

If the delay resulting from the written suspension order is unreasonable, submit a written request for a Contract Adjustment to the Engineer within seven Calendar Days of the Engineer's order to resume Work providing the reasons and justification for the Adjustment. If:

- A. An increase in the Contract performance cost or time results from an unreasonable delay caused by the suspension; and
- B. The suspension was caused by conditions beyond the control and not the fault of the Contractor or those parties for whom the Contractor is responsible, then:

Adjustments in the Contract price, excluding profit, will be made according to Section 109.04 and Adjustments to Contract Time will be made according to Section 108.07. The Engineer will not adjust the Contract Time or price if the Work performance would have been suspended or delayed by any other cause under any other terms or

conditions of the Contract or if the Contractor fails to submit a request for an Adjustment to the Contract within the allowable time prescribed above.

The Engineer may suspend the Work when the Contractor fails to perform any provisions of the Contract. In such a case, the Engineer will neither adjust the Contract Time nor price nor will the Engineer pay for traffic control devices or maintenance of traffic during the suspension period. The Engineer will order the Work to resume when conditions are favorable as determined by the Engineer.

104.09 Notification Requirements for Differing Site Conditions, Changes in the Character of the Work and Extra Work. Immediately notify the Engineer of alleged changes to the Contract due to Differing Site Conditions; Extra Work; altered Work beyond the scope of the Contract; any delay that is compensable under the terms and conditions of the Contract; and/or action(s) or lack of action(s) taken by the Department that have allegedly changed the Contract terms and conditions.

- A. No further Work is to be performed or Contract costs incurred on the change after the date the change occurs unless directed otherwise by the Engineer.
- B. Within seven Days of the initial notification, provide the following information to the Engineer in writing:
 - 1. The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change.
 - 2. The name, title, and activity of each Department representative knowledgeable of the alleged change.
 - 3. Copies or descriptions of any documents and the substance of any oral communications involved in the alleged change and the basis for an allegation of accelerated Schedule performance, if applicable.
 - 4. The basis for an allegation that the Work is not required by the Contract, if applicable.
 - 5. The particular elements of Contract performance for which additional compensation may be sought under this Section including:
 - a. Contract Item(s) that have been or may be affected by the alleged change.
 - b. Materials that were/will be added, deleted, or wasted by the alleged change and a list of Equipment that was/will be idled or required by the alleged change.
 - c. Labor that was/will be forced to remain idle on the jobsite as a result of the alleged change.
 - d. Delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change.
 - e. Estimated Adjustments to Contract price(s), delivery schedule(s), staging, and Contract Time necessary due to the alleged change.
 - f. Estimate of the time within which the Department must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of the Contractor to provide required notice in accordance with this Section shall constitute a waiver of any and all entitlement to Adjustments in the Contract price or Time as a result of the alleged change.

- C. Within ten Days after the receipt of notice, the Engineer will respond in writing to the Contractor to:
 - 1. Confirm that a change occurred and, when necessary, direct the method and manner of further performance; or
 - 2. Deny that a change occurred and, when necessary, direct the method and manner of further performance; or

8. A VEP proposing to change the type or thickness of the Pavement Structure will not be considered.
 9. Additional information needed to evaluate VEP will be provided in a timely manner. Untimely submittal of additional information will result in rejection of the VEP. Where design changes are proposed, the additional information could include results of field investigations and surveys, design computations, and field change sheets.
- D. **Payment.** If the VEP is accepted, the changes and payment will be authorized by a Change Order. Reimbursement will be made as follows:
1. The changes will be incorporated into the Contract by changes in quantities of Unit Bid Items, and/or new agreed price Items, as appropriate, under the Contract.
 2. The cost of the Value Engineering Work as determined from the changes will be paid directly. In addition, the Department will pay the Contractor 50 percent of the savings to the Department as reflected by the difference between the cost of the revised Work and the cost of the related construction required by the original Contract computed at Contract Unit Bid Prices. If the VEP provides only a savings in time to the Department, there will be no sharing of savings between the Department and the Contractor.
 3. The Contractor's costs for development, design, and implementation of the VEP are not eligible for reimbursement.
 4. The Contractor may submit a VEP for an approved Subcontractor. Subcontractors may not submit a VEP except through the Contractor.

104.14 Final Cleaning of Project Site; Maintenance and Cleanup of Staging Areas. Before the Final Inspection of the Project, clean all rubbish, excess Materials, temporary Structures and Equipment from the Project, any publicly owned borrow source used to complete the Work, and all areas affected by the Contractor in connection with the Work within the Right-Of-Way. Trim all surfaces and slopes, whether old or new, to the cross-section. Cut all grass and weeds that are taller than 6 inches, and leave all parts of the Work in an acceptable condition. The cost of the final cleanup is incidental to the Contract and no separate payment will be made.

Install erosion and sediment control measures that comply with stormwater regulations for all staging areas to the satisfaction of the Engineer. Restore all areas used for staging operations upon Completion of the Work. Restore paved staging areas to their original condition. Restore unpaved staging areas by re-grading and placing topsoil, seed and mulch to the satisfaction of the Engineer. Perform all restoration Work in accordance with Sections 202 and 908 of these Standard Specifications. All costs associated with restoration of staging areas and establishing an acceptable stand of grass are incidental to the Contract.

104.15 Contractor's Responsibility for the Work. Retain sole and absolute responsibility for the Work and provide for the protection and safety of all agents and employees of state and federal agencies, Contractors, Subcontractors, suppliers, and members of the general public until Substantial Completion is achieved as defined in Section 101.03. In no case, including but not limited to, supervisory acts or administration of the Contract by the Engineer, will the Contractor be relieved of the responsibility to indemnify the Department pursuant to the provisions of the Contract.

Rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the Work under the control of the Contractor and/or due to his/her fault or inactivity, at no cost to the Department. Rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the Work, not under the control of the Contractor, under agreed Unit Prices or as Extra Work under Section 109.04. "Items not under the control of the Contractor" shall be defined for purposes of this Section as Acts of God such as earthquakes, tidal waves, tornadoes, or hurricanes; catastrophic conditions such as hazardous waste materials spills, explosions, etc., or acts of the public enemy or of governmental authorities.

In case of the suspension of Work, maintain responsibility for the Project and take such precautions as may be necessary to prevent damage to the Project, provide for normal drainage and normal traffic operations, and erect any necessary temporary Bridges, signs, or other facilities. During such period of suspension of Work, properly and continuously maintain in an acceptable growing condition all living Material in newly established plantings,

seedings, and soddings furnished under the Contract, and take adequate precautions to protect new tree growth and other vegetative growth against injury.

104.16 Required Notifications for Disturbing Property and using Bridges. Give two weeks' notice to property owners when any fixture, shrub, or other object must be removed from a Right-Of-Way or easement area. If the owner does not attempt to salvage this property within the two week period, remove it without further obligation.

Before starting any Work that will change the loadings on an existing or proposed Bridge, inform the Engineer of the proposed loadings (axle spacing, axial loads, stockpiling and Equipment locations) including quantity of and type of construction Equipment and vehicles proposed for use. The loading that the Contractor's Equipment will apply to the Bridge will be subject to the approval of the Engineer. The Engineer's approval does not relieve the Contractor of its responsibility for the safe performance of the Work or from carrying out the Work in full accordance with the Plans and the requirements of the Specifications. If at any time the Contractor's upcoming operations would result in a change to the loading and / or the location of the loading on a Bridge, submit the proposed loadings for approval by the Engineer prior to changing the loading. Perform no Work that will change the loadings on any Bridge within the Contract limits until the Engineer's approval has been obtained. Review time will be in accordance with Section 105.04.

SECTION 105 – RESPONSIBILITIES OF THE DEPARTMENT; INTERPRETATION OF THE CONTRACT DOCUMENTS; MAINTENANCE DURING CONSTRUCTION; CLAIMS; PROJECT ACCEPTANCE

105.01	Authority of the Engineer	105.09	Utilities within the Project Limits; Miss Utility One-Calls
105.02	Authority and Duties of Inspectors	105.10	Construction Stakes, Lines & Grades Provided by the Engineer
105.03	Inspection of the Work	105.11	Removal of Defective and Unauthorized Work
105.04	Plans and Working Drawings	105.12	Load Restrictions
105.05	Conformity with the Plans and Specifications	105.13	Maintenance During Construction
105.06	Coordination of the Contract Documents; Duty to Report Errors to the Engineer; Use of Dimensions over Scaled Measurements	105.14	Opening Sections of the Project to Traffic
105.07	Copies of the Plans; Contractor's Supervision	105.15	Claims for Adjustments and Resolution of Disputes
105.08	Cooperation Between Contractors	105.16	Project Acceptance; Partial Acceptance

105.01 Authority of the Engineer. The Engineer is the administrator of the Contract and not a supervisor of the Work. Perform all Work to the satisfaction of the Engineer, but maintain complete responsibility for the Work. The Engineer will decide all questions which may arise as to the quality and acceptability of Materials furnished and Work performed and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of the Plans and Specifications; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; all disputes and mutual rights between contractors; and all questions as to compensation. At the preconstruction meeting, the Engineer will determine and communicate to the Contractor the chain of command and the extent of authority Department personnel will have to make changes to the Contract during the life of the Contract.

The Engineer has the authority to suspend the Work, wholly or in part, due to the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods as may be deemed necessary due to conditions the Engineer considered unsuitable for the prosecution of the Work; or for any other condition or reason deemed to be in the public interest.

The Engineer's authority to impose any Contract sanction, including suspension of the Work, withholding payments, or the like, will not relieve the Contractor of sole and absolute responsibility for the Project, performance of the Work, and the safety of workers and the general public. The Contractor saves the Department harmless pursuant to Section 107.10 for any violation, breach, or omission of the above Contract provision.

105.02 Authority and Duties of Inspectors. Inspectors acting under the authority of the Engineer are administrators of the Contract and not supervisors of the Work. Inspectors employed by or designated by the Department are authorized to inspect all Work performed and all Material furnished by the Contractor. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the Materials to be used. The Inspector is not authorized to revoke, alter, or waive any requirements of the Plans or Specifications. The Inspector may call the attention of the Contractor to any failure of the Work or Materials to conform to the requirements of the Contract and will have the authority to reject Materials or suspend the Work until any questions at issue can be referred to and decided by the Engineer. Such inspection will not relieve the Contractor from the obligation to perform the Work in accordance with the requirements of the Contract.

The Inspector will in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice which the Inspector may give the Contractor shall in no way be construed as binding the Engineer in any way or releasing the Contractor from fulfilling all of the terms of the Contract.

The Engineer may issue a written order to the Contractor to stop Work giving the reason for shutting down the Work. After placing the order in the hands of the Contractor's representative in charge at the Project Site or sending an electronic copy of such an order to a responsible party in the Contractor's organization, the Inspector will immediately leave the job, and in such cases Work performed by the Contractor during the absence of the Inspector will not be paid for and may not be accepted. The Engineer will identify the person(s) within the Department who have the authority to issue a Stop Work order at the preconstruction meeting for the Contract.

105.03 Inspection of the Work. Allow the Engineer access to all parts of the Work at all times for inspection. Furnish information and assist the Engineer as required to make complete and detailed inspections. Inspection may include mill, plant, or shop inspection; and/or any Material furnished under these Specifications. If the Engineer fails to reject defective Work or Materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection of the Materials or Work when such defect is discovered, or obligates the Engineer to Final Acceptance. The Engineer is not responsible for losses suffered by the Contractor due to removals or repairs of such defects.

Remove or uncover portions of the finished Work as directed at any time before acceptance of the Work. After examination, restore those portions of the Work to the standard required by the Contract. If the exposed Work proves to be acceptable, the uncovering or removal and restoration will be paid as Extra Work. If the exposed Work proves to be unacceptable, the uncovering or removal and restoration shall be at the Contractor's expense.

Any Work performed or Materials used without supervision or inspection by the Department representative may be ordered removed and replaced at the Contractor's expense.

When any unit of government or political subdivision, utility company, or any railroad corporation pays a portion of the cost of the Work performed on this Contract, its respective representatives have the right to inspect the Work. Such inspection shall not make any unit of government or political subdivision, utility company, or any railroad corporation a party to this Contract, and shall in no way interfere with the rights of either party hereunder.

105.04 Plans and Working Drawings. The Department will furnish, with the Bid Proposal, Plans of sufficient detail to convey a comprehensive understanding of the Work specified. Furnish Working Drawings as required by the Engineer. Do not incorporate any changes from the requirements of the Contract in the Working Drawings unless the changes are specifically denoted, together with justification, and approved in writing by the Engineer. Any change from the requirements of the Contract shall be signed and sealed by a Professional Engineer registered in Delaware. Identify Working Drawings and submittals by the Contract number. Identify Items or component Materials by the specific Contract Item Number and Specification reference in the Contract.

Any staging and stockpile area(s) outside the Project's LOC that individually or cumulatively are larger than 10,000 square feet must be approved by DelDOT's Archaeologist. Submit all staging and stockpile areas outside the Project's LOC for approval. Within 30 Days, DelDOT will:

- A. Approve the use of the proposed staging and stockpile area(s),
- B. Reject the request, or
- C. Perform an archaeological survey to determine whether to approve or reject the request, which may take up to 3 months.

If an archaeological survey is necessary, DelDOT or a consultant on its behalf will undertake the survey.

The Contractor is responsible for the preparation of all Working Drawings. However, drawings submitted directly by the supplier or the Contractor's representative will be accepted by the Department, if the letter of submittal indicates that the Contractor has been notified of the submission.

Working Drawings for metal Structures shall consist of shop detail, erection, and other Working Drawings showing details, dimensions, sizes of units, and other information necessary for the fabrication and erection of metal work.

Provide such details on Working Drawings as are required for successful prosecution of the Work. Include plans for Items such as Falsework, bracing, sheeting, shoring, cofferdams, Formwork, masonry layout diagrams, and bending diagrams for reinforcing steel.

Submit copies of the manufacturer's catalog cuts, drawings, wiring diagrams, etc. with Working Drawings for electrical and mechanical Equipment. After all Items of a particular system have been reviewed, prepare an

"Instruction Book" especially for the system. Include in the "Instruction Book" an Equipment list, a complete description of the Equipment, the sequence of operation including inter-locking and protective features, the use of by-pass switches, and a detailed description of all wiring circuits. Also include in the book a recommended spare parts list, renewal parts bulletins, and instruction bulletins for the Equipment furnished. Use diagrams and drawings of reduced size suitable for binding. Include a proper index listing all Items. Properly fasten and bind in a suitable leather or heavy plastic cover book with a title clearly shown.

Prior to Final Inspection, supply five copies of the book to the Engineer. The books must be available during the period when electrical and mechanical systems are being connected and energized, and the final bound copies must reflect any changes or Adjustments made during this period.

Submit electronic copies of Working Drawings to the Engineer following the procedure set forth in Figure below, unless otherwise defined at the preconstruction meeting. Should any questions arise as to the proper procedure for submitting Working Drawings, contact the Engineer for clarification. Returned drawings will be stamped as follows:

- A. **"Returned for Resubmission"**. In this case, revisions or corrections must be made, and the drawings resubmitted for review.
- B. **"Reviewed for General Conformity with Plans and Specifications"**. In this case, if the Contractor agrees with the comments, incorporate the comments and do not resubmit the drawings. If the Contractor does not agree with the comments, state the reason for disagreeing with the comments in writing and submit the reasons to the Department within ten Working Days after receipt of the Department's comments.

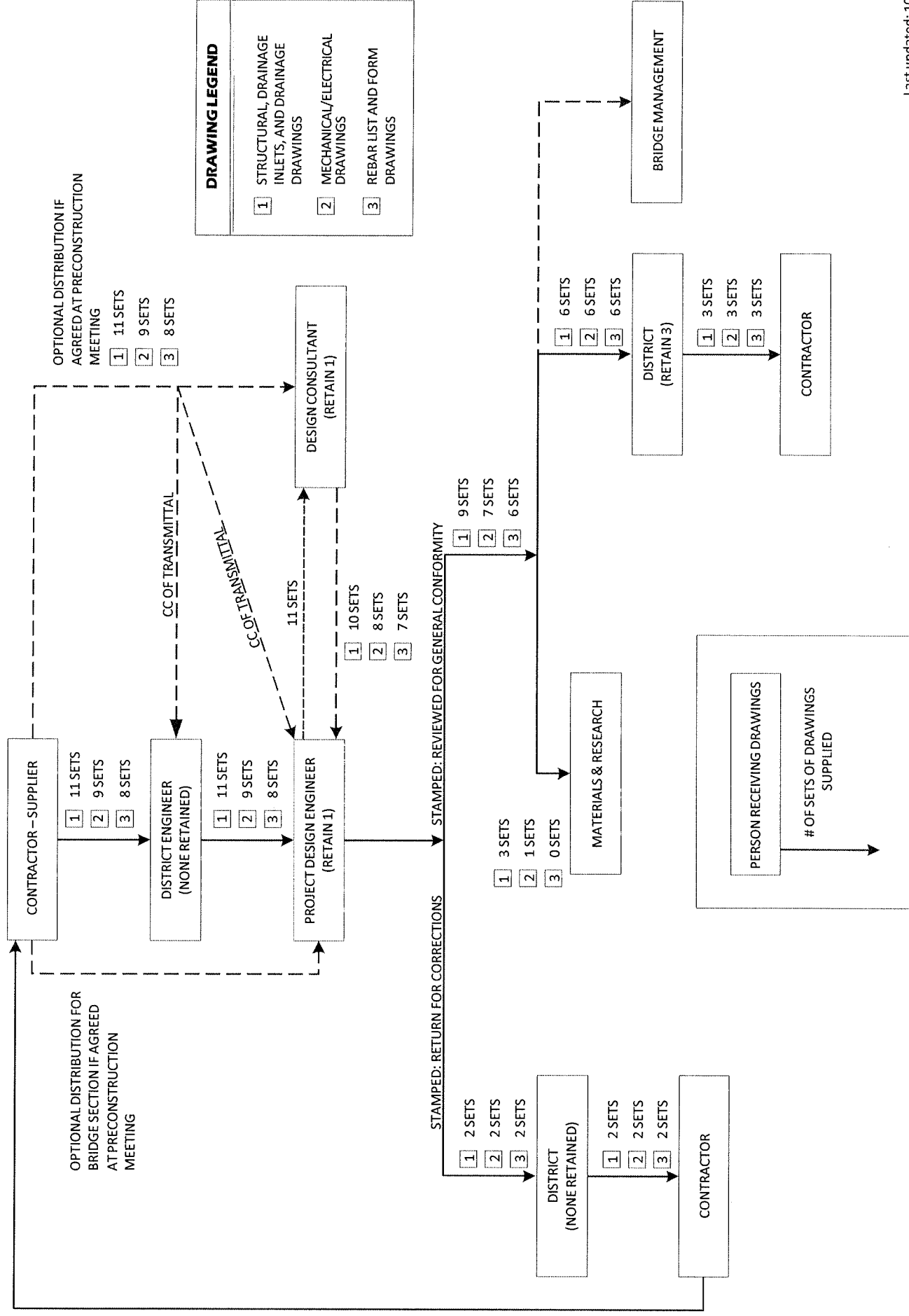
The Department does not review every detail of every Working Drawing or other submittal made by the Contractor. Consequently, responsibility for the completeness, accuracy, and conformance to Contract requirements of all submittals rests with the Contractor. The Department accepts no responsibility for the completeness and accuracy of approved submittals or the failure of approved submittals to conform to the requirements of the Contract.

Reviewed Working Drawings, submittals, or resubmittals will be transmitted to the Contractor within forty-five (45) Days from the date of receipt by the Department. If a railroad, the U.S. Coast Guard, municipality, or other entity as specified in the Contract is required to review the Working Drawings, the reviewed Working Drawings will be returned within sixty (60) Days from the date of receipt by the Department. If the Working Drawings are not returned by the time specified, no additional compensation will be allowed except that an extension of time in accordance with Section 108.07 will be considered.

The Department generally follows the submittal flowchart provided on the following page in reviewing and approving Working Drawings.

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WORKING DRAWING SUBMITTAL PROCESS



105.05 Conformity with the Plans and Specifications. Perform all Work and furnish all Materials in reasonably close conformity with the lines, grades, cross-section, dimensions, and Material requirements, including tolerances, shown on the Plans or indicated in the Specifications.

If the Engineer finds that the Materials or the finished product in which the Materials used are not within reasonably close conformity with the Plans and Specifications, but that reasonably acceptable Work has been produced, the Engineer will then make a determination if the Work will be accepted and remain in place. In this event, the Engineer will document the basis of acceptance which will provide for an appropriate Adjustment in the Contract price for such Work or Materials if deemed necessary by the Engineer.

In the event the Engineer finds the Materials or the finished product in which the Materials are used or the Work performed are not in reasonably close conformity with the Plans and Specifications, and the result is an inferior or unsatisfactory product, remove and replace or otherwise correct the Work or Materials at the expense of the Contractor. If provisions are included in the Contract for the acceptance of Materials or Work that are not in full compliance with the minimum requirements stated, adjust the pay per those provisions.

105.06 Coordination of the Contract Documents; Duty to Report Errors to the Engineer; Use of Dimensions over Scaled Measurements. Each individual Contract Document is an essential part of the Contract and a requirement occurring in one is binding as though occurring in all. All of the Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the case of a discrepancy between the Contract Documents the governing ranking will be:

- A. General Description
- B. General Notices
- C. Plans
- D. Special Provisions
- E. Standard Construction Details
- F. Standard Specifications

Do not take advantage of any apparent error or omission in the Contract. If the Contractor discovers an error or omission, promptly notify the Engineer. The Engineer will make corrections and interpretations as necessary to fulfill the intent of the Contract. Do not use scaled measurements when the dimensions on the Plans are given or can be computed from the information given.

The Contractor is responsible to verify during construction that the conditions actually encountered are consistent with the design and related Contract Documents during the course of construction. Issue a written Request For Information (RFI) to the Engineer for clarification and response, if any questions arise, experience interference / conflict caused by design, or feel errors and omissions may exist in the Contract Documents. The Engineer will respond to each RFI in writing clearly indicating all applicable design revisions. Provide a copy of all RFIs and responses to the Department as they are issued.

If a deviation from the specified sampling or testing procedures and/or Contract Documents is identified by the Contractor, Inspector or any representative thereof, then submit for approval a written Non-Conformance Report (NCR), including its associated corrective actions forward, covering such deviation. Include in the NCR, description of construction activity and location by Specification.

Make every attempt to identify issues and deviations from the Contract Documents in advance of the Work in order to allow the Department three (3) Working Days from receipt of the written notice to review and respond accordingly to any RFI and NCR. The Department will work with the Contractor with response to any RFI or NCR that requires immediate attention.

105.07 Copies of the Plans; Contractor's Supervision. The Contractor will be supplied with two copies of the Plans and the Bid Proposal. Keep one copy at the Project site at all times. Give the Work the constant attention necessary to facilitate progress and cooperate with the Engineer in every way possible.

Furnish (a) a competent Superintendent or supervisor who is employed by the firm, has full authority to direct performance of the Work in accordance with the Contract requirements, and is in charge of all construction operations, regardless of who performs the Work and (b) such other organizational resources, including supervision, management and engineering services, as the Engineer determines is necessary to assure the performance of the Contract. The Superintendent or supervisor must be present on site while Work is being performed and must be competent, capable of reading and understanding the Contract and experienced in the type of Work being performed. The Superintendent or supervisor is the point of contact for the Engineer, authorized to act for the Contractor, and has full authority to execute orders or the directions of the Engineer without delay.

105.08 Cooperation between Contractors. The Department reserves the right to contract for and perform other or Additional Work on or near the Limits of Construction covered by the Contract.

Contractors performing work on the same Project shall coordinate their Work and cooperate with each other. In case of a dispute, the Engineer will be the referee, and the Engineer's decision will be final and binding on all. When separate Contracts are let within the limits of any one Project, conduct the Work without interfering or hindering the progress or Completion of the Work by other Contractors.

Each Contractor involved assumes all liability, financial or otherwise, in connection with its respective Contract. Protect and save harmless the Department from any and all damages or Claims that may arise because of inconvenience, delays, or loss experienced because of the presence and operations of other Contractors working within the Limits of Construction of the same Project.

Coordinate and sequence the Work with other contractors. Arrange, place, and dispose of Materials without interfering with the operations of other contractors on the same Project.

105.09 Utilities within the Project Limits; Miss Utility One-Calls. Bidders are hereby notified that within the limits of the Work under this Contract, several utility facilities and/or appurtenances may be encountered. The locations of all utilities shown on the Plans or mentioned in the Contract Documents are approximate locations only.

Prior to Advertisement, the Department will notify all utility companies, pipeline owners, railroads, or other parties known to be affected by the Work, and endeavor to have all necessary relocations of the public or private utility fixtures, pipelines, and other facilities and appurtenances within or adjacent to the Limits of Construction made as soon as practicable. Notwithstanding any other provision of this Contract, do not proceed with the Work before conferring with the Engineer, the utility companies, and the municipal or county authorities in an effort to secure the most accurate and most recent information as to utility locations. As required by Chapter 8, Title 26 of the Delaware Code, do not begin any construction around or adjacent to utilities without notifying the Utilities Service Protection (Miss Utility) of Delmarva, Inc. at least two Working Days, but not more than ten Working Days in advance of starting the Work. Miss Utility is a report center system that enables the public, contractors, utilities, and other excavators to notify participating member utilities of planned digging activities by making one call.

Water lines, gas lines, wire lines, services connections, water and gas meter boxes, water and gas valve boxes, light standards, cable ways, signals, and all other utility facilities and appurtenances within the limits of the proposed construction that require moving, including the Work involved in relocating or otherwise altering such utilities, are to be moved by others at no expense to the Contractor, except as otherwise provided in the Contract. Allow utility contractors performing Work within the limits of the Contract to use the Contractor's maintenance of traffic (MOT) devices that are already in place as a result of the Work, such as "Road Work Ahead" signs and MOT related to the Project's construction phasing. The respective utility contractor is responsible for their own Equipment, Work and personnel safety while working within the limits of another Contractor. Utility contractors performing Work within the work zone shall use their own MOT devices at their own expense for daily construction activities such as lane and shoulder closures. Utility contractors shall provide their own flaggers. The Engineer reserves the right to order the Contractor to provide MOT for utility companies working within the work zone. When the Engineer issues such an order, the Engineer will pay for the work under the Unit Prices in the Contract. If Unit Prices for MOT ordered by the Engineer do not exist on the Contract, the Contractor and the Engineer shall negotiate a new price for the work or follow the Force Account procedure for reimbursement. If the Contractor provides MOT at the request of a

utility company, the Engineer will not make payments under the Contract. The utility company will pay the Contractor.

The Engineer will not pay for any relocation or rearrangement of utility facilities or appurtenances made for the Contractor's sole convenience.

Consider in the bid all the permanent and temporary utility appurtenances in their present or relocated positions as shown on the Plans or as readily discernible. No additional compensation will be allowed for any delays, inconvenience, or damage due to any interference from such utility facilities and appurtenances or the operation of moving them, except that the Contractor may be granted an extension of Contract Time.

The relocation of existing utilities that will interfere with the proposed construction, the construction of new utility facilities, and/or the reconstruction of existing utility facilities may also be in operation simultaneously with the Work to be performed under this Contract.

Any damage to utility services caused by the Contractor must be repaired at the Contractor's expense. Repair such damage immediately.

Prior to performing any Work on the Project, contact all utility companies, pipeline owners, railroads, or other known parties affected and "Miss Utility" of DELMARVA in order to ensure that all such utilities have received notice and in order that all utility adjustments may be made.

The following Utilities are members of Utilities Service Protection Center of DELMARVA (USPCD):

24/7 Mid-Atlantic Network, LLC	MCI
AboveNet Communications	Mediacom of Lower MD/DE
Aero Energy	Moore Grant Sanitation
AIRCO	Municipal Utility Commission
Angola Crest, LLC	Neon Optica, Inc
Artesian Water Company	New Castle County Special
AT&T of Delaware	ServicesNUI Elkton Gas
Atlantic Broadband	Paradee Gas Co.
Bethel Township Sewer Dept	Pep-Up, Inc.
Camden-Wyoming Sewer & Water	Peninsula Oil and Propane
Cavalier Telephone	P.F. Net Network Corporation
Chesapeake Utilities	Poores Propane
Choptank Electric	Qwest Communications
City of Delaware City	Savannah's Landing HOA
City of Dover	Schagrin Gas Company
City of Harrington	Sharp Energy
City of Lewes Public Works	Steeplechase Waterworks
City of Milford	Sunoco Pipeline, LP
City of Newark	Sussex County Engineering Dept.
City of New Castle	Sussex Shores Water Co.
City of Pocomke	Texas Eastern Transmission, LP
City of Rehoboth Beach	Tidewater Utilities
City of Seaford	Town of Bethany beach
City of Wilmington	Town of Blades
Colonial Pipeline Co.	Town of Bridgeville
Columbia Gas Transmission	Town of Chesapeake City
Comcast Cable Communications	Town of Clayton
Connexion Technologies	Town of Dagsboro
County Propane of Delaware	Town of Felton
Dept.of Transportation	Town of Georgetown
Delaware Electric Cooperative	Town of Laurel
Delaware Pipeline Company	Town of Middletown
Delaware State Highway	Town of Millsboro
Delaware Storage and Pipeline Com	Town of Milton

Delmarva Power	Town of Selbyville
Direct Propane	Town of Smyrna
Eastern Shore Gas	Tunnel Companies, Inc.
Eastern Shore Natural Gas	United Water
Eastern Utilities Commission	University of Delaware
G4S Technology, LLC	Verizon Communications
Gull Point Condominium Association	Wastewater Utilities, Inc.
Kent County Public works (Engineering)	Williams Gas Transmission
Kent County Sanitary District	W.L. Gore & Associates, Inc.
Kitts Hummock Improvement Association	XO Communications
Level 3 Communications	YMG Corporation
Long Neck Water Co.	
Magellan Midstream Partners, L.P.	
Magellan Terminals Holding, LP	

The report center is essentially a message center, to which all participating parties are connected by a private line teletype network. The work location report is called in over two primary numbers, toll free, 1-800-441-8355 and 1-800-282-8555 in Delaware only. The area covered is the entire DELMARVA Peninsula.

A minimum of two but not more than ten (10) Working Days advance notice of starting time is required. The Day of the call is not counted as one of these Days. This assures the person calling of having the underground facility located prior to excavation.

The party reporting a digging operation is asked a standard format of questions to provide the utilities with the necessary information required to ensure an adequate location of the activity. The caller is given a ticket number for reference purposes. The center specifically locates reported areas of activity on a master map and determines the spot by grid coordinates. This information is then transmitted to the participating parties via high speed teletype network. The ticket life is for ten (10) Working Days after the call.

Messages received are sent out immediately during normal work hours (7:00 AM to 5:00 PM, Monday through Friday). Messages received after normal working hours, Saturdays, Sundays, or Holidays are taken, logged, and transmitted within one hour the next normal Work Day.

The Work location report is received by the participating utility which immediately locates the Work area by the information transmitted from the message center. The utility must then respond to the person originating the call by 1) stating it has no underground facilities at the designated location or 2) stating there are facilities in the area and dispatching a locating crew to the site and marking their underground facility with stakes, flags, and/or paint horizontally over the ground.

APWA recommended safety color codes will be used: white for proposed excavation, pink for temporary survey marking, orange for communications, red for electric, blue for potable water, green for sewer and drain lines, yellow for gas and petroleum products, purple for reclaimed water. This will enable the reporting party to visually see if the utility has responded.

Overhead High-Voltage Line Safety requires notification to and mutually agreeable measures from the utility from any person intending to carry on any function, activity, Work or operation within 20 feet of any high voltage overhead line.

105.10 Construction Stakes, Lines, and Grades Provided by the Engineer. The Engineer will furnish and set control points and construction stakes unless otherwise specified in the Contract Documents.

The Engineer will establish Right-Of-Way lines, Limits of Construction, and easements if needed, and will provide and set construction stakes establishing Right-Of-Way lines, easement lines, slopes, Profile Grades, centerline or off-set lines, and benchmarks. The Department may furnish the Contractor with information relating the lines, slopes, and grades. The Engineer will establish Structure working points, elevations, and all the necessary points and off-sets to complete the Structure. Use these stakes and marks as the field control to establish other necessary controls and perform the Work. Before beginning the Work, determine the meaning of all stakes, indicated measurements, and marks provided by the Department.

The Engineer will also perform preliminary and final cross-sections of borrow pit sites and cross-sections for bedrock and undercut excavation.

Protect and preserve of all stakes and marks. The labor cost of the survey crew replacing disturbed stakes and marks will be deducted from the payment due for the Work.

The Department is responsible for the accuracy of lines, slopes, grades, and other engineering work set forth under this Section. The Department will not be responsible for staking delays unless the Contractor provides the Engineer ten (10) Calendar Days' notice prior to beginning Work for which layout is needed and thereafter gives at least two (2) business days' notice that stakes are needed.

105.11 Removal of Defective and Unauthorized Work. All Work that fails to meet the Contract requirements will be deemed unacceptable by the Engineer. Remove and dispose of all unacceptable Work at the Contractor's expense immediately upon rejection by the Engineer. Work performed without adequate layout, Work performed beyond the lines and grades shown on the Plans, or any Extra Work performed without written direction by the Engineer will be considered unauthorized Work and will not be measured or paid by the Department. The Engineer may direct the Contractor to remove and replace unauthorized Work at the Contractor's expense.

Failure of the Contractor to remove and properly dispose of rejected Work immediately after receiving written notice to do so from the Engineer shall be sufficient cause for the termination of the Contract. Furthermore, the Engineer will have the authority to cause unacceptable Work to be remedied or removed and replaced, and unauthorized Work to be removed. The costs incurred by the Engineer for correcting unacceptable or unauthorized Work will be deducted from the amount due or to become due the Contractor.

105.12 Load Restrictions. Comply with all legal and Contractual load restrictions in the hauling of Materials or Equipment on public roads. A hauling permit or other special permit will not relieve the Contractor of liability for damage to public or private property that may result from the movement of such loads or Equipment.

Vehicles transporting construction Materials to Department Projects shall not exceed the gross vehicle weight (GVW) or licensed weight, if less, as specified in the Delaware Code. Materials inspection weigh tickets will not be issued by Department personnel for GVWs in excess of the allowable maximum. The allowable GVW for the delivery truck must be shown on each material ticket submitted to the Engineer.

Payment for Materials delivered to the Project will not exceed the allowable GVW minus the truck tare weight. An average tare weight may be established on a basis approved by the Engineer so that empty weighing is not necessary before every load. No payment will be made for any excess Material weight.

Notify Subcontractors, vendors, and suppliers of this requirement.

The maximum GVW for different vehicle axle configurations is as follows; provided that in the case of three-axle vehicles the extra weight fee has been paid and is so noted on the registration card:

Customary Values

<i>Single Unit Values</i>	<i>GVW, Maximum</i>
2-axle vehicle (e.g., 2-axle dump truck)	40,000 lb.
3-axle vehicle (e.g., 3-axle dump truck)	65,000 lb. *70,000 lb.
4-axle vehicle (e.g., 4-axle dump truck)	73,280 lb.
<i>Tractor-Semi-Trailer Combinations</i>	
3-axle combination unit	60,000 lb.
4-axle combination unit	70,000 lb.
5-axle combination unit	80,000 lb.

* When extra weight fee has been paid and is so noted on registration card.

Assume responsibility for all damage caused by hauling Equipment, whether the damage occurs within or outside of the Project limits.

105.13 Maintenance during Construction. Maintain the Work during construction and until the Project is accepted. Perform this maintenance every Day in a continuous and effective manner with adequate Equipment and forces to keep the roadway and Structures in a satisfactory condition. All snow removal will be performed by DelDOT Maintenance, unless the Contract Documents specifically assign these responsibilities to the Contractor. All mowing of grass outside of the LOC will be performed by DelDOT Maintenance.

The Engineer will notify the Contractor if there is a failure to comply with these provisions. If the Contractor fails to remedy unsatisfactory maintenance within twenty-four (24) hours after receipt of the notice, the Engineer may proceed to maintain the Project. The entire cost of this maintenance will be deducted from monies due or to become due the Contractor. Failure to adequately and safely maintain the Project will be sufficient cause to terminate the Contract for default.

If the Contract involves the placement of Material on or the use of a previously constructed subgrade, base course, pavement or Structure, maintain the previously constructed Work during construction operations.

The cost of maintenance Work during construction and before the completion of the Final Inspection punchlist is incidental to the Contract. The cost of maintenance Work occurring after the Final Inspection punch list is complete will be paid by the Engineer, except that the cost of maintenance Work required for landscaping and vegetative growth shall be borne by the Contractor until Final Acceptance.

In the event that the Contractor's Work is ordered shut down for failure to comply with the provisions of the Contract, maintain traffic, protect and maintain the roadway and Structures, and provide ingress and egress for local residents as may be necessary during the period of suspended Work or until the Contract has been declared in default.

Mow all grass and weeds within the Limits of Construction, as directed by the Engineer, to a height in compliance with Section 107.01. If the Engineer directs the Contractor to mow grass more than 4 times in a calendar year, the Engineer will pay for all mowing beyond the fourth mowing operation.

105.14 Opening Sections of the Project to Traffic. The Engineer may order certain sections of the Work to be opened to traffic or other use prior to Completion or acceptance of the Work. Opening these sections will not constitute acceptance of the Work or waiver of any Contract provisions. For sections of the Work that are open to traffic, the cost of repairing damage to the Work caused by vehicular traffic will be paid by the Engineer unless such section of roadway is open due to the fault or inactivity of the Contractor or the Contractor caused the damage. All other maintenance costs including, but not limited to, mowing grass, general cleanup and/or the repair of Work damaged by vandalism are borne by the Contractor until the Final Inspection punch list is complete, except that maintenance costs for Work involving landscaping and vegetative growth that are borne by the Contractor until Final Acceptance. Prior to opening a section of the Work to traffic, confer with the Engineer to ensure that all traffic control devices are in place and functioning. Do not open any section of roadway to traffic without the approval of the Engineer.

105.15 Claims for Adjustments and Resolution of Disputes. All disputes between the Contractor and the Engineer arising under or related to this Contract that are not resolved by mutual agreement shall be resolved by following the Claim procedure established in this Section. "Claim" means a written demand or assertion by the Contractor or the Department seeking, as a legal or equitable right: payment of money, Adjustment or interpretation of Contract terms, or other relief.

A. Contractor Notification of Claims.

Notify the Engineer orally or in writing of the intention to make a Claim for relief before beginning the affected Work. Within five Working Days of declaring the intention to make a Claim, provide written notification of the Claim to the Engineer that includes the following:

1. The date of the occurrence and the nature and circumstances of the occurrence that constitute a change to the Contract or the need for an interpretation of the Contract's terms;
2. The name and title of Department representatives knowledgeable of the conditions on which the Claim is based; and

3. The particular elements of Contract performance for which relief is sought under this Section.

When a Claim is based solely upon the need for a Contract interpretation, provide written notice of the intent to Claim as prescribed above within five (5) Working Days of the discovery by the Contractor of the alleged misinterpretation of the Contract by the Engineer.

If the Contractor's written notification is not given to the Engineer within five (5) Working Days as prescribed above or the Engineer is not afforded proper facilities by the Contractor for keeping strict account of the actual costs incurred by the Contractor as a result of the alleged change or alleged misinterpretation of the Contract, then the Contractor waives the Claim. Such notice by the Contractor, and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the Claim. Nothing contained in this Section shall be construed as establishing any Claim contrary to the terms of Section 104.06 or any other provision of the Contract Documents.

B. *Engineer's Response to the Contractor's Notice.*

Within ten (10) Calendar Days after receipt of the Contractor's written notice of a Claim, the Engineer will respond in writing to the Contractor to:

1. Confirm that a change has occurred and that relief is due as provided herein; or
2. Confirm that the Engineer agrees with the Contractor's interpretation of the Contract and that relief is due as provided herein; or
3. Deny that relief is due and direct the Contractor to follow the formal Claim submittal procedure as described below; or
4. Advise the Contractor that adequate information has not been submitted to decide whether B.1., B.2. or B.3. above applies, and indicate the need for more information for further review. The Department will respond to such additional information within ten (10) Calendar Days of receipt from the Contractor; or
5. Advise the Contractor that the Engineer will review the Claim after obtaining the formal Claim submittal as described below.

Any Adjustments made to the Contract will not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information in accordance with this Section.

C. *Claim Submittal.*

Submit a formal Claim in writing within sixty (60) Calendar Days after Work on the Item Claimed has been completed. The Contractor can only recover, and the formal Claim shall only consist of, those items allowed under Section 105.15.H. The formal Claim submittal must contain:

1. A description of the precise nature and basis for the Claim;
2. Each fact upon which the Contractor relies to support the claim;
3. The precise reason the Contractor believes that relief should be granted;
4. The language in the Contract upon which the Contractor relies in support of the Claim;
5. The amount of money or nature and extent of relief to which the Contractor believes it is entitled; and
6. Any other factors which the Contractor believes support the Claim.

When requesting a time extension or relief due to a constructive acceleration, include an as-built Project Schedule that conforms to the requirements of the Contract. Failure to submit such a Schedule constitutes a waiver of the Contractor's right to receive a time extension or other relief due to a delay or a constructive acceleration.

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In complying with the Claim submittal requirements listed above, the Contractor must certify the Claim using the following form:

The undersigned is duly authorized to certify this claim on behalf of (the Contractor).

(The Contractor) certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract Adjustment for which (the Contractor) believes that the Department is liable.

(THE CONTRACTOR)

By: _____

(Name)

(Title)

Date of Execution: _____

The Contractor agrees to follow the procedure described in this Section for all Claims. The Contractor further agrees that any claimed dollar amount and/or relief sought that is not made pursuant to this Section and within the time limits prescribed by this Section shall be forever waived and not raised at any subsequent meeting or hearing dealing with the Claim. The Department will establish a claims procedure to be followed that is consistent with these Specifications and provides the means and methods by which the Contractor and the Department shall process the Contractor's formal Claim.

D. District Review.

Formal Claims submitted in accordance with this Section will be reviewed fully at the District level. Within thirty (30) Calendar Days after receiving the formal Claim submittal, the District Engineer will respond, in writing, with the District's decision. If additional time is required by the District to review the Claim, the District Engineer will notify the Contractor. Upon mutual agreement, the parties may engage in non-binding alternate dispute resolution proceedings in order to try and induce a settlement of the dispute prior to the District's decision. These proceedings may include, but are not limited to, non-binding arbitration or mediation.

E. Contractor's Appeal to the Claims Committee.

The Contractor may appeal the District's decision to DelDOT's Claims Committee for review. Give notice of the appeal to the District in writing within ten (10) Calendar Days of the District's Decision. Failure to provide timely notice of an appeal constitutes a waiver of the Contractor's right to appeal.

The Claims Committee will conduct a Claim review meeting attended by representatives of the Contractor and the District. The Claims Committee will conduct the Claim Review Meeting within sixty (60) Calendar Days after the District receives the Contractor's notice of appeal. The proceedings of the Claim

Review Meeting will be recorded by a Court Reporter. The cost associated with the Court Reporter will be shared equally by the Department and the Contractor. A copy of the record of the Claim Review Meeting will be made available to the Contractor. Within fifteen (15) Calendar Days of the Claim Review Meeting, the Committee's Chairperson will notify the Contractor, in writing, of the Committee's decision.

F. *Decision of the Secretary.*

Either party may appeal the Claims Committee's decision to the Secretary requesting to proceed with the arbitration process as outlined in Section 105.15.G. The appellant shall give notice of the appeal to the Claims Committee's Chairperson, in writing, within ten (10) Calendar Days after receiving the Claims Committee's decision. Failure by either party to provide timely notice of an appeal constitutes a waiver of that party's right to appeal. After receiving the written notification, the Secretary or the Secretary's designee (usually the Chief Engineer) will notify the parties, in writing, within thirty (30) Calendar Days of the receipt of the notice regarding the Claim. The Secretary or the Secretary's designee will review the record and may schedule a meeting or hearing with the parties to discuss the Claim. The Secretary or the Secretary's designee will then issue a written decision that will serve as the final decision of the Department concerning the Claim.

G. *Arbitration.*

Any Claim, properly presented and processed through the Claim procedure outlined above, and finally decided by the Secretary or the Secretary's designee pursuant to Section 105.15.F, in the absence of agreement by the Contractor and the Department as to the resolution thereof, and upon the demand of either party delivered in writing to the other within thirty (30) Calendar Days from the date of the written decision by the Secretary or the Secretary's designee, as provided in Section 105.15.F; shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect; except as otherwise modified by these Specifications. Failure by either party to provide a timely notice of appeal to the other constitutes a waiver of that party's right to appeal.

The arbitration proceeding may involve presentation of facts or such portions thereof as have previously been presented at prior administrative hearings held pursuant to Section 105.15 herein or may be based entirely upon the record, as established therein. The record established at prior administrative hearings pursuant to Section 105.15 shall be specifically admissible at such arbitration proceedings and such facts as have been established shall be specifically binding upon the parties; with the exclusion of opinions and conclusions thereon. Such arbitration shall be specifically based upon the Claim presented at prior administrative hearings and no material, information, fact, and/or Claim not presented at such hearings held pursuant to said Section 105.15 shall be admissible at any arbitration conducted pursuant to this Section, with the exception of the Contract Documents as defined in Section 101.03 Definitions - Contract. The arbitrators are to furnish a written decision to both parties that includes the findings of the panel and an explanation of the basis for the findings. This agreement to arbitrate will be strictly enforceable as provided under Chapter 57, Title 10 of the Delaware Code, as amended. The Contractor and DelDOT will each pay half of the arbitration fee and the cost of the court reporter.

H. *Recoverable Costs.*

The Contractor is not entitled to recover any costs in a Claim other than those allowed by this Section. As described below, 1. through 5. identify all recoverable direct and indirect costs and 6. identifies all non-recoverable costs.

1. Labor. In accordance with Section 109.04 D.1.
2. Bond, Insurance, and Tax. In accordance with Section 109.04 D.2.
3. Materials. In accordance with Section 109.04 D.3.
4. Equipment. In accordance with Section 109.04 D.4.
5. Percentage Markups. In accordance with Section 109.04 D.6. and 109.04 D.7.

6. Non-recoverable Damages or Expenses. The expenses listed above as 1. through 5. shall constitute the sole cost(s) and expense(s) to which the Contractor is entitled on any Claim submitted for additional compensation or settlement of any Claim made under these Specifications, except as further provided in Section 105.15.J. The parties agree that the Department will have no liability for the following items of damage or expense:
- a. Profit in excess of that provided herein;
 - b. Loss of profit;
 - c. The costs of lost productivity for labor and Equipment either on this Contract or any other;
 - d. Home office overhead in excess of that provided herein;
 - e. Consequential damages, including but not limited to loss of Bonding capacity, loss of bidding opportunities and insolvency;
 - f. Indirect costs or expenses of any nature;
 - g. Attorney's fees, Claim preparation expenses or costs of litigation; and
 - h. Interest on any claimed amounts.

Submit any Claim on behalf of a Subcontractor according to Section 105.15. Recoverable damages for Claims submitted on behalf of Subcontractors shall be solely limited to the list of all direct or indirect costs permitted by 1. through 4. above. For Work approved by the Department, the Subcontractor will be allowed a percentage markup as permitted by Section 109.04 D.6. and 109.04 D.7. The Contractor will be allowed an additional percentage markup as permitted by Section 109.04 D.8. to be computed on the final sum total of such Subcontractor cost Claimed under 1. through 4. above for portions of Subcontractor Work approved by the Department.

I. *Liquidated Damages.*

A Claim, not for additional costs, but for a waiver by the Department of an assessment of Liquidated Damages, in whole or in part, may also be made by the Contractor as part of this Section. Any Claim submitted shall not affect in any manner the imposition or waiver of Liquidated Damages, except that any Liquidated Damages shall be waived for any delay for which a time extension is granted in accordance with Section 108.07.

J. *Claims for Delays.*

In order to receive an extension of Contract Time or to receive monetary compensation for delays to the Contract Schedule, the Contractor must request an extension of Contract Time in accordance with Section 108.07. Base all requests for extensions of Contract Time on the Contract's progress Schedule. Failure to properly update and maintain the progress Schedule in accordance with the terms of the Contract shall constitute a waiver of the Contractor's rights to claim for a time extension and/or monetary damages due to a delay.

The Department may grant time extensions in the performance of Work for delays caused by Acts of God as defined in Section 104.15. For such delays that are also beyond the control and not the fault of the Department, the Contractor shall be entitled to a time extension, but is not entitled to recover any other damages resulting from such delays.

In the event that a delay is not caused by the Contractor's fault or negligence but is caused wholly by actions of the Department, or determined by an arbitrator to be the Department's sole responsibility, an extension of time will be granted in an amount equivalent to the actual critical delay caused by the Department, and the Contractor is not entitled to any additional compensation except as allowed herein. In the event that a delay that is the Department's sole responsibility is concurrent with a delay that was not the

sole responsibility of the Department, the Contractor is entitled to a time extension, but shall not be entitled to recover any other damages resulting from the concurrent delay.

All recoverable direct and indirect costs for compensable delays are identified in 1. below, and all non-recoverable costs for compensable delays are identified in 2. below. Compensation provided by 1. below shall not be duplicative of compensation already provided as part of Section 105.15.H or 109.04.

1. **Allowable Direct and Indirect Expenses.** Only the additional costs associated with the following items will be recoverable by the Contractor for delay compensation:
 - a. **Extended Field Overhead.** Field overhead costs necessary for the prosecution of the Work during the delay period, as follows:
 - i. **General Field Supervision.** Such costs include but are not limited to general field supervision, assistants, watchman, clerical and other field support staff that are physically located on the jobsite. Compute these labor costs in accordance with Section 109.04.D.1. For salaried personnel, calculate the rate of wage (or scale) actually paid by dividing the weekly salary by seven Days per week.
 - ii. **Field Office Facilities and Supplies.** Such costs include but are not limited to field office trailers, tool trailers, office equipment rental, temporary toilets, and other incidental facilities and supplies that are physically located on the jobsite. Compute these costs on the basis of the actual added costs incurred by the Contractor to provide these services as a result of the delay.
 - iii. **Maintenance of Field Operations.** Such costs include but are not limited to expenses for telephone, electric, water, and other similar services that are provided at the jobsite. Compute these costs on the basis of the actual added costs incurred to maintain these services as a result of the delay. These extended field overhead costs are not duplicative of those compensated in Section 109.04.D.7.
 - b. **Labor.** For all necessary, non-salaried, idle labor that must remain on the Project during such periods of delay due to collective bargaining contracts or other reasons approved by the Engineer. Compute the labor costs in accordance with Section 109.04.D.1.
 - c. **Bond, Insurance, and Tax.** In accordance with Section 109.04.D.2.
 - d. **Equipment.** For any idle Equipment other than small tools that must remain on the Project site during delays, the Contractor is to receive compensation at the rate calculated in Section 109.04.D.4. Should it not be necessary for machinery or Equipment to remain on the Project during delays, the Contractor is to receive transportation costs to remove the machinery or Equipment and return it to the Project at the end of the delay period. No compensation is recoverable for idle Equipment unless the Equipment has been held on the Project site on a standby basis at the request of the Engineer and, but for this request, would have left the Project site.
 - e. **Materials.** Costs for material escalation due to the delay or the cost of storage of Materials due to the delay are recoverable. Obtain the Engineer's approval prior to storing any Material due to a delay.
 - f. **Percentage Markups.** An additional 10 percent markup of the total of a., b., c., and d. above will provide full compensation for home office overhead and any other costs attributed to the delay for which no specific allowance is herein provided. This is the sole markup that is recoverable for a compensable delay. Markups from Sections 105.15.H.5., 109.04.D.6. and 109.04 D.7. shall not apply.
 - g. **Records.** Payment will not be made for delays until the Contractor has furnished the Engineer with duplicate itemized statements of the cost as herein above specified and detailed as follows:

- i. Name, classification, date, daily hours, total hours, rate, and extension for each worker and foreman.
- ii. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and Equipment.
- iii. Transportation costs.
- iv. Cost of Bonds, property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes.

The Engineer will compare the Department's records with those furnished by the Contractor and make any necessary Adjustments. When these records are agreed upon and signed by both parties, the records become the basis of payment for the expenses incurred, but do not preclude subsequent Adjustment based on later audits or inspections of the Contractor's records by the Department.

The Contractor's cost records pertaining to expenses under this Section shall be open to inspection or audit by representatives of the Department as provided in Section 105.15.K.

2. **Non-Allowable Damages or Expenses.** The expenses listed in 1. above shall constitute the sole cost(s) and expense(s) to which the Contractor shall be entitled on any delay Claim submitted for additional compensation or settlement of any Claim made under these Specifications. The parties agree that the Department will have no liability for the items listed in Section 105.15.H.6.

K. *Review of Contractor's Records by the Engineer.*

The Contractor agrees to make its accounting records and cost information available at the time of submission of the Claim and such other records as the Department may require in order to determine the validity and amount of each item Claimed. Ensure that such records are open to inspection or audit by representatives of the Department during the life of the Contract and for a period of not less than three years after the Contractor's acceptance of Final Payment as set forth in Section 109.10. Retain such records for that period.

Where payment for Materials, Equipment, or labor is based on the cost of forces other than the Contractor's, make every reasonable effort to ensure that the cost records of such other forces are open to inspection and audit by representatives of the Department on the same terms and conditions as the cost records of the Contractor. Payment for the cost of such forces may be deleted if the records of such third parties are not made available to the Department's representatives.

If an audit or inspection is to be commenced, the Engineer will provide the Contractor with a reasonable notice of the time when such an audit or inspection is to begin. In cases where all or a part of such records are not made available, the Contractor understands and agrees that any items not supported by records because the records are not made available will not be recoverable. If payment has already been made in such a case, refund to the Department the amount so recovered.

L. *Contractor and Subcontractor/Supplier Disputes.*

Resolve any dispute arising between the Contractor and its Subcontractor/supplier concerning payments held in trust, as required by Chapter 8, Title 17 of the Delaware Code by arbitration. The Department shall not serve as the arbiter of such disputes, but shall, in the absence of agreement between the parties, designate the American Arbitration Association to resolve the matter.

105.16 Project Acceptance; Partial Acceptance. Final Acceptance will not occur until Completion of the Project as defined in Section 101.03. The Contract Time will be stopped at Substantial Completion as defined in Section 101.03.

When the Contract Time is stopped, expeditiously provide the exempted documents, certificates, or proofs of compliance. Final Acceptance and final payment will not be made until all documents, certificates, or proofs of compliance have been executed and delivered to the Engineer.

Upon receiving notice from the Contractor of Substantial Completion, the District will conduct a semi-final inspection. During this inspection, the District will note by stations and in detail all Work or conditions requiring correction. Immediately prosecute the corrective Work. When the noted corrections are completed to the satisfaction of the District, the Department will conduct a Final Inspection to certify that the Project can be used, occupied, or operated for its intended use and that the Work has been satisfactorily completed in accordance with the Contract Documents. The Engineer will note any further corrective measures as deemed necessary. Prosecute corrective measures immediately. When the corrective Work is satisfactorily completed, together with receipt of proper documentation as noted herein, the Engineer will immediately accept the Project and notify the Contractor in writing of the date of acceptance of the Project. If the Contractor fails to complete the corrective Work identified by the Engineer within a reasonable period of time, usually two weeks, after the semi-final and Final Inspections, or the Contractor fails to submit proper documentation including final invoice, time charges will resume until such is completed. For each and every Calendar Day or Working Day, dependent on the type of Contract, charged beyond Substantial Completion that exceeds the allowable Contract time, the Contractor will be assessed Liquidated Damages in the amount of 10 percent of the value shown in Section 108.09.

When a unit or portion of the Project, such as a Structure, interchange, or section of road or pavement is Substantially Completed, the Contractor may request a Final Inspection of that unit or portion of the Work. If the unit or portion of the Work has been completed in accordance with the Contract, the Engineer may accept it as completed. The decision to make a partial acceptance of a unit of Work is solely at the discretion of the Engineer. Partial acceptance will not void or alter any of the terms of the Contract.

SECTION 107 – LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01	Laws to be Observed	107.08	Use of Explosives
107.02	Permits, Licenses and Taxes	107.09	Protection and Restoration of Property
107.03	Patented Devices, Materials, and Processes	107.10	Responsibility for Damage Claims
107.04	Contractor's Responsibility to Protect Utility Property and Services	107.11	Furnishing Right-Of-Way
107.05	Federal Aid Participation	107.12	Personal Liability of Public Officials
107.06	Construction Safety, Health, and Sanitary Standards	107.13	Contractor's Responsibility for the Work after Final Acceptance; No Waiver of Legal Rights
107.07	Public Convenience and Safety	107.14	Hazardous Materials Discovered Within the Project Limits

107.01 Laws to be Observed. Investigate and strictly comply with all Federal, State, or County laws and regulations, and City or Town ordinances and regulations. Indemnify and save harmless the State of Delaware, the Department of Transportation, its Secretary and all officers, agents, and servants against any Claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by the Contractor as an entity or by the Contractor's employees.

If the Contractor should discover any provisions in the Contract that are contrary to or inconsistent with any law, ordinance, regulation, order, or decree, immediately report it to the Engineer in writing.

107.02 Permits, Licenses and Taxes. Procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work.

107.03 Patented Devices, Materials, and Processes. The Contractor and the Surety shall hold and save harmless the State, the Department, their officers or agents, in accordance with the terms of these Specifications, from any and all Claims because of the use of any patented design, device, material, or process in connection with the Work agreed to be performed under this Contract. Furnish any patent agreement between patentee and the Contractor to the Department.

107.04 Contractor's Responsibility to Protect Utility Property and Services. At points where the Contractor's operations are adjacent to properties of railway, communications companies, power companies, or other utilities, or are adjacent to other properties, facilities, or appurtenances, and damage to which might result in considerable expense, loss, or inconvenience, do not commence Work until all arrangements necessary for the protection thereof have been made.

In the event of interruption to water or utility services as a result of accidental breakage, or as a result of being exposed or unsupported, promptly notify the proper authority. Cooperate with the proper authority in the restoration of service as promptly as possible. Do not Work around or near fire hydrants until appropriate plans for continued service have been approved by the local fire authority.

Keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times and do not place any Material or obstruction within 15 feet of any such hydrant. Ensure that fire hydrants are entirely accessible at all points to fire apparatus at all times. Whenever any Work is performed in the area of a fire hydrant or whenever a fire hydrant is relocated or installed, the center of the hose outlet shall be a minimum of 18 inches above the final grade directly beneath the hose outlet. Set the breakaway flange at the bottom of a hydrant at 0 inches to 4 inches above the ground.

107.05 Federal Aid Participation. When the United States Government pays all or any portion of the cost of a Project, observe the federal laws authorizing such participation and the rules and regulations made pursuant to such laws; and the Work shall be subject to the inspection of the appropriate Federal agency.

SECTION 108 – SUBCONTRACTING; NTP; PROGRESS SCHEDULES; TIME EXTENSIONS; LIQUIDATED DAMAGES; TERMINATION

108.01	Subletting of the Contract	108.07	Extensions of Contract Time; Weather Delays
108.02	Preconstruction Meeting; Submitting a Schedule; Notice to Proceed	108.08	Failure to Complete on Time
108.03	Performance and Progress	108.09	Schedule of Liquidated Damages
108.04	Contractor's Resources; Progress Schedules	108.10	Default of the Contract
108.05	Traffic Requirements and Contractor's Operations; Completing Work	108.11	Termination of the Contract for Convenience
108.06	Preference for Delaware Labor; Character of Workers and Equipment; Specified Construction Methods	108.12	Termination of the Contractor's Responsibility

108.01 Subletting of the Contract. Perform Work with the Contractor's own organization amounting to not less than **50 percent** of total original Contract Price, excluding any specialty Items designated by the Contract. Specialty Items may be performed by subcontract and the amount of any such specialty Items performed may be deducted from the total original Contract Price before computing the amount of Work required to be performed by the Contractor's own organization. The Contract upon which the requirements are computed includes the cost of Material and manufactured products that are to be purchased or produced by the Contractor under the Contract provisions. Adjustments in quantities or additional Items of Work shall not require an Adjustment of the percentage computed as described above.

The term "perform Work with its own organization" refers to workers employed or leased by the prime Contractor, and Equipment owned or rented by the prime Contractor, with or without operators. Such term does not include employees or Equipment of a Subcontractor or lower tier Subcontractor, agents of the prime Contractor or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime Contractor meets all of the following conditions:

- A. The prime Contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- B. The prime Contractor remains responsible for the quality of the Work of the leased employees;
- C. The prime Contractor retains all power to accept or exclude individual employees from Work on the Project; and
- D. The prime Contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other federal regulatory requirements.

"Specialty Items" are limited to Work that requires highly specialized knowledge, abilities, or Equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the Contract as a whole and in general are intended to be limited to minor components of the overall Contract. All Specialty Items will be expressly identified in the Contract.

Do not sublet, sell, transfer, assign or otherwise dispose of any portion of the Contract except with the written consent of the Engineer. Such consent, when given, does not relieve the Contractor of any responsibility for the fulfillment of the Contract. Do not purchase Work or Materials from an organization other than its own, or otherwise dispose of the Contract or Contracts or any portion thereof, or of its right, title or interest therein, without written consent from the Engineer. Written consent will only be given after the Engineer has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime Contract.

If the Contractor proposes to subcontract any part of Work, outline the scope and value of the Work to be performed by the Subcontractor. Outline the cost of Materials to be used by the Subcontractor. Include the cost of Materials to be used by the Subcontractor in the value of the subcontracted Work. A Subcontractor shall not subcontract further a portion of the Work without the express written permission of the Engineer. In granting such permission, the Engineer will ensure that the Subcontractor seeking to subcontract the Work to be performed by another shall nonetheless perform with its own organization Work amounting to not less than 50 percent of the total subcontracted bid price.

Perform all the traffic control Work and related Items either (1) entirely with labor, Equipment and Materials from the Contractor's own organization; or (2) entirely with labor, Equipment and Materials from a single Subcontractor. Maintenance of the Equipment will not be subject to this requirement.

When the Contractor has sublet a portion of the Contract or a Bid Item to a Subcontractor, the actual payment to the Subcontractor will be applied to fulfill Disadvantaged Business Enterprise (DBE) requirements of the Contract, where applicable. The cost of the portion of the Contract or Bid Item performed by a DBE will be included in the total amount of Work subcontracted by the Contractor in determining whether the Contractor is performing at least 50 percent of the total Contract Bid Price, as required by this Section.

As a prerequisite to payment for any Work performed by a Subcontractor or on a Subcontractor's behalf and prior to any Work being performed on the Project by any Subcontractor, submit a certified copy of the Contractor-Subcontractor agreement and a copy of the Subcontractor's Delaware business license. Also include all other contracts with suppliers or any other person, firm, or organization for review and approval by the Engineer. Each subcontract shall be in writing and shall contain and state that all pertinent provisions and requirements of the prime Contract are incorporated into the subcontract. The Contractor is solely responsible to determine that all such provisions are included and such provisions will be implied where not specifically included.

The Contractor may also be required to submit additional information concerning the prospective Subcontractor or supplier, including any additional information required by the terms of this Contract, by the Department or by the FHWA, or other governmental agency, where necessary. Such information may include but may not necessarily be limited to:

- A. Evidence that the organization which performs the Work is particularly experienced and equipped for such Work.
- B. Assurance by the Contractor that the labor standards provisions set forth in this Contract shall apply to labor performed on all Work encompassed by the Contract.
- C. Assurance that all Civil Rights provisions and DBE requirements have been satisfied.

Include provisions in all subcontracts that indemnify and save harmless the Department from the action of the Subcontractor or supplier; provisions that provide for the binding arbitration of all disputes between the parties to the subcontract agreement; and provisions that save harmless and indemnify the Department for omissions in the subcontract agreement.

Any review performed or permission or approval granted under these Specifications will not operate, nor be interpreted as approval of the Work to be performed by the Subcontractor or Material supplied by a supplier, nor operate to relieve the Contractor of the sole responsibility for satisfactory Completion of the Contract. No contracts, subcontracts, supplier agreements, sales, transfers, leases, assignments, or any other agreements applicable to this Contract will in any case release the Contractor of its sole responsibility and liability under the Contract and Bonds.

The Department, at its discretion, may refuse to pay for or accept all or part of the Work or Materials supplied by an unapproved Subcontractor or Materials supplier and may refuse to consider such Work performed or Materials supplied as part of the subcontracted Work.

108.02 Preconstruction Meeting; Submitting a Schedule; Notice to Proceed. Following the execution of the Contract, the Engineer may schedule a preconstruction meeting. Prior to the preconstruction meeting, submit the progress Schedule per Section 108.04. After the preconstruction meeting, the Engineer will issue to the Contractor a Notice to Proceed which will stipulate the date on or before which the Contractor must begin Work. The date specified in the notice will be at least ten (10) Calendar Days subsequent to the date of issuance of the Notice to

Proceed. No Work is to be started before receipt of the Notice to Proceed. The specified Contract Time will begin on the Day the Work actually starts or on the date stipulated in the Notice to Proceed, whichever is earlier.

108.03 Commencement of Work; Counting Contract Time. Begin Work no later than the date stipulated in the Notice to Proceed. Contract Time will be counted using either Calendar Days or Working Days, whichever is indicated in the Bid Proposal.

- A. **Calendar Day Contracts.** Contract Time will begin as specified in Section 108.02 and continue each and every Day shown on the calendar until the Substantial Completion of the Work as determined by the Engineer. No Work will be permitted on Sundays or Holidays unless the Engineer determines that such Work is in the best interest of the Department. If the Contractor wants to perform Work on Sundays and/or Holidays, submit a written request to the Engineer at least three Working Days prior to the Sunday or holiday for approval to perform Work on such Sunday or Holiday. Provide notice to the Engineer no later than 12 PM Friday if any Work is to be performed that week on Saturday so that adequate inspection can be provided by the Department.
- B. **Working Day Contracts.** Contract Time will begin as specified in Section 108.02 and continue as defined in Section 101.03 until Substantial Completion of the Work as determined by the Engineer. No Work will be permitted on Sundays or Holidays unless the Engineer determines that such Work is in the best interest of the Department. Submit a written request to the Engineer at least three Working Days prior to the Sunday or holiday for approval to Work on such Sunday or Holiday. Provide notice to the Engineer no later than 12 PM Friday if any Work is to be performed that week on Saturday so that adequate inspection can be provided by the Department.

108.04 Contractor's Resources; Progress Schedules. Provide sufficient Materials, Equipment, and labor to complete the Project within the Contract Time. Lack of resources is not a sufficient reason for an extension of Contract Time.

Submit a Progress Schedule to the Engineer for review. Do not start Work until the Progress Schedule is approved and methods of construction operations for each phase of construction are acceptable to the Engineer and are in conformance with all applicable erosion and sediment control requirements. The progress Schedule will be used to establish the critical construction operations and to monitor the progress of the Work. Submit the progress Schedule chart in the form specified below, unless the Contract requires a Critical Path Method (CPM) Schedule. When the Contract requires a CPM Schedule, the specifications for preparing and maintaining the Schedule will be set forth in the Special Provisions. The cost of preparing and maintaining a progress Schedule is incidental to the Contract unless otherwise specified in the Contract Documents.

If the Contractor elects to use a CPM Schedule when it is not required in the Contract, comply with the requirements of this Section and no additional payment will be made for the CPM Schedule.

- A. **Progress Schedule Chart.** Prepare a Progress Schedule Chart ("PSC") that shows in detail the time (Working Days or Calendar Days as specified) involved in performing construction activities for the duration of the Project. Schedule the Project in such manner and sequence as to minimize the time and surface area of erodible earth material. Use the PSC for the coordination of Work under the Contract including the activities of Subcontractors, vendors, and suppliers. The Department will use the PSC to monitor the progress of the Work. Show the impact of utility activities, permits and interdependent Work between separate Project locations, if applicable.

Fully use, but do not exceed, the specified Contract duration in the PSC. Time charges will begin no later than the time stipulated in the Notice to Proceed. Review and approval of the PSC will not bind the Department nor constitute acceptance of any individual time period for scheduled activities.

- B. **Biweekly and As-Required Look-Ahead Schedules.** Submit to the Engineer a two-week activity Schedule on each Friday for each two-week period of Work activity. This activity Schedule shall provide specific details related to actual construction activities the Contractor plans to have in progress during the two-week period.

When requesting an extension of Contract Time as specified in Section 108.07 and if required by the Engineer, submit a revised detailed progress Schedule showing the remaining Work to be completed and

any delay periods that affected the Schedule. The Engineer also reserves the right to require the Contractor to submit a revised Schedule when the Contractor performs a significant amount of the Work out of sequence from the approved Schedule.

Monthly Payment Chart. Unless otherwise noted on the Plans submit to the Engineer, as part of the PSC or CPM Schedule submittal, an estimate of the monthly payments expected to be received on the Contract. This estimate will be referenced as the "Monthly Payment Chart". The Monthly Payment Chart can be generated by hand, or by a word processor or spreadsheet. Include, as a minimum, columns showing estimated monthly payments for the duration of the Contract Time. The total of all estimated monthly payments must equal the Awarded Contract total Bid Price. The Engineer may request an updated "Monthly Payment Chart" depending on the accuracy of the initial estimates and according to the overall needs of the Department. The Monthly Payment Chart is not binding on either the Department or the Contractor. The purpose of the chart is to help the Department plan its budget so that Contractors can be paid each month as quickly as is practicable.

Costs to prepare and/or update the "Monthly Payment Chart" are addressed as follows:

- A. On Contracts requiring CPM Schedules and Updates, these will be addressed with Special Provisions.
- B. On Contracts not requiring CPM Schedules, the cost to prepare and update the "Monthly Payment Chart" is included in Item 763000, Initial Expense.

108.05 Traffic Requirements and Contractor's Operations; Completing Work. Schedule and conduct Work in such a manner and in such sequence as will ensure the least interference with traffic. Do not open up Work to the prejudice or detriment of Work already started; and the Engineer may require the Contractor to finish a section on which the Work is in progress before Work is started on any additional sections.

108.06 Preference for Delaware Labor; Character of Workers and Equipment; Specified Construction Methods. In the construction of all public works for the State or any political subdivision thereof, or by persons contracting with the State or any political subdivision thereof, give preference in employment of laborers, workers, or mechanics to bona fide legal citizens of the State who have established citizenship by residence of at least 90 Days. Each public works Contract for the construction of public works for the State or any political subdivision thereof will contain a stipulation that any person, company, or corporation who violates the provisions of this Section shall pay penalty to the State Treasurer equal to the amount of compensation paid to any person in violation. The requirement to give preference to Delaware laborers, workers or mechanics shall not apply to federally funded Contracts.

Employ only competent and efficient persons. Whenever, in the opinion of the Engineer, any employee is careless or incompetent, obstructs the progress of the Work, acts contrary to instructions of the superintendent or foreman, or conducts himself/herself improperly, discharge the employee, upon the request of the Engineer, from the Work and do not again employ that person on the Contract or any other Contract for the Department, except with the written consent of the Engineer.

Use only machinery and Equipment that is of sufficient size and capacity to obtain satisfactory quality in the performance of the Work. Do not use Equipment that injures the Work, adjacent property or public roads. When the Contract specifies that the Work be performed by the use of certain methods and/or Equipment, use such methods and/or Equipment unless alternatives are authorized by the Engineer. Submit requests for the use of alternative Equipment or methods in writing for approval. If approval is given, the Contractor will be fully responsible for producing Work in conformity with Contract requirements. If, after trial use of the substituted methods and/or Equipment, the Engineer determines that the Work produced does not meet the Contract requirements, discontinue the use of the substitute method and/or Equipment and complete the remaining construction with the specified methods and/or Equipment.

If substituted methods or Equipment produce deficient Work, remove the deficient Work and replace it with Work of specified quality, or take such other corrective action as the Engineer may direct. No additional compensation or increases in Contract Time will be allowed as the result of authorizing a change in methods and/or Equipment under these provisions unless it is as a credit to the Department or a VEP.

108.07 Extensions of Contract Time; Weather Delays. If the Contractor cannot complete the Work within the time allowed by the Contract due to a delay or delays that meet the criteria of Section 105.15.J, submit a written

request to the Engineer for an extension of time for Completion of the Contract. Submit the reasons justifying the delay. All time analysis will be performed based on the approved Contract Schedule. Failure to submit an acceptable Schedule or failure to properly maintain the Schedule forfeits the Contractor's right to a time extension. If requested by the Engineer, submit a revised detailed progress Schedule showing the remaining Work to be completed on the Project. If the Engineer finds that the request for an extension of time is justified, the Engineer will grant an extension of time in such amount as the Contractor proves to be reasonable and proper. Upon written notice being sent by the Engineer, the new Completion time will become part of the Contract and shall be binding upon the Contractor and Surety. The Contractor shall not be entitled to any additional time as a result of any delay to the Schedule without articulating a valid reason that is permitted by these Specifications.

The Contractor is presumed to have included in its Contract price allowance for any reasonably anticipated delays in procurement of Materials and procurement is the Contractor's sole responsibility. Unless some unusual market condition such as an industry-wide strike, natural disaster, or area-wide shortage arises after bids are taken and prevents procurement of Materials within the allowable time limitations, delays in delivery of such Materials are not sufficient reasons for extending the Contract Time.

For Contracts that do not provide an allowance for Weather Days in the Contract Documents, follow the requirements of Section 105.15.J to determine if weather warrants and extension of Contract Time.

For Contracts that provide an allowance for Weather Days, the term "Weather Day" means any Calendar Day, including weekends, Holidays and non-Work periods, on which weather conditions would prevent a Contractor from performing Work, whether or not the Contractor was scheduled to Work that Day. For each Weather Day that occurs on a jobsite, submit a request to the Engineer for that Day to be counted as a Weather Day. When the total number of Weather Days that are submitted and approved exceeds the number of allowable Weather Days provided in the Contract, Contract Time will be extended one Calendar Day for each Calendar Day that Work cannot progress due to the impact of weather. Such extensions will only begin accruing once the allowable Weather Days are exceeded and Contract Time will only be adjusted for Weather Days that occur after the number of allowable Weather Days has been exceeded. For Contracts without CPM Schedules, Calendar Days lost to weather do not need to occur on a critical path in order to be considered for an extension of Contract Time.

108.08 Failure to Complete on Time. For each Calendar Day or Working Day that Work remains uncompleted after the Contract Time has expired, the sum specified in Section 108.09 will be deducted from any money due the Contractor. This sum is not a penalty, but is a Liquidated Damage assessed to recover the cost of inconvenience to the public, added cost of engineering and supervision, and other extra expenditures of public funds due to the Contractor's failure to complete the Work on time. Any Adjustment of the Contract Time for Completion of the Work granted under Section 108.07 will be considered in the assessment of Liquidated Damages.

The column indicated in the chart as "Calendar Day" will also be used in the assessment of Liquidated Damages for contracts with a predetermined Completion date.

Computations for the assessment of Liquidated Damages will be made in accordance with the daily computations described in the definition of Working Day, when the Contract is a Working Day Contract. On all other Contracts each and every consecutive Calendar Day, including Saturdays, Sundays, and Holidays, will be included in the computations for the assessment of Liquidated Damages.

Assume liability for Liquidated Damages for delays commencing from the date on which the Contract Time, as adjusted by Section 108.07, expires. The Department will not pay the Contractor for maintenance of traffic (MOT) devices or measures used during periods when Liquidated Damages are assessed. This includes, but is not limited to, MOT devices, flaggers, traffic officers and any lump sum MOT Items that may be included in the Contract. Additionally, the Department will not pay the Contractor for field office items or CPM updates used during periods when Liquidated Damages are assessed.

Permission for the Contractor or Surety to continue and finish Work after the Contract Time and approved extensions have elapsed will not waive the Department's rights under the Contract. The Department may waive such portions of the Liquidated Damages as may accrue after the Work is substantially complete and is in a condition for safe and convenient use by the traveling public. Payment of Liquidated Damages will be deducted from payments otherwise due the Contractor or be made by direct payment by the Contractor in the event that the total Liquidated Damages due exceeds the deductions.

108.09 Schedule of Liquidated Damages. The specific rates for Liquidated Damages are as follows:

Awarded Contract		Value Daily Charge	
For More Than	To and Including	Work Day	Calendar Day
\$ 0	\$ 25,000	\$410.00	\$ 290.00
25,000	50,000	420.00	300.00
50,000	100,000	570.00	400.00
100,000	500,000	880.00	630.00
500,000	1,000,000	1,140.00	820.00
1,000,000	2,000,000	1,410.00	1,000.00
2,000,000	5,000,000	1,480.00	1,060.00
5,000,000	10,000,000	1,650.00	1,180.00
10,000,000	15,000,000	2,620.00	1,870.00
15,000,000	20,000,000	4,380.00	3,130.00
20,000,000	25,000,000	6,110.00	4,360.00
25,000,000	30,000,000	7,850.00	5,610.00
30,000,000	35,000,000	9,610.00	6,860.00
35,000,000	over	11,340.00	8,100.00

108.10 Default of the Contract. The Engineer may give notice to the Contractor and the Surety, in writing, declaring the Contract to be in default under the following conditions:

- A. If the Contractor fails to begin the Work within the time specified in the Notice to Proceed.
- B. If the Contractor fails to perform the Work with sufficient labor, Equipment, and Material resources to ensure the prompt Completion of the Work in accordance with the approved Schedule.
- C. If the Contractor's Work is unacceptable, or if the Contractor refuses to remove Materials or perform any such Work as shall be determined by the Engineer to be defective or otherwise unacceptable Work.
- D. If the Contractor discontinues the prosecution of the Work or fails to resume the Work which has been discontinued.
- E. If the Contractor becomes insolvent, declares bankruptcy, commits any acts of bankruptcy or insolvency, or allows any final judgment to stand unsatisfied for a period of ten (10) Days.
- F. If the Contractor makes an assignment for the benefit of creditors without authorization by the Department.
- G. If the Contractor, for any other cause whatsoever, fails to carry on the Work in a manner acceptable to the Department.

If the Contractor or Surety, within a period of ten (10) Days after receiving a written notice of default from the Engineer, fails to remedy the situation to the satisfaction of the Engineer, the Engineer will declare the Contractor to be in default on the Contract, terminate the Contractor's right to proceed with the Work, and have full power and authority, without violating the Contract, to take over the prosecution of the Work from the Contractor. The Department may appropriate or use the Contractor's Materials at the site as may be suitable for use in the Project and may enter into an agreement with another Contractor for the Completion of the Contract according to the terms and provisions thereof, or use other methods as in the opinion of the Engineer will be required for the Completion of the Contract.

All costs and changes incurred by the Department as a result of the default, including the cost of completing the Work under Contract or remedying defective or otherwise unacceptable Work, and any applicable Liquidated Damages or disincentives will be deducted from monies due the Contractor for completed Work. If such cost

exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Department the balance of such costs in excess of the Contract Price.

If it is determined, after termination of the Contractor's right to proceed, that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department in accordance with Section 108.11. Thus, damages to which a Contractor may be entitled as a result of an improper default termination will be limited to amounts as provided for in Section 108.11.

108.11 Termination of the Contract for Convenience. The Department may, by written order to the Contractor, terminate the Contract or any portion of the Contract when such termination would be in the best interest of the Department. In the event such termination occurs without fault and for reasons beyond the control of the Contractor, all completed Items as of the date of termination will be paid for at the Contract price. Payment for partially completed and eliminated Work will be paid as provided in Section 109.06.

Acceptable Materials obtained by the Contractor for the Work, but which have not been incorporated therein, may, at the option of the Department, be purchased from the Contractor at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

After receipt of notice of termination from the Department, submit, within sixty (60) Days of the effective termination date, its' Claim for additional damages or costs not covered above or elsewhere in these Specifications. Such Claim may include such cost items as reasonable idle Equipment time, mobilization efforts, uncompensated bidding and Project investigation costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in Claim preparation, Subcontractor costs not otherwise paid, actual idle labor costs if Work is stopped in advance of the termination date, guaranteed payments for private land usage as part of original Contract, and any other direct cost or direct damage for which the Contractor feels reimbursement should be made. The intent of negotiating this Claim would be that an adjusted figure be reached with the Contractor. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Contractor agrees to make its cost records available to the extent necessary to determine the validity and amount of each Item claimed.

Termination of the Contract or portion thereof shall not relieve the Contractor of its contractual responsibilities for the Work completed, nor shall it relieve the Surety of its obligation for and concerning any just Claim arising out of the Work performed.

108.12 Termination of the Contractor's Responsibility. The termination of the Contractor's responsibility for the Work occurs upon Final Acceptance in accordance to Section 105.16, except to the extent provided in Section 107.13.

Volumes will be measured at 60 degrees Fahrenheit or will be corrected to the volume at 60 degrees Fahrenheit using ASTM D4311 for asphalt or ASTM D633 for tars.

When bituminous Materials are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming may be used for computing quantities.

Cement will be measured by the pound.

Timber will be measured by the actual thousand feet board measure, MFBM, incorporated into the Structure.

When a complete Structure or structural unit (in effect, "lump sum" Work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances specified elsewhere in the Contract, manufacturing tolerances established by the industries involved will be accepted.

109.02 Scope of Payment for Unit Prices; Payment of Subcontractors. Receive and accept compensation provided in the Contract as full payment for furnishing all Materials and for performing Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, and expense of every kind arising out of the nature of the Work or the performance thereof, subject to the provisions of Section 107.13.

If the "Basis of Payment" clause for an Item relating to a Unit Price in the Contract requires that the Unit Price cover and be considered compensation for certain Work or Materials used to complete the Work for that Item, this same Work or Material will not be measured or paid under any other Pay Item appearing in the Contract.

When requirements, responsibilities and/or furnishing of Materials (collectively called "Requirements" in this Section) are outlined in the details, notes on the Plans and/or in the paragraphs preceding the "Basis of Payment" paragraph in these Specifications or Special Provisions, such Requirements are included in the payment for the Item. No separate payment will be made for the above mentioned Requirements even if those requirements are not expressly reiterated in the "Basis of Payment" Section of the specification.

Within 30 Days of receipt of any payment from the Department, file a statement to the Department on a form furnished by the Department that all Subcontractors furnishing labor or Material have been paid the full sum due them at that stage of the Contract, except any funds withheld under the terms of the Contract as required by Chapter 8, Title 17 of the Delaware Code, Annotated Revised 1974, and as amended.

109.03 Compensation for Altered Quantities. When the accepted quantities of Work vary from the quantities in the Contract Schedule, accept payment at the original Contract Unit Prices for the accepted quantities of Work performed. No allowance will be made for any increased cost, except as provided in Sections 104.06, 104.07, 104.08, and 108.11 and/or in any escalation clauses provided in the Contract Documents.

109.04 Payment for Differing Site Conditions, Major Changes, Extra Work, and Force Account. When the Contract requires the Department to compensate the Contractor for Differing Site Conditions, changes to the Contract, and/or Extra Work, (collectively called "Changed Work" in this Section) the Department and the Contractor shall jointly choose one of the following methods to calculate the compensation owed to the Contractor:

- A. Perform the Changed Work at Contract Unit Prices;
- B. Renegotiate the Unit Prices for the Changed Work;
- C. Negotiate a lump sum payment for the Changed Work;

Should negotiated new prices or renegotiated existing price(s) involve Work to be performed by a Subcontractor, the Contractor's total allowable mark-up on the subcontracted portion of the Work shall not exceed 10 percent of the Subcontractor's proposed price. Upon request by the Department, submit documentation substantiating the price of the Subcontractor's proposed Work.

Should the Engineer and the Contractor fail to agree on a method of compensation for Changed Work, the Engineer may direct the Contractor to perform the Changed Work, provided that the Changed Work is within the scope of the Contract. When the Contractor performs Changed Work at the direction of the Engineer, the Work is called "Force Account Work" and the Contractor will be compensated following the procedure set forth below.

- D. Perform the Changed Work on a time and material basis using the rules for "Force Accounts" described below to determine payment.

Prior to starting Force Account Work, the Engineer and the Contractor must meet to determine the labor, Equipment and Materials that are necessary to perform the Work. The Engineer will make the final determination concerning what labor, Equipment and Materials are necessary. The Contractor must follow the direction of the Engineer when performing the Force Account Work. Force Account Work is to be compensated in the following manner except as further provided in Section 105.15:

- 1. **Labor.** Receive as compensation the rate of wage (or scale) actually paid as shown on its certified payrolls for each and every hour that necessary labor and foremen are actually engaged in the Force Account Work. Superintendents, general foreman, or other general supervisors of the Force Account Work are compensated by the overhead markup in Section (7.) below and are not paid as labor.

Receive as compensation the actual costs paid to, or on behalf of, workers by reason of health and welfare benefits or other benefits, when such amounts are required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed on the Work.

- 2. **Bond, Insurance, and Tax.** For Bond premiums, property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions, and social security taxes on the Force Account Work, receive the actual incremental cost thereof, necessarily and directly resulting from the Force Account Work. Furnish satisfactory evidence of the rate or rates paid for such Bond, insurance, and tax.
- 3. **Materials.** The Department reserves the right to furnish such Materials as it deems advisable. Make no Claims for costs and markup on such Materials.

Only Materials furnished by the Contractor and necessarily used in the performance of the Force Account Work will be paid under this Section. The cost of Contractor furnished Materials shall be the cost to the purchaser, whether Contractor, Subcontractor, or other forces from the supplier thereof, together with transportation charges actually paid by the purchaser, except as the following are applicable:

- a. If a cash or trade discount by the actual supplier is offered or available to the purchaser, credit that amount to the State notwithstanding the fact that such discount may not have been taken.

- b. If Materials are procured by the purchaser by any method which is not a direct purchase from a direct billing by the actual supplier to such purchaser, the cost of such Materials is the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such Materials.
- c. If the Materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such Materials shall not exceed the price paid by the purchaser for similar Materials furnished from said source on items or the current wholesale price for such Materials delivered to the job site, whichever price is lower.
- d. If the cost of such Materials is, in the opinion of the Engineer, excessive, then the cost of such Material is deemed to be the lowest current wholesale price at which such Materials are available in the quantities concerned delivered to the Project site, less any discounts as provided in a. above.
- e. If the Contractor does not furnish satisfactory evidence of the cost of such Materials from the actual supplier thereof, the cost will be determined in accordance with d. above.

4. *Equipment and Plant.*

Use only Equipment that is, in the opinion of the Engineer, in good operating condition. Specifically describe the Equipment used when documenting such Equipment for payment. Use Equipment of suitable size and suitable capacity required for the Work to be performed. In the event the Contractor elects to use Equipment of a higher rental or payment value than that suitable for the Work, payment will be made at the rate applicable to the suitable Equipment. The Engineer will determine the suitability of the Equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate Equipment, the rate paid for the operator is to be that for the suitable Equipment.

- a. *Contractor-Owned Equipment and Plant.* The hourly rates for Contractor-owned Equipment and plant will be determined from the applicable volume of the Rental Rate Blue Book (referred to hereafter as the "Blue Book"), published by Machinery Information Division of K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, CA 95110. These provisions apply to the Equipment and plant owned directly by the Contractor or by entities which are divisions, affiliates, subsidiaries, or in any other way related to the Contractor or its parent company. The Blue Book will be used in the following manner:
 - i. The hourly rate will be determined by dividing the monthly rate by 176. The weekly, hourly, and daily rates will not be used.
 - ii. The number of hours to be paid will be the number of hours that the Equipment or plant is actually used on a specific Force Account activity, not to exceed 176 hours per calendar month.
 - iii. The current revisions to the Blue Book will be used in establishing rates. The current revision applicable to specific Force Account Work is as of the first Day of Work performed on that Force Account Work and that rate applies throughout the period the Force Account Work is being performed.
 - iv. An area adjustment will be made. Equipment life adjustment will be made in accordance with the rate adjustment tables in the Blue Book. Charge overtime at the same rate indicated in i. above.
 - v. The estimated operating costs per hour will be used for each hour that the Equipment or plant is in operation on the Force Account Work. Such costs do not apply to idle time regardless of the cause of the idleness.
 - vi. Idle time for Equipment or plant will not be paid, except where the Equipment has been held on the Project site on a standby basis at the written request of the Engineer and, but for this request, would have left the Project site. Such payment will be made at one-half the rate

established in i. and iv. above. Such payment will not exceed 8 hours in a Day and will not exceed 40 hours in a week.

vii. The rates established above include the cost of fuel, oil, lubrication, supplies, attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, and all incidentals.

viii. Operator costs are not included in this hourly rate for this Equipment or plant.

In the event that a rate is not established in the Blue Book for a particular piece of Equipment or plant, the Engineer will establish a rate for that piece of Equipment or plant that is consistent with its cost and use in the industry.

- b. *Rented Equipment and Plant.* In the event that the Contractor does not own a specific type of Equipment and must obtain it by rental, inform the Engineer of the need to rent the Equipment and of the rental rate for that Equipment prior to using it on the Work. The Contractor will be paid the actual rental rate for the Equipment for the time that the Equipment is actually used to accomplish the Work, provided that rate is reasonable, plus the cost of moving the Equipment on to and away from the job if such moves are solely necessitated by the Force Account Work. For idle rental Equipment that must remain on the site because of a written directive from the Engineer and would have left the site but for that directive, the rented Equipment will be paid at the rental rate established above, not to exceed 8 hours per Day and not to exceed 40 hours per week. In no case will the Department pay the Contractor for equipment costs in excess of the actual cost paid by the Contractor for the rental. Provide a copy of the paid receipt or canceled check for the rental expense incurred.
5. *Miscellaneous.* No allowance will be made for: general superintendence; the use of tools whose Blue Book value is less than \$1,500.00; or other costs for which no specific allowance is herein provided.
6. *Profit.* Profit shall be computed at 5 percent of the following:
- Total Material cost (bare cost not including FOB).
 - Total direct labor cost (actual hours worked multiplied by regular hourly rate and benefits) as provided by Section 109.04.D.1.
7. *Overhead.* Overhead is defined to include the following:
- All salaries and expenses of executive officers, supervising officers, or supervising employees and all home office expenses;
 - All clerical or stenographic employees;
 - All charges for minor Equipment, such as tools whose Blue Book value is less than \$1,500.00, including, but not limited to, shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and
 - All drafting room accessories such as paper, tracing cloth, and blueprinting.
- Overhead costs for Force Account Work will be computed at 10 percent of the following:
- Total Material cost (bare cost not including FOB).
 - Total direct labor cost (actual hours Worked multiplied by the regular hourly rate) and benefits as provided by Section 109.04.D.1.
 - Total Equipment and plant cost.

- d. Specific extraordinary overhead expenses, such as hiring of additional supervisory personnel or the use of a special type of minor Equipment (as defined above), which the Contractor has to purchase specifically for the Force Account, may be allowed. In such instances, the Contractor will be paid only the reasonable costs of such extraordinary overhead expenses provided the Engineer has agreed to such costs prior to their being incurred.
8. **Subcontracting.** For administration costs in connection with approved subcontract Work, receive an amount equal to 10 percent for Work up to \$100,000.00 and 5 percent for Work exceeding \$100,000 of the total of such Work completed as set forth in 1. through 4. above.
9. **Records.** Maintain Force Account Records in such a manner as to provide a clear distinction between the direct costs of Work paid for on a Force Account basis and the costs of other operations.

From the above records, furnish the Engineer completed daily Force Account Work reports for each Day's Work to be paid for on a Force Account basis. Sign and submit such reports daily. Detail the daily Force Account Work reports as follows:

- a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
- b. Designation, dates, daily hours, total hours, rental rate (including a copy of the Blue Book pages used), and extension for each unit of machinery and Equipment.
- c. Quantities of Materials, prices, and extensions.
- d. Costs for transportation of Materials.
- e. Cost of property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; Bonds; and social security tax.

Substantiate Material charges with valid copies of vendor's invoices. Submit such invoices with the daily Force Account Work reports, or, if not available that Day, submit them with subsequent daily Force Account Work reports. Should the vendor's invoices not be submitted within sixty (60) Days after the date of delivery of the Material, or within fifteen (15) Days after the Completion of the Work, whichever occurs first, the Engineer reserves the right to establish the cost of such Materials at the lowest current wholesale prices at which said Materials are available, in the quantities concerned delivered to the location of Work less any discounts provided in Section 109.04.D.3.a.

The Engineer will compare its records with the completed daily Force Account Work reports furnished by the Contractor and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both parties, the reports become the basis of payment for the Work performed, but do not preclude subsequent Adjustment based on a later audit by the Department.

Allow cost records pertaining to Work paid on a Force Account basis to be open to inspection or audit by representatives of the Department as provided in Section 105.15.K.

109.05 Basis of Payment for Fixed Quantity Items. When indicated on the Plans, Bid Proposal and/or the Specifications, certain Items will be paid on an estimated fixed quantity Item basis. Where this occurs, the method of measurement and basis of payment indicated in these Specifications is modified for such Items as identified in this Section.

When estimated fixed quantities are indicated, the only quantities for which payment will be made are the estimated quantities as shown in the Proposal at the Unit Bid Prices, except in certain situations described below in (A), (B) and (C) of this Section.

When bidding, check the estimates provided in the Contract Documents and appraise the actual amount of labor, Equipment, or Material required to complete the Work in accordance with the Plans and Specifications. No allowance will be made or Claims considered for any quantities used in completing the Work in excess of those given in the Proposal unless:

- A. The Contractor encounters a Differing Site Condition that causes the estimated fixed quantity to change;
- B. The Engineer adds or deletes Work to the Contract that increases or decreases a fixed quantity Item; or
- C. The Contractor contests the fixed quantity and can show that the actual quantity of the Work performed is more than 25 percent of the estimated fixed quantity.

When Differing Site Conditions cause an estimated fixed quantity to change, the Engineer will adjust the payment in accordance with Section 104.07 of these Specifications. When the Engineer adds or deletes Work, the actual quantity of Work that is added or deleted will be added to or deleted from the estimated fixed quantity. If estimated fixed quantity Items are deleted completely, no payment will be made.

In cases where a fixed quantity is contested by the Contractor, provide necessary measurements and computations to support a change in the quantity. If the change is verified and approved by the Engineer and the error in the estimated fixed quantity exceeds 25 percent, the Contractor will be compensated at the Unit Bid Price for the actual quantity of Work performed under the Item.

109.06 Eliminated Items. Should any Items contained in the Contract be found unnecessary for the Completion of the Work, the Engineer may, upon written order to the Contractor, eliminate the Items from the Contract. The elimination of these Items will not invalidate the Contract. When the Contractor is notified of the elimination of Items, the Contractor will be reimbursed for the actual Work performed and all direct expenses incurred in preparation for the eliminated Item as calculated by the Force Account procedure outlined in these Specifications. Reimbursement of Materials actually purchased prior to notification of the elimination of Items will be paid at the actual cost of the Materials plus 15 percent (overhead and profit). Such Materials will become the property of the Department. In no event will reimbursement for an eliminated Item exceed the Bid Price of the Contract Item. Also, in no case will the Contractor be reimbursed for the loss of anticipated profit.

109.07 Estimates; Retainage. The Engineer will once in each month make an estimate, in writing, of the total amount of Work performed on the Contract and the value of the completed Work to the date of the estimate. Five percent of the value of the Work performed as indicated by the estimate may be retained as security for fulfillment of the Contract until a total of 5 percent of the total bid price has been retained. Securities may be substituted for this retainage in accordance with Section 6962, Chapter 69, Title 29 of the Delaware Code and as amended. Payment of estimates, except final estimates, will not exceed those shown on the Proposal except those authorized by Change Order. No such estimates or payments will be made when, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract or when, in the Engineer's judgment, the total value to the Work performed since the last estimate amounts to less than \$3,000.00. The Engineer, if it deems it expedient to do so, may cause estimates to be made more frequently than one in each month and payments thereon to be made more frequently to the Contractor.

109.08 Payment for Stored Material. When approved by the Engineer, estimates may include an allowance for the value of tested and acceptable Materials of a non-perishable or non-contaminative nature which have been produced or furnished in a condition ready for incorporation as a permanent part of Work yet to be completed, provided the following terms and conditions are met:

- A. **Request.** The request for payment allowance for properly stored Materials must be in writing, accompanied by an itemized inventory statement, written consent of the Surety, and an invoice or purchase order on the supplier's letterhead documenting the cost of the Materials. No payment allowance will be permitted for amounts less than \$25,000.00 for each Material of a qualifying Contract Item.
- B. **Materials.** An allowance of 100 percent of the cost to the Contractor for Materials, not to exceed 90 percent of the Contract Item price, may be made when such Material is delivered and stockpiled or stored in accordance with the requirements specified in the Contract Documents.

Prior to such allowance, all such Material shall have been tested and found acceptable to the Engineer.

Payment will not be allowed in excess of the Unit Bid Price of the quantity required for the Contract. Base the required quantity on the Contract bid quantities and approved revisions.

- C. **Excluded Materials.** No allowance will be made for fuels, form lumber, Falsework, temporary Structures, or for other Materials of any kind which will not become an integral part of the finished construction.

No allowance will be made for cement, aggregate, sand, seed, plants, fertilizer, or other perishable or contaminative items, nor for Materials which, in the opinion of the Engineer, have an unacceptable shelf life or an environmental, or safety restriction.

- D. **Storage.** Store all Materials in an approved manner and in areas where damage is not likely to occur. Dedicate the stored Material to the Project.

When Materials cannot be practically stored within the limits of the Project, the Engineer may approve the storage of Materials on private property or, for structural members, in the manufacturer's or fabricator's yard. Requests for payment for such Material stored outside the limits of the Project shall be accompanied by a release from the owner and/or tenant of such property or yard agreeing to permit the removal of the Materials from the property without cost to the State.

- E. **Materials Inventory.** Materials shall be available for inspection and inventory at the storage site by the Engineer or the Engineer's authorized representative at all times.

- F. **Materials Measurement and Payment.** The method of measurement for Materials shall be in units which are easily inventoried and acceptable to the Engineer. Payment allowance for Materials will be included in the progress estimate as a new and separate Item and will be subject to retainage provisions. Submit proof of payment to the Engineer prior to processing the next progress estimate in the form of a paid invoice from the Material supplier. Failure to submit proof of payment prior to the processing of the progress payment will result in the deduction of the applicable Material payment in its entirety from progress payments until such time as the proof of payment is received by the Engineer. As the Materials are incorporated into the Project and the Work is paid under the applicable Unit Price(s), an equal percentage of the Material allowance will be deducted from progress estimates until 100 percent of the allowance has been deducted. At the conclusion of the Work for which the Materials are required, the cost of Materials remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

109.09 Withholding of Money Due on an Estimate to Offset a Contractor's Liability. Whenever Liquidated Damages are assessable, such damages will be deducted from the monthly and final estimate. The payment of any current or final estimate or of any retained percentage shall in no way affect the obligation of the Contractor to repair or renew any defective parts of the construction and to be responsible for all damage due to such defects.

If at any time there is evidence of any lien or Claim for which, if established, the Department might become liable, and which is chargeable to the Contractor, the Department will have the right to retain out of any payment then due or to become due an amount sufficient to completely indemnify the Department against such lien or Claim. If there should prove to be any such Claim after all payments are made, refund to the Department all monies that the Department may be compelled to pay in discharging any lien made obligatory in consequence of the Contractor's neglect or default.

Upon Substantial Completion of the Work under the Contract, the Engineer may release 60 percent of the amount then retained. The balance of the amount retained will be held until all reports required of the Contractor are received and final payment is authorized by the Department. The Department may, at its option, retain temporarily or permanently a smaller amount and may cause the Contractor to be paid temporarily or permanently, from time to time, such portion of the amount retained as it deems equitable.

No provision contained in these Specifications shall be construed as creating any debt, liability or obligation on the part of the State or Department to any Subcontractor, supplier, or materialman.

109.10 Final Payment; Time Limit to Challenge Quantities. The Engineer will, as soon as practicable after the Completion of the Contract, make a final estimate of the Work performed and the value of such Work, and the Department will pay the entire sum found to be due after deducting from all previous payments all amounts to be kept and all amounts to be retained under the provisions of the Contract. All prior partial estimates and payments will be subject to correction in the final estimate payment. Give notice to the Engineer of any alleged errors in the payment of Contract quantities. Such notice must be given to the Engineer within 120 Calendar Days of the date when the Engineer gives the Contractor notice that the Contract's quantities have been finalized. Failure to notify the Engineer within this time frame constitutes a waiver of the Contractor's right to contest the quantities. Nothing in this Section serves to preclude the Engineer from performing audits of its own records or the Contractor's records and to adjust payment based on such audits in accordance with other provisions in the Specifications.

The acceptance by the Contractor of the final estimate operates as and is a release to the State, the Department, the Secretary, and its agents from all Claims of liability under the Contract, or for anything done or furnished or relating to the Work under the Contract, or for any act or neglect of the State, the Department, the Secretary, or its agents relating to or connected with the Contract.

109.11 Source of Supply and Carrier Rates on Construction Materials. Bidders must fully inform themselves as to the source of supply of acceptable Materials needed for the Work and in regard to the carrier rates and transportation facilities for these Materials before submitting Proposals.

Inability to secure satisfactory Materials from the source upon which the bid was based, or changes in carrier, or the alteration of transportation facilities for these Materials during the life of the Contract, shall not constitute cause for a Claim for extra compensation.

109.12 Transportation Tax Exemption. Base all Unit Prices on exemption from any transportation tax for which the State is, by law, exempt on Materials entering into and forming a part of the Project.

In order for the Contractors to take advantage of the exemption from payment of the tax on transportation and to have the construction Materials consigned to the State, in care of itself, furnish the supplier with a statement certifying that the Contractor has been authorized to Claim the exemption, identifying the Contract in which the authorization was given and instructing the supplier to make the shipment involved free of tax.