VDOT

Virginia Department of Transportation

REQUEST FOR PROPOSALS

A DESIGN-BUILD PROJECT

Approaches and Bridge over Tye River
(Rte. 29 NBL)

Amherst/Nelson County Line

Project No:
0029-005-130, C501, B645
BR-005-3(107)

Contract ID Number: C00076552DB35

October 7, 2009

TABLE OF CONTENTS
PART 1

1.0 INTRODUCTION....1
2.0 BACKGROUND INFORMATION....1
2.1 Project Description....1
2.2 Legislative Authority....2
2.3 Procurement Overview of the Project....2
2.4 Right-of-Way and Site Acquisition....2
2.5 Budget....2
2.6 Project Milestone Schedule....3
2.7 VDOT's Point of Contact and Project Reference....4
2.8 RFP Documents....6
2.9 Deviations from the RFP Documents....6
3.0 GENERAL PROCEDURES AND REQUIREMENTS....7
3.1 Offeror's Pre-Submittal Responsibilities and Representations....7
3.2 Pre-Proposal Meeting and Site Visit....7
3.3 Acknowledgment of Receipt of RFP, Revisions and Addenda....7
4.0 CONTENTS OF PROPOSALS....8
4.1 General....8
4.2 Letter of Submittal....8
4.3 Price Proposal....13
5.0 PROPOSAL EVALUATION AND RESPONSIVENESS REVIEW....14
6.0 PROPOSAL SUBMITTAL REQUIREMENTS....14
6.1 Due Date, Time and Location....14
6.2 Format....15
7.0 QUESTIONS AND CLARIFICATIONS....16
8.0 AWARD OF CONTRACT, PROPOSAL VALIDITY AND CONTRACT EXECUTION....16
8.1 Negotiations and Award of Contract....16
8.2 Proposal Validity....17
8.3 Contract Execution and Notice to Proceed....18
9.0 RIGHTS AND OBLIGATIONS OF VDOT....18
9.1 Reservation of Rights....18
9.2 No Assumption of Liability....20
10.0 PROTESTS....20
11.0 MISCELLANEOUS....21
11.1 Virginia Freedom of Information Act....21
11.2 Conflict of Interest....22
11.3 Ethics in Public Contracting Act....23
11.4 Requirement to Keep Team Intact....23
11.5 Disadvantaged Business Enterprises....23
11.6 Trainee and Apprenticeship Participation....26
11.7 Escrow Proposal Documents....26
11.8 Administrative Requirements....29
11.9 Compliance with the Law in Virginia....30
11.10 Attachments....31

PART 1
REQUEST FOR PROPOSALS

INSTRUCTIONS FOR OFFERORS

1.0 INTRODUCTION

The Virginia Department of Transportation ("VDOT") submits this Request for Proposals ("RFP") to solicit design-build proposals ("Proposals") from those entities ("Offerors") interested in contracting to serve as the Design-Builder for the replacement of the bridge and approaches over the Tye River on Rte. 29 NBL at the Amherst/Nelson County Line, Virginia ("Project"). The purpose of this RFP is to determine which Offeror (the "Successful Offeror") will be awarded the Design-Build contract ("Design-Build Contract") for the Project.

These Project priorities are:

- Cost – provide the best price for the scope of work identified in this RFP
- Schedule – minimize Project duration

Offerors Proposals must meet all requirements established by this RFP. Requirements of this RFP generally will use the words "shall", "will", or "must" (or equivalent terms) to identify a required item that must be submitted with an Offeror's Proposal. Failure to meet an RFP requirement will render an Offeror's Proposal non-responsive.

THE RESPONSIVE AND RESPONSIBLE OFFEROR SUBMITTING THE LOWEST PRICE PROPOSAL FOR THE PROJECT WILL BE RECOMMENDED FOR AWARD.

The award of a contract to the Offeror who submitted the lowest price, whose Proposal is responsive and whose Price Proposal is within VDOT's budget for design and construction services will be made in accordance with Part 1, Section 8 of this RFP.

2.0 BACKGROUND INFORMATION

2.1 Project Description

The Project is located on Rte. 29 NBL at the Amherst/Nelson County Line, Virginia. The purpose of this Project is to replace the existing structurally deficient NBL bridge with a new two-lane bridge, along with the reconstruction of the roadway approaches on both ends of the proposed structure. The elevation of the roadway profile shall increase to approximately match that of the existing Rte. 29 SBL bridge. The limits of the proposed project begin approximately 650 feet from the south end of the existing NBL bridge and end approximately 900 feet from the north end of the existing NBL bridge. The length of the project is approximately 0.4 miles. However, it is noted that this description and length are approximate only and based on the preliminary design shown in the RFP Information Package. The final project length may vary depending on the Offeror's final design and this fact shall be taken into account in the Offeror's proposal. During construction, traffic traveling on Rte. 29 NBL shall be

detoured to Rte. 29 SBL. The minimum traffic lane widths shall be 12 feet in each direction during all phases of construction.

2.2 Legislative Authority

2.2.1 Section 33.1-12(2)(b) of the *Code of Virginia* authorizes VDOT and the Commonwealth Transportation Board ("CTB") to develop and award contracts using the Design-Build contracting method. In accordance with the law, VDOT completed the Finding of Public Interest ("FOPI") dated September 16, 2009. The FOPI is attached hereto as Attachment 2.2.1.

2.3 Procurement Overview of the Project

2.3.1 VDOT will use a single-phase selection process for the selection of a Design-Builder on the Project. In accordance with the requirements of this RFP, interested Offerors will submit a Proposal consisting of a Letter of Submittal and Price Proposal. Upon completion of the responsiveness review of the Letters of Submittal and Price Proposals, it is anticipated that the Director of Innovative Project Delivery will recommend the Offeror who submitted the lowest bid, whose proposal is responsive and within VDOT's budget to the Chief Engineer for an award of a fixed price Design-Build Contract by the CTB.

2.4 Right-of-Way and Site Acquisition

2.4.1 VDOT has acquired the right-of-way necessary for replacement of the Rte. 29 NBL bridge and approaches over the Tye River described in this RFP. The Offeror shall be responsible for assuming all risks associated with the acquisition of additional right-of-way (to accommodate its unique solution), including any public hearings that may be required, and no modifications to the Contract Price or Contract Time will be granted or considered.

2.4.2 If the Offeror's proposed design requires additional temporary construction easements beyond the current right of way limits it will be the responsibility of the Offeror to coordinate directly with the affected property owners to acquire such temporary construction easements in accordance with the requirements described in Part 2, Section 1.4.

2.5 Budget

2.5.1 VDOT's current estimated contract value for this Project is $9,000,000.

2.6 Project Milestone Schedule

2.6.1 VDOT currently anticipates conducting the procurement of the Project in accordance with the following list of milestones leading to award of the Design-Build Contract. This schedule is subject to revision and VDOT reserves the right to modify this schedule as it finds necessary, in its sole discretion.

	Project Milestones	Date	
1.	Advertise RFP	10/07/09	
2.	Pre-Proposal Meeting with Offerors & Site Visit	10/15/09	(10:00 AM prevailing local time)
3.	RFP Questions due to VDOT	10/23/09	(4:00 PM prevailing local time)
4.	VDOT Responses to RFP Questions	10/30/09	
5.	Due Date - Letter of Submittal, Price Proposal, and Escrow Documents	11/16/09	(4:00 PM prevailing local time)
6.	Open Letters of Submittal and Price Proposals	11/17/09	(9:00 AM prevailing local time)
7.	Notice of Intent to Award	11/24/09	
8.	CTB Approval / Notice to Award	12/17/09	
9.	Design-Build Contract Execution	1/08/10	
10.	Notice to Proceed	1/13/10	
11.	Substantial Completion	10/05/12	
12.	Final Completion	12/04/12	

2.6.2 VDOT has established final milestones for contract completion dates for the Project and Offerors should base their proposals on such milestones.

.1 Substantial Completion – the Project shall be substantially complete and open for traffic by the date set forth in Part 1, Section 2.6.1.

.2 Final Completion of the entire Project shall be no later than the date set forth in Part 1, Section 2.6.1.

.3 Offerors are on notice that any earlier completion date(s) identified by Offeror in response to this RFP will be deemed by VDOT as the contractual completion date(s) for this Project.

2.7 VDOT's Point of Contact and Project Reference

2.7.1 VDOT's sole Point of Contact ("POC") for this Project shall be the person designated below. VDOT's POC is the only individual authorized to discuss this RFP with any interested parties, including Offerors. All communications with VDOT's POC about the Project or this RFP shall be in writing, as required by applicable provisions of this RFP.

Name:	Jeffrey A. Roby, P. E.
Address:	Innovative Project Delivery Division Virginia Department of Transportation 1401 East Broad Street Richmond, VA 23219
Phone:	(804) 371-4316
Fax :	(804) 786-7221
E-mail:	Jeffrey.Roby@vdot.virginia.gov

2.7.2 VDOT disclaims the accuracy of information derived from any source other than VDOT's POC, and the use of any such information is at the sole risk of Offeror.

2.7.3 All written communications to VDOT from Offerors shall specifically reference the correspondence as being associated with "Approaches and Bridge over Tye River (Rte. 29 NBL) Project No. 0029-005-130, C501, B645".

2.7.4 An RFP Information Package is available on CD-ROM for $50.00. Interested Offerors should complete the RFP Information Package Order Form included as Attachment 2.7.4. The instructions for submittal and payment are included on the form. The RFP Information Package will include the following components:

- Environmental
  - VDOT Permit Determination
  - Programmatic Categorical Exclusion ("PCE")
  - Document Reevaluation for PSE Authorization (EQ-200)
  - Environmental Certification/Commitments Checklist (EQ-103)
  - VDOT Water Quality Permit Manual, Revised - March 28, 2006

- Special Provisions
  - Special Provision for Density Control of Embankments and Backfill
  - Special Provision for Section 301 – Clearing and Grubbing
  - Special Provision for Low Permeability Concretes For Design-Build Projects

- Special Provision for Hydraulic Cement Concrete Operations for Massive Construction
- Special Provision for the Quality Assurance/Quality Control ("QA/QC") for the Construction of Deep Foundation Systems for Design Build Projects
- Special Provision for Drilled Shafts
- Special Provision for Lime Modification of Soils
- Special Provision for Design-Build Tracking ("DBT") Numbers
- Special Provision for Personnel Requirements for Work Zone Traffic Control
- Special Provision for Project Communication and Decision Making for Design-Build Projects
- Special Provision for Asbestos Removal for Road Construction Demolition Projects
- Special Provision for Asbestos Removal and NESHAP-Related Demolition Requirements for Structures on Design-Build Projects
- Special Provision for Inspection of Structures for Asbestos Containing Materials ("ACM") on Design-Build Projects
- Special Provision for Limitation of Operations Protection of Green Floater Mussel
- Special Provision for Limitation of Operations Protection of Nesting Migratory Birds
- Approved Retaining Wall Systems List
- Guidelines for Preparation of Alternate Retaining Wall Plans
- General Notes for Alternate Retaining Wall Plans
- Special Provision for Mechanically Stabilized Earth Walls (Concrete Panel Facing)
- Special Provision for Mechanically Stabilized Earth Walls (Segmental Block Facing)
- Special Provision for Mechanically Stabilized Earth Walls (Modular Cantilever Facing)
- Special Provision for T-Wall Retaining Wall System
- Special Provision Copied Note for PG 76-22 Asphalt Cement Adjustment

- Preliminary Design Files
  - Preliminary Bridge Plans (DGN and PDF)
  - Preliminary Road Plans (DGN and PDF)
  - Geopak Files
  - Digital Terrain Model
  - Traffic Data
  - Scoping Form
  - Grade Design Exception

- Bridge
  - Existing Bridge Plans
  - Existing Bridge Plans of adjacent SBL Bridge with Engineering Geology sheet

- Materials
  - VDOT Materials Division Memorandum Number MD299-07 for Materials Acceptance - October 4, 2007

2.8 RFP Documents

2.8.1 The documents included in this RFP (collectively the "RFP Documents") consist of the following sections, as well as any attachments and exhibits contained or identified in such sections:

PART 1 – REQUEST FOR PROPOSALS, INSTRUCTIONS FOR OFFERORS
PART 2 – PROJECT TECHNICAL INFORMATION AND REQUIREMENTS INCLUDING RFP INFORMATION PACKAGE (CD-ROM)
PART 3 – LUMP SUM DESIGN-BUILD AGREEMENT
PART 4 – GENERAL CONDITIONS
PART 5 – DIVISION I AMENDMENTS TO STANDARD SPECIFICATIONS

2.8.2 Each Offeror shall review the proposed RFP Documents and provide comments regarding any aspect of such documents to which it has any concern, including but not limited to terms that it considers to be ambiguous or to which it takes exception. Such comments will be submitted to VDOT's POC within the time set forth in Section 2.6.1 of this RFP. VDOT will review all comments received and, if it deems appropriate, in its sole discretion, may modify such documents through an Addendum. Offerors shall base their Proposals on the terms and conditions of the Design-Build Contract included in the latest issued Addendum.

2.8.3 Addenda to the RFP Documents, if any, will be posted on the VDOT Project website. Hard copies of the Addenda on file will be available upon request. If there is any conflict between the electronic format and hard copy of any RFP Document or Addendum, the hard copy on file shall control.

2.9 Deviations from the RFP Documents

2.9.1 If awarded the Design-Build Contract, an Offeror will be obligated to meet all of the requirements of the RFP Documents. If VDOT is willing to modify a requirement, VDOT will issue an Addendum as appropriate, provided, however, that: (a) VDOT shall have the sole discretion as to the acceptability of any such modifications; and (b) no modifications from the requirements of the RFP Documents will be valid unless they are agreed to by VDOT and set forth in an Addendum.

3.0 GENERAL PROCEDURES AND REQUIREMENTS

This Section provides general information, procedures and requirements related to the pre-submittal period to be followed by all Offerors.

3.1 Offeror's Pre-Submittal Responsibilities and Representations

3.1.1 Each Offeror shall be solely responsible for examining the RFP Documents, including any Addenda issued to such documents, and any and all conditions which may in any way affect its Proposal or the performance of the work on the Project, including but not limited to:

.1 Examining and carefully studying the RFP Documents, including any Addenda and other information or data identified in the RFP Documents;

.2 Visiting the Project site and becoming familiar with and satisfying itself as to the general, local, and site conditions that may affect the cost, progress, or performance of its work on the Project;

.3 Becoming familiar with and satisfying itself as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Project; and

.4 Determining that the RFP Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Project.

3.1.2 Each Offeror is responsible for promptly giving VDOT written notice, in accordance with the processes set forth in Section 7.0 below, of: (a) all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP Documents; and (b) aspects of the RFP Documents that Offeror does not understand. Any failure to do so shall be at Offeror's sole risk, and no relief for error or omission will be provided by VDOT.

3.2 Pre-Proposal Meeting and Site Visit

3.2.1 VDOT will hold a Pre-Proposal meeting of potential Offerors on the date set forth in Section 2.6.1 above at the VDOT Lynchburg District Learning Center, Rooms A & B, 10:00 AM prevailing local time. No more than three (3) representatives from each Offeror (inclusive of any member of Offeror's team) will be allowed to participate in the Pre-Proposal Meeting. A site visit may be held directly after the pre-proposal meeting at the Project location.

3.3 Acknowledgment of Receipt of RFP, Revisions and Addenda

3.3.1 Offeror shall provide VDOT the Acknowledgement of RFP, Revisions, and/or Addenda Form (C-78-RFP), set forth as Attachment 3.3.1, with submission of the Proposal, which will serve to acknowledge that Offeror has received this RFP and identify Offeror's representative, who shall be Offeror's single point of contact for the receipt of any documents, notices and addenda associated with this RFP.

4.0 CONTENTS OF PROPOSALS

4.1 General

4.1.1 This Section 4.0 describes the Letter of Submittal and Price Proposal. The format for the presentation of such information is described in Section 6.0.

4.1.2 The Letter of Submittal will consist of all information required under this section. A Letter of Submittal Checklist has been provided for reference in Attachment 4.1.2. The purpose of the checklist is to aid the Offeror in insuring all submittal requirements have been included in the Offeror's Letter of Submittal and to provide a page reference indicating the location in the Letter of Submittal of each submittal requirement.

4.1.3 Offerors shall be aware that VDOT reserves the right to conduct an independent investigation of any information, including prior experience, identified in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means. VDOT also reserves the right to request additional information from an Offeror during the evaluation of that Offeror's Proposal.

4.1.4 Proposals shall specifically identify any elements that are deemed confidential or proprietary. Offerors shall be prepared upon request to provide justification of why such materials shall not be disclosed under the Virginia Freedom of Information Act in the Code of Virginia. The classification of the entire Proposal document, line item prices, and/or Price Proposals as proprietary or trade secrets is not acceptable.

4.2 Letter of Submittal

4.2.1 Provide a Letter of Submittal on the Offeror's letterhead confirming the individual who is both the official representative and point of contact for the Offeror relative to this RFP. The letter shall identify such individual's name, title, address, phone and fax numbers, and e-mail addresses, and shall be signed by an authorized representative of Offeror's organization. All signatures shall be original and signed in ink.

4.2.2 Identify the name, address and telephone number of the principal officer of the legal entity with whom a Design-Build contract with VDOT would be written (e.g., President, Treasurer, Chairperson of the Board of Directors, etc.).

4.2.3 Identify whether the Offeror will be structured as a corporation, limited liability company, general partnership, joint venture, limited partnership or other form of organization. Identify the team members who will undertake financial responsibility for the Project and describe any liability limitations. If the Offeror is a limited liability company, partnership or joint venture, describe the bonding approach that will be used and the members of such organizations who will have joint and several liability for the performance of the work required for the Project.

4.2.4 Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If a situation arises in responding to this questionnaire where you are unsure whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed accordingly. An affiliate shall be considered as any business entity which is closely associated to another business entity so that one entity controls or has power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in joint ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving, are not considered to be affiliates.

If an Offeror has no affiliated and/or subsidiary companies other than the Offeror's legal business entity, the Offeror should include a statement in the Letter of Submittal indicating the same.

4.2.5 Provide an 8.5" x 11" copy of the Offeror's VDOT prequalification certificate.

4.2.6 All Offerors and Proposals must comply with the law with regard to their organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, individual, or professional in nature, and nothing herein is intended to contradict, nor to supersede, State and Federal laws and regulations regarding the same. At the time of submitting Proposals, all Offerors shall be eligible, under the law and relevant regulations, to offer and to provide any services proposed or related to the Project. Unless otherwise exempted by § 54.1-401, 54.1-402, or 54.1-402.1, any person, partnership, corporation, or other entity offering or practicing architecture, engineering, or land surveying shall be registered or licensed in accordance with the provision of *Chapter 4, Title 54.1 of the Code of Virginia.* Offerors shall satisfy all commercial and professional registration requirements, including, but not limited to those requirements of the Virginia State Corporation Commission ("SCC") and the Virginia Department of Professional and Occupational Regulations ("DPOR"):

All business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission (A Business Registration Guide is available on the Internet at http://www.state.va.us/scc/division/clk/brg.htm). Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (http://www.state.va.us/dpor). Board regulations require that all branch offices of professional corporations and business entities located in Virginia which offer or render any professional services relating to the professions regulated by the

Board be registered with the Board. All branch offices which offer or render any professional service must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at each branch. All firms involved that are to provide professional services must meet these criteria at the time of submitting a response to the Request for Proposal to the Department. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

Each business entity on the Offeror's proposed team who is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis and landscape architecture, should provide evidence including full size copies of appropriate commercial professional registrations and licenses for all offices proposed for this Project, as well as providing full size copies of appropriate individual registrations/licenses for those professional occupations listed below (all names of business entities and individual registration/licenses should be included in tabular format in the letter of submittal while all full size copies of SCC and DPOR supporting registration documentation should be included in an Appendix to the Letter of Submittal):

.1 The SCC registration information including the name, registration number, type of corporation and status of the business entity.

.2 For this Project, the DPOR registration information for each office practicing or offering to practice any professional services in Virginia. Provide the business name, address, registration type, registration number and expiration date.

.3 For this Project, the DPOR license detailing for each of your Key Personnel practicing or offering to practice professional services in Virginia. Provide the name, the address, type, the registration number, and the expiration date. Provide the office location where each Key Personnel member is offering to practice professional services in Virginia.

.4 For this Project, the DPOR license detailing for those services not regulated by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (i.e. real estate appraisal): the business name, the address, the registration type, the registration number, and the expiration date.

Failure to comply with the law with regard to those legal requirements in Virginia (whether federal or state) regarding your organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, individual, or professional in nature may render your Proposal, in the sole and reasonable discretion of the Department, non-responsive and in that event your Proposal may be returned without any consideration or evaluation.

4.2.7 Pursuant to Section 8.2.1, declare that the offer represented by the Proposal will remain in full force and effect for one hundred twenty (120) days after the date the Proposal is actually submitted to VDOT ("Letter of Submittal /Price Proposal/Escrow Document due date").

4.2.8 Offeror's Team Structure

Offeror shall provide the identity of and information about the following Key Personnel listed below. This information is to be provided on the Key Personnel Resume Form attached hereto as Attachment 4.2.8.

.1 **Design-Build Project Manager** – This individual should be responsible for the overall Project design, construction quality management and contract administration for the Project.

.2 **Design Manager** – This individual shall be responsible for coordinating the individual design disciplines and ensuring the overall Project design is in conformance with the Contract Documents. The Design Manager shall be responsible for establishing and overseeing a quality assurance and quality control ("QA/QC") program for all pertinent disciplines involved in the design of the Project, including, but not limited to, review of design, working plans, specifications, and constructability of the Project.

Licensure/Certification/Training Requirements: This individual shall be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.

.3 **Construction Manager** – This individual, who will be required to be assigned to and on the Project site for the duration of construction operations, shall be responsible for managing the construction process to include all quality control ("QC") activities to ensure the materials used and work performed meet contract requirements and the "approved for construction" plans and specifications.

Licensure/Certification/Training Requirements: This individual shall hold a Virginia Department of Conservation and Recreation ("DCR") Responsible Land Disturber ("RLD") Certification and a VDOT Erosion and Sediment Control Contractor Certification ("ESCCC") or a statement shall be included indicating this individual will hold these certifications prior to the commencement of construction.

.4 **Quality Assurance Manager (QAM)** – This individual shall be from an independent firm that has no involvement in construction operations for the Project, and shall be responsible for the quality assurance ("QA") inspection and testing of all materials used and work performed on the Project to include monitoring of the contractor's QC program. The QAM will ensure that all work and materials, testing, and sampling are performed in conformance with the contract requirements, and the "approved for construction" plans and specifications.

Licensure/Certification/Training Requirements: This individual shall be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.

4.2.9 Furnish an organizational chart showing the "chain of command" to include the Key Personnel identified in Section 4.2.8 and identifying major functions to be performed and their reporting relationships in managing, designing and constructing the Project. The organizational

chart should also include identification of design subconsultants, specialty subconsultants, major subcontractors and the entities responsible for implementing the Offeror's proposed QA/QC program including reporting relationships.

The Offeror shall provide and ensure independent QA and quality control QC for both the design and construction elements of the Project. Two independent testing laboratories will be required, one for QA testing and one for QC testing. The entity(ies) performing QA operations, inspections, sampling and laboratory testing and the entity(ies) performing QC operations, inspections, sampling and laboratory testing shall be unique and independent from one another.

4.2.10 The Offeror should indicate, by executing and returning the attached Certification Regarding Debarment Form(s) Primary Covered Transactions, set forth as Attachment 4.2.10(a) and Certification Regarding Debarment Form(s) Lower Tier Covered Transactions, set forth as Attachment 4.2.10(b), if Offeror, or any affiliated and/or subsidiary companies, or any subconsultant, subcontractor, or any other person or entity identified as a member of Offeror's organization in Section 4.2 associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of Federal or State funds:

.1 Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

.2 Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years.

.3 Has a proposed debarment pending; or has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Any of the above conditions will not necessarily result in denial of award, but will be considered in determining Offeror responsibility. For any condition noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administrative sanctions. For the avoidance of doubt, Attachments 4.2.10(a) and 4.2.10(b) shall be separately completed and executed by Offeror, any affiliated and/or subsidiary companies, and all subconsultants, subcontractors, and any other person or entity identified as a member of Offeror's organization in Section 4.2.

4.2.11 Proposal Schedule

Provide a **Proposal Schedule** for the Project. The Proposal Schedule should include: (i) a narrative description of the proposed schedule; (ii) logic relationships, durations, critical path based on the longest path and interim milestones; and (iii) permitting and design review submittals by VDOT. The Proposal Schedule to be included with the Proposal may be developed using Microsoft Office Project, Excel or an equivalent software package wherein the information is conveyed using logic relationships and a gantt chart. In addition to hard copy, the Offeror shall provide the Proposal Schedule's source document in electronic format, e.g. .xls, etc., on a CD-ROM.

Please note, the **Successful Offeror** shall develop, in addition to the Proposal Schedule included with the Letter of Submittal, a **Baseline Schedule** in accordance with Part 3, Section 11.1.2.

4.3 Price Proposal

4.3.1 Offerors shall complete the Price Proposal Checklist, Attachment 4.3.1, and include with their Price Proposal. The purpose of the Price Proposal Checklist is to aid the Offeror in ensuring all submittal requirements have been included in the submittal.

4.3.2 Offeror shall specify, on the form set forth in Attachment 4.3.2, the Proposal Price, in both numbers and words. Offerors are advised that the prices set forth above shall be considered full compensation to Offeror for all design services, labor, material, equipment, permits, taxes, overhead, profit and any other expenses of any kind applicable to the work to be undertaken by Offeror associated with such work, including but not limited to any escalation, extended site overhead, acceleration of schedule, and/or shift of construction sequencing.

4.3.3 Offeror shall provide a schedule of values for the Price Proposal. This schedule of values shall identify the associated costs of each project activity identified in the Proposal Schedule required by Section 4.2.11 above. The value associated with each activity shall be inclusive of all direct and indirect costs, overhead, profit and any other expenses of any kind. The values and quantities shall be clearly supported by the Escrow Proposal Documents.

4.3.4 Offeror shall submit, for the Price Proposal, a proposed monthly payment schedule showing the anticipated schedule on which funds will be required and the associated dollar value for the work. The value of the monthly payment schedule shall correlate with the Proposal Schedule.

4.3.5 Offeror shall provide the required information set forth in Part 3 (Lump Sum Agreement), Section 6.3, Adjustments to Asphalt, Fuel and Steel Prices.

4.3.6 Offeror shall provide the Proposal Guaranty (C-24) required by Section 102.07 of Part 5, Division I Amendments to Section 100 of the VDOT Road and Bridge Specifications. **If the Price Proposal Guarantee is not submitted with the Price Proposal, then the Offeror shall be deemed non-responsive and will be disqualified from participating in the Design-Build procurement for this project.** A copy of the Proposal Guaranty Form C-24 may be found at http://vdotforms.vdot.virginia.gov/ .

4.3.7 Offeror shall provide the Sworn Statement Forms (C-104, C-105), as set forth in Attachments 4.3.7(a) and 4.3.7(b) respectively.

4.3.8 For those DBE's whom Offeror intends to use as a subcontractor, Offeror shall provide the Minimum DBE Requirements Form (C-111; Attachment 4.3.8(a)), and/or DBE Good Faith Effort Documentation Form (C-49; Attachment 4.3.8(b)), if applicable (including Good Faith

Effort supporting documentation), and Certification of Binding Agreement Form (C-112; Attachment 4.3.8(c)).

5.0 PROPOSAL EVALUATION AND RESPONSIVENESS REVIEW

5.0.1 VDOT will open and read publicly on the date and time set forth in Section 2.6.1 the Price Proposals that accompanied the Letters of Submittal and Escrow Documents.

5.0.2 After opening the Letters of Submittal and Price Proposals, VDOT will determine if the Letter of Submittal of the lowest price proposal for the Project is responsive. VDOT shall consider a Letter of Submittal as responsive if the Letter of Submittal includes all of the information described in Section 4.2. If a Letter of Submittal does not include all of the information described in Section 4.2, VDOT may, in its sole discretion, consider such Letter of Submittal to be non-responsive.

5.0.3 Prior to determining responsiveness, VDOT in its sole discretion, may seek clarification on the contents of a Letter of Submittal and Price Proposal documents through any means VDOT desires, including but not limited to, holding interviews, asking written questions of the Offeror(s), seeking written clarifications, conducting discussions on the Letter of Submittal and Price Proposal documents, and soliciting updated documents during the responsiveness review process.

5.0.4 If VDOT considers a Letter of Submittal and Price Proposal to be non-responsive pursuant to this section, VDOT will determine if the Letter of Submittal of the next lowest Price Proposal is responsive in accordance with Sections 5.0.2, 5.0.3, and 5.0.4 herein.

5.0.5 Following VDOT's responsiveness determination to the Letter of Submittal and Price Proposal documents, VDOT will announce the Successful Offeror and issue Notice of Intent to Award.

6.0 PROPOSAL SUBMITTAL REQUIREMENTS

This Section 6.0 describes the requirements that all Offerors must satisfy in submitting Proposals. Failure of any Offeror to submit its Proposal in accordance with this RFP may result in rejection of its Proposal.

6.1 Due Date, Time and Location

6.1.1 All Letters of Submittal, Price Proposals and Escrow Documents must be received by the due date and time set forth in Section 2.6.1 above ("Letter of Submittal/Price Proposal/Escrow Documents Due Date"). Submissions must be delivered to the following individual at the following address:

US Postal Service regular mail, send to:

Mr. W. W. Barker

Administrative Services Division
Virginia Department of Transportation
1401 E. Broad Street
Old Highway Building, 4th Floor
Richmond, VA 23219

Hand delivery, US Postal Service express mail, or private delivery service FEDEX, UPS, etc…, send to:

Mr. W. W. Barker
Administrative Services Division
Virginia Department of Transportation
1st Floor Reception Desk
1201 E. Broad Street
Richmond, VA 23219

Neither fax nor email submissions will be accepted. Offerors are responsible for effecting delivery by the deadline above, and late submissions will be rejected without opening, consideration, or evaluation, and will be returned unopened to the sender. VDOT accepts no responsibility for misdirected or lost proposals.

6.2 Format

If VDOT determines that a Proposal does not comply with or satisfy the format of this section, VDOT may find such Proposal to be non-responsive.

6.2.1 Three separate sealed parcels containing the Letter of Submittal, Price Proposal and Escrow Documents shall be received by the due date and time set forth in Section 2.6.1. If the sealed Letter of Submittal, Price Proposal and Escrow Documents are not received by the above specified date, then the Offeror shall be deemed non-responsive and will be disqualified from participating in the design-build procurement for this Project. Parcels shall be clearly marked to identify the Project and the Offeror, and to identify the contents as the Letter of Submittal, Price Proposal, or Escrow Documents.

6.2.2 Each Offeror shall deliver one copy of the Letter of Submittal which must bear original signature, and one CD-ROM containing the entire Letter of Submittal in a single cohesive Adobe PDF file.

The Letter of Submittal shall be bound and contained in a single volume, with an identity on its front cover. **Three ring binders are not permissible.**

- The Letter of Submittal shall be:
  - Typed on one (1) side only.
  - Separated by numbered tabs with sections corresponding to the order set forth in Section 4.0.

- The SOQ Checklist, Form C-78-RFP, Key Personnel Resume Forms and the full size copies of the SCC and DPOR supporting registration documentation should be included in appendices.
- All information shall be prepared on 8.5" x 11" white paper.

- All printing, except for the front cover of the Letter of Submittal and any appendices, must be
  - Times New Roman, with a font of 12-point.
  - Times New Roman 10 point font may be used for filling out information on the Key Personnel Resume Form. (Note, the format and appearance of the Key Personnel Resume Form should not be modified)
  - Include page number references in the lower right hand corner.

6.2.3 The Price Proposal shall be provided in hard copy, with only one copy being submitted.

6.2.4 The Escrow Documents shall be provided in accordance with Section 11.7 herein.

7.0 QUESTIONS AND CLARIFICATIONS

7.0.1 All questions and requests for clarification regarding this RFP shall be submitted to VDOT's POC in writing in electronic format (submission by email is acceptable). No requests for additional information, clarification or any other communication should be directed to any other individual. **NO ORAL REQUESTS FOR INFORMATION WILL BE ACCEPTED.**

7.0.2 All questions or requests for clarification must be submitted by the due date and time set forth in Section 2.6.1 above. Questions or clarifications requested after such time will not be answered, unless VDOT elects, in its sole discretion, to do so.

7.0.3 VDOT's responses to questions or requests for clarification shall be in writing. VDOT will issue an Addendum to this RFP, if needed. VDOT will not be bound by any oral communications, or written interpretations or clarifications that are not issued in writing or set forth in an Addendum.

7.0.4 VDOT, at its sole discretion, shall have the right to seek clarifications from any Offeror to fully understand information contained in the Proposal and to help evaluate and rank the Offerors.

8.0 AWARD OF CONTRACT, PROPOSAL VALIDITY AND CONTRACT EXECUTION

8.1 Negotiations and Award of Contract

8.1.1 VDOT will review the Proposal submitted by the Offeror with the lowest Price Proposal. If the Proposal is responsive and the Price Proposal is within VDOT's budget for design and construction services, then VDOT will issue a Notice of Intent to Award to the Successful Offeror.

8.1.2 Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the Successful Offeror to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Successful Offeror.

8.1.3 Pursuant to 23 CFR 636.404, if the Proposal Price submitted by the Offeror with the lowest Price Proposal is not within VDOT's budget for design and construction services, VDOT may establish a competitive range among the Offerors who have submitted a responsive Proposal.

8.1.4 Pursuant to 23 CFR 636.402, 636.404, and 636.406, prior to VDOT establishing a competitive range, VDOT may hold communications with only those Offeror's whose exclusion from or inclusion in, the competitive range is uncertain. Communications will (a) enhance VDOT's understanding of Proposals; (b) allow reasonable interpretation of the Proposal; or (c) facilitate VDOT's evaluation process.

8.1.5 Pursuant to 23 CFR 636.404, after VDOT establishes the competitive range, VDOT will notify any Offeror whose Proposal is no longer considered to be included in the competitive range.

8.1.6 Pursuant to 23 CFR 636.506, 636.507, and 636.508, VDOT will hold discussions with all Offerors in the competitive range. Offerors are advised that VDOT may, in its reasonable discretion, determine that only one Offeror is in the competitive range.

8.1.7 Pursuant to 23 CFR 636.510, VDOT may determine to further narrow the competitive range once discussions have begun. At which point, VDOT will notify any Offeror whose Proposal is no longer considered in the competitive range.

8.1.8 Pursuant to 23 CFR 636.509, at the conclusion of discussions, VDOT, will request all Offeror(s) in the competitive range to submit a final proposal revision, also called Best and Final Offer ("BAFO"). Thus, regardless of the length or number of discussions, there will be only one request for a revised proposal (*i.e.*, only one BAFO).

8.1.9 Pursuant to 23 CFR 636.512, VDOT will review the final proposals in accordance with the review and selection criteria and complete a final ranking of the Offerors in the competitive range, then VDOT will issue a Notice of Intent to Award to the Successful Offeror.

8.1.10 Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the Successful Offeror to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Successful Offeror.

8.2 Proposal Validity

8.2.1 The offer represented by each Proposal will remain in full force and effect for one hundred twenty (120) days after the Letter of Submittal/Price Proposal/Escrow Documents Due Date set forth in Section 2.6.1. If Award of Contract has not been made by the CTB within one

hundred twenty (120) days after the Letter of Submittal/Price Proposal/Escrow Documents Due Date, each Offeror that has not previously agreed to an extension of such deadline shall have the right to withdraw its Proposal.

8.3 Contract Execution and Notice to Proceed

8.3.1 Within fifteen (15) days of Notice of Intent to Award, the Successful Offeror shall deliver to VDOT all pertinent documents in accordance with Section 103 of the Division I Amendments to the Standard Specifications. Upon Award of Contract, VDOT will deliver an executed copy of the Design-Build Contract to the Successful Offeror, who shall execute and deliver such copy to VDOT within seven (7) days of receipt.

8.3.2 VDOT reserves the right to issue Notice to Proceed within fifteen (15) days after execution of the Design-Build Contract.

9.0 RIGHTS AND OBLIGATIONS OF VDOT

9.1 Reservation of Rights

9.1.1 In connection with this procurement, VDOT reserves to itself all rights (which rights shall be exercisable by VDOT in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:

.1 The right to cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to the execution by VDOT of the Design-Build Contract, without incurring any obligations or liabilities.

.2 The right to issue a new RFP.

.3 The right to reject any and all submittals, responses and proposals received at any time.

.4 The right to modify all dates set or projected in this RFP.

.5 The right to terminate evaluations of responses received at any time.

.6 The right to suspend and terminate the procurement process for the Project, at any time.

.7 The right to revise and modify, at any time prior to the Proposal Submittal Date, factors it will consider in evaluating responses to this RFP and to otherwise revise its evaluation methodology.

.8 The right to waive or permit corrections to data submitted with any response to this RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.

.9 The right to issue addenda, supplements, and modifications to this RFP, including but not limited to modifications of evaluation criteria or methodology and weighting of evaluation criteria.

.10 The right to permit submittal of addenda and supplements to data previously provided with any response to this RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.

.11 The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.

.12 The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Offerors.

.13 The right to permit Offerors to add or delete firms and/or key personnel until such time as VDOT declares in writing that a particular stage or phase of its review has been completed and closed.

.14 The right to add or delete Offeror responsibilities from the information contained in this RFP.

.15 The right to appoint and change appointees of the Evaluation Team.

.16 The right to use assistance of outside technical and legal experts and consultants in the evaluation process.

.17 The right to waive deficiencies, informalities and irregularities in a Proposal, accept and review a non-conforming Proposal or seek clarifications or supplements to a Proposal.

.18 The right to disqualify any Offeror that changes its submittal without VDOT approval.

.19 The right to change the method of award or the evaluation criteria and scoring at any time prior to submission of the Proposals.

.20 The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.

.21 The right to negotiate the allocation of prices identified for specific portions of the work depicted within a Price Proposal.

.22 The right to disqualify and/or cease negotiations with an Offeror if VDOT, in its sole discretion, determines that the Offeror's Price Proposal contains unbalanced pricing among the specific portions of work identified therein.

9.2 No Assumption of Liability

9.2.1 In no event shall VDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) a contract, in form and substance satisfactory to VDOT, has been executed and authorized by VDOT and, then, only to the extent set forth therein.

9.2.2 VDOT assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Offeror and its team members.

10.0 PROTESTS

This Section simply summarizes protest remedies available with respect to the provisions of the Code of Virginia that are relevant to protests of awards or decisions to award Design-Build Contracts by VDOT. This section does not purport to be a complete statement of those provisions and is qualified in its entirety by reference to the actual provisions themselves.

In accordance with §2.2-4360, of the *Code of Virginia*, if an unsuccessful Offeror wishes to protest the award or decision to award a contract, such Offeror must submit a protest in writing to VDOT's POC no later than ten (10) calendar days after the award or the announcement posting the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. No protest shall lie for a claim that the selected Offeror is not a responsible bidder.

The protesting Offeror shall concurrently file a copy of its notice of protest with all other Offerors.

Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. However, if the protest of any Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, of the *Code of Virginia*, then the time within which the protest must be submitted shall expire ten (10) calendar days after those records are available for inspection by such Offeror under § 2.2-4342, of the *Code of Virginia*.

VDOT shall issue a decision in writing within ten (10) calendar days of the receipt of any protest stating the reasons for the action taken. This decision shall be final unless the Offeror appeals within ten (10) calendar days of receipt of the written decision, by instituting legal action in accordance with § 2.2-4364, of the *Code of Virginia.*

Pursuant to § 2.2-4362, of the *Code of Virginia*, an award need not be delayed for the period allowed a bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination by the Commissioner, or his designee, that proceeding without delay is necessary to protect the public interest or unless the Design-Build Proposal would expire. Further, pursuant to §2.2-4361, of the *Code of Virginia*, pending a final determination of a protest or appeal, the validity of the contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed.

11.0 MISCELLANEOUS

11.1 Virginia Freedom of Information Act

11.1.1 All proposals submitted to VDOT become the property of VDOT and are subject to the disclosure requirements of Section 2.2-4342 of the Virginia Public Procurement Act and the Virginia Freedom of Information Act ("FOIA") (Section 2.2—3700 et seq. of the *Code of Virginia*). Offerors are advised to familiarize themselves with the provisions of each Act referenced herein to ensure that documents identified as confidential will not be subject to disclosure under FOIA. In no event shall the Commonwealth, the Commonwealth Transportation Commissioner, or VDOT be liable to an Offeror for the disclosure of all or a portion of a Proposal submitted pursuant to this request not properly identified as confidential.

11.1.2 If a responding Offeror has special concerns about information which it desires to make available to VDOT but which it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Offeror should specifically and conspicuously designate that information as such in its Proposal and state in writing why protection of that information is needed. The Offeror should make a written request to the Director of the Innovative Project Delivery Division. The written request shall:

.1 Invoke such exemption upon the submission of the materials for which protection is sought.

.2 Identify the specific data or other materials for which the protection is sought.

.3 State the reasons why the protection is necessary.

.4 Indicate that a similar process with the appropriate officials of the affected local jurisdictions is or will be conducted. Failure to take such precautions prior to submission of a proposal may subject confidential information to disclosure under the Virginia FOIA.

11.1.3 Blanket designations that do not identify the specific information shall not be acceptable and may be cause for VDOT to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VDOT by applicable law, and the applicable law(s) shall control in the event of a conflict between the procedures described above and any applicable law(s).

11.1.4 In the event VDOT receives a request for public disclosure of all or any portion of a proposal identified as confidential, VDOT will attempt to notify the Offeror of the request, providing an opportunity for such Offeror to assert, in writing, claimed exemptions under the FOIA or other Commonwealth law. VDOT will come to its own determination whether or not the requested materials are exempt from disclosure. In the event VDOT elects to disclose the requested materials, it will provide the Offeror advance notice of its intent to disclose.

11.1.5 Because of the confidential nature of the evaluation and negotiation process associated with this Project, and to preserve the propriety of each Offeror's Proposal, it is VDOT's intention, subject to applicable law, not to consider a request for disclosure until after VDOT's issuance of a Notice of Intent to Award. Offerors are on notice that once a Design-Build Contract is executed, some or all of the information submitted in the Proposal may lose its protection under the applicable laws of the Commonwealth.

11.2 Conflict of Interest

11.2.1 Implementation guidelines for VDOT's policy on organizational conflicts of interest relating to Design-Build procurement are documented in the Innovative Project Delivery Division Memorandum IPD 07-02.0 dated August 1, 2007.
(http://www.virginiadot.org/business/resources/IPD_07_02_0.pdf)

11.2.2 Each Offeror shall require its proposed team members to identify potential conflicts of interest or a real or perceived competitive advantage relative to this procurement. Offerors are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the Project or VDOT's design build program may present a conflict of interest or a competitive advantage. If a potential conflict of interest or competitive advantage is identified, the Offeror shall submit in writing the pertinent information to VDOT's POC.

VDOT, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined to have a conflict of interest or competitive advantage relative to this procurement that cannot be mitigated, shall not be allowed to participate as a Design-Build team member for the Project. Failure to abide by VDOT's determination in this matter may result in a Proposal being declared non-responsive.

11.2.3 Conflicts of interest and a real or perceived competitive advantage are described in state and federal law, and, for example, may include, but are not limited to the following situations:

1. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria for the Project.

2. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria as part of the programmatic guidance or procurement documents for VDOT's Design-Build program, and as a result has a unique competitive advantage relative to the Project.

3. An organization or individual with a present or former contract with VDOT to prepare planning, environmental, engineering, or technical work product for the Project, and has a potential competitive advantage because such work product is not available to all potential Offerors in a timely manner prior to the procurement process.

11.2.4 VDOT reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a Project specific basis.

11.2.5 VDOT may, in its sole discretion, determine that a conflict of interest or a real or perceived competitive advantage may be mitigated by disclosing all or a portion of the work product produced by the organization or individual subject to review under this section. If documents have been designated as proprietary by Virginia law, the Offeror will be given the opportunity to waive this protection from disclosure. If Offeror elects not to disclose, Offeror may be declared non-responsive.

11.3 Ethics in Public Contracting Act

VDOT may, in its sole discretion, disqualify the Offeror from further consideration for the award of the Design-Build Contract if it is found after due notice and examination by VDOT that there is a violation of the Ethics in Public Contracting Act, § 2.2-4367 of the *Code of Virginia*, or any similar statute involving the Offeror in the procurement of the contract.

11.4 Requirement to Keep Team Intact

The team proposed by Offeror, including but not limited to the lead contractor, the lead designer, Key Personnel, and any other individuals identified pursuant to Section 4.2 above, shall remain on Offeror's team for the duration of the procurement process and, if the Offeror is awarded the Design-Build Contract, the duration of the Design-Build Contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to VDOT's POC, who, at his sole discretion, will determine whether to authorize a change. Unauthorized changes to the Offeror's team at any time during the procurement process may result in the elimination of the Offeror from further consideration.

11.5 Disadvantaged Business Enterprises

The Disadvantaged Business Enterprises ("DBE") contract goal for this procurement is **seven percent (7%)**.

11.5.1 It is the policy of VDOT that DBEs, as defined in 49 CFR Part 26, shall have every opportunity to participate in the performance of construction/consultant contracts. Offerors are encouraged to take all necessary and reasonable steps to ensure that DBEs have every opportunity to compete for and perform services on contracts, including participation in any subsequent supplemental contracts. If a portion of the work on the Project is to be subcontracted out, Offerors must seek out and consider DBEs as potential subcontractors. DBEs must be contacted to solicit their interest, capability and qualifications. Any agreement between an

Offeror and a DBE whereby the DBE promises not to provide services to any other Offeror or other contractors/consultants is prohibited.

11.5.2 If a DBE is not certified, the DBE must become certified with the Virginia Department of Minority Business Enterprises ("VDMBE") prior to the Proposal Due Date. If the DBE is a prime, the firm will receive full credit for the planned involvement of their own workforce, as well as the work they commit to be performed by DBE subcontractors. DBE primes are encouraged to make the same outreach. DBE credit will be awarded only for work actually performed by DBEs themselves. When a DBE prime or subcontractor subcontracts work to another firm, the work counts toward DBE goals only if the other firm itself is a DBE. A DBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce.

11.5.3 DBE certification entitles a firm to participate in VDOT's DBE Program. However, it does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular type of work.

11.5.4 This Project has federal funding. In accordance with the Governor's Executive Order No. 33, VDOT requires utilization of Small, Women and Minority ("SWaM") Businesses to participate in the performance of state funded projects. VDOT also encourages the utilization of SWaM Firms to participate in the performance of federally funded projects. A list of the DMBE certified SWaM firms is maintained on the DMBE web site (http://www.dmbe.state.va.us/) under the SWaM Vendor Directory link. Offerors are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services in the Design-Build contract. If the Offeror intends to subcontract a portion of the services on the Project, the Offeror is encouraged to seek out and consider SWaM firms as potential subconsultants. The Offeror is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between an Offeror and a SWaM firm whereby the SWaM firm promises not to provide services to other Offerors is prohibited.

11.5.5 When preparing bids for projects with DBE goals, VDOT encourages prospective bidders to seek the assistance of the following offices:

Virginia Department of Minority Business Enterprises
111 East Main Street, Suite 300
Richmond, VA 23219
Phone: (804) 786-2260
Toll Free (VA Only) 1-800-223-0671
www.dmbe.virginia.gov

Metropolitan Washington Airports Authority
Equal Opportunity Programs Department
1 Aviation Circle
Washington, DC 20001
Phone: (703) 417-8625

www.metwashairports.com

Contractors are also encouraged to seek help from the VDOT Districts Equal Employment Opportunity ("EEO") Offices, Central Office Civil Rights Office and the VDOT Business Opportunity and Workforce Development ("BOWD") Center as listed below:

VDOT Central Office
1221 East Broad Street
Richmond, VA 23219
(804) 786-2085

Bristol District
870 Bonham Drive
Bristol, VA 24203
(276) 669-9907

Culpeper District
1601 Orange Road
Culpeper, VA 22701
(540) 829-7523

Fredericksburg District
87 Deacon Road
Fredericksburg, VA 22405
(540) 899-4562

Hampton Roads District
1700 N. Main Street
Suffolk, VA 23434
(757) 925-2519

BOWD
1602 Rolling Hills Drive
Suite 110
Richmond, VA 23229
Phone: (804) 662-9555

Lynchburg District
4219 Campbell Avenue
Lynchburg, VA 24506
(434) 856-8168

Northern Virginia District
14685 Avion Parkway
Chantilly, VA 20151
(703) 383-2341

Richmond District
2430 Pineforest Drive
Colonial Heights, VA 23834
(804) 524-6091

Salem District
731 Harrison Avenue
Salem, VA 24153
(540) 387-5453

Staunton District
811 Commerce Road
Staunton, VA 24401
(540) 332-7888

The following informational websites may also be of assistance:

www.virginiadot.org/business/bu_bizDev.asp

www.virginiadot.org/business/bu-civil-rights-home.asp

11.6 Trainee and Apprenticeship Participation

11.6.1 VDOT will require trainee and apprenticeship participation for this Project. The on-the-job trainee goal for this Project is **six (6)** individuals.

11.7 Escrow Proposal Documents

11.7.1 Scope

Pursuant to Section 11.7.5.1 below, each Offeror shall submit to the individual set forth in Section 6.1.1 above, on the RFP Submission Date, one copy of all documentary information generated in preparation of its Proposal. This material is hereinafter referred to as Escrow Proposal Documents ("EPDs"). The EPDs will be held in a secure location at the VDOT Central Office until the Successful Offeror is determined. The EPDs of the Successful Offeror will be transferred to and then held in escrow at the banking institution specified in this Section 11.7.6. EPDs of all other Offerors will be returned to the Offerors following the execution of the Design-Build Contract.

An Escrow Proposal Documents Submission Checklist has been provided for reference in Attachment 11.7.1.

11.7.2 Ownership

.1 The EPDs are, and shall always remain, the property of the Offeror, subject to joint review by VDOT and the Offeror, as provided herein.

.2 VDOT stipulates and expressly acknowledges that the EPDs constitute trade secrets. This acknowledgement is based on VDOT's express understanding that the information contained in the EPDs is not known outside Offeror's business, is known only to a limited extent and only by a limited number of employees of the Offeror, is safeguarded while in Offeror's possession, is extremely valuable to Offeror and could be extremely valuable to Offeror's competitors by virtue of its reflecting Offeror's contemplated techniques of design and construction. VDOT further acknowledges that Offeror expended substantial sums of money in developing the information included in the EPDs and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. VDOT further acknowledges that the EPDs and the information contained therein are made available to VDOT only because such action is an express prerequisite to Award of Contract. VDOT further acknowledges that the EPDs include a compilation of the information used in Offeror's business, intended to give Offeror an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

11.7.3 Purpose

EPDs may be used to assist in the negotiation of price adjustments and change orders and in the settlement of disputes and claims. They will not be used for pre-award evaluation of the

Offeror's anticipated methods of construction or to assess the Offeror's qualifications for performing the Work or the prices submitted.

11.7.4 Format and Contents

.1 Offerors may submit EPDs in their usual cost estimating format provided that all information is clearly presented and ascertainable. It is not the intention of this Section 11.7 to cause the Offeror extra work during the preparation of the Proposal, but to ensure that the EPDs will be adequate to enable complete understanding and proper interpretation for their intended use. The EPDs shall be submitted in the language of the Specifications (i.e., English).

.2 It is required that the EPDs clearly itemize the estimated costs of performing the work of each item contained in Offeror’s schedule of values. Cost items shall be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The EPDs shall include: estimates for costs of the design professionals and consultants itemized by discipline both for development of the design, all quantity take-offs, crew size and shifts, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, drawings and sketches showing site or work area layouts and equipment, add/deduct sheets, geotechnical reviews and consultant reports, and all other information used by the Offeror to arrive at the prices contained in the Proposal. Estimated costs shall be broken down into estimate categories for each bid items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed. The Offeror's allocation of indirect costs, contingencies, and mark-up shall be identified.

.3 All costs shall be identified. For bid items amounting to less than $10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and mark-up, as applicable, are allocated.

.4 RFP Documents provided by VDOT should not be included in the EPDs unless needed to comply with these requirements.

11.7.5 Submittal

.1 The EPDs shall be submitted in a sealed container to the individual set forth in Section 6.1.1 above, which container shall be clearly marked on the outside with the Offeror's name, date of submittal, Project name, and the words "Escrow Proposal Documents."

.2 Prior to Award of Contract, EPDs of the Successful Offeror will be transferred to the banking institution referenced in Section 11.7.6 and will be examined, organized, and inventoried by representatives of VDOT, together with members of the Offeror's staff who are knowledgeable in how the Proposal was prepared. This examination is to ensure that the EPDs are legible and complete. It will not include review of, and will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of any RFP

Documents or the Design-Build Contract. Examination will not alter any condition or term of the Design-Build Contract.

.3 If all the documents required by this Section 11.7 have not been included in the original submittal, additional documentation may be submitted, at VDOT's discretion, prior to Award of Contract.

.4 If the Design-Build Contract is not awarded to the Successful Offeror, the EPDs of the next Offeror to be considered for award shall be processed as described above.

.5 Timely submission of complete EPDs is an essential element of the Offeror's responsibility and a prerequisite to Award of Contract.

.6 If any Offeror's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds ten percent (10%) of the Total Proposal Price proposed by the Offeror, shall provide separate Escrow Documents to be included with those of the Offeror. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the highest-scored Offeror.

.7 If the Offeror wishes to subcontract any portion of the work after Award of Contract, VDOT retains the right to require the Offeror to submit Escrow Documents from the subcontractor before the subcontract is approved.

11.7.6 Storage

The Successful Offeror's EPDs shall be stored at SunTrust Bank at the following address:

SunTrust Bank
ATTN: Emily J. Hare
919 East Main Street
7th Floor
Richmond, Virginia 23219
(804) 782-5400

The cost for storing the EPDs will be paid by the Successful Offeror.

11.7.7 Examination

.1 The EPDs shall be examined by VDOT and the Offeror, at any time deemed necessary by VDOT.

.2 VDOT may delegate review of EPDs to members of VDOT's staff or consultants. The foregoing notwithstanding, the EPDs and information contained therein may be used in the resolution of any claim or dispute before any entity selected to resolve disputes and in any litigation or arbitration commenced hereunder. No other person shall have access to the EPDs.

.3 Access to the documents will take place in the presence of duly designated representatives of both VDOT and the Offeror, except that, if the Offeror refuses to be present or to cooperate in any other way in the review of the documents, VDOT may upon notice to the Offeror, review such documents without the Offeror being present.

11.7.8 Final Disposition and Return of EPDs

.1 The EPDs of the unsuccessful Offerors will be returned after the Design-Build Contract has been executed and delivered, after VDOT rejects all of the Proposals or after VDOT terminates its procurement.

.2 The EPDs of the Successful Offeror will be returned to the Offeror at such time as the Design-Build Contract has been completed, final payment has been made, and all claims or disputes arising under or related to the Design-Build Contract have been fully and finally resolved and/or adjudicated.

11.7.9 Execution of Escrow Agreement

The Successful Offeror, as a condition of Award of Contract, agrees to execute the Escrow Agreement in the form set forth in Attachment 11.7.9.

11.8 Administrative Requirements

In addition to the specific submittal requirements set forth in Sections 3.0 and 4.0 above, all Offerors shall comply with the following:

11.8.1 All Offerors and RFP submittals must comply with the law and nothing herein is intended to contradict, nor supersede, any applicable State and Federal laws and regulations. All Offerors shall be eligible at the time of their RFP submittal, under the law and relevant regulations, to offer and to provide all services proposed and related to the Project. Unless exempted by §§ 54.1-401, 54.1-402, or 54.1-402.1 of the *Code of Virginia*, any person, partnership, corporation, or other entity offering or practicing architecture, engineering, or land surveying shall be registered or licensed in accordance with the provision of *Chapter 4, Title 54.1 of the Code of Virginia.* Offerors shall satisfy at the time of their RFP submittal all commercial and professional registration requirements, including, but not limited to the requirements of the State Corporation Commission and the Department of Professional and Occupational Regulations.

11.8.2 In accordance with VA Code § 2.2-4311.1, the Successful Offeror will be required to certify that it does not, and to agree that it shall not, during the performance of the Design-Build Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. In addition, the Offeror's subcontractors (at all tiers) will be required to provide the same certification and agreement in their subcontract agreements.

11.8.3 All Offerors must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48 CFR 31, "Federal

Acquisition Regulations, Contract Cost Principles and Procedures," and 23 CFR 172, "Administration of Engineering and Design Related Service Contracts."

11.8.4 VDOT assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) when requested by VDOT to respond to the RFP. This requirement applies to all consulting firms with fifteen (15) or more employees.

11.8.5 VDOT does not discriminate against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

11.8.6 Offerors shall note and comply with the requirements relative to the eVA Business-to-Government Vendor system. The eVA Internet electronic procurement solution, web site portal (http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detailed information regarding eVA, registrations, fee schedule, and transaction fee, use the website link: http://www.eva.state.va.us. All Offerors must register in eVA; failure to register will result in a proposal being rejected.

11.8.7 Personnel handling Critical Infrastructure Information/Sensitive Security Information ("CII/SSI") material, visiting Critical Infrastructure ("CI") facilities or performing bridge/tunnel inspections are required to sign CII/SSI Non-Disclosure Agreements and pass a fingerprint-based Criminal History Background Check ("CHBC"}. All costs associated with the fingerprint-based CHBC are the responsibility of the Offeror or Design-Builder. A VDOT issued photo-identification badge is required for each employee of the Offeror's team who will need access to VDOT CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VDOT reserves the right to deny access to CII/SSI material and issuance of a VDOT security clearance and a VDOT issued photo-identification badge.

CII/SSI material includes bridge inspection reports. Bridge inspection reports are not included in the Information Package and CII/SSI Non-Disclosure Agreements are not required to purchase the Information Package. Firms desiring to obtain a copy of the bridge inspection report must request a CII/SSI Non-Disclosure Agreement form using the contact information found on the Information Package Order form and return a signed copy for each individual with access to the report.

11.9 Compliance with the Law in Virginia

Failure to comply with the law with regard to those legal requirements in Virginia (whether federal or state) regarding your ability to lawfully offer and perform any services proposed or related to the Project may render your RFP submittal, in the sole and reasonable discretion of the Department, non-responsive and/or non-responsible, and in that event your RFP

submittal may be returned without any consideration or evaluation for selection of contract award.

11.10 Attachments

The following attachments are specifically made a part of, and incorporated by reference into, these Instructions for Offerors:

ATTACHMENT 2.2.1	--	FINDING OF PUBLIC INTEREST (FOPI)
ATTACHMENT 2.7.4	--	RFP INFORMATION PACKAGE ORDER FORM
ATTACHMENT 3.3.1	--	FORM C-78-RFP (ACKNOWLEDGEMENT OF REVISIONS)
ATTACHMENT 4.1.2	--	LETTER OF SUBMITTAL CHECKLIST
ATTACHMENT 4.2.8	--	KEY PERSONNEL RESUME FORM
ATTACHMENT 4.2.10(a)	--	CERTIFICATION REGARDING DEBARMENT (PRIMARY COVERED TRANSACTIONS)
ATTACHMENT 4.2.10(b)	--	CERTIFICATION REGARDING DEBARMENT (LOWER TIER COVERED TRANSACTIONS)
ATTACHMENT 4.3.1		PRICE PROPOSAL SUBMITTAL CHECKLIST
ATTACHMENT 4.3.2	--	PRICE PROPOSAL FORM
ATTACHMENT 4.3.7(a)	--	FORM C-104 (BIDDER'S STATEMENT)
ATTACHMENT 4.3.7(b)	--	FORM C-105 (BIDDER'S CERTIFICATION)
ATTACHMENT 4.3.8(a)	--	FORM C-111(MIN. DBE REQUIREMENTS)
ATTACHMENT 4.3.8(b)	--	FORM C-49 (DBE GOOD FAITH EFFORTS DOCUMENTATION)
ATTACHMENT 4.3.8(c)	--	FORM C-112 (CERTIFICATION OF BINDING AGREEMENT)
ATTACHMENT 11.7.1	--	ESCROW PROPOSAL DOCUMENTS CHECKLIST
ATTACHMENT 11.7.9	--	ESCROW AGREEMENT
ATTACHMENT 11.8.7	--	CII/SSI NON-DISCLOSURE AGREEMENT

END OF PART 1
INSTRUCTIONS FOR OFFERORS

Finding of Public Interest for the Use of Design-Build Contracting Method
Approaches and Bridge Over Tye River: Amherst/Nelson County Line, Virginia
UPC: 76552

The Virginia Department of Transportation (VDOT) has a need to replace the bridge and approaches over the Tye River on Rte. 29 NBL at the Amherst/Nelson County Line, Virginia. VDOT has determined that project delivery via design-build contracting will expedite completion and allow for timely allocation of available funding.

The benefits of design-build delivery satisfy the following transportation needs:

- Accelerate the schedule on this project. The advertisement date for replacement of this structurally deficient and functionally obsolete bridge is currently scheduled in the SYIP for July 2012. Design-build procurement would enable a RFP to be issued in Fall 2009 and an agreement with a design-build contractor to be executed in Winter 2010.

- Allows for the timely obligation of federal and state funding.

- Earlier project competion may lead to savings in inflation cost factors.

Rte. 29 represents a critical component of the transportation network between Lynchburg and Charlottesville. The project will replace the existing bridge, built in 1947, with a new two-lane bridge, along with the reconstruction of the roadway approaches on both ends of the proposed structure. The roadway profile elevation shall increase to approximately match that of the Rte. 29 SBL bridge. The existing bridge has pin and hanger assemblies, other fatigue prone details, a six month inspection frequency and Commonwealth Transportation Board support to replace it. Posting a weight limit on the deteriorating bridge or closing the structure to traffic would cause significant detrimental impact to the trucking industry, commerce and the general public.

Traffic traveling on Rte. 29 NBL will be detoured to Rte. 29 SBL during construction of the new bridge. The length of the project is approximately 0.4 miles.

VDOT has a clear understanding of the project's scope of work. The scope will be defined to achieve desired results with room for innovation in the design and construction of the project.

Based on review of this public interest finding and the objective criteria previously adopted by the Commonwealth Transportation Board regarding the use of design-build contracts, I find that use of design-build contracting for the proposed project is in the best interest of the Commonwealth of Virginia.

Original with signatures on file in the Innovative Project Delivery Division.

Recommended for Approval: _____

Malcolm T. Kerley, P.E. date
Chief Engineer

Approved: _____

David S. Ekern, P.E. date
Commonwealth Transportation Commissioner

ATTACHMENT 2.7.4

DESIGN–BUILD

ORDER FORM

APPROACHES AND BRIDGE OVER TYE RIVER (RTE. 29 NBL)
REQUEST FOR PROPOSALS (RFP) INFORMATION PACKAGE
LETTER OF SUBMITTALS TO BE SUBMITTED
MONDAY, November 16, 2009 BY 4:00 PM (prevailing local time)

FIRM NAME _____

COMPLETE MAILING
ADDRESS_____

_____
(PLEASE GIVE BOTH STREET ADDRESS AND POSTAL DELIVERY ADDRESS)

FIRM TELEPHONE NUMBER_____ FIRM FAX NUMBER_____

E-MAIL ADDRESS _____

SIGNED:_____

FOR QUESTIONS REGARDING THE RFQ INFORMATION PACKAGE CONTACT:

JEFFREY A. ROBY, P.E.
VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 371-4316

TO ORDER THE RFP INFORMATION PACKAGE BY TELEPHONE/MAIL/FAX CONTACT:

THE SCHEDULING AND CONTRACT DIVISION PLAN ROOM
VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 786-1898,786-5161 OR 371-9868
FAX TELEPHONE NO. (804) 786-2788 (Ordering by fax using a Master or Visa credit card is the preferred method)

MASTERCHARGE/VISA NO._____

EXPIRATION DATE:_____

THE RFP INFORMATION PACKAGE WILL NOT BE ISSUED PRIOR TO RECEIPT OF PAYMENT

Dear Sir/Madam:

Please send the RFP Information Package designated below. Enclosed is check No._____in the amount of $_____ made payable to the Treasurer of Virginia.

TO VIEW THE RFP GO TO THE WEBSITE ADDRESS LISTED BELOW
http://www.virginiadot.org/business/request-for-proposals.asp

RFQ NO.	PROJECT	PACKAGES REQUESTED	TOTAL **($50.00 per package, price includes 5%Virginia Sales Tax)**
		#	$
C00076552DB35	0029-005-130, C501, B645		

FOR DEPARTMENTAL USE ONLY

RFP PACKAGE MAILED_____ MAILED BY_____

TO BE MAILED_____ CHECKED BY_____

Form C-78-RFP

ATTACHMENT 3.3.1

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

RFQ NO. **C00076552DB35**

PROJECT NO.: **0029-005-130, C501, B645**

ACKNOWLEDGEMENT OF RFP, REVISION AND/OR ADDENDA

Acknowledgement shall be made of receipt of the Request for Proposals (RFP) and/or any and all revisions and/or addenda pertaining to the above designated project which are issued by the Department prior to the Letter of Submittal submission date shown herein. Failure to include this acknowledgement in the Letter of Submittal may result in the rejection of your proposal.

By signing this Attachment 3.3.1, the Offeror acknowledges receipt of the RFP and/or following revisions and/or addenda to the RFP for the above designated project which were issued under cover letter(s) of the date(s) shown hereon:

1. Cover letter of RFP – 10/07/09
   (Date)
2. Cover letter of _____
   (Date)
3. Cover letter of _____
   (Date)

_____ SIGNATURE

_____ DATE

ATTACHMENT 4.1.2

Approaches and Bridge over Tye River (Rte. 29 NBL)

LETTER OF SUBMITTAL CHECKLIST AND CONTENTS

Offerors shall furnish a copy of this Letter of Submittal Checklist, with the page references added, with the Letter of Submittal.

Statement of Qualifications Component	Form (if any)	RFQ Cross reference	SOQ Page Reference
Letter of Submittal Checklist and Contents	Attachment 4.1.2	Section 4.1.2	
Acknowledgement of RFQ, Revision and/or Addenda	Attachment 3.3.1 (Form C-78-RFP)	Sections 3.3.1, 3.3.1	
Letter of Submittal (on Offeror's letterhead)	NA	Section 4.2.1	
Offeror's official representative information	NA	Section 4.2.1	
Principal officer information	NA	Section 4.2.2	
Offeror's Corporate Structure	NA	Section 4.2.3	
Affiliated and/or subsidiary companies	NA	Section 4.2.4	
Offeror's VDOT prequalification evidence	NA	Section 4.2.5	
Professional Services evidence	NA	Section 4.2.6	
SCC Registration	NA	Section 4.2.6.1	
DPOR Registration Each Office	NA	Section 4.2.6.2	
DPOR Registration (Key Personnel)	NA	Section 4.2.6.3	
DPOR Registration (Non-APELSCIDLA)	NA	Section 4.2.6.4	
Full size copies of SCC and DPOR registration documentation	NA	Section 4.2.6	
120 day declaration	NA	Section 4.2.7	

ATTACHMENT 4.1.2

Approaches and Bridge over Tye River (Rte. 29 NBL)

LETTER OF SUBMITTAL CHECKLIST AND CONTENTS

Statement of Qualifications Component	Form (if any)	RFQ Cross reference	SOQ Page Reference
Offeror's Team Structure			
Identity of and qualifications of Key Personnel	NA	Section 4.2.8	
Key Personnel Resume – DB Project Manager	Attachment 4.2.8	Section 4.2.8.1	
Key Personnel Resume – Design Manager	Attachment 4.2.8	Section 4.2.8.2	
Key Personnel Resume – Construction Manager	Attachment 4.2.8	Section 4.2.8.3	
Key Personnel Resume – Quality Assurance Manager	Attachment 4.2.8	Section 4.2.8.4	
Organizational chart	NA	Section 4.2.9	
Debarment Form(s) - Primary	Attachment 4.2.10(a)	Section 4.2.10	
Debarment Form(s) – Lower Tier	Attachment 4.2.10(b)	Section 4.2.10	
Proposal Schedule			
Proposal Schedule Narrative	NA	Section 4.2.11	
Proposal Schedule	NA	Section 4.2.11	
Proposal Schedule in electronic format (CD ROM)	NA	Section 4.2.11	
Letter of Submittal in electronic format (CD ROM)	NA	Section 6.2.2	

ATTACHMENT 4.2.8

KEY PERSONNEL RESUME FORM

Brief Resume of Key Personnel anticipated for the Project.
a. Name & Title:
b. Project Assignment:
c. Name of Firm with which you are now associated:
d. Years experience: With this Firm ____Years With Other Firms ____Years Please list chronologically (most recent experience first) your employment history, position and general experience or fields of practice for the last fifteen(15) years. (NOTE: If you have less than 15 years of experience, please list all of your experience for those years you have worked.):
e. Education: Name & Location of Institution(s)/Degree(s)/Year/Specialization:
f. Active Registration: Year First Registered/ Discipline/VA Registration #:
g. Document the extent and depth of your experience and qualifications relevant to the Project. 1. *Note your specific responsibilities and authorities for each assignment, not those of the firm.* 2. *Note whether experience is with current firm or with other firm.* 3. *Provide beginning and end dates for each assignment.* **(List at least three (3), but no more than five (5) relevant projects for which you have performed a similar function.)**

ATTACHMENT 4.2.10(a)
CERTIFICATION REGARDING DEBARMENT
PRIMARY COVERED TRANSACTIONS

Project No.: 0029-005-130, C501, B645

1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and

d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the Offeror for contracts to be let by the Commonwealth Transportation Board.

_____ _____
Signature Date Title

_____
Name of Firm

ATTACHMENT 4.2.10(b)
CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS

Project No.: 0029-005-130, C501, B645

1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the Offeror for contracts to be let by the Commonwealth Transportation Board.

_____ _____

Signature Date Title

_____

Name of Firm

ATTACHMENT 4.3.1

DESIGN-BUILD PRICE PROPOSAL CHECKLIST

Project Name: Approaches and Bridge over Tye River (Rte. 29 NBL)
Contract ID Number: C00076522DB35

- Contents of Price Proposal:

☐ **Proposal Price, in both numbers and words (Attachment 4.3.2) - Price for each corresponding scope of work shall be broken into the associated cost for each activity/ line item in the proposal schedule.**

☐ **Schedule of Values identifying the associated costs for each project activity identified in the Proposal Schedule**

☐ **Proposed Monthly Payment Schedule showing the anticipated schedule on which funds will be required and associated value of work**

☐ **Price Adjustment Information and Forms for Fuel, Asphalt, Steel (Part 3, Section 6.3, Attachments 6.3)**

☐ **Proposal Guaranty (C-24) required by Section 102.07 of Part 5, Division I Amendments to the Standard Specifications**

☐ **Sworn Statement Forms (C-104, C-105, Attachments 4.3.7(a) and 4.3.7(b))**

☐ **DBE Requirements forms (C-111, C-49 and C-112) as applicable (Attachments 4.3.8(a), 4.3.8(b) and 4.3.8(c))**

ATTACHMENT 4.3.2

PRICE PROPOSAL FORM

4.3.2 Offeror shall specify, the following pricing information, in both numbers and words:

.1 Proposal Price;

Lump Sum _____
_____($_____)

Date: _____

Signature: _____

Design-Builder: _____

Vendor No.: _____

Attachment 4.3.7(a)
Form C-104 (BIDDER'S STATEMENT)

ORDER NO.:
CONTRACT ID. NO.:

Form C-104
Rev. 12-9-99

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

PROJECT: 0029-005-130, C501, B645

FHWA: BR-005-3(107)

This form must be completed, signed and returned with bid; and failure to do so may result in the rejection of your bid. **THE CONTRACTOR SHALL AFFIRM THE FOLLOWING STATEMENT EITHER BY SIGNING THE AFFIDAVIT AND HAVING IT NOTARIZED OR BY SIGNING THE UNSWORN DECLARATION UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES.** A SEPARATE FORM MUST BE SUBMITTED BY EACH PRINCIPAL OF A JOINT VENTURE BID.

STATEMENT, In preparation and submission of this bid, I, the firm, corporation or officers, agents or employees thereof did not, either directly or indirectly, enter into any combination or arrangement with any persons, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Article 1.1 or Chapter 12 of Title 18.2 (Virginia Governmental Frauds Act), Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

AFFIDAVIT

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

STATE of _____ COUNTY (CITY) of _____
To-wit:

I _____ , a Notary Public in and for the State and County(City) aforesaid, hereby certify that this day _____ personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____ , 20 _____

_____ My Commission expires _____
Notary Public

OR
UNSWORN DECLARATION

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

Attachment 4.3.7(b)
FORM C-105 (BIDDER'S CERTIFICATION)

ORDER NO.:
CONTRACT ID. NO.:

Form C-105
Rev. 12-9-99

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
AFFIDAVIT

PROJECT: 0029-005-130, C501, B645

FHWA: BR-005-3(107)

This form must be completed, signed, notarized and returned with bid; and failure to do so, may result in the rejection of your bid. A separate form must be submitted by each principal of a joint venture bid.

1. I, the firm, corporation or officers, agents or employees thereof have neither directly nor indirectly entered into any combination or arrangement with any person, firm or corporation or entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, the effect of which is to prevent competition or increase the cost of construction or maintenance of roads or bridges.

   During the preceding twelve months, I (we) have been a member of the following Highway Contractor's Associations, as defined in Section 33.1-336 of the Code of Virginia (1970). (If none, so state).

NAME	Location of Principal Office
_____	_____
_____	_____
_____	_____

2. I (we) have _____, have not _____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that I/We have _____, have not _____, filed with the joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

   Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor [41 CFR 60-1.7(b)(1)], and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contract or subcontracts of $10,000 or under are exempt.)

   Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contract and subcontract unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Continued)

Attachment 4.3.7(b)
FORM C-105 (BIDDER'S CERTIFICATION)

ORDER NO.:
CONTRACT ID. NO.:

3. The bidder certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above; and

(d) Where the bidders is unable to certify to any of the statements in this certification, the bidder shall show an explanation below.

Explanations will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any explanation noted, indicate below to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administration sanctions. The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of change circumstances.

The undersigned is duly authorized by the bidder to make the foregoing statements to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

STATE of _____ COUNTY (CITY) of _____
To-wit:

I _____ , a Notary Public in and for the State and County(City) aforesaid, hereby certify that this day _____ personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____ , 20 _____

_____ My Commission expires _____
Notary Public

Attachment 4.3.8(a)

FORM C-111 MINIMUM DBE REQUIREMENTS

Form C-111
Rev. 7-13-05

COMMONWEALTH OF TRANSPORTATION
VIRGINIA DEPARTMENT OF TRANSPORTATION
MINIMUM DBE REQUIREMENTS

PROJECT NO: 0029-005-130, C501, B645

FHWA NO: BR-005-3(107)

*****INSTRUCTIONS*****

SECTION II OF THIS FORM IS TO BE USED BY THE CONTRACTOR TO SUBMIT THE NAMES OF DBE FIRMS TO BE UTILIZED ON THE PROJECT. ADDITIONAL SHEETS TO SHOW THE ALLOWABLE CREDIT PER ITEM MAY BE ATTACHED IF NECESSARY. **NOTE**: IF 100% OF AN ITEM IS NOT TO BE PERFORMED OR FURNISHED BY THE DBE, DESCRIBE THE PORTION AND PERCENTAGE TO BE PERFORMED OR FURNISHED BY THE DBE.

SECTION I:

DBE REQUIREMENT 7 %

SECTION II:

PERCENT ATTAINED BY BIDDER _____ %

NAME(s) AND CERTIFICATION NO. OF DBE(s) TO BE USED	TYPE OF WORK & ITEM NO(s)	PERCENT OF WORK	AMT. OF ALLOWABLE CREDIT PER ITEM

TOTAL: $ _____

Total Contract Value $ _____ X Required DBE _____ % =$ _____

I/WE CERTIFY THAT THE PROPOSED DBE (S) SUBMITTED WILL BE USED ON THIS CONTRACT AS STATED HEREON AND ASSURE THAT DURING THE LIFE OF THE CONTRACT, I/WE WILL MEET OR EXCEED THE PARTICIPATION ESTABLISHED HEREON BY THE DEPARTMENT.

_____ By _____
BIDDER SIGNATURE

_____ By _____
TITLE DATE

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

--DO NOT DETACH--

THIS INFORMATION MUST BE SUBMITTED WITH YOUR BID PROPOSAL IF YOUR BID DOES NOT MEET THE PROJECT DBE REQUIREMENTS, OR WHEN REQUESTED BY VDOT

CONTRACT I.D. NUMBER_____

PROJECT NUMBER_____

FHWA NUMBER_____

DISTRICT_____

DATE BID SUBMITTED_____

BIDDER'S NAME_____

SIGNATURE_____

TITLE_____

VENDOR NUMBER_____

DBE GOAL FROM BID PROPOSAL_____

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____**DATE SUBMITTED**_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____**SIGNATURE**_____

TITLE_____

NAMES OF CERTIFIED DBEs AND THE DATES ON WHICH THEY WERE SOLICITED TO BID ON THIS PROJECT

INCLUDE THE ITEMS OF WORK OFFERED AND THE DATES AND METHODS USED FOR FOLLOWING UP INITIAL SOLICITATIONS TO DETERMINE WHETHER OR NOT DBEs WERE INTERESTED.

NAMES AND VENDOR NUMBERS OF DBEs SOLICITED	DATE OF INITIAL SOLICITATION	ITEM(S) OF WORK	FOLLOW-UP METHODS AND DATES

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY

ATTACH COPIES OF SOLICITATIONS, TELEPHONE RECORDS, FAX CONFIRMATIONS, ELECTRONIC INFORMATION, ETC.

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____**DATE SUBMITTED**_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____**SIGNATURE**_____

TITLE_____

TELEPHONE LOG

DBE(s) CALLED	TELEPHONE NUMBER	DATE CALLED	TIME CALLED	CONTACT PERSON OR VOICE MAIL STATUS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____**DATE SUBMITTED**_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____**SIGNATURE**_____

TITLE_____

ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE FIRMS

IDENTIFY THOSE ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE FIRMS OR THOSE ITEM(S) THE BIDDER IDENTIFIED AND DETERMINED TO SUBDIVIDE INTO ECONOMICALLY FEASIBLE UNITS TO FACILITATE DBE PARTICIPATION. FOR EACH ITEM LISTED, SHOW THE DOLLAR VALUE AND PERCENTAGE OF THE TOTAL CONTRACT AMOUNT. IT IS THE BIDDER'S RESPONSIBILITY TO DEMONSTRATE THAT SUFFICIENT WORK TO MEET THE GOAL WAS MADE AVAILABLE TO DBE FIRMS.

ITEM(S) OF WORK MADE AVAILABLE	BIDDER NORMALLY PERFORMS ITEM(S) (Y/N)	ITEM(S) BROKEN DOWN TO FACILITATE PARTICIPATION (Y/N)	AMOUNT IN DOLLARS	PERCENTAGE OF CONTRACT

NOTE: INFORMATION REQUIRED FOR THIS SECTION CONTINUED ON SHEET 5
ATTACH ADDITIONAL PAGES IF NECESSARY

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____DATE SUBMITTED_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____SIGNATURE_____

TITLE_____

ADDITIONAL INFORMATION REGARDING ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE FIRMS (Continued From Sheet 4)

ITEM(S) OF WORK MADE AVAILABLE, NAMES OF SELECTED FIRMS AND DBE STATUS, DBEs THAT PROVIDED QUOTES, PRICE QUOTE FOR EACH FIRM, AND THE PRICE DIFFERENCE FOR EACH DBE IF THE SELECTED FIRM IS NOT A DBE.

ITEM(S) OF WORK MADE AVAILABLE(CONT.)	NAME OF SELECTED FIRM AND VENDOR NUMBER	DBE OR NON-DBE	NAME OF REJECTED FIRM(S)	QUOTE IN DOLLARS	PRICE DIFFERENCE IN DOLLARS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY.

IF THE FIRM SELECTED FOR THE ITEM IS NOT A DBE, PROVIDE THE REASON(S) FOR THE SELECTION ON A SEPARATE PAGE AND ATTACH.

PROVIDE NAMES, ADDRESSES, AND TELEPHONE NUMBERS FOR THE FIRMS LISTED ABOVE.

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____**DATE SUBMITTED**_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____**SIGNATURE**_____

TITLE_____

ADVERTISEMENTS OR PROOFS OF PUBLICATION.

NAMES AND DATES OF EACH PUBLICATION IN WHCH A REQUEST FOR DBE PARTICIPATION FOR THE PROJECT WAS PLACED BY THE BIDDER. ATTACH COPIES OF PUBLISHED ADVERTISEMENTS OR PROOFS OF PUBLICATION.

PUBLICATIONS	DATES OF ADVERTISEMENT

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____DATE SUBMITTED_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____SIGNATURE_____

TITLE_____

NAMES OF AGENCIES CONTACTED TO PROVIDE ASSISTANCE

NAMES OF AGENCIES (SEE SPECIAL PROVISION FOR 110.04) AND THE DATES THESE AGENCIES WERE CONTACTED TO PROVIDE ASSISTANCE IN CONTACTING, RECRUITING, AND USING DBE FIRMS. IF THE AGENCIES WERE CONTACTED IN WRITING, ATTACH COPIES OF SUPPORTING DOCUMENTS.

NAME OF AGENCY	METHOD AND DATE OF CONTACT	RESULTS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY.

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____DATE SUBMITTED_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____SIGNATURE_____

TITLE_____

TECHNICAL ASSISTANCE AND INFORMATION PROVIDED TO DBEs

EFFORTS MADE TO PROVIDE INTERESTED DBEs WITH ADEQUATE INFORMATION ABOUT THE PLANS, SPECIFICATIONS, AND REQUIREMENTS OF THE BID DOCUMENTS TO ASSIST THE DBEs IN RESPONDING TO A SOLICITATION.

IDENTIFY THE DBEs ASSISTED, THE INFORMATION PROVIDED, AND THE DATE OF CONTACT. ATTACH COPIES OF SUPPORTING DOCUMENTS.

DBEs ASSISTED	INFORMATION PROVIDED	DATE OF CONTACT

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY.

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____DATE SUBMITTED_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____SIGNATURE_____

TITLE_____

EFFORTS MADE TO ASSIST DBEs OBTAIN BONDING, LINES OF CREDIT, INSURANCE, ETC.

EFFORTS MADE TO PROVIDE INTERESTED DBEs IN OBTAINING BONDING, LINES OF CREDIT, INSURANCE, NECESSARY EQUIPMENT, SUPPLIES, MATERIALS, OR RELATED ASSISTANCE OR SERVICES, EXCLUDING SUPPLIES AND EQUIPMENT THE SUBCONTRACTOR PURCHASES OR LEASES FROM THE PRIME CONTRACTOR OR ITS AFFILIATES.

IDENTIFY THE DBEs ASSISTED, THE ASSISTANCE OFFERED, AND THE DATES OF SERVICES OFFERED AND PROVIDED. ATTACH COPIES OF SUPPORTING DOCUMENTS.

DBEs ASSISTED	ASSISTANCE OFFERED	DATES SERVICES OFFERED AND/OR PROVIDED

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY.

COMM0NWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

CONTRACT I.D. NO._____DATE SUBMITTED_____

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR VDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER_____SIGNATURE_____

TITLE_____

ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORTS

ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORTS

NOTE: ATTACH ADDITIONAL PAGES, IF NECESSARY

ATTACHMENT 4.9.8(C)

Form C-112
Rev. 12-12-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

CERTIFICATION OF BINDING AGREEMENT

Project No.: _____

Federal Project No.:_____

It is hereby certified by the below signed Contractors that there exists a written quote acceptable to both parties preliminary to a binding subcontract agreement stating the details concerning the work to be performed and the price which will be paid for the aforementioned work. A copy of the fully executed subcontract agreement shall be submitted to the Engineer within fourteen (14) working days after contract execution.

It is further certified that the aforementioned mutually acceptable quote and fully executed subcontract agreement represent the entire agreement between the two parties and that no conversations, verbal agreements, or other forms of non-written representations shall serve to add to, delete, or modify the terms as stated.

The prime Contractor further represents that the aforementioned mutually acceptable quote and fully executed subcontract agreement shall remain on file for a period of not less than one year following completion of the prime's contract with the Department or for such longer period as provisions of governing Federal or State law or regulations may require.

Contractors further jointly and severally represent that said binding agreement is for the performance of a "commercially useful function" as that term is employed in 49 C.F.R. Part 26.55 (c), (d).

DBE/WBE Contractor _____

By: _____ _____
Signature Title

Date: _____

Prime Contractor: _____

By: _____ _____
Signature Title

Date: _____

Note: This document is not intended to, nor should it be construed to, contain the entire text of the agreement between the contracting parties. This document does not take the place of, nor may it be substituted for, an official subcontracting agreement in those situations that may require such an agreement.

ATTACHMENT 11.7.1

ESCROW PROPOSAL DOCUMENTS CHECKLIST

Project Name: Approaches and Bridge over Tye River (Rte. 29 NBL)
Contract ID Number: C00076552DB35

- Format:

  - ☐ Usual cost estimating format as long as information is clearly presented and ascertainable

  - ☐ Submitted in the language (i.e., English) of the Specifications

- Subcontractors

  - ☐ If Offeror's Proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds ten percent (10%) of the Total Proposal Price proposed by the Offeror, shall provide separate Escrow Documents to be included with those of the Offeror. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the highest-scored Offeror.

- Cost Items (All costs shall be identified)

  - ☐ Clearly itemizes the estimated costs of performing the work of each item contained in Offeror's schedule of values.

  - ☐ Cost items shall be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review.

☐ Includes estimates for:

- design professionals and consultants itemized by discipline both for development of the design
- all quantity take-offs
- crew size and shifts
- equipment
- calculations of rates of production and progress
- copies of quotes from subcontractors and suppliers
- memoranda, narratives, drawings and sketches showing site or work area layouts and equipment
- add/deduct sheets
- geotechnical reviews and consultant reports
- all other information used by the Offeror to arrive at the prices contained in the Proposal.

☐ Broken down into estimate categories for each bid items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed.

☐ Allocation of indirect costs, contingencies, and mark-up shall be identified.

☐ For cost items amounting to less than $10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and mark-up, as applicable, are allocated.

ATTACHMENT 11.7.9
ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is made and entered into as of _____, 2009, by and among the Virginia Department of Transportation ("Department"), _____("Offeror") and **Sun Trust Bank** ("Escrow Agent") with reference to the following facts:

WHEREAS, Department has issued a Request for Proposals dated **October 7, 2009** ("RFP") for the completion of the **Approaches and Bridge over Tye River (Rte. 29 NBL) Project**, on the Amherst/Nelson County line in Virginia ("Project); and

WHEREAS, Offeror has submitted to Department a proposal ("Proposal") in response to the RFP; and

WHEREAS, as part of the Proposal, Offeror is submitting one copy of all information regarding the assumptions made in developing the Proposal, as required under Part 1, Section 11.7 of the RFP, in one (1) separately sealed and labeled boxes ("EPDs"); and

WHEREAS, Department and Offeror wish to employ the services of Escrow Agent to act as the escrow holder with regard to the EPDs for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Deposit**. Offeror hereby deposits with Escrow Agent the EPDs. Escrow Agent hereby acknowledges receipt of such EPDs, and such EPDs shall be held in escrow under the terms and conditions of this Agreement.

2. **Holding of EPDs**. Escrow Agent shall hold the EPDs in escrow in a designated are on the premises of Escrow Agent located at **919 East Main St., 7th Floor, Richmond, VA 23219** on a confidential basis. The EPDs shall be stored in an area which is locked at all times. No third party, including the employees of Escrow Agent, shall be allowed access to any of the EPDs except as provided in Section 3 hereof, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes.

3. **Review of EPDs**. Escrow Agent shall provide facilities for joint review of the EPDs by representatives of Department and Offeror in accordance with the terms of the RFP, upon at least one business days' advance notice.

4. **Release of EPDs**. Escrow Agent shall release the EPDs as follows:

(a) Escrow Agent shall release the EPDs to Offeror, and Offeror shall pick up the EPDs at Offeror's expense, upon deliver by Department of a certificate certifying the Department has entered into a Design-Build Contract with another Offeror (the "Contractor") and that all EPDs of other Offerors are to be released.

(b) Escrow Agent shall release the EPDs to the Design-Builder and Department for delivery and retention to the Department as set forth in the Design-Build Contract at such time as it is notified by Department and the Design-Builder.

5. **Representation and Warranty**. Offeror represents and warrants to Department that, prior to delivery of the EPDs to Escrow Agent, the EPDs were personally examined by an authorized representative of Offeror and that they constitute all the documentation and information used in the preparation of the Proposal.

6. **Rights of Escrow Agent**. If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

(a) withhold and stop all further proceedings in, and performance of, this escrow;

(b) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves, or

(c) deliver all EPDs with seals intact to another location to be selected by Department within thirty (30) days after Escrow Agent delivers notice thereof to Department.

7. **Fees**. Offeror shall be responsible for any escrow fees. If Offeror fails to pick up the EPDs under Section 4(a), Offeror shall pay any fees accruing thereafter.

8. **Notices**. All notices which may be or are required to be given or made by either party hereto to the other shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:

If to the Offeror:

_____
_____
_____
Attention: _____

If to Department:

Virginia Department of Transportation
1401 East Broad St.
Richmond, VA 23219
Attention: Jeffrey A. Roby

If to Escrow Agent:

Sun Trust Bank
919 East Main St., 10th Floor
Richmond, VA 23219
Attention: Emily J. Hare

or to such other addressees and such other places as any party hereto may from time to time designate by written notice to the others.

9. **Counterparts**. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

10. **Headings**. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

11. **Governing Law**. The laws of the Commonwealth of Virginia, excluding its conflict of laws, shall govern this Agreement.

12. **Attorneys' Fees**. If either Department or Offeror commences or engages in any action by or against the other party directly or indirectly arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in the action and in preparation for said action and any subsequent appeal. All parties agree to indemnify and hold Escrow Agent harmless from and against all costs, expenses, and reasonable attorneys' fees in connection with any such action.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

VIRGINIA DEPARTMENT OF TRANSPORTION

By: _____

Name: Jeffrey A. Roby
Title: Program Engineer VDOT

OFFEROR

By: _____

Name: _____
Title: _____

The escrow provided for this Agreement is hereby accepted by Escrow Agent.

Sun Trust Bank:

By: _____
Name: _____
Title: _____

ATTACHMENT 11.8.7

Critical Infrastructure Information/Sensitive Security Information (CII/SSI) Multi-Purpose Non-Disclosure Agreement

Retain a copy of both the front and back sides of this form for future reference

VDOT requires CII/SSI be protected and not disclosed to unauthorized persons.

PART A: To Be Completed By Individual VDOT or Company Employee

I agree with the following as a condition of being granted access to CII/SSI:

CII/SSI, which is valuable and sensitive, is protected by law and by strict VDOT policies. The intent of these laws and policies is to assure that CII/SSI will remain confidential - that is, it will be used only as necessary to accomplish VDOT's mission. Disclosure of CII/SSI in any manner that permits interception by unauthorized persons could compromise safety and security and is prohibited. CII/SSI may be released only to persons with a need-to-know.

I might have access to this information in various formats including but not limited to documents and drawings, physical structures, and computer based systems. I have no right or ownership interest in any VDOT CII/SSI. VDOT may at any time revoke my authorization allowing access to CII/SSI.

Willful violation of this agreement may subject me to discipline which might include, but is not limited to, removal from current VDOT projects; exclusion from further VDOT related work; and legal liability. My obligations with respect to the confidentiality and security of all CII/SSI disclosed to me shall survive the termination of any agreement or relationship with VDOT. My execution of this agreement shall not nullify or affect in any manner any other agreement, non-disclosure or otherwise, which I have executed or may execute with VDOT or the Commonwealth of Virginia.

I am obligated to protect this information from unauthorized disclosure in accordance with the terms of this agreement. I will only use CII/SSI that I obtain to perform my legitimate VDOT related duties. I will conduct myself in a strict conformance to applicable laws and VDOT policies governing CII/SSI. I will safeguard the confidentiality of all CII/SSI at all times. I will be responsible for my misuse or my wrongful disclosure of CII/SSI.

Each provision of this agreement is severable. If any administrative or judicial tribunal should find any provision of this agreement to be unenforceable, all other provisions shall remain in full force and effect.

I make this agreement in good faith, without mental reservation or purpose of evasion.

Printed Name	Date
VDOT District/Division OR Company Name	Phone Number
Company Address	
Signature	Signature of Authorized Agent (Not required for VDOT employees)

PART B: To Be Completed By Company Agent Only:

In addition to the provisions above, I certify:

All employees of this company involved with this VDOT project, regardless of location, who will have access to CII/SSI, myself included, will complete Part A of the Critical Infrastructure Information/Sensitive Security Information Multi-Purpose Non-Disclosure Agreement. The Agreement will be signed by me and accepted by VDOT prior to being granted access to CII/SSI. We will only access CII/SSI for which we have a need-to-know.

We will safeguard the confidentiality of all CII/SSI at all times. We will conduct ourselves in strict conformance to applicable laws and VDOT policies governing CII/SSI. Obligations with respect to the confidentiality and security of all CII/SSI disclosed to us shall survive the termination of any agreement or relationship with VDOT.

Authorized Company Agent:

Signature of Authorized Agent	Date
Printed Name	Title
Company Name	Phone Number
Company Address	
VDOT Contract Name and Number	

This form is valid for the identified project for a period of two years, while employed by the same company.

Critical Infrastructure Information/Sensitive Security Information (CII/SSI)
Multi-Purpose Non-Disclosure Agreement
Back Page

Retain a copy of both the front and back sides of this form for future reference.

Handling CII/SSI

You are responsible for safeguarding Critical Infrastructure Information/Sensitive Security Information (CII/SSI) in your custody or under your control.

The extent of protection afforded CII/SSI shall be sufficient to reasonably foreclose the possibility of its loss or compromise.

The terms of this clause (*Handling CII/SSI*), including this paragraph, must be included in any dissemination of any document, in whole or in part, that contains CII/SSI.

Protection - CII/SSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with protected CII/SSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

Use and Storage - During working hours, reasonable steps shall be taken to minimize the risks of access to CII/SSI by unauthorized personnel. After working hours, CII/SSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where contract security is provided.

Reproduction - Documents or material containing CII/SSI may be reproduced to the minimum extent necessary consistent with the need to carry out official duties provided that the reproduced material is marked and protected in the same manner as the original material.

Disposal - Material containing CII/SSI shall be disposed of by any method that prevents unauthorized retrieval (e.g. shredding, burning, returning to original source, etc.).

Transmission - CII/SSI shall be transmitted only by VDOT courier, US first class, express, certified or registered mail, or through secure electronic means.

TABLE OF CONTENTS

1.0 DESIGN-BUILDER'S SCOPE OF WORK 1
1.1 Project Description 1
1.2 Anticipated Scope of Work 1
1.3 Anticipated Design Services 1
1.4 Anticipated Right-of-Way and Utilities 2
1.5 Anticipated Construction Services 3
1.6 Anticipated Environmental Services 3
2.0 PROJECT TECHNICAL INFORMATION & REQUIREMENTS 4
2.1 Standards and Reference Documents 4
2.2 Proposed Bridge 8
2.2.1 Structure Load Ratings 10
2.2.2 Shop Drawings 10
2.2.3 FHWA Bridge Construction Unit Cost Report 10
2.2.4 Safety and Acceptance Inspection for the Proposed Bridge 11
2.3 Environmental 11
2.3.1 Environmental Document 11
2.3.2 Water Quality Permits and Compensatory Mitigation 12
2.3.3 Threatened and Endangered Species / Nesting Migratory Birds 14
2.3.4 Hazardous Materials 16
2.3.5 Environmental Compliance 17
2.4 Survey 17
2.5 Geotechnical Work 18
2.5.1 Minimum Pavement Sections 19
2.5.2 Geotechnical Requirements 20
2.6 Hydraulics 22
2.6.1 Hydrologic and Hydraulic (H&H) Analysis 22
2.6.2 Drainage 23
2.6.3 Stormwater Management Plan and Erosion and Sediment Control 23
2.6.4 Stormwater Management Facilities 24
2.7 Traffic Control Devices 24
2.7.1 Signs 24
2.7.2 Guardrail 24
2.7.3 Pavement Markings / Markers 24
2.8 Transportation Management Plan 25
2.8.1 Holiday Restrictions 25
2.9 Public Involvement / Relations 25
2.10 Utilities 26
2.11 Quality Assurance / Quality Control (QA/QC) 26
2.11.1 Design Management 27
2.11.2 Construction Management 28
2.12 Field Office 30
2.13 Plan Preparation 30
2.13.1 Geopak and MicroStation 30
2.13.2 Software License Requirements 30

2.13.3 Drafting Standards 31
2.13.4 Electronic Files 31
2.13.5 Bridge Plans 31
2.13.6 Construction Plans 32
2.13.7 Record (As-Built) Plans 32
2.13.8 Plan Deliverables 33
2.14 Virginia Occupational Safety and Health Standards 33
3.0 ATTACHMENTS 34

PART 2

TECHNICAL INFORMATION & REQUIREMENTS

1.0 DESIGN-BUILDER'S SCOPE OF WORK

1.1 Project Description

The Project is located on Rte. 29 NBL at the Amherst/Nelson County Line, Virginia. The purpose of this Project is to replace the existing structurally deficient NBL bridge with a new two-lane bridge, along with the reconstruction of the roadway approaches on both ends of the proposed structure. The elevation of the roadway profile shall increase to approximately match that of the Rte. 29 existing SBL bridge. The limits of the proposed project begin approximately 650 feet from the south end of the existing NBL bridge and end approximately 900 feet from the north end of the existing NBL bridge. The length of the project is approximately 0.4 miles. However, it is noted that this description and length are approximate only and based on the preliminary design shown in the RFP Information Package. The final project length may vary depending on the Design-Builder's final design and this fact shall be taken into account in the Offeror's proposal. During construction, traffic traveling on Rte. 29 NBL shall be detoured to Rte. 29 SBL. The minimum traffic lane widths shall be 12 feet in each direction.

The elements detailed in the preliminary plans contained in the RFP Information Package are considered to be the basic Project configuration. Modifications such as additional right-of-way requirements, design exceptions/waivers, and environmental impacts due to adjustments of this design may be required as described elsewhere in this document. However, the Offerors should note that they are solely responsible for any schedule and cost impacts due to these modifications and National Environmental Policy Act ("NEPA") document re-evaluations associated with the Offeror's design changes.

1.2 Anticipated Scope of Work

The anticipated scope of work to be undertaken by the Design-Builder under the design-build contract for this Project will be identified in the RFP. This work is anticipated to include, among other things: (a) completing design, (b) supporting VDOT in acquiring all environmental permits and approvals, (c) performing roadway and bridge construction, (d) providing quality assurance and quality control for design and construction, and (e) providing overall project management. Brief descriptions of this anticipated work are set forth below. Design-Builders should note that all work performed on this Project shall be completed using Imperial Units.

1.3 Anticipated Design Services

Design services shall address all items necessary for construction and operation of the completed facility. Design services are anticipated to include but are not limited to: surveying, roadway design, bridge design, traffic control devices including traffic signals, maintenance of traffic plans, signs, guardrail, pavement markings and marker plans, drainage design, design of stormwater management facilities, geotechnical investigation including borings and analysis,

materials analysis, hydraulic and hydrologic analysis, scour analysis and pavement design. Other data collection and technical studies anticipated include: geotechnical investigation, borings and analysis, and materials analysis.

A required minimum pavement section has been provided by VDOT in the RFP for bidding purposes. The Design-Builder will be required to validate the suitability of the minimum pavement section, and if deemed inadequate increase the pavement layer thicknesses subject to VDOT approval. The Design-Builder will be responsible for the final design and construction of the pavement. A preliminary survey has been performed for this Project, however any additional information that the Design-Builder may need for their particular design shall be included in the Design-Builder's scope of work. Any survey, design and subsurface information provided by VDOT is subject to the limitations as stated therein and must be validated and augmented as necessary to provide the final design.

VDOT has completed a Federal Highway Administration ("FHWA") approved Programmatic Categorical Exclusion ("PCE") dated August 25, 2009 in accordance with the requirements of the NEPA. The Design-Builder will comply with all environmental commitments as identified in the PCE, Environmental Certification, and Plans, Specifications and Estimates re-evaluation.

Any changes in scope or footprint (as expressed in the PCE) proposed by the Design-Builder, that are acceptable to VDOT, may require additional environmental technical studies and analysis. The Design-Builder would be responsible for necessary environmental studies or analysis to support a re-evaluation of the PCE. VDOT would be responsible for preparation of the re-evaluation documentation and coordinating with FHWA.

1.4 Anticipated Right-of-Way and Utilities

All right-of-way and easements required for the construction of the project have been acquired by VDOT. It is anticipated that no additional right-of-way and/or easements are necessary. The Design-Builder shall be responsible for assuming all risks associated with the acquisition of additional right-of-way or easements (to accommodate its unique solution), including any public hearings that may be required, and no modifications to the Contract Price or Contract Time will be granted or considered. Any additional easements for the convenience of construction access shall be the responsibility of the Design-Builder. Any additional right-of-way acquisition costs (compensation paid to landowners for right-of-way or easements and administrative expenses) will be paid by the Design-Builder and should be included in the design-build price proposal. These costs are specifically payments to the landowner for land, damages, relocation of displaced people and businesses and do include administrative expenses incurred by the Design-Builder. Access shall be maintained at all times to properties during construction. Design-Builder's Right-of-Way team shall be a member of the VDOT prequalified contracting consultant list, and include a VDOT prequalified Fee Appraiser.

1.5 Anticipated Construction Services

Construction services are anticipated to include, but are not limited to, temporary detour of Rte. 29 NBL traffic to existing Rte. 29 SBL including crossovers of the median, earthwork, roadway, bridge and structures (including all necessary excavation, foundation work, substructure work, and superstructure work), the demolition and removal of portions of the existing roadways, demolition and removal of existing structure, drainage, storm water management, transportation management plan, traffic control devices, erosion and sediment control and all other environmental requirements and commitments including those from the regulatory approvals and permits secured by VDOT, as well as all other environmental commitments from the PCE and as indicated in the Forms EQ-200 and the EQ-103 (Included in the RFP Information Package – CD-ROM). Design-Builders will also be expected to provide construction engineering inspection and management, quality assurance and quality control, including plant quality assurance inspection and testing, but excluding items listed under Section 2.11.2 below.

1.6 Anticipated Environmental Services

The Lynchburg District Environmental Section will obtain all necessary environmental clearances, permits, and approvals required to accomplish the work as noted in Part 4 (General Conditions of Contract), Section 2.6. The Design-Builder shall support VDOT's acquisition of necessary water quality permits by providing (but not limited to) design details, utility relocations, project descriptions, permit sketches and quantities information to be used in the Interagency Coordination Meeting ("IACM") process. The IACM is typically held on the second Tuesday of every month. The Design-Builder must provide completed IACM application and all supporting documentation six (6) weeks prior to the IACM date (see VDOT's Water Quality Permit Manual and the IACM Application Included in the RFP Information Package – CD-ROM).

The Design-Builder shall be responsible for compliance with pre-construction and construction-related environmental commitments and permit conditions. The Design-Builder shall assume all obligations and costs incurred by complying with the terms and conditions of the permits and certifications. Any fines associated with environmental permit or regulatory violations shall be the responsibility of the Design-Builder.

Design-Builder will be responsible for notifying VDOT of plan revisions, scope changes, and providing any necessary studies and other necessary information to support VDOT's completion and updating of NEPA and Section 4(f) environmental clearances. Design-Builder should note that they are solely responsible for any costs or schedule delays due to VDOT's permit acquisition, modifications and NEPA document and/or 4(f) re-evaluations associated with Design-Builder's design changes and no time extensions will be granted.

2.0 PROJECT TECHNICAL INFORMATION & REQUIREMENTS

2.1 Standards and Reference Documents

The design and construction work for the Project shall be performed in accordance with the applicable federal and state laws and VDOT Standards, Specifications and Reference Documents to include, but not limited to the documents listed herein. The Design-Builder must verify and use the latest version of the documents listed herein. The Design-Builder must meet or exceed the minimum roadway design standards and criteria.

If during the course of the design, the Design-Builder determines specific Standard, Specification or Reference Documents required are not listed herein, it is the responsibility of the Design-Builder to identify the pertinent Standard, Specification or Reference Document and submit to VDOT for review and approval prior to inclusion in the Contract Documents.

- VDOT 2002 Drainage Manual (including current Errata Sheet)
- VDOT Hydraulic Design Advisories (all current)
- VDOT CADD Manual (Version 2004)
- VDOT Construction Manual (2005)
- VDOT Post Construction Manual (2009 Edition)
- VDOT Construction Inspection Manual (April 2008)
- VDOT Traffic Engineering Design Manual
- VDOT 2003 Minimum Standards of Entrances to State Highways
- VDOT Right-of-way and Utilities Division Manuals, Vol. I (July 1999) and II (November 2003)
- VDOT Current Land Use Permit Manual
- VDOT Policy Manual for Public Participation in Transportation Projects (updated September 2004)
- VDOT Instructional & Information Memorandums ("I&IM"), All Divisions
- VDOT Policy for Integrating Bicycle and Pedestrian Accommodations
- VDOT Road and Bridge Standards, Vol. 1 and Vol. 2 (2008)
- VDOT Road and Bridge Specifications (2007) (all except Section 100), including all revisions
- VDOT Guardrail Installation Training Manual ("GRIT") February 2006
- VDOT Road Design Manual, Vol. I
- VDOT Guidelines for 1993 AASHTO Pavement Design, Revised – May 2003
- VDOT Survey Manual (2002 Edition)
- VDOT Manual of Instruction for Material Division
- VDOT's Minimum Quality Control and Quality Assurance Requirements for Design-Build and Public-Private Transportation Act Projects (August 2008)
- VDOT Materials Division Memorandum Number MD299-07 for Materials Acceptance – October 4, 2007 (Included in the RFP Information Package)
- VDOT Manual of Structure and Bridge Division, Vol. V
- VDOT 2005 Virginia Work Area Protection Manual

- VDOT Mobility Management Division Memoranda
- VDOT Water Quality Permit Manual, Revised - March 28, 2006 (Included in the RFP Information Package – CD-ROM)
- AASHTO Manual of Bridge Evaluation, 2008
- 23CFR650 Subpart C - National Bridge Inspection Standards ("NBIS"), Subsection 650.301 or the latest revision(s)
- AASHTO LRFD Bridge Design Specifications, 4th Edition, 2007; 2008 and 2009 Interim Specifications; and VDOT Modifications
- AASHTO Fracture Critical Non-Redundant Steel Bridge Members Current Spec. with all Interim Specifications
- AASHTO A Policy on Geometric Design of Highways and Streets (2004)
- AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals, 1994 Edition
- AASHTO Guide Design Specifications for Bridge Temporary Works
- AASHTO Construction Handbook for Bridge Temporary Works
- AASHTO Guide for the Development of Bicycle Facilities (1999)
- AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities (2004)
- AASHTO Guide for Design of Pavement Structures (Rigid Pavement and Flexible Pavement) (1993 Edition)
- USDOT FHWA Standard Highway Signs Book 2004 Edition
- Corps of Engineers laboratory testing procedures EM-1110-2-1906
- Manual of Uniform Traffic Control Devices ("MUTCD") 2003 Edition with Revisions 1 and 2
- Virginia Supplement to MUTCD
- Traffic Engineering Division Memorandums ("TDM")
- Virginia Department of Conservation and Recreation ("DCR") Virginia Stormwater Management Handbook (First Edition – 1999)
- DCR Virginia Erosion and Sediment Control Handbook (Third Edition – 1992)
- Americans with Disabilities Act Accessibility Guidelines for State and Local Government Facilities
- Transportation Research Board Highway Capacity Manual – HCM 2000
- Duncan, J.M. (April 2000) Factor of Safety And Reliability In Geotechnical Engineering, Journal of Geotechnical and Geoenvironmental Engineering, ASCE, Discussions and Closure August 2001

Special Provision Copied Notes ("SPCN"):

- SPCN c100ai02-0609 General Project Requirements, Supplemental Specifications (SSs), Special Provisions (SPs) and Special Provision Copied Notes (SPCNs)
- SPCN c100b01-0908 Labor
- SPCN c105hf1-0309 Section 105.06 Subcontracting
- SPCN c211gg0-0609 Warm Mix Asphalt Pavement
- SPCN c223ag1-0309 Section 223 Steel Reinforcement
- SPCN c315gg0-0609 Warm Mix Asphalt Pavement

- SPCN for PG 76-22 Asphalt Cement Adjustment – Design-Build Projects (Included in RFP Information Package – CD-ROM), dated October 7, 2009

Special Provisions:

- S107G01-0309 C-45
- S704E01-0309 Type B, Class VI Pavement Line Marking
- Special Provision for Density Control of Embankments and Backfill (Included in the RFP Information Package – CD-ROM), Revised – November 26, 2006
- Special Provision for Section 301 – Clearing and Grubbing (Included in RFP Information Package – CD-ROM), dated November 15, 2006
- Special Provision for Low Permeability Concretes For Design-Build Projects (Included in the RFP Information Package – CD-ROM), dated September 6, 2009
- Special Provision for Hydraulic Cement Concrete Operations for Massive Construction (Included in the RFP Information Package – CD-ROM), dated September 14, 2004
- Special Provision for the Quality Assurance/Quality Control ("QA/QC") for the Construction of Deep Foundation Systems for Design Build Projects (Included in the RFP Information Package – CD-ROM), dated July 15, 2008
- Special Provision for Drilled Shafts (Included in the RFP Information Package – CD-ROM), dated September 28, 2009
- Special Provision for Lime Modification of Soils (Included in the RFP Package – CD-ROM), dated May 31, 2000
- Special Provision for Design-Build Tracking ("DBT") Numbers (Included in the RFP Information Package – CD-ROM), dated February 8, 2008
- Special Provision for Personnel Requirements for Work Zone Traffic Control (Included in RFP Information Package – CD-ROM), dated June 11, 2009
- Special Provision for Project Communication and Decision Making for Design-Build Projects (Included in RFP Information Package – CD-ROM), dated August 2009
- Special Provision for Asbestos Removal for Road Construction Demolition Projects (Included in the RFP Information Package – CD-ROM), dated March 18, 2009
- Special Provision for Asbestos Removal and NESHAP-Related Demolition Requirements for Structures on Design-Build Projects (Included in RFP Information Package – CD-ROM) dated June 22, 2009
- Special Provision for Inspection of Structures for Asbestos Containing Materials (ACM) on Design-Build Projects (Included in RFP Information Package – CD-ROM), dated June 22, 2009
- Special Provision for Limitation of Operations Protection of Green Floater Mussel (Included in the RFP Information Package – CD-ROM), dated August 26, 2009
- Special Provision for Limitation of Operations Protection of Nesting Migratory Birds (Included in the RFP Information Package – CD-ROM), dated August 26, 2009
- Approved Retaining Wall Systems List (Included in the RFP Information Package – CD-ROM), dated July 6, 2009
- Guidelines for Preparation of Alternate Retaining Wall Plans (Included in the RFP Information Package – CD-ROM), dated March 6, 2008

- General Notes for Alternate Retaining Wall Plans (Included in the RFP Information Package – CD-ROM), dated April 10, 2009
- Special Provision for Mechanically Stabilized Earth Walls (Concrete Panel Facing) (Included in the RFP Information Package – CD-ROM), dated September 18, 2008
- Special Provision for Mechanically Stabilized Earth Walls (Segmental Block Facing) (Included in the RFP Information Package – CD-ROM), dated October 17, 2008
- Special Provision for Mechanically Stabilized Earth Walls (Modular Cantilever Facing) (Included in the RFP Information Package – CD-ROM), dated July 9, 2009
- Special Provision for T-Wall Retaining Wall System (Included in the RFP Information Package – CD-ROM), dated May 1, 2002

Supplemental Specifications:

- SS1D005-0909 Supplemental Division 1 – General Provisions
- SS21101-0609 Supplemental Section 211 – Asphalt Concrete
- SS21402-0908 Supplemental Section 214 – Hydraulic Cement
- SS21501-0908 Supplemental Section 215 – Hydraulic Cement Concrete Admixtures
- SS21701-0609 Supplemental Section 217 – Hydraulic Cement Concrete
- SS22401-0908 Supplemental Section 224 – Castings
- SS22601-0609 Supplemental Section 226 – Structural Steel
- SS31502-0609 Supplemental Section 315 – Asphalt Concrete Pavement
- SS40501-0609 Supplemental Section 405 – Prestressed Concrete
- SS51202-0909 Supplemental Section 512 – Maintaining Traffic
- SS51401-0609 Supplemental Section 514 – Field Office

- VDOT Permit Determination (Included in the RFP Information Package – CD-ROM), dated September 2, 2009
- Programmatic Categorical Exclusion ("PCE") (Included in the RFP Information Package – CD-ROM), dated August 25, 2009
- Document Reevaluation for PSE Authorization (EQ-200) (Included in the RFP Information Package – CD-ROM), dated September 3, 2009
- Environmental Certification/Commitments Checklist (EQ-103) (Included in the RFP Information Package – CD-ROM), dated September 3, 2009
- FHWA publications HDS-6, HEC-11, HEC-14, HEC-15, and HEC-20

In the event that there is a discrepancy between VDOT and non-VDOT Standards and References listed herein, the VDOT specifications, design standards, and manuals shall take precedence. Design Waivers will be required for any element that does meet AASHTO minimum design criteria, but not VDOT minimum standards. Design Exceptions will be required for any design element that does not meet AASHTO minimum design criteria. See IIM-LD-227.3, S&B 70.1 for more information regarding Design Exceptions and Design Waivers. Special Provisions included in this contract document or other Special Provisions selected for use in design and construction of this Project that have been approved by VDOT will govern over the VDOT specifications, design standards and manuals. Special Provision Copied Notes approved by

VDOT and requirements specified within the text of this RFP will govern over both the Special Provisions and VDOT specifications, design standards and manuals.

Specific design requirements described in the Technical Requirements (Part 2) shall supersede the design depicted in the preliminary plans included in the RFP Information Package. In the event that there is a discrepancy between the preliminary plans and the Technical Requirements (Part 2) herein, the Technical Requirements (Part 2) shall take precedence.

2.2 Proposed Bridge

The proposed bridge for this Project shall be designed using AASHTO *LRFD Bridge Design Specifications,* 4th Edition, 2007; 2008 and 2009 Interim Specifications; VDOT Modifications (IIM-S&B-80) and the Additional Foundation Criteria attachment (Attachment 2.2). AASHTO HL-93 loading shall be used. The Design-Builder shall submit a preliminary type, size and location plan of the proposed bridge to VDOT for review and approval prior to proceeding with final design.

Bridge type and layout shall be based on reducing long term maintenance costs for VDOT. To the maximum extent possible expansion joints in deck slabs shall be minimized. The use of continuous span units and jointless bridge design technologies shall be used as outlined in the VDOT *Manual of the Structure and Bridge Division*, Volume V – Part 2 (VDOT Office Practice). The proposed bridge shall not be designed as fracture critical.

The proposed structure shall utilize low permeability concrete in accordance with the Special Provision for Low Permeability Concretes For Design-Build Projects (Included in the RFP Information Package – CD-ROM). The proposed structure shall utilize corrosion resistant reinforcement in accordance with IIM-S&B 81.1. Epoxy coated reinforcing steel shall not be used. When choosing corrosion resistant reinforcing steel, precautions shall be made to prevent any decomposition due to dissimilar metal properties. Acceptable types of corrosion resistant reinforcing steel includes; stainless steel and MMFX-2. If MMFX-2 is used, the reinforcing steel should meet the specification for ASTM A1035; however, a maximum allowable design stress should be limited to 60 ksi.

Plain deformed reinforcing bars shall conform to ASTM A615 Grade 60.

Either prestressed concrete or structural steel beams/girders may be used and shall be designed as composite with the cast-in-place deck. A minimum future wearing surface load of 15 psf shall be applied to the deck areas of the composite section. A minimum construction tolerance load of 20 psf shall be applied to the non-composite sections of beam/girder spans having cast-in-place decks. No timber bridge elements of any kind will be acceptable in the proposed structure. Asphalt concrete pavement over corrugated metal forms shall not be used.

For structural steel alternatives, the material shall be weathering steel if the conditions meet the requirements of the Federal Highway Administration Technical Advisory T5140.22, “Uncoated Weathering Steel in Structures.” The use of HPS (high performance steel) 70 ksi will be permitted. The use of HPS 100 ksi will not be permitted. Cover plates on continuous rolled

beam sections in the negative moment areas and longitudinal stiffeners shall not be used. Other fatigue prone details shall be minimized and/or not used. No field welding to structural steel members, primary or secondary, shall be permitted except as allowed by VDOT Office Practice.

For prestressed concrete alternatives, the precast concrete Bulb-T sections adopted by VDOT shall be used. AASHTO shapes will not be permitted. The use of HPC (high performance concrete) for prestressed concrete beams in excess of 8,000 psi concrete strength will be considered but will require approval by the State Structure and Bridge Engineer.

The use of parapets/railings other than cast-in-place F-shape parapet shall be approved by VDOT. Parapets/railings shall be crash tested and approved as FHWA/NCHRP Test Level-4.

Dismantling and removing the existing structure shall be in accordance with Section 413 of the Road and Bridge Specifications. Reuse of the existing structure including all substructure units shall not be permitted.

The use of multi-column piers will not be permitted. When spread footings are proposed, the Design-Builder shall conform to Section 401 of VDOT Road and Bridge Specifications 2007, Structure Excavation. All pier spread footings shall be keyed into bedrock a minimum of two feet. The Design-Builder shall ensure that all recommendations related to the suitability of foundation material for spread footings at the time of construction shall be made in the field by a qualified geotechnical engineer. As part of VDOT's requirements, foundation recommendations for the proposed bridge shall be submitted for review and approval prior to the submittal of final foundation construction plans. A minimum horizontal clearance of 10 feet to any substructure face or toe of slope shall be maintained to the centerline of abandoned railroad bed as depicted in the preliminary bridge plans. Accommodations for access along the existing trail on the abandoned railroad bed shall be provided for during construction of the Project.

The preferred type of Elastomeric Expansion Dam (VDOT Standard BEJ-3) is the Type F2 Dam, the use of other types of expansion dams shall be approved by VDOT. Structural steel in Elastomeric Expansion Dams and/or Tooth Expansion Joints shall be ASTM A709 Grade 36 and shall be fabricated in accordance with Section 407 and galvanized in accordance with Section 233 of the Specifications.

Structural approach slabs will be required at each end of the bridge on this Project. Approach slabs and sleeper pads, if the latter is required, shall conform to the requirements of the VDOT *Manual of the Structure and Bridge Division*, Volume V – Parts 2 and 3. A sleeper pad will be required when the bridge abutment is either integral or semi-integral.

The proposed structure shall be designed to meet all applicable hydraulic requirements, including current FEMA and VDOT guidelines as described in the latest edition of the VDOT Drainage Manual. The Design-Builder shall deliver to VDOT a final Hydrologic and Hydraulic Analysis and a final Scour Analysis for the proposed bridge design as noted in Section 2.6.1 herein. These analyses shall be submitted to the Department for review and approval prior to the commencement of bridge construction**.** Adequate drainage for the bridge structures must be provided; in particular, the designed system must be able to drain and control water that is on the

deck. Bridge deck drainage analysis and design shall be performed in accordance with the latest version of FHWA Publication HEC21- Design of Bridge Deck Drainage, and the VDOT Drainage Manual.

2.2.1 Structure Load Ratings

The Design-Builder shall perform a load rating using the As-Built drawings of the completed bridge. Structure load ratings shall be performed in accordance with VDOT Structure and Bridge Division Instructional and Informational Memorandum ("I&IM") Number IIM-S&B-27.6 or the latest revision; AASHTO Manual of Bridge Evaluation, 1st Edition, 2008; and 23CFR650 Subpart C – National Bridge Inspection Standards ("NBIS"), Subsection 650.301. The Design-Builder shall perform load ratings on bridge superstructures using Load and Resistance Factor Rating method for NBIS rating for the AASHTO HL-93 design loading, the blanket permit vehicle (90K and 115K) and Virginia's Legal Load vehicles as specified in IIM-S&B-27.6 or the latest revision.

All load ratings for the completed structure other than steel curved girders/beams shall be performed using AASHTOWare VIRTIS software.

The Design-Builder shall prepare and deliver to VDOT a load rating report for the completed structure. This report shall contain a completed copy of VDOT's current load rating summary sheet referencing the controlling structural element(s) signed by a professional engineer licensed in Virginia, rating assumptions, pertinent analysis calculations and VIRTIS, DESCUS or other approved computer input as appropriate. In addition, a compact disk ("CD") containing the load rating input files for VIRTIS, DESCUS or other approved computer programs shall be delivered to the Department with the report. The report shall be submitted not later than thirty days after completion of the bridge and in accordance with IIM-S&B-27.6 or the latest revision.

No structure shall be placed into service if a Load Restriction (Posting) is required based upon the load rating analysis. The Design-Builder is responsible for all remedial measures to make corrections to the design or as-built bridge.

2.2.2 Shop Drawings

The Design-Builder shall review and approve working/shop drawings and submit three approved sets to VDOT for the proposed bridge structure. Reference should be made to Article 105.10 of VDOT Road & Bridge Specifications 2007. The working/shop drawings shall be approved by a registered, licensed, Professional Engineer.

2.2.3 FHWA Bridge Construction Unit Cost Report

For the proposed bridge structure, the Design-Builder shall submit Estimated Quantities along with the associated unit costs for all standard and non-standard items in the final bridge plan submittal. The bridge unit cost data is required to complete VDOT's annual Bridge Construction Unit Cost Report which is provided to FHWA.

2.2.4 Safety and Acceptance Inspection for the Proposed Bridge

Acceptance of a bridge structure will require the following two independent inspections by VDOT:

1. A satisfactory safety/inventory inspection by VDOT as described below is required prior to Substantial Completion and opening the structure to public traffic. This safety/inventory inspection by VDOT will serve as the initial inspection of the structure. Data gathered will include location, date completed, alignment, description, horizontal/vertical clearances, stream data, structure element description and condition data, and traffic safety features.

2. A satisfactory final construction inspection by VDOT is required prior to Final Acceptance of the structure.

While it is suggested that these two inspections be held simultaneously, simultaneous inspection is not a requirement since it may not be practical.

To facilitate inspection of the structure by VDOT, the Design-Builder shall ensure that all structural elements are accessible and shall provide adequate resources including:

- Man-lifts, bucket trucks, under bridge inspection vehicles, boats, or other equipment necessary to inspect the structure as well as properly trained staff of sufficient composition to support the inspections.
- Plans, procedures, personnel, and equipment to implement traffic control measures.

The Design-Builder shall provide a minimum of thirty (30) days notice to VDOT whenever it requires VDOT to undertake an inspection. The Design-Builder's notice to VDOT shall include as-built drawings, traffic control procedures, a description of the items to be inspected and an anticipated schedule for the inspections, all in accordance with the requirements contained in Section 2.2.

Unless otherwise approved by VDOT, structures shall be substantially complete (i.e. roadway, and slopes on the approaches and underneath the structure are already in place) before the inspection will be performed.

2.3 Environmental

2.3.1 Environmental Document

In accordance with the requirements of the NEPA, a PCE, dated August 25, 2009, has been completed for the Project. Preliminary Plans, Specifications, and Estimates ("PS&E") re-evaluation and Environmental Certification have also been completed by VDOT. These documents are included in the RFP Information Package – CD-ROM.

The Design-Builder shall carry out the environmental commitments during design and construction, as applicable, as identified in the PCE, the PS&E re-evaluation, and the Environmental Certification forms. All commitment compliance shall be supported by appropriate documentation, to be provided by the Design-Builder to VDOT. VDOT shall then complete the final PS&E re-evaluation and Environmental Certification forms prior to the VDOT Project Manager releasing the project for construction.

Any changes in scope or footprint proposed by the Design-Builder that are acceptable to VDOT may require additional environmental technical studies and analysis. The Design-Builder will be responsible for any additional environmental technical studies and analysis. VDOT will be responsible for the preparation and coordination of any revised environmental documents. The Design-Builder shall carry out any additional environmental commitments that result from such coordination at its sole expense and no additional cost to the Project.

2.3.2 Water Quality Permits and Compensatory Mitigation

VDOT shall be responsible for the tasks involved with determining the need for water quality permits and performing the associated tasks to secure water quality permits, permit modifications and/or permit extensions; VDOT shall be the Permittee. This will be done in accordance with the VDOT's Water Quality Permit Manual (RFP Information Package – CD-ROM).

A State Program General Permit ("SPGP") from the US Corps of Engineers, a VWP General Permit No. WP3 from VDEQ, and a Virginia General Permit #1 ("VGP-1") from the Virginia Marine Resource Commission ("VMRC") are anticipated for the project. VDOT's preliminary permit determination for the project (dated September 2, 2009) is included in the RFP Information Package – CD-ROM. The Design-Builder should note that VDOT's preliminary permit determination represents a worse case and is provided for scheduling purposes.

The Design-Builder shall support VDOT's permit acquisition efforts by providing (but not limited to) design details, utility relocations, project descriptions, permit sketches and quantities information which shall include information such as limits of jurisdiction, square feet of impact below OHW (or MLW) both permanent and temporary, cubic yards of impact below OHW (or MLW) both permanent and temporary and broken out by excavation, permanent fill and temporary fill quantity calculations, plan views, section views, construction notes, construction phasing details, temporary construction measures, erosion and sediment controls, hydraulic commentary, and access requirements. VDOT shall utilize this information to complete a Joint Permit Application. Water quality permits shall be acquired by VDOT within six (6) months from the time the above required information is complete and provided by the Design-Builder to VDOT.

In addition the Design-Builder shall support/attend VDOT's presentation if requested at the IACM, address agency comments/concerns, evaluate and/or incorporate design changes for avoidance and minimization, attend regulatory agency field reviews, etc as requested by VDOT. The Design-Builder's lump sum price shall not include costs for VDOT's tasks associated with

water quality permit acquisition. However, all costs associated with the Design-Builder's support of VDOT's permit determination and/or permit acquisition shall be included in the Design-Builder's lump sum price.

If VDOT determines that wetlands and/or stream mitigation is required to secure the permit authorization, VDOT will provide the required compensatory mitigation. The Design-Builder shall not include that cost in their lump sum price.

The Design-Builder shall note that avoidance, minimization, and mitigation measures associated with permit acquisition will require close coordination between the Design-Builder and VDOT. However, if permit issuance is delayed or permits are denied, the Design-Builder will be responsible for any schedule delays and/or associated costs.

The Design-Builder shall be responsible for coordination with VDOT to ensure that project schedules accommodate any Special Provisions, Time of Year Restrictions ("TOYR"), and the duration of permit acquisition from the regulatory agencies. The Design-Builder shall be responsible for adhering to permit conditions and Special Provisions, as identified in the permit authorizations including but not limited to TOYR, avoidance and minimization recommendations, restoration of temporary impact areas, and countersinking culverts.

The Design-Builder shall not proceed with work covered by the water quality permits until the VDOT Project Manager releases the work in writing. The VDOT Project Manager may release a portion or all of such work not in jurisdictional areas, but may order a suspension of the same work after its release. The Design-Builder shall not be allowed to begin work that pre-determines the work required in the jurisdictional areas until the permits are secured.

After receiving the VDOT Project Manager release of the work, the Design-Builder shall notify in writing the VDOT Project Manager 14 days prior to beginning work in the jurisdictional areas covered by the water quality permits so the required agency notifications can be made by VDOT.

The Design-Builder shall allow environmental compliance inspections by VDOT, and/or regulatory agencies as required by permits and/or to facilitate any interim compliance reviews/assessments.

At the conclusion of the project, the Design-Builder shall notify in writing the VDOT Project Manager of compliance with the permit conditions and the completion of the work in the jurisdictional areas covered by the water quality permits so the required agency notifications can be made by VDOT.

Any changes proposed by the Design-Builder in either the footprint and/or scope of the Project as provided in design details and/or construction sketches/plans and quantities information provided by the Design-Builder and used by VDOT to determine the applicability of water quality permits and/or information provided to VDOT to secure the necessary water quality permits will require additional coordination with VDOT and may necessitate the acquisition of additional or modified water quality permits to meet the change in footprint and/or

scope. The Design-Builder shall carry out any additional environmental commitments that result from change in footprint and/or scope at its sole expense and no additional cost to the Project; additionally the Design-Builder will be responsible for any schedule delays and associated costs.

All permitted construction activities shall be identified as hold points in the Design-Builder's CPM Schedule.

2.3.3 Threatened and Endangered Species / Nesting Migratory Birds

2.3.3.1 Green Floater Mussel

The Design-Builder shall adhere to the Special Provision on the Limitation of Operations for the Protection of the Green Floater Mussel included in the RFP Information Package – CD-ROM.

VDOT has coordinated with US Fish and Wildlife Service ("FWS"), Virginia Department of Game and Inland Fisheries ("VDGIF"), Virginia Department of Conservation and Recreation ("VDCR"), and Virginia Department of Agriculture and Consumer Services ("VDACS") regarding the Green Floater (*Lasmigona subviridis*) .

The Tye River is known to provide unique and important habitat for the Green Floater. This mussel is protected by the Federal Endangered Species Act of 1973 et seq. and the Virginia Endangered Species Act (29.1-563 et seq.) and occurs in close proximity to the project site.

A TOYR protective of Green Floater applies from 15-April through 15-June, and from 15-August through 30-September of any given year. The Design-Builder must adhere to VDGIF's standard recommendations for instream work, to implement measures to ensure concrete and debris do not enter the water, and adhere to strict E&S controls.

VDOT will coordinate a Green Floater mussel survey from 66 feet upstream and 131 feet downstream of the work area within 45 days of instream work, in accordance with the Freshwater Mussel Guidelines for Virginia, by a qualified biologist that has been pre-approved by VDGIF. Mussel surveys must be done between April 1 and October 31. Mussels tend to burrow deeper into substrate during cooler months, making them more difficult to see and collect. Surveys conducted outside this time period will require prior approval by VDGIF. The Design-Builder shall notify the VDOT Project Manager at least 45 days prior to instream work. The costs associated with the Green Floater mussel survey and relocations shall not be included in the Design-Builder's lump sum price. The Design-Builder will be responsible for coordination with VDOT to ensure that project schedules accommodate the mussel survey and any potential relocation.

If Green Floaters are found in this area, VDOT will coordinate the standard relocation in accordance with the Freshwater Mussel Guidelines for Virginia. The first relocation survey must occur within 30-45 days of instream construction activities and at least 7 days prior to the second relocation survey. The second relocation survey shall occur within 30 days of the instream construction activities and at least 7 days after the first relocation survey. All relocation surveys

shall include at a minimum, two passes. The Design-Builder is responsible for notifying VDOT at least 45 days prior to instream work.

VDOT will coordinate exceptions to the Special Provision for Limitation of Operations for the Protection of Green Floater Mussel included in the RFP Information Package – CD ROM. This coordination will include, but may not be limited to, the United States Fish and Wildlife Service and the Virginia Department of Game and Inland Fisheries, U.S. Army Corps of Engineers, Virginia Department of Environmental Quality, and the Virginia Marine Resource Commission.

The Design-Builder shall monitor continuously all construction activities within the construction footprint of each side of the Tye River to prevent releases of soil, sediment, concrete, petroleum products and other hazardous materials. All areas of exposed and potentially erodible soil including stockpiles and access roads shall be stabilized with applications of stone, seeding, straw mulch, retention blankets, and other geotextile materials, in an effort to minimize erosion and eliminate siltation. The Design-Builder shall prepare and submit to the VDOT Project Manager for approval their plan and sequence of demolition of the Rte. 29 NBL bridge over the Tye River. The plan shall include all measures that will be implemented to prevent earth, concrete, and debris from entering the waterway.

In the event the activities of the Design-Builder at the Tye River cause the taking of Green Floaters or physically diminish the habitat as determined by the VDOT Project Manager or any agency having jurisdiction over the waterway, all in-stream work shall cease pending an investigation into the cause and extent of damage. No compensation or claim for time or damages will be valid should such investigation reveal responsibility or negligence on the part of the Design-Builder.

2.3.3.2 Nesting Migratory Birds

The Design-Builder shall adhere to the Special Provision on the Limitation of Operations for the Protection of Nesting Migratory Birds included in the RFP Information Package – CD-ROM.

The Rte. 29 NBL bridge over the Tye River is known to provide nesting habitat for the migratory barn swallow (*Hirundo rustica*) and cliff swallow (*Petrochelidon pyrrhonota*). These migratory birds are protected by the Migratory Bird Treaty Act of 1918 et seq ("MBTA"). The MBTA prohibits the harming and destruction of birds, eggs, nests, or parts thereof.

Swallows found to be nesting on the bridge to be demolished shall not be disturbed or displaced by demolition activities or other construction practices which would cause a direct effect to brooding birds from 1-May through 31-August of any given year. VDOT will take actions to preempt nesting activity prior to May 1st if necessary. This may include the placement of netting, planking, tarpaulins, and other means that prevent the birds from accessing former nests or building new ones as long as these methods do not result in death or injury to adults. No removal of inactive nests of migratory birds should be accomplished prior to consultation with the US Fish and Wildlife Service ("USFWS") office with local jurisdiction. The Design-Builder

shall notify the VDOT Project Manager when ready to perform these activities in the vicinity of identified nests. The Design-Builder shall not proceed with activities resulting in violation of the MBTA until an on-site inspection for the presence or absence of nesting migratory birds has been performed by VDOT. The Design-Builder will be advised of the results of this inspection and may be given clearance to proceed subject to a determination of its findings. All costs associated with actions to preempt nesting activities shall not be included in the Design-Builder's lump sum price.

Activities that cannot avoid nests or nesting activities by taking the preceding actions may require a permit from the Region 5 Bird Permit Office, Division of Migratory Bird Management, USFWS. The Region 5 contact information is presented below:

U.S. Fish and Wildlife Service
Migratory Bird Permit Office
P.O. Box 779
Hadley, MA 01035-0779
Tel.: (413) 253-8643
Fax: (413) 253 8424
Email: permitsR5MB@fws.gov

In the event the activities of the Design-Builder cannot adhere to the Special Provision on the Limitation of Operations for the Protection of Nesting Migratory Birds included in the RFP Information Package – CD ROM, the Design-Builder shall notify the VDOT Project Manager and cease all activity until a permit is obtained by the Design-Builder. No compensation or claim will be paid to the Design-Builder for time or damages for failure to meet the conditions of the Special Provision.

2.3.4 Hazardous Materials

The Design-Builder shall have asbestos inspections performed by an independent Asbestos Inspector licensed by the Virginia Department of Professional and Occupational Regulation ("DPOR") for all structures (including bridges) to be acquired for the Project right of way. Asbestos abatement shall be performed for all structures found to contain regulated asbestos materials ("ACM") prior to demolition. The Design-Builder shall conform to the Special Provision for Asbestos Removal for Road Construction Projects. If a structure is found to contain non-friable (non-regulated) asbestos containing materials, the Design-Builder shall conform to the Special Provision for Demolition of Structures Containing Non-Friable Asbestos Containing Materials. All bridge structures shall be inspected according to the Special Provision for Inspection of Bridge Structures for ACM. Where ACM are identified, the Design-Builder shall provide for abatement in accordance with VDOT Special Provision for Removal of Asbestos from Bridge Structures and with all Federal and State regulations. Copies of all inspection results shall be provided to VDOT.

Asbestos abatements shall not be performed by an asbestos contractor who has an employee/employer relationship with, or financial interest in, the laboratory utilized for asbestos sample analysis nor shall the asbestos contractor have an employee/employer relationship with,

or financial interest in, the asbestos inspector and project designer working on the project. The Design-Builder shall provide monitoring services associated with asbestos abatement and demolition activities.

The Design-Builder shall make all appropriate notifications as required by the Special Provision for Removal of Asbestos from Bridge Structures, the Special Provision Copied Note regarding demolition notifications for structures not requiring asbestos removal and all Federal and State regulations. Special Provisions are included in the RFP Information Package CD-ROM.

All solid waste, hazardous waste, and hazardous materials shall be managed in accordance with all applicable federal, state, and local environmental regulations. The Design-Builder shall notify the VDOT Project Manager immediately of all instances involving the spill, discharge, dumping or any other releases of hazardous materials into the environment and shall provide all required notifications and response actions.

The Design-Builder shall include in the lump sum price all costs associated with complying with these requirements.

2.3.5 Environmental Compliance

The Design-Builder is responsible for compliance with all applicable state and federal environmental laws, regulations, and permits. Should any non-compliant item(s) be identified during construction, immediate and continuous corrective action shall be taken by the Design-Builder to bring the item(s) back into compliance.

The Design-Builder shall be responsible for any schedule delays and associated costs as a result of any delays and/or shut downs associated with non-compliance. Any monetary fines associated with violations shall be the responsibility of the Design-Builder.

2.4 Survey

VDOT has completed a field survey according to VDOT Survey Manual, conforming to VDOT Standards, including, but not limited to the following:

- Horizontal control
- Vertical control
- Notification of property owners*
- Post photography control
- Photogrammetry
- Field data
- Topography
- Property data
- Utilities
- Levels

- Digital Terrain Model
- Bridge Site Plan

*Design-Builders should be aware that Virginia Code 33.1-94 requires that notice "*be sent to the owner by certified mail, at the address recorded in the tax records, return receipt requested, or delivered by guaranteed overnight courier or otherwise delivered to the owner in person with proof of delivery not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the earlier of the date of mailing, if mailed, or on the date delivered.*" Advance notification of property owners is required for all data collection efforts related to the development of highway plans.

The Design-Builder will be responsible for obtaining any additional survey needed to accommodate their final design. Additionally, the Design-Builder will be responsible for any update (property owner changes, subdivisions, etc.) that may occur and needs to be reflected on the plans in order to acquire right-of-way and complete the final design. Any additional Survey changes will be verified and certified and submitted in final documentation.

2.5 Geotechnical Work

The subsurface data shown on the existing Rte. 29 SBL bridge plans included in this RFP is being provided for Offeror's information in accordance with Section 102.04 of Division I Amendments to the Standard Specifications (Part 5). No additional borings were performed at the proposed bridge site during development of this RFP. The Design-Builder shall perform a design-level geotechnical investigation to validate and augment the geotechnical information included in this RFP. The geotechnical engineering investigation performed by the Design-Builder shall meet or exceed both Chapter 3 of the VDOT Manual of Instructions ("MOI") for Materials Division and the current AASHTO *LRFD Bridge Design Specifications*, 4th Edition, 2007; 2008 and 2009 Interim Specifications; and VDOT Modifications.

The Design-Builder shall collect appropriate data for geotechnical evaluation of embankments, soil and rock cuts, bridge structures, storm water management facilities, minor structures including drainage pipes, and any other earth supported structures or elements of highway design and construction. The Design-Builder will be responsible for obtaining water quality permit(s) required for any borings needed in performance of the Design-Builder's geotechnical investigation for this Project. The Design-Builder shall complete laboratory tests in accordance with pertinent ASTM or AASHTO standards and analyze the data to provide design and construction requirements. Soils, aggregate, concrete and other materials tests shall be performed by a laboratory accredited through the AASHTO Accreditation Program (AMRL and CCRL) for each test it conducts for the Project, unless otherwise approved by VDOT.

The Design-Builder shall provide all records of subsurface explorations and describe the soils encountered and their depth limits in accordance with the requirements outlined in Chapter 3 of the VDOT MOI's for Materials Division. The Design-Builder shall provide electronic copies of all subsurface explorations in accordance with the boring log template available on the website address included in Chapter 3 of the VDOT's MOI for Materials Division. The electronic files shall be provided by a certified professional geologist or a suitably qualified

registered professional engineer in the Commonwealth of Virginia, in gINT© software. Upon request, VDOT will provide its gINT and ACCESS file structures for the Geotechnical Database Management System ("GDBMS").

Where applicable, the Design-Builder shall incorporate reliability assessments in conjunction with standard analysis methods. An acceptable method for evaluation of reliability is given by Duncan, J.M. (April 2000) *Factors Of Safety And Reliability In Geotechnical Engineering*, Journal of Geotechnical and Geoenvironmental Engineering, ASCE, Discussions and Closure August 2001. A suitable design will provide a probability of success equal to or greater than 99 percent. The aspects of this Project for which reliability assessments shall be made include: (1) the selection of soil parameters used in the design of all foundations and retaining walls, (2) the factors of safety for slope stability, and (3) the settlement and bearing capacity of embankments. Except as mentioned in (1) above, reliability assessments need not be performed for structural foundations and retaining walls, which will be evaluated based on the required limit states in LRFD. The Design-Builder may propose to identify specific, non-critical features, and alternative methods for evaluating variability of subsurface conditions, reliability and minimum factors of safety, prior to submission of its design calculations and drawings. VDOT may, in its sole discretion, accept or reject such proposed methods.

The Design-Builder shall submit to VDOT for its review all geotechnical design and construction memoranda and/or reports that summarize pertinent subsurface investigations, test, and geotechnical engineering evaluations and recommendations utilized in support of their design/construction documents. This submittal shall be made at least 90 days in advance of the submittal of any final design/construction documents that is dependent upon the geotechnical evaluations and recommendations. Technical specifications for construction methods that are not adequately addressed in the standard specifications shall be provided by the Design-Builder as part of the final design/construction documentation. Prior to submittal of any final design/construction documentation, the Design-Builder shall review the final design/construction documents to assure that it appropriately incorporated the geotechnical components and shall submit evidence of this review to accompany the final design/construction documentation. The Design-Builder shall reference the drawings that incorporate the pertinent results. The Design-Builder's Quality Assurance and Quality Control Plan shall document how each specific geotechnical recommendation or requirement will be addressed in the final design/construction documentation. The results of the geotechnical investigation and laboratory results shall support design and construction efforts to meet the requirements outlined in this Section.

2.5.1 Minimum Pavement Sections

A minimum pavement section is being provided for proposal preparation purposes only. If the Design-Builder confirms that the minimum pavement section is inadequate for actual design/construction conditions, it shall notify VDOT during the Scope Validation Period of the necessary changes and proposed price adjustments, if any. Acceptable changes are limited to increasing the thickness of the base or subbase layers specified below. Any changes to the minimum pavement section noted below must be approved by VDOT. The Design-Builder will be responsible for the final design and construction of the pavements for this Project in accordance with the Contract Documents.

The Design-Builder shall prepare and incorporate into the plans, typical sections, profiles and cross-sections of the validated pavement sections in accordance with the applicable manuals noted in Section 2.1. This includes drainage and subdrainage requirements to ensure positive drainage both within the pavement structure and on the pavement surface. The minimum pavement section is as follows:

- **Surface - 1.5" Asphalt Concrete, Type SM-9.5D**
- **Intermediate - 2" Asphalt Concrete, Type IM-19.0D**
- **Base - 10" Asphalt Concrete, Type BM-25.0A**
- **Subbase - 6" Aggregate Base Material, Type I, Size No. 21B**

The paved shoulder typical section shall be the same as the mainline pavement section.

The minimum pavement design is based upon the following criteria:

- A minimum soil CBR value of 5 (therefore all imported borrow shall have a minimum CBR value of 5).
- All subgrade is compacted in accordance with the applicable sections of the Road and Bridge specifications and applicable special provisions.
- All unsuitable materials must be removed or modified in accordance with Part 5 of the RFP.

Traffic loadings considered in the development of the minimum pavement section provided above are **based on a current ADT of 12,500 with 15% truck traffic and 1.3% growth rate for a service life of 30 years for new construction.** The Design-Builder shall confirm through VDOT that the traffic loading is valid for use in final pavement design during the Scope Validation Period.

Adequate control of surface and ground water will be a very important consideration for the overall performance of this pavement design. The area surrounding pavements should be graded to direct surface water away from paved areas. Any utility excavations or excavations for storm drains within pavement areas must be backfilled with compacted structural fill in accordance with applicable sections of the Road and Bridge specifications and applicable special provisions.

2.5.2 Geotechnical Requirements

The Design-Builder shall analyze methods to minimize differential settlement of the approach to the bridge (bump at the bridge) for new construction and provide construction recommendations to address soil-structure interaction to accommodate the unique construction methods applied to this Project. All geotechnical work shall be completed to satisfy baseline and post-construction contract performance requirements.

Design and construct pavements, subgrades, and embankments to meet the following post-construction settlement tolerances:

- Total vertical settlement less than two inches over the initial 20-years, and less than one inch over the initial 20-years within 100' of bridge abutments.

- Settlement that will not impede positive drainage of the pavement surface especially within the travel lanes nor subject the roadway to flooding in area where it is applicable;

- Settlement that does not result in damage to adjacent or underlying structures, including utilities.

- For pavement sections of approach slabs, bridge decks, and tie-ins to the Project, grade tolerances shall be measured with a 10-foot straightedge. The variation of the surface from the testing edge of the straightedge between any two contacts with the surface shall not be more than plus (+) 0.25-inch to minus (-) 0.125 -inch at structures and (+/-) 0.25-inch at project tie-ins.

- Humps, depressions and irregularities exceeding the specified tolerance will be subject to correction by the Design-Builder. Design-Builder shall notify the Quality Assurance Manager ("QAM") and VDOT for any non-conformance items.

The Design-Builder shall consider settlement and design foundations (bridges, retaining walls, and other structures) based upon the Additional Foundation Criteria attachment (Attachment 2.2).

In summary, the Additional Foundation Criteria attachment outlines two options for managing settlement of structures; a) limit total settlement to 0.5 inch and subsequently limits the need for a refined analysis of the superstructure and substructure or b) allow the Design-Builder to design the structure for their estimates of elastic, consolidation and secondary settlement (total settlement) and subsequently communicate the total and differential settlement in a the General Note. In either case a General Note is placed on the plans which communicate the amount of settlement evaluated and accommodated by the structure. Specific General Note language along with Notes to Designer are included in the Additional Foundation Criteria attachment.

In either case the total vertical and/or differential settlements of the proposed structures shall not exceed the performance tolerance noted above for pavements and of the bridge decking. In addition, angular distortion between adjacent foundations greater than 0.008 radians in simple span and 0.004 radians in continuous span structures in not permitted unless first approved by VDOT.

Design stable cut slopes and embankment slopes and evaluate stability for interim construction stages, for the end of construction condition, and for design-life conditions. Design shall satisfy the following criteria:

- The maximum slope ratio to be used for cut and/or roadway embankment fill slopes should not be steeper than 2H:1V.

The following factors of safety are to be used with limit equilibrium methods of analysis to determine factors of safety for representative sections of all soil cut and soil embankment fill slope areas greater than 10 feet in height and/or where slopes are supporting, or are supported by, retaining structures. The factors of safety listed in Table 1 below are valid for subsurface investigations performed in accordance with Chapter 3 of the Materials Division's Manual of Instructions or for site specific investigation plans approved by the District Materials Engineer. Approval of site specific investigation plans with reduced boring frequency may require higher factors of safety.

Table 1: Minimum Factors of Safety for Soil Cut/Fill Slopes

Slope analysis parameters based on:	Factor of Safety	
	Involves Structure or Critical Slope[1]	Non-Critical Slope
In-situ or lab. tests and measurements[2,3]	1.5	1.3
No site specific tests	N/A[3]	1.5

Notes:

1. A critical slope is defined as any slope that is greater than 25 feet in height, affects or supports a structure, impounds water or whose failure would result in significant cost for repair, or damage to private property
2. Site specific in-situ tests include both ground water measurements and SPT testing but may also include CPT or DMT
3. Parameters for critical slopes involving structures must be based on specific laboratory testing
4. Problem soils (very soft soils, very loose soils, fissured or heavily over-consolidated soils), must be analyzed using shear strength parameters determined from appropriate laboratory strength tests in accordance with accepted local engineering practice
5. Problem soils such as silts shall be analyzed for short- and long-term stability using residual strength parameters determined from laboratory shear testing. These parameters shall be determined by drained direct shear tests using sufficient stress reversals to obtain large strains as discussed in the Corps of Engineers laboratory testing procedures EM-1110-2-1906. Many reversals are required to reach residual strengths and some references suggest using a pre-split sample (Ref. Engineering properties of Clay Shales, Report No. 1 by W. Haley and B.N. MacIver).
6. Construction plans shall specify use of soil types consistent with the parameters used in slope analyses

- Incorporate reliability assessments as referenced above.

2.6 Hydraulics

2.6.1 Hydrologic and Hydraulic (H&H) Analysis

The proposed structure shall be designed by the Design-Builder to meet all applicable hydraulic requirements, including current FEMA, FHWA, and VDOT guidelines as described in the 2002 VDOT Drainage Manual (including current Errata Sheet), Hydraulic Design Advisories and applicable I&IMs. The Design-Builder shall deliver to VDOT a final Hydrologic and Hydraulic Analysis and a final Scour Analysis for the proposed bridge design. The Scour Analysis shall be performed in accordance with accepted design and analysis procedures outlined in FHWA publications HEC-18, HEC-20, and HEC-23. Once scour countermeasures and armoring are identified, if any, the H&H analysis shall be updated to account for the scour countermeasures and armoring placement. These analyses shall be submitted to VDOT for review and approval prior to the commencement of bridge construction.

These analyses shall also be accompanied by a completed VDOT LD-293 form. The Design-Builder shall provide VDOT four (4) paper and two (2) electronic copies (Adobe PDF format) of the final H&H Analysis, Scour Analysis, HEC-RAS Files and LD-293.

2.6.2 Drainage

The drainage design work shall include the design of culverts, open channels, storm sewers, bridge drainage assemblies and structures, adequate outfall analysis (in accordance with DCR Minimum Standard 19), stormwater management facilities, and erosion and sediment control in compliance with the standards and reference documents listed previously in Section 2.1 and the VDOT Erosion and Sediment Control & Stormwater Management Program.

2.6.3 Stormwater Management Plan and Erosion and Sediment Control

An Erosion and Sediment Control ("ESC") Plan and a Stormwater Management Plan must be prepared and implemented in compliance with the Virginia Erosion and Sediment Control Law, the Virginia Erosion and Sediment Control Regulations, the Virginia Stormwater Management Act, the Virginia Stormwater Management Regulations. The Design-Builder must certify that the Erosion and Sediment Control and Stormwater Management Plans have been designed and reviewed in accordance with Virginia Department of Conservation and Recreation ("DCR") regulations and VDOT policies and procedures, including applicable I&IM. A qualified person, other than the designer, who is a certified DCR Plan Reviewer, must independently review and certify the ESC Plans. The Design-Builder shall complete and submit the ESC and SWM Plan Certification form (LD-445C) to the VDOT Project Manager certifying the ESC and SWM plan for the Project is in accordance with VDOT's Approved ESC and SWM Standards and Specifications. The Design-Builder will be responsible for compliance with construction-related permit conditions and shall assume all obligations and cost incurred by complying with the terms and conditions of the permit. Any fines associated with permit or regulatory violations shall be the responsibility of the Design-Builder.

As the land-disturbing activity is greater than one acre, coverage under the VSMP General Construction Permit is required. The Design-Builder shall coordinate and submit required information to the VDOT Project Manager. The Design-Builder shall complete the applicable sections of the VSMP Permit Registration form (LD-445), Permanent BMP Information form (LD-445A), VSMP Permit Fee Registration form (LD-445B), ESC and SWM Plan Certification form (LD-445C) and submit this assembly to the VDOT Project Manager. The VDOT Project Manager will review the submitted information and request coverage under the VSMP General Construction Permit in accordance with VDOT's guidelines. The Design-Builder shall not proceed with work covered by the permit until the VDOT Project Manager releases the work in writing. This represents a hold point in the Design-Builder's CPM Schedule. Upon completion of the regulated land disturbing activity, the Design-Builder shall complete and sign the VSMP Permit Termination Notice form (LD-445D) and submit it to the VDOT Project Manager for processing. The Design-Builder shall also have on-site during land disturbing operations an individual or individuals holding a DCR Inspector Certification, a DCR

Responsible Land Disturber ("RLD") Certification and a VDOT Erosion and Sediment Control Contractor Certification ("ESCCC") to ensure compliance with all requirements.

2.6.4 Stormwater Management Facilities

Design-Builder must identify acceptable location(s) to meet the stormwater management requirements of the Project. The Design-Builder, as part of their final design, shall develop a final design in accordance with the Standards and Reference Documents listed in Section 2.1.

2.7 Traffic Control Devices

The Project shall include all temporary and permanent signs, variable signs for time of day lane use, guardrail, pavement markings, and pavement markers,. Signing and Striping Plans, Transportation Management Plan ("TMP"), and Temporary Traffic Control/ Public Information/ Traffic Operations Plans are required from the Design-Builder for final approval by VDOT and shall be included as a planned work package. The Design-Builder shall comply with the Special Provision for Personnel Requirements for Work Zone Traffic Control (Included in RFP Information Package – CD-ROM) All existing traffic control devices within the Project limits shall be modified, upgraded, or replaced to meet current VDOT standards.

2.7.1 Signs

The Project shall include all required modifications to existing signs and sign structures and all required new temporary and permanent signs and structures. Any signs on adjacent roadways that require relocation/replacement due to construction activities shall be the responsibility of the Design-Builder.

An existing sign inventory shall be completed prior to site demolition in accordance with the VDOT Traffic Engineering Design Manual. This existing information shall be submitted at the same time as the first plan submittal for proposed signing. The Design-Builder shall accomplish the sign panel design using GUIDSIGN software.

2.7.2 Guardrail

The Design-Builder shall make reasonable effort to ensure that the clear zone within the project limit is free from hazards and fixed objects. In the event that removal or relocation of hazard and fixed objects from the clear zone is not feasible, the Design-Builder shall design and install appropriate barrier system for protect in accordance with NCHRP 350. The same requirement applies to existing conditions affected by this project where guardrail upgrade will be required. All existing sub-standard guardrail within the Project Limits must be upgraded by the Design-Builder to meet current standards.

2.7.3 Pavement Markings / Markers

The Design-Builder shall include all required pavement markings and markers**.** All edge lines, centerlines and skip lines shall be Type B, Class VI, patterned preformed tape.

All pavement markings shall be in accordance with VDOT Traffic Engineering Guidelines, dated January 2005.

2.8 Transportation Management Plan

The Design-Builder shall prepare a Transportation Management Plan ("TMP") in accordance with IIM 241 and TED-351 for all proposed work associated with the Project. This Project is classified as a Type B in terms of the TMP.

The Design-Builder shall develop and deliver a TMP, detailing the temporary traffic control plan, the public communications plan, traffic operations analyses (including incident management) for all phases of work, with proposed lane/road closures, and all construction accesses for approval by VDOT. This plan shall be prepared based on traffic/crash analysis and implemented to promote safe and efficient operation of adjacent public transportation facilities and State Highways in accordance with IIM 241.

The TMP shall reflect the noted Scope of Work and all applicable VDOT Standards and Specifications and Amherst/Nelson County ordinances regarding time of work. This plan shall, unless otherwise directed by VDOT, also incorporate a regular weekly update to VDOT regarding any scheduled lane closures and identification of work areas for the two weeks following the update.

2.8.1 Holiday Restrictions

Unless otherwise approved by VDOT as part of the TMP, no temporary lane restrictions shall take place between 12:00 noon on the Friday preceding and 12:00 noon Tuesday following Memorial Day and Labor Day; or any State or Federal holiday if these holidays occur on Saturday, Sunday or Monday. If any State or Federal holiday falls on a week day other than Monday, there shall be no temporary lane restrictions between 12:00 noon the day before and 12:00 noon the day after each of these holidays. No lane restriction shall take place between 12:00 noon Wednesday preceding and 12:00 noon the Monday following Thanksgiving Day. The detour on Rte. 29 SBL, once open to traffic, is not considered a temporary lane restriction.

2.9 Public Involvement / Relations

The Design-Builder shall be responsible for providing a point of contact and phone number for the public to use in calling to request information or express concerns during the project. All information to be released to the public shall be approved and controlled by VDOT. The Design-Builder shall also be responsible for coordinating preparation and release of public information with VDOT's Lynchburg District Office of Public Affairs:

During the Design and Construction Phases, the Design-Builder shall:

- hold informal meetings with affected stakeholders as necessary and as directed by VDOT. Any meetings held will be in accordance with the VDOT Policy Manual for Public Participation in Transportation Projects, updated September 2004.

- provide to VDOT's Lynchburg District Office of Public Affairs written information about the project suitable for posting by VDOT on its Web site. Such information will include a project overview, plan of work for the two-week outlook, overall project schedule, and potential impacts to traffic, up–to-date project photos, and contact information.

During the Construction Phase, the Design-Builder shall:

- provide an emergency contact list of project personnel and have sufficient manpower and resources available to respond to any onsite emergency including any work zone incidents.

- operate as a liaison between VDOT and the Design-Builder's Construction Manager to ensure compliance with local ordinances and provide appropriate notification to affected property owners.

2.10 Utilities

There are no utility impacts and no relocations of utilities on this project.

2.11 Quality Assurance / Quality Control (QA/QC)

Design-Builder shall submit its QA/QC Plan for both design and construction to VDOT for review and approval at the meeting held after the Date of Commencement as set forth in Part 4 General Conditions under Section 2.1.2. Along with the QA/QC Plan submittal, the Design Manager and Quality Assurance Manager ("QAM") shall provide a presentation of the QA/QC Plan for both design and construction utilizing Project related scenarios. Project scenarios shall include but not limited to:

1. Preparatory Inspection Meeting requirement, including incorporation of at least one each, Witness and Hold Point, as set forth in Sections 105.04, 105.05 and 105.10, Department's guidance document for Minimum Quality Assurance and Control Requirements for Design-Build and Public-Private Transportation Act Projects, August 2008 (August 2008 QA/QC Guide);
2. At least one (1) material which VDOT retains responsibility for testing as identified in Table 105-1, (August 2008 QA/QC Guide);
3. Situation arising requiring the issuance of a Non-conformance Report, subsequent review of the report, including completion of corrective measures and the issuance of a Notice of Correction of non-conformance work with proper log entries and proper interface with auditing and recovery requirements as set forth in Section 105.09.01.01 for nonconforming Work resulting from:
    a. defective equipment
    b. construction activities/materials which fail to conform as specified;
4. Inspection documentation capturing requirements as set forth in Section 105.13 (VDOT's Minimum Requirements for Quality Control and Quality Assurance for Design-Build and

PPTA Projects dated August 2008); as well as inspection of foundation and pavement subgrades that are to be performed and certified by a qualified license geotechnical engineer in accordance with the special provisions referenced in this Document.

5. Application for payment for Work Package which includes work element, including review and approval by Quality Assurance Manager;
6. Detail two (2) sample entries in Materials Notebook showing completion of Form C-25, including subsequent submission and review by Department Project Manager as set forth in Section 105.13.01 (see Section 803.73 of Manual of Instruction, Form TL-142S, an example of a completed Materials Notebook and VDOT Materials Division Memorandum Number MD299-07 for Materials Acceptance – October 4, 2007)

2.11.1 Design Management

The Design-Builder is responsible for design quality. The Design Manager, assigned by the Design-Builder, shall be responsible for overall management of the QA/QC programs for design. This individual shall report directly to the Design-Builder's Project Manager and is responsible for all of the design QA/QC activities. The Design Manager shall maintain close communication with Design-Builder's Project Manager and shall ensure the Project is completed in accordance with the requirements of the Contract Documents. The Design Manager shall perform all of the design oversight reviews. VDOT will participate in these reviews. The FHWA will be given the opportunity to participate in these reviews as well. VDOT holds the ultimate approval and disapproval authority. Under this procedure, the Design Manager will provide VDOT with draft design plans for review and approval to confirm that the design work complies with the requirements of the Contract Documents, especially Section 2.4 of the General Conditions (Part 4) and the Standard and Reference Documents listed in Section 2.1 herein prior to initiation of construction activities on the Project.

Plans to be reviewed shall be submitted to VDOT's Project Manager in accordance with Section 2.13.6 below. VDOT's Project Manager will distribute plans to appropriate VDOT and FHWA staff for review and/or approval. VDOT and FHWA shall have the right to review and comment on all Draft Plans and Specifications for compliance with the requirements of the Contract Documents and Reference Documents. The Design-Builder shall be responsible to satisfy all such requirements and acknowledge that VDOT and FHWA maintains the right to disapprove any design approach that it is not in compliance with the requirements of the Contract Documents and Referenced Documents unless said approach was previously approved in writing by VDOT or FHWA.

The written approval of the modifications should be attached with the draft plans submitted for review. The Design-Builder shall revise and modify all draft design plans so as to fully reflect all comments and shall deliver the revised submittal to VDOT's Project Manager, who will distribute plans to appropriate VDOT and FHWA staff for review and comments.

Construction Plans are to be submitted to VDOT for review and approval by the Chief Engineer prior to construction of that element. The time frame for plan review and approval shall be in accordance the requirements of the Contract Documents. Any Construction Plans requiring FHWA approval shall be submitted to VDOT and VDOT will coordinate with FHWA.

The Design-Builder shall be responsible for the design details and ensuring that the design and construction work are properly coordinated. The Design-Builder shall be responsible for documenting any design exceptions or waivers that may be needed. VDOT will submit the design waivers and design exceptions to the appropriate reviewing authority for review and approval. VDOT formal acceptance of the design will occur at the time of final acceptance as provided in the Contract Documents.

2.11.2 Construction Management

The plan requires that the Design-Builder shall have the overall responsibility for both the Quality Control ("QC") and Quality Assurance ("QA") activities. The Design-Builder shall be responsible for 100% QA work and QA sampling and testing for all materials used and work performed on the Project. These QA functions shall be performed by an independent firm that has no involvement in the construction QC program/activities. There shall be a clear separation between QA and construction including separation between QA inspection and testing operations and construction QC inspection and testing operations including testing laboratories. Two independent testing laboratories will be required, one for QA testing and one for QC testing. The Design-Builder will also be responsible for providing quality assurance and quality control testing for all materials manufactured off-site, excluding the items listed below:

- Prestressed Concrete Structural Elements (beams, girders (VDOT adopted Bulb-T sections), and piles).
- Structural Steel Elements (beams and girders).
- Pipe (concrete, steel, aluminum and high density polyethylene) for culverts, storm drains and underdrains.
- Precast Concrete Structures.
- Asphalt Concrete Mixtures.
- Aggregate (dense and open graded mixes).
- Metal Traffic Signal and Light Poles and Arms

VDOT will provide plant quality assurance and plant testing of these items. In the event that VDOT determines that materials fail to meet the tolerances in the Road and Bridge specifications, a Non-Compliance Report ("NCR") will be issued by the VDOT Project Manager and addressed to the Design-Builder's QAM for resolution. The Design-Builder is responsible to submit a Source of Materials, Form C-25, for all materials VDOT retains responsibility for testing. The C-25 is for informational purposes only for VDOT for the purpose of performing QA inspections. The C-25 will not be approved or rejected by VDOT since it is the Design-Builder's responsibility to obtain materials that meet the contractual requirements. The Design-Builder will be responsible for providing quality assurance and quality control testing of all off-site materials that are not identified above, to include materials obtained from off-site soil borrow pits.

The Design-Builder's QAM shall report directly to the Design-Builder's Project Manager and be independent of the Design-Builder's roadway, bridge and otherwise physical construction operations. The QAM shall establish quantities prior to commencing construction, and provide VDOT a total number of QC, QA, Independent Assurance ("IA") and Independent Verification

("IV") tests required as a result of the quantities and the sampling and testing requirements as set forth in Sections 105.4 and 105.5 (August 2008 QA/QC Guide). VDOT will provide all IA and IV tests and therefore final determination of the actual number of IA and IV tests to be performed will be made by VDOT based on these quantities.

The QAM will be responsible for the QA inspection and testing of all materials used and work performed on the Project to include monitoring of the Contractor's QC activities, maintaining the Materials Notebook, documentation of all materials, sources of materials and method of verification used to demonstrate compliance with VDOT Standards. This includes all materials where QA testing is to be performed by VDOT. The QAM shall be vested with the authority and responsibility to stop any work not being performed according to the Contract requirements. The construction QA and QC inspection personnel shall perform all of the construction inspection and sampling and testing work that is normally performed by VDOT, as prescribed in the Construction Manual, Inspection Manual, Materials Manual of Instructions and all other applicable Reference Documents. This includes the documentation of construction activities and acceptance of manufactured materials.

Two independent testing laboratories will be required, one for QA testing and one for QC testing. The entity(ies) performing QA operations, inspections, sampling and laboratory testing and the entity(ies) performing QC operations, inspections, sampling and laboratory testing shall be unique and independent from one another.

VDOT's role during construction operations will be limited to verification sampling and testing, independent assurance, review and processing progress payments, and oversight of the Design-Builder's construction management scheduling, document control and other Project control and Project management/administration efforts necessary to properly administer and manage the Project. All construction QA and QC personnel shall hold current VDOT materials certifications when testing hydraulic cement concrete, asphalt concrete, soils and aggregate, pavement markings and for the safety and use of nuclear testing equipment, as required by the Road and Bridge Specifications. The QA programs must be performed under the direction of the QAM. The QC programs should be performed under the direction of the Construction Manager. Substitution of Construction Manager and the QAM shall require VDOT approval. In addition, VDOT shall have the right to order the removal of any construction QA and QC personnel to include the QAM and the Construction Manager for poor performance at the sole discretion of the VDOT Project Manager. The QA/QC plan shall include rapid reporting of non-compliance to the VDOT Project Manager, and the remedial actions to be taken as discussed in Section 105.12 of the Division 1 Amendments to the Standard Specifications (Part 5).

The Design-Builder shall provide, prior to Final Application for Payment, a complete set of Project records that included, but are not limited to the following:

- Project correspondence
- Project diaries
- Test reports
- Invoices

- Materials books
- Certified survey records
- DBE/EEO records
- Warranties
- Special Tools, etc.

2.12 Field Office

The Design-Builder shall provide office space, equipment, and services consistent with requirements for a Type I Field Office. This field office should be configured and equipped for joint operations by Design-Builder and VDOT staff. The configuration and equipping of the field office shall be coordinated between the Design-Builder and the VDOT Project Manager prior to on-site placement of the field office. The field office will be operational throughout the duration of the project and shall be removed upon final project acceptance.

2.13 Plan Preparation

2.13.1 Geopak and MicroStation

When the Design-Builder is given the Date of Commencement, they will be furnished with the following software and files which run in WindowsNT or WindowsXP only: Geopak (current version used by VDOT), MicroStation (current version used by VDOT) and VDOT Standard Resources Files, and all the design files used to develop the preliminary roadway and bridge plans including aerial images and updated survey files.

2.13.2 Software License Requirements

VDOT shall furnish license(s) for all the software products VDOT makes available to the Design-Builder. The License(s) will be supplied upon request by the Design-Builder, based on the data provided on a completed Software License Form, LD-893, and subsequently reviewed and approved by the VDOT Project Manager.

All License(s) are provided for use on the Project detailed on the request only for the duration specified for that Project. Any adjustment made to the Project schedule will be taken into consideration in adjusting the time the license(s) are available. Justification for the number of license(s) requested **MUST** include the estimated number of total computer hours for the task of design, detailing, relating Project management and other computer based engineering functions requiring the software requested.

The appropriate use of all license(s) provided to the Design-Builder will become the responsibility of the Design-Builder regardless of who on the team uses the license(s). The Design-Builder will be responsible for keeping track of the license(s) provided to them or a team member and the prompt return of the license(s) and removal of the software from any system used solely for the Project for which it was obtained.

2.13.3 Drafting Standards

All plans shall be prepared in U.S. customary units and in accordance with the most recent version of the VDOT's Road Design Manual, Vol I, VDOT's CADD Manual and VDOT's I&IM and VDOT's Manual of Structure and Bridge Division, Vol. V, Part 2, Design Aids and Typical Details.

The approved plans shall be furnished by the Design-Builder with appropriate signature blocks and Professional Engineer seal on each sheet indicating approval for construction.

2.13.4 Electronic Files

All plans shall also be submitted in electronic format using the provided versions of MicroStation CADD software. Files shall be submitted in both DGN & PDF formats. VDOT will furnish electronic files of all applicable standard detail sheets upon request by Design-Builder. The files will use standard VDOT cell libraries, level structures, line types, text fonts, and naming conventions as described in the most recent version of the VDOT CADD Manual and VDOT's Manual of the Structure and Bridge Division, Vol. V- Part 2, Design Aids and Typical Details. Files furnished to Design-Builder in electronic format shall be returned to VDOT and removed from Design-Builder and its designer's computer equipment upon completion of this Project.

2.13.5 Bridge Plans

Each sheet of the contract plans shall be completely dimensioned, and all elevations necessary for construction purposes shall be shown. An Estimated Quantities table shall be included on the final bridge plans. The Design-Builder shall provide complete details for steel structures or steel components, showing all sizes and overall dimensions of members, number and arrangement of all fasteners at joints, type and size of welds.

Plan sets should contain sheets which are arranged and detailed as outlined in the VDOT Office Practice. To the extent possible, the bridge plans must use the standard sheets in Volume V (all parts) of the VDOT Manual of Structure and Bridge Division. Structural elements that have a corresponding standard sheet in Volume V must be detailed using the appropriate standard sheet.

Dead load deflections shall be computed and shown on the drawings. In addition, a camber diagram shall be shown. The deflections are those anticipated to occur in the girders/beams upon placement of the concrete deck and parapet. In the event prestressed concrete beams are used, the expected net camber at release for beams shall be shown on the plans. The net camber at release is the amount of upward deflection that should occur at mid-span when stress transfer is made and the member is freely resting on storage supports.

The sequence of concrete deck placement operations for beams or girder construction shall be given for continuous structures, and all erection stresses shall be computed where

necessary for design. A summary table of moments, shears, reactions and stresses for primary load carrying members shall be included in the plans.

2.13.6 Construction Plans

Construction Plans are those that are issued for construction and approval by VDOT's Chief Engineer. This plan milestone includes plans that may be submitted as soon as sufficient information is available to develop Construction Plans for certain portions or elements of the Project. The Design-Builder shall meet commitments for review and approval by other entities/agencies as specified in other portions of the RFP and its attachments. These plans will be issued for construction following approval by VDOT's Chief Engineer. The roadway or bridge plans may be submitted for approval in logical subsections (such as from bridge to bridge) and consisting of work packages such as: 1) clearing and grubbing along with erosion and siltation control, grading and drainage, 2) paving, and 3) traffic control. Individual bridge plans may be submitted in logical components such as: 1) foundation, 2) remaining substructure, and 3) superstructure. A submittal schedule and planned breakdown of work packages shall be submitted to VDOT for approval as part of their planned Project schedule.

In addition, the construction plans shall include the following: 1) for all proposed and relocated waterline and sanitary sewer lines provide plan and profiles prepared at 1 inch = 5 feet vertical and 1 inch = 25 feet horizontal and all calculation charts and models, 2) for all proposed and existing storm systems utilized for adequate outfall, provide plan and profiles prepared at 1 inch = 5 feet vertical and 1 inch = 25 feet horizontal and all associated calculation charts (capacity, inlet sizing, and HGL), and 3) provide adequate outfall cross sections and calculations.

The roadway or bridge plans described above shall be submitted to VDOT**. VDOT shall receive five (5) full-size sets and five (5) half-size sets of each submission**. The plan submissions shall be delivered, in accordance with Section 2.13.8 below, to the following addresses:

Virginia Department of Transportation
Attention - Mr. Brian Henschel, P.E., PMP, Area Construction Engineer
4219 Campbell Ave.
Lynchburg, VA 24501

2.13.7 Record (As-Built) Plans

The final plan milestone is Record (As-Built) Plans. As-Built Plans shall be prepared, certified and submitted to VDOT with the final application for payment. These plans will show all adjustments and revisions to the Construction Plans made during construction and serve as a permanent record of the actual location of all constructed elements. The Design-Builder shall submit the Record (As-Built) Plans in both hard copy and electronic (DGN & PDF) formats.

2.13.8 Plan Deliverables

- The Design-Builder shall prepare Hard Copy paper plans and Electronic plans (DGN & PDF) formats on CD or other approved media for each of the following deliverables:
    - Construction Plans
    - Design Calculations
    - Final Hydrologic and Hydraulic Analysis including Scour Analysis
    - Working/Shop Drawings
    - Record Plans (As-Built)
    - Bridge Load Rating Report

2.14 Virginia Occupational Safety and Health Standards

The Project shall comply with Virginia Occupational Safety and Health Standards in accordance with Section 110.05 of the Division I Amendments to the Standard Specifications.

At a minimum, all Contractor personnel shall comply with the following, unless otherwise determined unsafe or inappropriate in accordance with OSHA regulations:

2.14.1 Hard hats shall be worn while participating in or observing all types of field work when outside of a building or outside of the cab of a vehicle, and exposed to, participating in or supervising construction.

2.14.2 Respiratory protective equipment shall be worn whenever an individual is exposed to any item listed in the OSHA Standards as needing such protection unless it is shown the employee is protected by engineering controls.

2.14.3 Adequate eye protection shall be worn in the proximity of grinding, breaking of rock and/or concrete, while using brush chippers, striking metal against metal or when working in situations where the eyesight may be in jeopardy.

2.14.4 Approved high visibility Safety apparel shall be worn by all exposed to vehicular traffic and construction equipment.

2.14.5 Standards and guidelines of the current Virginia Work Area Protection Manual shall be used when setting, reviewing, maintaining, and removing traffic controls.

2.14.6 Flaggers shall be certified in accordance with the Virginia Flagger Certification Program.

2.14.7 No person shall be permitted to position themselves under any raised load or between hinge points of equipment without first taking steps to support the load by the placing of a safety bar or blocking.

2.14.8 Explosives shall be purchased, transported, stored, used and disposed of by a Virginia State Certified Blaster in possession of a current criminal history record check and a commercial

driver's license with hazardous materials endorsement and a valid medical examiner's certificate. All Federal, State and local regulations pertaining to explosives shall be strictly followed.

2.14.9 All electrical tools shall be adequately grounded or double insulated. Ground Fault Circuit Interrupter ("GFCI") protection must be installed in accordance with the National Electrical Code ("NEC") and current Virginia Occupational Safety and Health agency ("VOSH"). If extension cords are used, they shall be free of defects and designed for their environment and intended use.

2.14.10 No person shall enter a confined space without training, permits and authorization.

2.14.11 Fall protection is required whenever an employee is exposed to a fall six feet or greater.

3.0 ATTACHMENTS

3.1 The following attachments are specifically made a part of, and incorporated by reference into, these Technical Information & Requirements:

ATTACHMENT 2.2 -- ADDITIONAL FOUNDATION CRITERIA

All additional information is included in the RFP Information Package – CD-ROM referred to in Part 1, Section 2.7.4 of this RFP.

END OF PART 2
TECHNICAL INFORMATION & REQUIREMENTS

ATTACHMENT 2.2

Additional Foundation Criteria

(October 7, 2009)

The following additional VDOT Modifications to the AASHTO LRFD Bridge Design Specifications, 4th Edition, 2007; 2008 and 2009 Interim Specifications; and VDOT Modifications (IIM-S&B-80) are made as an intermediate measure to provide general guidance.

Force Effects due to Superimposed Deformations:

Substructures shall be designed for forces arising from superimposed deformations as described in AASHTO.

Temperature Range: Substructures and joints shall use Procedure A using moderate climate for Hampton Roads District and cold climate for other districts. Expansion lengths may be determined by refined analysis or may be taken as:

Bearing Type	Number of fixed bearings between joints	Exp Length
Steel (low profile or rocker, or HLMR)	1	Distance from fixed bearing to point under consideration
	2 or more*	Distance from Mid-point between extreme points of fixity to point under consideration
Elastomeric pads, plain or reinforced	0	Half of unit length
	1	Distance from fixed bearing to point under consideration
	2 or more*	Distance from Mid-point between extreme points of fixity to point under consideration
Combination of Elastomeric pads and Elastomeric with a PTFE sliding surface	Treat as steel bearings	

Note: The location of the thermal center (neutral point) can be substantially affected by stiffness of the substructure, When the height of fixed piers (measured from top of footing to top of cap) within a single structural unit increases by more than 25% ($[H_{tallest}-H_{shortest}]/H_{shortest}>.25$) the designer shall take into account the effects of substructure stiffness when determining the expansion length at any point (including joints) and the forces to be resisted at any substructure unit. See also Sections 14.4, 14.5.

Settlements:
Plans shall incorporate one of the following **General Notes**.

The foundations for this structure have been designed to limit Total Settlement to ½". The total settlement (S_{TOT}) is defined as the arithmetic sum; S_{TOT} = Elastic Settlement + Consolidation

Settlement + Secondary Settlement. The superstructure and substructure elements above the footings has not been specifically analyzed or designed to accommodate total nor differential settlement.

OR

This structure has been analyzed and designed to accommodate settlement as noted below: Total Settlement of (__)" has been accommodated. The total settlement (S_{TOT}) is defined as the arithmetic sum ; S_{TOT} (__)" = Elastic Settlement (__)" + Consolidation Settlement (__)" + Secondary Settlement (___)". In addition, Differential Settlement of (__)" between adjacent substructure units and (__)" within a single unit has been accommodated.

<u>In order to facilitate the selection of the specific values for the General Note, the following Notes to Designer are provided:</u>

The following restrictions are placed on Settlements:

1. For beam and slab bridges conforming to superstructure types a, e, f, g, k, i as defined in AASHTO Table 4.6.2.2.2: when total settlement and differential settlement are limited to ½" no additional analysis is required.

2. During construction and after all settlements have occurred the bridge structure (consisting of the superstructure, substructure and associated elements in the load path) must meet all structural capacity requirements for all loading combinations requiring such analysis. In addition, the structure must meet all structural capacity requirements for all load combinations for the listed differential settlement.

3. The bearings and substructure shall be designed and detailed to accommodate increases or decreases in loads due to total or differential settlement shown on the plans. (Ref AASHTO 3.4.1; 3.12.6). The superstructure shall be designed and detailed to accommodate changes in loads, locations of inflections points or fatigue stress ranges.

4. Creep and/or shrinkage may only be used to offset settlement effects when it occurs CONCURRENTLY with settlement, and the designer is responsible for determining time rate of settlement and creep. [For instance, if all settlement is elastic (instantaneous), creep cannot be used to offset loads imposed]

5. Joint rotations and Bearing rotations due to settlement shall be considered in addition to all tolerances for rotations due to Live Load (LL) effects or for constructability.

6. In no case shall anticipated settlements (or rotations due to settlement) as noted in the general note cause the structure to encroach on horizontal, vertical or navigation clearance envelopes. (e.g. if 2" of settlement is anticipated then the designer should add 2" to the planned minimum vertical clearance)

7. Settlements which change super elevation shall not reduce super elevation below the minimum specified by AASHTO for the roadway design speed and roadway type, nor shall they negatively impact the performance of the deck or approach paving.

8. Settlements which change profile grade shall not:
    a. Increase spread of drainage beyond limits specified in AASHTO.
    b. Change performance or maintainability of utilities.
    c. Introduce a low spot on the bridge.
    d. Negatively impact rideability except as limited by the special provision for rideability. [When applicable]

9. Coordinate predicted/expected settlement of the approach embankments and bridge structure to comply with contract rideability requirements.

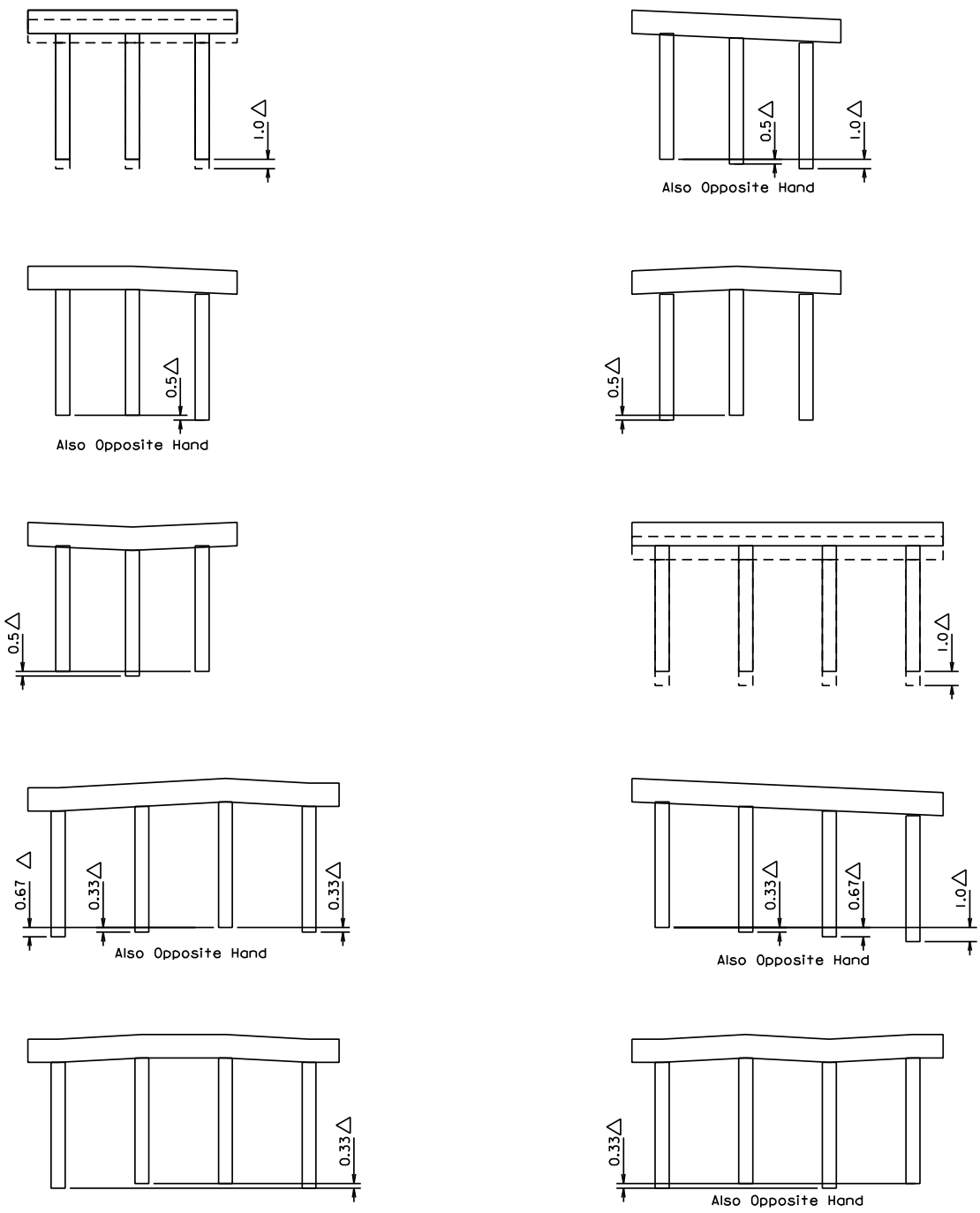
10. The structure must be capable of carrying an additional future wearing surface equal to the magnitude of the total anticipated settlement placed uniformly from curb to curb and abutment to abutment. All parapets and railings shall accommodate the additional layer of surfacing with no modification or reduction in crash test level after construction.

11. Jacking and shimming shall not be allowed to correct differential settlement except as noted in the original design plans.

12. Settlements shall be treated as a load condition with γ_{SE} = 1.0 for all AASHTO indicated groups. (Clarify AASHTO 3.4.1)

13. When differential settlement at a single substructure unit is anticipated, both the superstructure and substructure shall be analyzed and detailed to account for the changes resulting from differential deflection. For continuous footings, settlement may be considered to be linear along the long axis of the footing. For isolated footings, in addition to the linear distribution of settlement, adjacent footings shall be analyzed for a linear proportion of the differential settlement at each footing (for a 3 column pier with 2 equal spaces, 50%, for a 4 column pier with 3 equal spaces, 33 % of the total pier differential shall be used at each column. (including but not limited to the settlement conditions shown on the following page)

14. Under no condition shall settlement be used to justify use of simple span configurations instead of continuous span configurations.



Examples of Possible Settlement patterns to clarify differential settlement proportioning as it is intended to be be considered as part of settlement analysis (Patterns are selected for illustrative purposes, the pattern selection is not all inclusive, designer is responsible for determining Critical Pattern)

Friction Forces:

Forces due to friction shall be included in all substructure designs; changes in length shall include effects of settlement, temperature, shrinkage, and creep as appropriate.

Bearing Type	Coefficient of Friction (μ)	Force for Design
Low profile Steel with brass Steel rocker HLMR with PTFE	0.10 0.10 or refined estimate In accordance with Road and Bridge Specifications	Designer shall apply aggravating forces @ 100%, mitigating forces at 0% to all substructure units when specifying steel or HLMR bearings.
Elastomeric Plain (70 durometer) and Reinforced (50 durometer)	Slip is not allowed for elastomeric bearings except when detailed with a PTFE sliding surface. Forces shall be computed using the Shear Modulus (G).	Designer shall apply aggravating forces computed using 1.0 G, mitigating forces computed using 0.5 G, where G defined in accordance with Section 14 of the LRFD spec.
Elastomeric with PTFE sliding surface	Treat as HLMR for both coefficient of friction and forces for design.	

PART 3

Lump Sum
Design-Build Agreement
Between
Department and Design-Builder

This **AGREEMENT** is made as of the ___ day of _____ in the year of ___, by and between the following parties, for services in connection with the Project identified below.

VIRGINIA DEPARTMENT OF TRANSPORTATION ("Department"),
An agency of the Commonwealth of Virginia:

Virginia Department of Transportation
Attention: Chief Engineer
1401 East Broad Street
Richmond, VA 23219

DESIGN-BUILDER:

PROJECT:
0029-005-130, C501, B645
Approaches and Bridge over Tye River (Rte. 29 NBL)
Amherst/Nelson County Line, Virginia

Table of Contents

Article 1: Scope of Work 1

Article 2: Contract Documents.....1

Article 3: Interpretation and Intent.....2

Article 4: Ownership of Work Product 2

Article 5: Contract Time 3

Article 6: Contract Price.....5

Article 7: Procedure for Payment.....5

Article 8: Termination for Convenience 7

Article 9: Representatives of the Parties 10

Article 10: Bonds and Insurance 11

Article 11: Other Provisions.....11

In consideration of the mutual covenants and obligations contained herein, Department and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments and work orders to this Agreement issued in accordance with *General Conditions of Contract Between Department and Design-Builder* ("General Conditions of Contract");

2.1.2 This Agreement (Part 3), executed by Department and Design-Builder, inclusive of all Exhibits;

2.1.3 General Conditions of Contract (Part 4);

2.1.4 Department's Request for Proposals ("RFP") dated _____ , including all Addenda (track changes depicted in the Addenda have been accepted and are incorporated herein);

.1 Part 1 – Instructions for Offerors

.2 Part 2 – Project Technical Information and Requirements, including RFP Information Package;

2.1.5 Division I Amendments (Part 5) to Standard Specifications, dated _____ ("Division I Amendments");

2.1.6 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, and

2.1.7 Design-Builder's Proposal submitted in response to RFP, including all final modifications: **[LIST PROPOSAL MODIFICATIONS BY NUMBER AND DATE].**

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof, provided, however, that Parts 3, 4 and 5 of the RFP shall be deemed superseded by the documents set forth in Sections 2.1.2, 2.1.3 and 2.1.5 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Department and Design-Builder with respect to its subject matter and by incorporation herein are as fully binding on the parties as if repeated herein. The parties have made no oral representations or other agreements, except as specifically stated in the Contract Documents.

3.4 Except as set forth in the last sentence of this Section 3.4, and notwithstanding anything to the contrary in Design-Builder's Proposal, Design-Builder is obligated to perform the Work in full compliance with the RFP Documents. The parties agree, however, that the betterments and higher and/or more stringent standards or specifications and design and construction criteria, concepts, and drawings set forth in the Design-Builder's Proposal (collectively referred to as "Enhancements") shall supersede the minimum requirements of the RFP Documents and Design-Builder is obligated to perform the Work in compliance with the Enhancements.

Article 4

Ownership of Work Product

4.1 **Work Product Defined**. The term "**Work Product**" is intended to include all drawings, specifications, calculations, reports, and documentation, whether in paper copy or electronic format, produced by or through Design-Builder that is furnished to Department.

4.2 **Ownership of Work Product**. Department shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. Department's ownership rights, include without restriction or limitation, the right of the Department, and anyone contracting with Department, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by Department on another project. In receiving all rights, title and interest in the Work Product, Department is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Work Product, and Design-Builder agrees that it shall, at the request of Department, execute all papers and perform all other acts that may be necessary (if any) to ensure that Department's rights, title and interest in the Work Product are protected. The rights

conferred herein to Department include, without limitation, Department's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

4.3 **Use of Work Product at Department's Risk**. The Department's use of the Work Product on any subsequent procurement by Department on another project shall be at Department's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. The Department waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from the Department's use of the Work Product on another project.

Article 5

Contract Time

5.1 **Date of Commencement.** The Work shall commence upon Design-Builder's receipt of Department's Notice to Proceed or the date set forth in the Notice to Proceed ("**Date of Commencement**"), unless the parties mutually agree otherwise in writing. The Department will issue a Notice to Proceed within fifteen (15) days after the Agreement Date, unless the parties mutually agree otherwise in writing.

5.2 **Completion Dates**

5.2.1 **Substantial Completion Dates**. The Design-Builder shall substantially complete the Work and it shall be open for traffic on _____ (the "**Substantial Completion Date**").

~~**5.2.2** **Interim Milestone Dates**. Interim Milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows by the dates specified below ("**Interim Milestone Dates**"):~~ **(Not Used)**

5.3 **Final Completion**. Final Completion of the Work, and any part thereof, shall be achieved as expeditiously as reasonably practicable, but in no event later than sixty (60) days after Substantial Completion of the Work or designated part of the Work (the last day of such sixty day period being referred to as the "**Final Completion Date**").

5.4 **Adjustments**. All of the scheduled completion dates set forth in Section 5.2 through 5.3 above (collectively referred to as **"Contract Times"**) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.5 **Time is of the Essence**. Department and Design-Builder mutually agree that time is of the essence with respect to the Contract Times.

5.6. **Liquidated Damages**. Design-Builder understands that if the Contract Times are not attained, Department will suffer damages which are difficult to determine and accurately specify. To compensate Department for such damages, Design-Builder hereby agrees as follows:

5.6.1 If Substantial Completion of the Work is not attained by the Substantial Completion Date, Designer-Builder shall pay Department **five hundred Dollars ($500.00)** as liquidated damages for each day that actual Substantial Completion of the Work extends beyond the Substantial Completion Date.

5.6.2 ~~If Interim Milestone(s) are not attained by the Interim Milestone Date(s), Designer-Builder shall pay Department _____ Dollars ($_____) as liquidated damages for each day that each Interim Milestone(s) extends beyond the Interim Milestone Date.~~ **(Not Used)**

5.6.3 If Final Completion is not attained by the Final Completion Date, Designer-Builder shall pay Department **two thousand five hundred Dollars ($2,500)** as liquidated damages for each day that Final Completion extends beyond the Final Completion Date.

5.7 **Liquidated Damages Not Penalty**. The parties acknowledge, recognize and agree on the following:

5.7.1 that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Department as a result of Design-Builder's failure to complete the Work on or before the applicable Contract Time(s);

5.7.2 that any sums which would be payable under this Article 5 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and

5.7.3 that any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Department which are occasioned by any delay in achieving the applicable Contract Times for the above-referenced Work. Notwithstanding the above, liquidated damages are not intended to excuse Design-Builder from liability for any other breach of its obligations under the Contract Documents.

5.8 ~~**Early Completion Bonus**. If Substantial Completion of the entire Work is attained on or before the Substantial Completion Date (such earlier date being referred to as the "**Bonus Date**"), the Department shall pay the Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars ($_____) (the "**Early Completion Bonus**") for each day that Substantial Completion is attained earlier than the Bonus Date, except that the Early Completion Bonus shall not exceed _____ Dollars ($_____). Further, the parties acknowledge, recognize, and agree, that in order to qualify for the Early Completion Bonus, the Design-Builder must notify the Department by _____ and provide a general release executed by the Design-Builder waiving all claims, except those claims previously made in writing to Department and remaining unsettled at the time of Final Payment, which claims shall be specifically listed in an attachment to the general release.~~ **(Not Used)**

Article 6

Contract Price

6.1 **Contract Price.** Department shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____Million _____Thousand and 00/100 Dollars ($_____) ("**Contract Price**"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 **Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1 of the General Conditions of Contract, markups shall be allowed on such changes in accordance with requirements of Section 109.05 of the Division I Amendments to the Standard Specifications.

6.3 **Adjustments to Asphalt, Fuel and Steel.** Department and Design-Builder agree to adjust prices for asphalt, fuel and steel, in accordance with the Department's pertinent special provisions, attached hereto as Exhibits 6.3(a), 6.3(b), 6.3(c) and 6.3(d) provided Design-Builder declares its intent, in the Price Proposal, to use the provisions for price adjustments, and also submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, price adjustments for asphalt, fuel and steel will be based on the quantities identified in the work packages in Design-Builder's Proposal, which quantities shall be specifically summarized and provided in Design-Builder's Price Proposal. Actual quantities shall be monitored and documented by Design-Builder, and submitted to Department in the monthly report required by Section 11.1.8 below, on forms provided by Department.

Article 7

Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Department on the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Department shall make payment within thirty (30) days after Department's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract. Department's payment shall comply with VA. CODE §2.2-4347, et seq., which addresses prompt payment.

7.1.3 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees that, within seven (7) days following receipt of monies from the Department for work performed by any Subcontractor, Design-Builder shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from the Department attributable to the work performed by the Subcontractor; or (b) notify the Department and Subcontractor, in writing, of Design-Builder's intention to

withhold all or a part of the Subcontractor's payment, specifying the reason for the non-payment. Design-Builder also agrees that it shall include in all of its subcontracts a provision that: (a) obligates Design-Builder to pay interest to Subcontractors on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt of monies from the Department for work performed by any Subcontractor, except for amounts withheld as allowed in the preceding sentence; (b) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 7.1.3 with respect to each lower-tier Sub-subcontractor.

7.1.4 Design-Builder's obligations to pay an interest charge to a Subcontractor pursuant to Section 7.1.3 shall not be construed to be an obligation of the Department, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.

7.1.5 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees to provide the Department, within five (5) days of the Agreement Date, its federal employer identification number.

7.2 **Retainage on Progress Payments**. Retainage will not be withheld from Progress Payments.

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Department in accordance with Section 6.7 of the General Conditions of Contract. Department shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Department's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for Final Payment set forth in Section 6.7.2 of the General Conditions of Contract. Department's payment shall comply with VA. CODE §2.2-4347 et seq. dealing with prompt payment.

7.4 **Interest.** Payments due and unpaid by Department to Design-Builder, whether progress payments or Final Payment, shall bear interest commencing seven (7) days after payment is due in accordance with VA. CODE §2.2-4355.

7.5 **Record Maintenance and Retention of Records**. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, Department and Department's accountants shall be afforded access from time-to-time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as "Books and Records") relating to: (a) changes in the Work performed on a cost basis; or (b) any request by Design-Builder for an adjustment in the Contract Price or Contract Times. Design-Builder shall preserve all of its Books and Records for a period of five (5) years after Final Payment.

Article 8

Termination for Convenience

8.1 Upon ten (10) days written notice to Design-Builder, Department may, for its convenience and without cause, elect to terminate all or part of the Work if Department, in its sole discretion, determines that such a termination is in the Department's best interests. The Department shall notify Design-Builder of the decision to terminate by delivering to Design-Builder a written notice of termination specifying the extent of termination and its effective date (a "**Notice of Termination**").

8.1.1 If Department terminates all of the Work for convenience before issuing a Notice to Proceed, Design-Builder agrees that it shall have no right to recover any monies from Department. Design-Builder specifically waives any and all rights to claim from the Department for any cost, profit, overhead contribution or any other monetary relief associated with the Contract Documents or Project, including but not limited to bid and proposal costs, or any services that might have constituted Work under the Contract Documents.

8.1.2 If Department terminates all or part of the Work for convenience after issuing a Notice to Proceed, then Sections 8.2 through 8.8 below shall apply.

8.2 After receipt of a Notice of Termination, and except as directed by Department, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 8:

8.2.1 Stop Work as specified in the notice;

8.2.2 Enter into no further Subcontracts and place no further orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;

8.2.3 Unless instructed otherwise by Department, terminate all Subcontracts to the extent they relate to the Work terminated and except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

8.2.4 Assign to Department or its designee in the manner, at the times, and to the extent directed by Department, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case Department will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such Subcontracts;

8.2.5 Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of Department, to the extent it may require, which approval or ratification shall be final;

8.2.6 Transfer and deliver to Department or its designee, as directed by Department: (a) possession and control of the Project; and (b) all right, title and interest of Design-Builder in and

to: (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated; (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, information and other Work Product that would have been required to be furnished to Department if the Work had been completed; and (iii) all intellectual property developed specifically for the Project; provided, however, that in the event of such transfer, the Design-Builder shall not be liable for any warranties for Work which has not achieved Substantial Completion, nor shall the Design-Builder have any liability with respect to any design materials produced with respect to the Project;

8.2.7 Complete performance in accordance with the Contract Documents of all Work not terminated;

8.2.8 Take all action that may be necessary, or that Department may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Design-Builder and in which Department has or may acquire an interest; and

8.2.9 As authorized by Department, use its best efforts to sell at fair market value any property of the types referred to in Section 8.3; provided, however, that Design-Builder: (a) shall not take any such action with respect to any items for which title has previously transferred to Department; (b) is not required to extend credit to any purchaser; and (c) may acquire the property itself, under the conditions prescribed and at prices approved by Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Department under the Contract Documents or paid in any other manner directed by Department.

8.3 Inventory. Design-Builder shall submit to Department a list of termination inventory not previously disposed of and excluding items authorized for disposition by Department; and within thirty (30) days of receipt of the list, Design-Builder shall deliver such inventory to Department and Department shall accept title to such inventory as appropriate.

8.4 Settlement Proposal. After termination, Design-Builder shall submit a final termination settlement proposal to Department in the form and with the certification prescribed by Department. Design-Builder shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination unless Design-Builder has requested a time extension in writing within such 30-day period and Department has agreed in writing to allow such an extension.

8.5 Amount of Termination Settlement. Design-Builder and Department shall negotiate in good faith to reach agreement on the settlement amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Article 8 and any such settlement shall be subject to the provisions of the Code of Virginia §2.2-514. Such negotiated settlement shall include an allowance for profit solely on Work that has been performed as of the termination date. Such agreed amount or amounts payable for the terminated Work, exclusive of demobilization costs and other shut-down costs, shall not exceed the total Contract Price as reduced by the Contract Price of Work not performed. Upon determination of the settlement amount, this Agreement will be amended accordingly, and Design-Builder will be paid the agreed amount as described in this Section 8.5. Department's execution and delivery of any settlement agreement shall not be

deemed to affect any of its rights with respect to compliance of the Work which has achieved Substantial Completion with all applicable Contract requirements or any of its rights under payment and performance bonds or any of its rights against Subcontractors.

8.6 No Agreement as to Amount of Claim. In the event of failure of Design-Builder and Department to agree upon the amount to be paid Design-Builder by reason of the termination of Work pursuant to this Article 8, the amount payable (exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures of the General Conditions.

8.7 Reduction in Amount of Claim. The amount otherwise due Design-Builder under this Article 8 shall be reduced by: (a) the amount of any valid claim which Department may have against Design-Builder in connection with this Agreement; and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things previously paid for by the Department and to be retained by Design-Builder or sold by the Design-Builder (with the proceeds being retained by the Design-Builder), pursuant to the provisions of this Article 8.

8.8 Payment. Department may, from time-to-time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of this Agreement, whenever in the opinion of Department the aggregate of such payments shall be within the amount to which Design-Builder will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 8, such excess shall be payable by Design-Builder to Department upon demand together with interest at a variable rate per annum equal to the reference rate announced by Bank of America, N.A., from time–to-time, plus one percent (1%).

8.9 Inclusion in Subcontracts. Design-Builder shall insert in all Subcontracts that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from Department and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Design-Builder shall communicate, immediately upon receipt thereof, any Notice of Termination issued by Department to all affected Subcontractors.

8.10 No Consequential Damages. In the event of a termination for convenience under this Article 8, Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed plus its settlement and closeout costs. Under no circumstances shall Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Article 8. The payment to Design-Builder determined in accordance with this Article 8 constitutes Design-Builder's exclusive remedy for a termination hereunder.

8.11 No Waiver. Anything contained in this Agreement to the contrary notwithstanding, a termination under this Article 8 shall not waive any right or claim to damages which Department may have with respect to Work which has achieved Substantial Completion prior to the date of termination, and Department may pursue any cause of action which it may have by law or under this Agreement on account of such completed Work. The Design-Builder makes no warranties with respect to Work which has not achieved Substantial Completion prior to the date of

termination. Department's termination of this Agreement shall not relieve any rights Department has under any performance bonds issued on the Project.

8.12 **Dispute Resolution.** The failure of the parties to agree on amounts due under Article 8 shall be a dispute to be resolved in accordance with the requirements of the General Conditions, Article 10.

8.13 **Right to Use Work Product.** If Department terminates this Agreement pursuant to this Article 8, Department's rights to use the Work Product shall be as set forth in Article 4 hereof.

Article 9

Representatives of the Parties

9.1 Department's Representatives

9.1.1 Department designates the individual listed below as its Senior Representative ("Department's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

[INSERT DEPARTMENT'S REPRESENTATIVE]

9.1.2 Department designates the individual listed below as its Department's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

[INSERT DEPARTMENT'S REPRESENTATIVE]

9.2 Design-Builder's Representatives

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

[INSERT DESIGN-BUILDER'S REPRESENTATIVE]

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

[INSERT DESIGN-BUILDER'S REPRESENTATIVE]

9.3 The Department and Design-Builder shall, in the spirit of cooperation, exchange information in a timely manner. While the Contract Documents establish a timeline and process for making decisions and managing communications on the Project, the parties recognize it is not possible to specify processes for all activities that may occur. The parties shall communicate in a

manner consistent with the Special Provision for *Project Communication and Decision Making for Design-Build Projects (August 2009)* included in the RFP Information Package.

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder shall procure and maintain insurance in accordance with the Contract Documents, including Article 5 of the General Conditions of Contract and Division I Amendments.

10.2 Performance and Payment Bonds. Design-Builder shall procure and maintain performance and payment bonds executed by a surety acceptable to Department, each in the amount of one hundred percent (100%) of the Contract Price, and in accordance with all other requirements of the Contract Documents, including the Division I Amendments.

Article 11

Other Provisions

11.1 Project Management and Reporting Requirements

11.1.1 Proposal Schedule. This schedule shall be the basis for monitoring Design-Builder's performance of the Work until such time as a Baseline Schedule has been approved by Department in accordance with Section 11.1.2 below.

11.1.2 Baseline Schedule. Within sixty (60) days of the Date of Commencement, Design-Builder shall submit to Department, for its review and approval, a CPM schedule that includes, among other things: (a) the order in which Design-Builder proposes to carry out the Work (including each stage of design, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition), procurement, manufacture, delivery to Site, construction, inspection and testing); and (b) the times when submissions and approvals or consents by Department are required (provided, however, that such times shall be no less than the Department's minimum review duration identified in Section 3.1 of the General Conditions of Contract). This schedule shall be resource-loaded and cost-loaded, broken down into work packages that are consistent with the Work Breakdown Structure submitted in Design-Builder's Proposal, and in deliverables generally completed within thirty (30) days, with the dollar value (price) of each deliverable being identified. If Department does not approve such submission, Design-Builder shall resubmit a revised schedule to Department within seven (7) days of its receipt of Department's comments on such schedule. This process shall continue until such time as a schedule is so approved by Department ("**Baseline Schedule**"), and the payment schedule is so approved by Department ("**Earned Value Schedule**") as referenced in Section 6.1 of General Conditions of Contract (Part 4). Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Baseline Schedule.

11.1.2.1 **Cost Loading**. The Design-Builder shall cost load each activity in the Baseline Schedule for which the Design-Builder expects to receive payment. The Baseline Schedule shall be reasonably cost loaded to allow for an accurate determination of progress of the activity based on earnings. The Baseline Schedule shall be cost loaded in accordance with the following:

.1 If the "Resource" feature is used to cost-load the Baseline Schedule, the Design-Builder shall define and assign a project-specific resource to applicable activities. The Resource ID shall be unique and prefixed by the Contract number. (e.g. C00012345DB10.00100$).

.2 Activities shall be cost-loaded to allow for summarization of the budgeted quantity and budgeted costs by Cost Account ID. Cost Account ID numbers shall be assigned to all applicable activities.

.3 The aggregate sum of the budgeted costs for all activities shall equal the total contract value. Total contract value will be considered to mean the current contract value including the original amount of the contract and any authorized adjustments for authorized changes to the Work.

.4 Anticipated payments for adjustments such as asphalt, fuel, retainage, incentives, disincentives, etc., will not be considered in the Baseline Schedule, unless approved by the Engineer.

11.1.2.2 **Baseline Schedule Narrative**. A Baseline Schedule Narrative shall be submitted with the Baseline Schedule submission. The Baseline Progress Schedule Narrative shall include the following written information:

.5 The Design-Builder's overall plan describing the proposed overall sequence of construction, including where the work will begin and how the work will progress;

.6 A description of the project critical path.

.7 A description of the near critical path(s) (float paths with total float value within twenty (20) workdays of the critical path total float).

.8 A listing of the major milestone dates, including as applicable contract interim milestone(s), major traffic switches, start and finish milestones for each phase or stage of work, work to be performed by the Department or other third parties.

.9 A log identifying the schedule constraints used and explanation of the reasons why and the purpose for using each constraint.

.10 A description of the proposed working calendar(s) to indicate the Calendar ID, number of work days per week, number of shifts per day, and number of hours per day as well as the anticipated number of non-working days per month for each calendar with considerations, as applicable, for holidays, normal weather conditions;

as well as for seasonal or other known or specified constraints and restrictions (i.e. traffic, local events, environmental, permits, utility, etc.).

.11 A log of the applicable DBE participation activities in the Schedule for which the Design-Builder intends to claim credit for attaining the DBE goal required in the Contract. The list shall indicate the proposed start/finish dates and durations of the DBE participation activities.

.12 A description of any known problems or anticipated issues that may impact the schedule; and any actions taken or needed to correct the problems.

11.1.3 **Schedule Updates**. As part of, and in conjunction with, the monthly reports required by Section 11.1.8, Design-Builder shall provide Department with any proposed update of the Baseline Schedule for Department's review and approval and a progress narrative that describes, at a minimum, the overall progress for the preceding month, a critical path analysis including a description of any deviations in the project critical path since the previous schedule submission, a discussion of problems encountered or anticipated since the previous schedule submission and proposed solutions thereof including an explanation of any corrective actions taken or required to be taken, work calendars, constraints, delays experienced and any pending Time Impact Analysis ("**TIA**"), float consumption as a result of either Department and/or Design-Builder delays, documentation of any logic changes, duration changes, resource changes or other relevant changes. The Schedule Update shall be based on the most recently accepted Schedule. All activities that are completed prior to the current data date shall show actual start and finish dates. All on-going activities shall show an actual start date and remaining duration to indicate the amount of time required to complete the remaining work as of the current data date. Activity percent complete for on-going activities shall be based on amount of work completed as of the current data date relative to the total amount of work planned. Activity relationships for the remaining activities shall be modified as necessary to correct out-of-sequence progress for on-going and remaining activities to reflect the Design-Builder's current plan for completing the remaining work. The Schedule Update shall be calculated using the current data date. The monthly progress narrative shall also include the following:

.1 Comparisons of actual and planned progress, including: (i) illustrating schedule variance graphically by plotting the Budgeted Cost of Work Performed ("BCWP") and the Budgeted Cost of Work Scheduled ("BCWS"); and (ii) reporting the Schedule Performance Index ("SPI"), defined as the ratio of BCWP divided by BCWS; and

.2 Statement by the Design-Builder that this is the only schedule being executed to perform the Work; and

.3 Details of any aspects of the Work which may jeopardize the completion in accordance with the Contract Documents; and

.4 Measures being (or to be) adopted to overcome such aspects and a list of approvals needed to adopt such measures.

.5 A description of any deviations from scheduled performance in terms of the scheduled completion dates of the interim milestone(s) and Final Completion since

the previous schedule submission, including a statement explaining why any of the schedule milestone date(s) is forecast to occur after the specified date(s).

.6 A description of any changes in the Design-Builder's work plan in terms of sequence of construction, shifts, manpower, equipment, or materials.

.7 A description of work planned for the next update period and actions to be taken by the Department or other involved third parties.

If Department believes that the Baseline Schedule needs a specific revision, either in logic, activity duration, manpower or cost, it will submit a written request to Design-Builder. Design-Builder shall respond in writing within seven (7) days, either agreeing with Department's proposed revision, and henceforth including it in the next Baseline Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, Department and Design-Builder shall agree to attempt to resolve the issues through a TIA submission as described in Section 8.3 of the General Conditions of Contract or the dispute resolution process of Article 10 in the General Conditions of Contract. If the Department and the Design-Builder cannot agree on the TIA, the Design-Builder shall proceed under the previously approved Baseline Schedule. At no time shall Design-Builder continue to reflect items of non-concurrence from Department in Baseline Schedule updates.

11.1.4 Schedule Format. Design-Builder shall submit for each Proposal Schedule Update, Baseline Schedule and Baseline Schedule Update submission the following submittal items. Each electronic file submittal shall have a unique file name prefixed by the Contract ID to identify the Contract, submission type, and order of submission (e.g. C00012345DB01-B1, C00012345DB01-U1, etc.). The submittals shall include:

.1 A transmittal letter to the Engineer, identifying the date of submittal and which Progress Schedule is being submitted for review.

.2 Two (2) sets of data compact disks ("CD") containing the electronic working file of the Schedule in Primavera proprietary exchange format ("XER") file format. Each CD shall be labeled to indicate the Contract ID, type of submission, filename, and data date.

.3 Two (2) sets of paper copies of the following schedule reports:

a) Schedule calculation log.

b) A legible time-scaled bar-chart plot of the Schedule to show for each activity: the Activity ID, Activity Name, Original Duration, Remaining Duration, Start and Finish dates, Activity Percent Complete, and Total Float. The bar-chart plot shall identify the project critical path (longest path). The Design-Builder shall prepare the time-scaled bar-chart Schedule using scheduling software that is wholly compatible with the Department's scheduling software system.

c) A legible network logic diagram plot of the Schedule depicting the order, interdependence of activities, and sequence in which the work will be accomplished. The Design-Builder shall prepare the network logic diagram plot of the Schedule using scheduling software that is wholly compatible with the Department's scheduling software system.

d) A tabular Predecessor/Successor report sorted in ascending order by Activity ID to show the following:
   i) Activity ID;
   ii) Activity Name;
   iii) Original Duration;
   iv) Remaining Duration;
   v) Early Start;
   vi) Early Finish;
   vii) Late Start;
   viii) Late Finish;
   ix) Total Float;
   x) Critical (Yes or No);
   xi) Predecessor Activity ID, Activity Name, Early Start, Early Finish, Relationship Type, Lag, Driving (Yes or No), Constraint, and Constraint Date;
   xii) Successor Activity ID, Activity Name, Early Start, Early Finish, Relationship Type, Lag, Driving (Yes or No), Constraint, and Constraint Date.

.4 One (1) set of electronic file copies by email of the following:

a) A working file of the Schedule in XER file format.

b) Electronic PDF copy of the monthly progress narrative.

c) Electronic PDF copy of the Activity Cost-loading Report ("ACR"). The ACR shall provide a listing of the budgeted costs for each cost-loaded activity. The ACR shall show the budgeted cost by activity grouped by Cost Account ID and sorted by Activity ID. The ACR shall also show the aggregate sum of the budgeted costs for each Cost Account and an overall summary of the budgeted costs for the project. The ACR shall show for each activity the Activity ID, Activity Name, Price/Unit, Budgeted Unit (Quantity), and Budgeted Cost.

d) Electronic PDF copy of the Earned Value Schedule S-Curve.

This process shall continue until Final Completion. The first day of the month ("data date") of each Baseline Schedule update shall coincide with Design-Builder's Application for Payment. The Design-Builder shall prepare and maintain the Schedule using scheduling software that is capable of meeting all requirements of this provision. The Design-Builder's scheduling software shall be wholly compatible with the Department's scheduling software system and shall have the

capability to import and export project data in XER format. The Department's scheduling software system is the latest version of Primavera's Project Management software (currently P6 version 6.2). Compatible shall mean that the Design-Builder-provided electronic file versions of the schedule can be imported into the Department's scheduling software system with no modifications, preparation or adjustments. At the Design-Builder's request, secured access via the internet may be granted to allow the Design-Builder to develop and maintain his Schedule in the Department's scheduling software system.

Submission of data from another software system where data conversion techniques or software is used to import into Primavera's scheduling software is not acceptable and will be cause for rejection of the submitted schedule.

The Schedule shall conform to the following software settings:

a) Define Project ID as the Contract ID number.

b) Define project "Must Finish By" date equal to the Contract Final Completion date.

c) Define the baseline for Earned Value calculations as the "Project Baseline".

d) Define the critical activities as "Longest Path".

e) Define schedule calculation option to compute total float as "Finish Float = Late Finish – Early Finish".

11.1.5 <u>Other Information and Alteration</u>. Design-Builder shall, whenever required by Department, provide in writing a general description of the arrangements and methods which Design-Builder proposes to adopt for the execution of the Work. No significant alteration to the Baseline Schedule, or to such arrangements and methods, shall be made without informing Department and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of Department and the work to be carried out by Department's Separate Contractors. If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of Department. If the progress of the Work does not conform to the Baseline Schedule, as updated herein, Department may instruct Design-Builder to revise the Baseline Schedule, showing the modifications necessary to achieve completion within the Contract Times.

11.1.6 <u>Department's Separate Contractors</u>. Design-Builder agrees to include the activities of Department's Separate Contractors into the Baseline Schedule. Design-Builder shall reasonably cooperate with Department's Separate Contractors and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

11.1.7 <u>Department's Review and Approval of Baseline Schedule</u>. Department's review and approval of the Baseline Schedule or subsequent updates shall not be construed as relieving Design-Builder of its complete and exclusive control and responsibility over the means, methods,

sequences and techniques for executing the Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Work within the Contract Time(s).

11.1.8 Monthly Reports. Monthly reports shall be prepared by Design-Builder and submitted to Department in six (6) copies. The first report shall cover the period up to the end of the calendar month after that in which the Agreement Date occurred; reports shall be submitted monthly thereafter, on or before the tenth (10th) day of each month. Reporting shall continue until Department's determination that the Project has achieved Final Completion. Each report shall include:

.1 Photographs and detailed descriptions of progress, including each stage of design, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition), procurement, delivery to Site, and construction;

.2 Charts showing the status of all design documents, purchase orders, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition) and construction;

.3 Records of personnel and Design-Builder's equipment;

.4 Copies of quality assurance documents, and test results;

.5 Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;

.6 Status of approvals for Governmental Approvals, as required by Section 2.6.1 of the General Conditions of Contract;

.7 Monthly updates to the Baseline Schedule and the narrative as set forth in Section 11.1.3 above;

.8 Unresolved claims or disputes that involve requests for extension to the Contract Time(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Price;

.9 All required EEO documentation for federal-aid projects;

.10 Weekly work zone safety reviews, on Department-provided forms;

.11 Erosion & Sediment Control Reports, on Department-provided forms; and

.12 Actual quantities for fuel, asphalt and steel on Department-provided forms.

Failure of Design-Builder to provide complete monthly reports, including but not limited to the monthly schedule updates, shall be grounds for Department to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes such complete reports.

11.1.9 **Project Records**. Design-Builder shall organize and maintain its project records in a manner that allows such project records to be filed by work packages, as applicable. Additionally, Design-Builder shall develop a tracking log wherein the project records are provided chronologically, with the file type, description, date received/sent, entity the documentation is from/to, pay package reference, status and electronic location. The Project Record Tracking Log shall be developed in accordance with the format outlined in Attachment 11.1.9. If the project record relates to changes in the Work, preferably only one work package shall be referenced in such project record. If a project record relates to multiple work packages, then all related work packages shall be referenced in such project record. As a condition of Final Payment, Design-Builder shall provide Department with a complete set of all project records by and between Design-Builder and Department exchanged on the Project.

11.2 Miscellaneous

11.2.1 In executing this Agreement, Department and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary approvals to execute this Agreement and to perform the services and obligations described herein.

11.2.2 The parties acknowledge that as of the Agreement Date, the Virginia General Assembly has appropriated, and the Commonwealth Transportation Board ("CTB") has allocated, funding for the Project, and the Department's obligation to pay the Contract Price for the Work is subject to the appropriations and allocations.

11.3 Exhibits

11.3.1 The following exhibits are specifically made part of, and incorporated by reference into, this Agreement (Attachments to Part 3 are included in the RFP Information Package):

EXHIBIT 6.3(a)	--	ADJUSTMENT FOR ASPHALT
EXHIBIT 6.3(b)	--	FORM C-16a (PRICE ADJUSTMENT FOR ASPHALT)
EXHIBIT 6.3(c)	--	ADJUSTMENT FOR FUEL
EXHIBIT 6.3(d)	--	ADJUSTMENT FOR STEEL
EXHIBIT 11.1.9	--	EXAMPLE CORRESPONDENCE TRACKING LOG

DEPARTMENT:

Virginia Department of Transportation
(Name of Department)

_____
(Signature)

_____
(Printed Name)

Chief Engineer
(Title)

Date: _____

DESIGN-BUILDER:

_____
(Name of Design-Builder)

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date: _____

END OF PART 3
LUMP SUM DESIGN-BUILD AGREEMENT

EXHIBIT 6.3(a)
ADJUSTMENT FOR ASPHALT

SPECIAL PROVISION FOR
ASPHALT MATERIAL PRICE ADJUSTMENT
DESIGN-BUILD PROJECTS

October 7, 2009

In the event the Design-Builder elects to seek adjustment for asphalt items designated in the Price Proposal\Contract as Price Adjustment Items such items will be subject to price adjustment as set forth herein. Other items will not be adjusted, except as otherwise specified in the contract. If new pay items which contain Asphalt Material are established by Work Order, they will not be subject to Price Adjustment unless specifically designated in the Work Order to be subject to Price Adjustment.

Each month, the Department will publish an average state-wide PG 64-22 f.o.b. price per ton developed from the average terminal prices provided to the Department from suppliers of asphalt cement to contractors doing work in Virginia. The Department will collect terminal prices from approximately 12 terminals each month. These prices will be received once each month from suppliers on or about the last weekday of the month. The high and low prices will be eliminated and the remaining values averaged to establish the average statewide price for the following month. That monthly state-wide average price will be posted on the Scheduling and Contract Division website on or about the first weekday of the following month.

This monthly statewide average price will be the Base Index for all contracts on which bids are received during the calendar month of its posting and will be the Current Index for all asphalt placed during the calendar month of its posting. In the event an index changes radically from the apparent trend, as determined by the Engineer, the Department may establish an index which is determined to best reflect the trend.

The amount of adjustment applied will be based on the difference between the Price Proposal\Contract Base Index and the Current Index for the applicable calendar month during which the work is performed. Adjustment of any asphalt material item designated as a price adjustment item which does not contain PG 64-22, except PG 76-22, will be based on the indexes for PG 64-22. The quantity of asphalt cement for asphalt concrete pavement to which adjustment will be applied will be the quantity based on the percent of asphalt cement shown on the appropriate approved job mix formula.

The quantity of asphalt emulsion for surface treatments to which adjustment will be applied will be the quantity based on 65 percent residual asphalt.

Price adjustment will be shown as a separate entry on the monthly progress estimate of work packages completed; however, such adjustment will not be included in the total cost of the work for progress determination or for extension of contract time.

In order to be eligible for asphalt price adjustment under this provision, the Design-Builder shall clearly identify in its Price Proposal those pay items and the associated quantities it chooses to have asphalt price adjustment applied to in its work packages. Items the successful Design-Builder chooses for asphalt price adjustment must be specifically designated in writing in the Design-Builder's Price Proposal to be considered complete for asphalt price adjustment. Items not properly designated or left out of the Design-Builder's Price Proposal will automatically not be considered for adjustment.

Any apparent attempt to unbalance bids in favor of items subject to price adjustment or failure to submit required cost and price data as noted hereinbefore may result in rejection of items for asphalt adjustment.

__I elect to use this provision

__I elect not to use this provision

Date:_____

Signature:_____

Design-builder:_____

Vendor No.: _____

EXHIBIT (Exhibit # 6.3 (b))

Form C-16a
7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
PRICE ADJUSTMENT

INSTRUCTIONS - This form is to be completed and returned ONLY when asphalt concrete items are designated for price adjustment on the bid price sheets.

PROJECT NUMBER:

DISTRICT:

Bid Prices in this contract for items containing PG 64-22 asphalt cement were developed using an f.o.b. price of $ _____ per **IMPERIAL** ton for **PG 64-22**. This quote will be averaged into the monthly price index.

Bid Prices in this contract for items containing PG 76-22 asphalt cement were developed using an f.o.b. price of $ _____ per **IMPERIAL** ton for **PG 76-22**. This quote is project specific.
(When required by provisions)

Price quotes signed by each supplier from which the Design-Builder proposes to obtain PG 64-22 or PG 76-22 shall be maintained by the successful bidder. These quotes shall be retained on site during the life of the Contract for review by the Engineer upon request.

__ I elect to use this provision
__ I elect not to use this provision

DATE: _____

SIGNATURE: _____

_____
(Firm or Corporation)

_____
(Vendor No.)

EXHIBIT 6.3 (c)
ADJUSTMENT FOR FUEL

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
OPTIONAL ADJUSTMENT FOR FUEL
DESIGN-BUILD PROJECTS

October 7, 2009

The Department will adjust monthly progress payments up or down as appropriate for cost changes in fuel used on specific items of work identified in this provision. A master listing of standard items eligible for fuel adjustment is provided by the Department on its website at the following link http://www.virginiadot.org/business/resources/masteroptionalfuelitems.pdf. The listing on the web site also includes the corresponding fuel factor for each item. The fuel usage factor for each item is considered inclusive of all fuel usage.

The amount of adjustment will be computed from the change in the indexes and the on-site fuel use as shown in the Department's master listing of eligible items.

In order to be eligible for fuel adjustment under this provision, the Design-Builder shall clearly identify in its Price Proposal those pay items and the associated quantities it chooses to have fuel adjustment applied to in its work packages. Items the successful Design-Builder chooses for fuel adjustment must be specifically designated in writing in the Design-Builder's Price Proposal to be considered complete for fuel adjustment. Items not properly designated or left out of the Design-Builder's Price Proposal will automatically not be considered for adjustment.

The monthly index price to be used in the administration of this provision will be calculated by the Department from the Diesel fuel prices published by the U. S. Department of Energy, Energy Information Administration on highway diesel prices, for the Lower Atlantic region. The monthly index price will be the price for diesel fuel calculated by averaging each of the weekly posted prices for that particular month.

For the purposes of this provision, the base index price will be calculated using the data from the month preceding the receipt of bids. The base index price will be posted by the Department at the beginning of the month for all bids received during that month.

The current index price will be posted by the Department and will be calculated using the data from the month preceding the particular estimate being vouchered for payment.

The current monthly quantity for eligible items of work selected by the Design-Builder for fuel adjustment in its work packages will be multiplied by the appropriate fuel factor to determine the gallons of fuel to be cost adjusted. The amount of adjustment per gallon will be the net difference between the current index price and the base index price. Computation for adjustment will be made as follows:

$$S = (E - B)\ QF$$

Where; S = Monetary amount of the adjustment (plus or minus)
B = Base index price
E = Current index price
Q = Quantity of individual units of work
F = Appropriate fuel factor

Adjustments will not be made for work performed beyond the original contract time limit unless the original time limit has been changed by an executed Work Order.

If new pay items are added to this contract by Work Order and they are listed in the Department's master listing of eligible items, the Work Order must indicate which of these individual items will be fuel adjusted; otherwise, those items will not be fuel adjusted. If applicable, designating which new pay items will be added for fuel adjustment must be determined during development of the Work Order and clearly shown on the Work Order form. The Base Index price on any new eligible pay items added by Work Order will be the Base Index price posted for the month in which bids were received for that particular project. The Current Index price for any new eligible pay items added by Work Order will be the Index price posted for the month preceding the estimate on which the Work Order is paid.

When quantities differ between the last monthly application of payment prepared upon final acceptance and the final application of payment, adjustment will be made using the appropriate current index for the period in which that specific item of work was last performed.

In the event any of the base fuel prices in this contract increase more than 100 percent (i.e. fuel prices double), the Engineer will review each affected item of work and give the Design-Builder written notice if work is to stop on any affected item of work. The Department reserves the right to reduce, eliminate or renegotiate the unit price for remaining portions of affected items of work.

Any amounts resulting from fuel adjustment will not be included in the total cost of work for determination of progress or for extension of contract time.

__I elect to use this provision

__I elect not to use this provision

Date:_____

Signature:_____

Design-builder:_____

Vendor No.:_____

EXHIBIT 6.3 (d)
ADJUSTMENT FOR STEEL

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
PRICE ADJUSTMENT FOR STEEL
DESIGN-BUILD PROJECTS

October 7, 2009

In the event Design-Builder submits a design that incorporates steel items, the Department will adjust monthly progress payments associated with eligible work packages up or down as appropriate for cost changes in steel used on specific items of work identified in the Price Proposal/contract in accordance with this provision. Provided at the end of this provision is a master listing of standard bid items the Department has determined are eligible for steel price adjustment. Inventoried materials from the listing of eligible items are specifically excluded for consideration. In addition, concrete items where reinforcing steel is normally included in the unit bid price for the item such as (but not limited to) drop inlets, median barriers, sound barrier walls, bridge railing and parapets, are not eligible for consideration under this provision.

The requirements of this provision shall apply only to material cost changes that occur between the date of the opening of the Price Proposal and the date the material is shipped to the fabricator. To be eligible for this price adjustment, Design-Builder is required to fill out the accompanying Form for Price Adjustment for Eligible Steel Items on Design-Build Projects and submit the same with its Price Proposal for the Project. By signing the Form and submitting it with its Price Proposal Design-Builder declares its intention to participate in the price adjustment in its contract with the Department. For the purposes of this provision, the prices listed on the Form for Price Adjustment for Eligible Steel Items on Design-Build projects are fixed for cost and adjustment calculations regardless of quantities incorporated into final design. Further, in order for steel items to be eligible for adjustment, once shipped to the fabricator, the items shall be specifically stored, labeled, or tagged, recognizable by color marking, and identifiable by project for inspection and audit verification.

Design-Builder shall upon request furnish documentation supporting the price per pound for eligible steel items as shown on the Form for Price Adjustment for Eligible Steel Items on Design-Build Projects furnished with its Price Proposal. Design-Builder must use the format as shown with this Form; no other format for presenting this information will be permitted. Design-Builder shall certify that all items of documentation are original and were used in the computation of the price per pound amount for the represented eligible pay items for the month the Price Proposal was opened. This documentation shall support the base line material price ("Base Price") of the steel item only. Base price per pound shall not include the following cost components: fabrication, shipping, storage, handling, and erection.

Failure to submit all documentation required or requested supporting the per pound prices on eligible steel items will result in Design-Builder being ineligible for a price adjustment of any or all steel items.

Price adjustment of each qualifying item under consideration will be subject to the following condition:

> There is an increase or decrease in the cost of eligible steel materials in excess of 10 percent up to a maximum of 60 percent from the Base Price when compared with the latest published price index ("Price Index") in effect at the time material is shipped to the fabricator.

The Price Index the Department is using is based on The U.S. Department of Labor, Bureau of Labor Statistics, Producers Price Index (PPI) which measures the average price change over time of the specific steel eligible item from the perspective of the seller of goods. The Master List table provided at the end of this provision indicates the Producers Price Index (PPI) steel category index items and the corresponding I.D. numbers to which VDOT items will be compared. **Please note**: The Producers Price Index (PPI) is

subject to revision 4 months after original publication, therefore, price adjustments and payments will not be made until the index numbers are finalized.

The price adjustment will be determined by computing the percentage of change in index value beyond 10 percent above or below the index on the date of opening of Design-Builder's Price Proposal to the index value on the date the steel material is shipped to the fabricator (Please see included sample examples). Weights and date of shipment must be documented by a bill of lading provided to the Department. The final price adjustment dollar value will be determined by multiplying this percent increase or decrease in the index (after 10%) by the represented quantity of steel shipped, by the Base Price per pound subject to the limitations herein.

Price increase/decrease will be computed as follows:

$$A = B \times P \times Q$$

Where;

- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted in Design-Builder's Price Proposal for project in price per pound as listed on the Form for Price Adjustment for Eligible Steel Items on Design-Build Project
- P = Adjusted percentage change in PPI average from shipping date to date of opening of Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of steel in pounds shipped to fabricator for specific project

The need for application of the adjustments herein to extra work will be determined by the Engineer on an individual basis and, if appropriate, will be specified on the Work Order.

This price adjustment is capped at 60 percent. This means the maximum "P" value for increase or decrease that can be used in the above equation is 50% (60%-10% threshold).

Calculations for price adjustment shall be shown separate from the monthly progress payment for work packages and will not be included in the total cost of work for determination of progress or for extension of contract time.

Upon Department review and due process consideration for redress by Design-Builder, any apparent evidence to unbalance the price supplied by Design-Builder in favor of items subject to price adjustment will result in ineligibility for Department participation under this provision.

FORM FOR PRICE ADJUSTMENT FOR ELIGIBLE STEEL ITEMS ON DESIGN-BUILD PROJECTS
Must be supplied with Price Proposal for Department Participation

(All prices to be supported by project-specific quotes)

DATE FOR RECEIPT OF PRICE PROPOSAL _____

Note: All prices (costs) are to include any surcharges on materials quoted. Vendors must include this surcharge with their cost. All prices (costs) are F.O.B. from the originating mill.

Item Number	Item Description	Quantity	Unit	Unit Price	Supplier	Date of Quote

We/I, the undersigned, understand that by supplying prices for the steel items listed above and signing this form we are declaring our desire to apply the Special Provision For Steel Adjustment for Design-Build Projects to this Price Proposal and contract. The terms and conditions for participation are as stated in the Special Provision For Steel Adjustment for Design-Build Projects.

_____ Design-Builder

_____ Date

Sample Calculation of a Price Adjustment (increase)

Project bid on April 28, 2004.

Project has 450,000 lb. of eligible structural steel.

Design Builder's *f.o.b. supplier price for structural steel submitted in the Price Proposal is $0.2816 per pound.

*free on board

Adjusted** BLS Producers Price Index (PPI) most recently published average at time of opening of the Price Proposal is 139.6.

All eligible steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 161.1

Adjustment formula is as follows:

A = B X P X Q

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted in the Price Proposal for Design-Build project in $ per pound
- P = Adjusted percentage change in PPI average from shipping date to date of submitted Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of eligible steel shipped to fabricator in October 2004 for this project in pounds

B = $0.2816

P = (161.1- 139.6)/139.6 – 0.10 = 0.054

Q = 450,000 lb.

A = 0.2816 x 0.054 x 450,000

A = $6,842.88 pay adjustment to Design-Builder

Sample Calculation of a Price Adjustment (decrease)

Project bid on April 28, 2004.

Project has 450,000 lb. of eligible structural steel.

Design-Builder's *f.o.b. supplier price for structural steel submitted in the Price Proposal is $0.2816 per pound. *free on board

Adjusted BLS Producers Price Index (PPI) most recently published average at time of opening of the Price Proposal is 156.6.

All eligible steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 136.3

Adjustment formula is as follows:

A = B X P X Q

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted in the Price Proposal for Design-Build project in $ per pound
- P = Adjusted percentage change in PPI average from shipping date to date of submitted Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of eligible steel shipped to fabricator in October 2004 for this project in pounds

B = $0.2816

P = (156.6 – 136.3)/156.6 – 0.10 = 0.030

Q = 450,000 lb.

A = 0.2816 x 0.030 x 450,000

A = $3,801.60 credit to Department

MASTER LISTING

STANDARD BID ITEMS ELIGIBLE FOR STEEL PRICE ADJUSTMENT

March 18, 2009

ITEM NUMBER	ITEM DESCRIPTION	UNITS	BLS Series I. D. Number WPU used in $ adjust.
00519	SHEET PILE, STEEL	SF	avg. 1017 & 101
00540	REINF. STEEL	LB	101704
00542	EPOXY COATED REINF. STEEL	LB	101704
00560	STRUCTURAL STEEL JB-1	LB	avg. 1017 & 101
11030	REINF. STEEL BRIDGE APPR. SLAB	LB	101704
11181	PATCH.HYDR.CEM.CONC. PAVE.	SY	101704
13290	GUARDRAIL GR-8 (NCHRP 350 TL-3)	LF	avg. 1017 & 101
13292	GUARDRAIL GR-8A (NCHRP 350 TL-3)	LF	avg. 1017 & 101
13294	GUARDRAIL GR-8B (NCHRP 350 TL-3)	LF	avg. 1017 & 101
13310	GUARDRAIL TERMINAL GR-6 (NCHRP 350)	LF	avg. 1017 & 101
13320	GUARDRAIL GR-2	LF	avg. 1017 & 101
13323	GUARDRAIL GR-2A	LF	avg. 1017 & 101
13331	RAD. GUARDRAIL GR-2	LF	avg. 1017 & 101
13333	RAD. GUARDRAIL GR-2A	LF	avg. 1017 & 101
13335	GUARDRAIL GR-3	LF	avg. 1017 & 101
13341	GUARDRAIL TER. GR-6(WEATHERING STEEL	LF	avg. 1017 & 101
13351	GUARDRAIL GR-8	LF	avg. 1017 & 101
13352	GUARDRAIL GR-8A	LF	avg. 1017 & 101
13353	GUARDRAIL GR-8B	LF	avg. 1017 & 101
13355	GUARDRAIL GR-10	LF	avg. 1017 & 101
13421	MEDIAN BARRIER MB-3	LF	avg. 1017 & 101
13450	MEDIAN BARRIER MB-5	LF	avg. 1017 & 101
13451	MEDIAN BARRIER MB-5A	LF	avg. 1017 & 101
13452	MEDIAN BARRIER MB-5B	LF	avg. 1017 & 101
13545	REINF. STEEL	LB	101704
14502	REINFORCING STEEL	LB	101704
15290	PATCH.CEM.CONC.PAVE.TY.CRCP-A	SY	101704
15302	PATCH.CEM.CONC.PAVE. TY. II	SY	101704
15305	PATCH.CEM.CONC.PAVE.TY. IV-A	SY	101704
17323	GUARDRAIL BEAM *	LF	avg. 1017 & 101
17325	RADIAL GUARDRAIL BEAM *	LF	avg. 1017 & 101
17327	RUB RAIL	LF	avg. 1017 & 101
17353	CABLE GR-3	LF	avg. 1017 & 101
17521	GUARDRAIL BEAM (WEATHERING STEEL)	LF	avg. 1017 & 101
17523	RADIAL GUARDRAIL BEAM (WEATHERING STEEL)	LF	avg. 1017 & 101
17525	RUB RAIL (WEATHERING STEEL)	LF	avg. 1017 & 101
22501	FENCE FE-W1	LF	avg. 1017 & 101
22643	FENCE FE-CL	LF	avg. 1017 & 101
22645	FENCE FE-CL VINYL COATED	LF	avg. 1017 & 101
23043	WATER GATE FE-4 TY.III	LF	avg. 1017 & 101
23501	FENCE FE-W1 (FABRIC ONLY)	LF	avg. 1017 & 101
45522	4" STEEL ENCASE. PIPE	LF	101706
45532	6" STEEL ENCASE. PIPE	LF	101706
45562	16" STEEL ENCASE. PIPE	LF	101706

45572	18" STEEL ENCASE. PIPE	LF	101706
45582	24" STEEL ENCASE. PIPE	LF	101706
45584	24" JACKED STEEL ENCASEMENT PIPE	LF	101706
45592	30" STEEL ENCASE. PIPE	LF	101706
50402	SIGN POST STEEL 3"	LF	101706
50404	SIGN POST STEEL 4"	LF	101706
50406	SIGN POST STEEL 6"	LF	101706
50410	SIGN POST STEEL 10"	LF	101706
50412	SIGN POST STEEL 12"	LF	101706
50414	SIGN POST STEEL 14"	LF	101706
50416	SIGN POST STEEL 16"	LF	101706
50418	SIGN POST STEEL 18"	LF	101706
51317	SIG. POLE MP-1 20' ONE ARM 30'	EA	101706
51319	SIG. POLE MP-1 20' ONE ARM 32'	EA	101706
51325	SIG. POLE MP-1 20' ONE ARM 38'	EA	101706
51327	SIG. POLE MP-1 20' ONE ARM 40'	EA	101706
51329	SIG. POLE MP-1 20' ONE ARM 42'	EA	101706
51331	SIG. POLE MP-1 20' ONE ARM 44'	EA	101706
51337	SIG. POLE MP-1 20' ONE ARM 50'	EA	101706
51339	SIG. POLE MP-1 20' ONE ARM 52'	EA	101706
51341	SIG. POLE MP-1 20' ONE ARM 54'	EA	101706
51344	SIG. POLE MP-1 20' ONE ARM 56'	EA	101706
51346	SIG. POLE MP-1 20' ONE ARM 58'	EA	101706
51347	SIG. POLE MP-1 20' ONE ARM 60'	EA	101706
51348	SIG. POLE MP-1 20' ONE ARM 62'	EA	101706
51368	SIG.POLE MP-1 20'TWO ARMS 36'& 42'	EA	101706
51400	SIG.POLE MP-1 CO.LU.ONE ARM 38	EA	101706
51402	SIG.POLE MP-1 CO.LU.ONE ARM 40	EA	101706
51408	SIG.POLE MP-1 CO.LU.ONE ARM 46	EA	101706
51412	SIG.POLE MP-1 CO.LU.ONE ARM 50	EA	101706
51414	SIG.POLE MP-1 CO.LU.ONE ARM 52	EA	101706
51416	SIG.POLE MP-1 CO.LU.ONE ARM 54	EA	101706
51418	SIG.POLE MP-1 CO.LU.ONE ARM 56	EA	101706
51420	SIG.POLE MP-1 CO.LU.ONE ARM 58	EA	101706
51422	SIG.POLE MP-1 CO.LU.ONE ARM 60	EA	101706
55162	LIGHTING POLE LP-1 30'-4'	EA	101706
55163	LIGHTING POLE LP-1 30'-6'	EA	101706
55166	LIGHTING POLE LP-1 30'-12'	EA	101706
55169	LIGHTING POLE LP-1 35'-6'	EA	101706
55171	LIGHTING POLE LP-1 35'-10'	EA	101706
55176	LIGHTING POLE LP-1 40'-8'	EA	101706
55185	LIGHTING POLE LP-2 TYPE A	EA	101706
55186	LIGHTING POLE LP-2 TYPE B	EA	101706
55187	LIGHTING POLE LP-2 TYPE C	EA	101706
55188	LIGHTING POLE LP-2 TYPE D	EA	101706
55189	LIGHTING POLE LP-2 TYPE E	EA	101706
55190	LIGHTING POLE LP-2 TYPE F	EA	101706
55192	LIGHTING POLE LP-2 TYPE H	EA	101706
60452	REINF. STEEL BRIDGE APPR. SLAB	LB	101704
61700	REINF. STEEL	LB	101704
61704	CORROSION RESISTANT REINF. STEEL	LB	101704
61705	EPOXY COATED REINF. STEEL	LB	101704
61750	STRUCT.STEEL HIGH STRG.PLT.GIRDERS	LB	avg. 1017 & 101
61811	STR.STEEL PLATE GIRDER ASTM A709 GRADE50	LB	avg. 1017 & 101
61812	STR.STEEL PLATE GIRDER ASTM A709 GRADE50	LB	avg. 1017 & 101
61813	STR.STEEL PLATE GIRDER ASTM A709 GRADEHPS50W	LB	avg. 1017 & 101

61814	STR.STEEL PLATE GIRDER ASTM A709 GRADEHPS70W	LB	avg. 1017 & 101
61820	STR.STEEL ROLLED BEAM ASTM A709 GRADE 36	LB	avg. 1017 & 101
61821	STR.STEEL ROLLED BEAM ASTM A709 GRADE50	LB	avg. 1017 & 101
61822	STR.STEEL ROLLED BEAM ASTM A709 GRADE50W	LB	avg. 1017 & 101
61990	STEEL GRID FLOOR	SF	avg. 1017 & 101
64110	STEEL PILES 10"	LF	avg. 1017 & 101
64112	STEEL PILES 12"	LF	avg. 1017 & 101
64114	STEEL PILES 14"	LF	avg. 1017 & 101
64768	DRIVING TEST FOR 12" STEEL PILE	LF	avg. 1017 & 101
64778	DRIVING TEST FOR 14" STEEL PILE	LF	avg. 1017 & 101
65200	REINF. STEEL	LB	101704
65204	CORROSION RESISTANT REINF. STEEL	LB	101704
65205	EPOXY COATED REINF. STEEL	LB	101704
67086	PED. FENCE 6'	LF	avg. 1017 & 101
67088	PED. FENCE 8'	LF	avg. 1017 & 101
67089	PED. FENCE 10'	LF	avg. 1017 & 101
68100	REINF. STEEL	LB	101704
68104	CORROSION RESISTANT REINF. STEEL	LB	101704
68105	EPOXY COATED REINF. STEEL	LB	101704
68107	STR.STEEL PLATE GIRDER ASTM A709 GRADE50	LB	avg. 1017 & 101
68108	STR. STEEL PLATE GIRDER ASTM A709 GR50W	LB	avg. 1017 & 101
68109	STR. STEEL PLATE GIRDER ASTM A709 GR.HPS50W	LB	avg. 1017 & 101
68110	STR. STEEL PLATE GIRDER ASTM A709 GR.HPS70W	LB	avg. 1017 & 101
68112	STR.STEEL ROLLED BEAM ASTM A709 GR.36	LB	avg. 1017 & 101
68113	STR.STEEL ROLLED BEAM ASTM A709 GR.50	LB	avg. 1017 & 101
68114	STR.STEEL ROLLED BEAM ASTM A709 GR. 50W	LB	avg. 1017 & 101
68115	STRUCT. STEEL	LB	avg. 1017 & 101
68270	REINF. STEEL BRIDGE APPR. SLAB	LB	101704
69060	SHEET PILES, STEEL	SF	avg. 1017 & 101
69100	REINF. STEEL	LB	101704
69104	CORROSION RESISTANT REINF. STEEL	LB	101704
69105	EPOXY COATED REINF. STEEL	LB	101704
69110	STEEL PILES 10"	LF	avg. 1017 & 101
69112	STEEL PILE 12"	LF	avg. 1017 & 101
69113	DRIVING TEST FOR 12" STEEL PILE	LF	avg. 1017 & 101

___I elect to use this provision

___I elect not to use this provision

Date: _____

Signature: _____

Design-Builder: _____

Vendor No.: _____

EXHIBIT 11.1.9

Tracking Log for Project Records

VDOT Project: XYZ Project
Project: U000--111-222, P101, R201, C501, B601, B602
CONTRACT ID #: C00011111DB5

CORR	Correspondence
EMAIL	Email
MEET	Meeting Minutes
MEMO	Memo (Internal)
MISC	Miscellaneous Files

ID Number	Process	Description / Issue	Pay Package Reference	Date Received or Sent	From	To	Status (Open/ Closed	Record File Location Or Insert Hyperlink (ctrl + k)
C00018992DB4-1	CORR	VDOT to Design-Builder - Notice of Intent Letter	n/a	05/09/2007	VDOT	Design-Builder	Closed	
C00018992DB4-2	CORR	Performance and Payment Bonds	n/a	05/11/2007	Design-Builder	AAA	Closed	
C00018992DB4-3	CORR	Certificate of Insurance	n/a	05/15/2007	Design-Builder	CCC	Closed	
C00018992DB4-4	CORR	SWPP Certification Permit	n/a	05/15/2007	Design-Builder	Design-Builder	Closed	
C00018992DB4-5	CORR	C112 - Binding Agreements	n/a	05/17/2007	Design-Builder	BBB	Closed	
C00018992DB4-6	CORR	VDOT Request for Design-Builder Preconstruction Meeting	n/a	06/09/2007	VDOT	Design-Builder	Closed	
C00018992DB4-7	CORR	Design-Builder to VDOT - Escrow Document Review Meeting	n/a	06/15/2007	Design-Builder	VDOT	Closed	
C00018992DB4-8	CORR	VDOT to Design-Builder - CTB Award	n/a	06/21/2007	VDOT	Design-Builder	Closed	
C00018992DB4-9	MISC	Design-Builder Questions Regarding Final Contract Document Timeline	n/a	06/22/2007	Design-Builder	VDOT	Closed	
C00018992DB4-10	CORR	Design-Builder to VDOT - Preconstruction Meeting	n/a	07/17/2007	Design-Builder	VDOT	Closed	
C00018992DB4-11	CORR	VDOT to Design-Builder - Final Contract Documents	n/a	07/18/2007	VDOT	Design-Builder	Closed	
C00018992DB4-12	MEET	Preconstruction Meeting Minutes	n/a	07/23/2007	Design-Builder	VDOT	Closed	
C00018992DB4-13	CORR	VDOT to Design-Builder - Notice to Proceed	n/a	08/02/2007	VDOT	Design-Builder	Closed	
C00018992DB4-14	CORR	Design-Builder to VDOT Permit Application Request	1	08/02/2007	Design-Builder	VDOT	Closed	
C00018992DB4-15	EMAIL	Geotechnical Investigations - Preliminary Data	2	08/08/2007	Design-Builder	Design-Builder	Closed	
C00018992DB4-16	CORR	Design-Builder to VDOT - Flood Plain Study Inquiry	3	08/09/2007	Design-Builder	VDOT	Closed	
C00018992DB4-17	CORR	Payment Requisition # 1 - First submission	1,2,3	08/10/2007	Design-Builder	VDOT	Closed	
C00018992DB4-18	CORR	Payment Requisition # 1 - Second submission	1,2,3	08/13/2007	Design-Builder	VDOT	Closed	
C00018992DB4-19	MEMO	VDOT Acknowledgement of Receipt of Preliminary Roadway Plans	4	08/14/2007	VDOT	Design-Builder	Closed	
C00018992DB4-20	MEMO	VDOT to Design-Builder - ROW Plan Submittal 1 Comments	5	08/22/2007	VDOT	Design-Builder	Closed	
C00018992DB4-21	CORR	VDOT ID Outstanding Issues to Design-Builder	5	08/24/2007	VDOT	Design-Builder	Closed	
C00018992DB4-22	CORR	VDOT to Design-Builder - Comments Regarding Preliminary Roadway Plans	4	09/05/2007	VDOT	Design-Builder	Closed	
C00018992DB4-23	CORR	Payment Requisition # 2	4,5	09/10/2007	Design-Builder	VDOT	Closed	
C00018992DB4-24	MEMO	NVRPA Comments - Bridge Details	6	09/16/2007	NVRPA	Design-Builder	Closed	
C00018992DB4-25	CORR	Design-Builder to VDOT - Outstanding Issues	n/a	09/18/2007	Design-Builder	VDOT	Closed	
C00018992DB4-26	CORR	FWD: FOIA Request Mrs. Smith	n/a	09/20/2007	VDOT	Design-Builder		
C00018992DB4-27	CORR	FOIA Response to Mrs. Smith	n/a	09/23/2007	Design-Builder	VDOT	Closed	
C00018992DB4-28	MEMO	Memo to File - Reporting Requirements	n/a	09/25/2007	DDD	File	Closed	
C00018992DB4-29	CORR	Conflict of Interest Request for Determination	n/a	09/27/2007	OAG	VDOT	Closed	
C00018992DB4-30	CORR	VDOT Acknowledgement of Receipt of Final Roadway Plans	7	10/04/2007	VDOT	Design-Builder	Closed	
C00018992DB4-31	CORR	Payment Requisition # 3	6,7	10/10/2007	Design-Builder	VDOT	Closed	
C00018992DB4-32	CORR	VDOT to Design-Builder - Comments Regarding Final Roadway Plans	7	10/17/2007	VDOT	Design-Builder	Closed	
C00018992DB4-33	MEET	Permit Coordination Meeting Minutes	8	10/26/2007	VDOT	Design-Builder	Closed	
C00018992DB4-34	CORR	Town of Leesburg Comment - Utililty Relocation Plans	9	10/27/2007	Design-Builder	VDOT		

PART 4

General Conditions of Contract Between Department and Design-Builder

Table of Contents

Article 1: General 1

Article 2: Design-Builder's Services and Responsibilities 4

Article 3: Department's Services and Responsibilities 13

Article 4: Hazardous Environmental Conditions and Differing Site Conditions 16

Article 5: Insurance and Bonds 18

Article 6: Payment 18

Article 7: Indemnification 22

Article 8: Time 25

Article 9: Changes to the Contract Price and Time 28

Article 10: Contract Adjustments and Disputes 30

Article 11: Stop Work and Termination for Cause 33

Article 12: Miscellaneous 36

Article 1
General

1.1 Mutual Obligations

1.1.1 Department and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings), provided, however, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document.

.1 *Agreement* refers to the executed Lump Sum Design-Build Agreement Between Department and Design-Builder.

.2 *Agreement Date* is the date that the Agreement is executed by both parties.

.3 *Business Day(s)*, whether capitalized or not, means any day(s) other than a Saturday, Sunday, Commonwealth of Virginia holiday, or a day when the New York Stock Exchange or banks are authorized or required to close in New York, New York or Richmond, Virginia.

.4 *Contract Documents* refer to those documents identified in Article 2 of the Agreement.

.5 *Contractor* shall mean Design-Builder.

.6 *Day* or *Days*, whether capitalized or not, shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.7 *Department's Project Criteria* are developed by or for Department to describe Department's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Department's Project Criteria are included in the Request for Proposals and may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.8 *Design Consultant* is a qualified, licensed design professional, eligible to provide professional engineering and/or land surveying services in the Commonwealth of Virginia, who is not an employee of Design-Builder, but is retained by Design-Builder, or

:
employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

.9 *Engineer* shall mean the Department's Chief Engineer, who acts directly or through his duly authorized representative, the representative acts within the scope of the particular duties assigned to him or the authority given to him.

.10 *General Conditions of Contract (or General Conditions)* refer to this document.

.11 *Governmental Approval* means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

.12 *Governmental Unit* means any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or the Parties; provided, however, that the term "Governmental Unit" shall not be construed to include the Department.

.13 *Hazardous Environmental Condition* means the presence at the Site of Hazardous Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

.14 *Hazardous Materials* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.15 *Interim Milestone(s) is* completion and delivery date(s) for parts of the work specified by the Contract Documents.

.16 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any Governmental Unit.

.17 *Proposal* means that document submitted by Design-Builder pursuant to the RFP and identified in Article 2 of the Agreement.

.18 *QA Manager ("QAM")* is the Design-Builder's designee responsible for providing Quality Assurance and Quality Control of the Work, and ensuring conformance with the Contract Documents.

.19 *QA/QC Plan* is a plan that details how the Design-Builder will provide quality control ("QC") and quality assurance ("QA") for both the design and construction elements of the project, obtain samples for Design-Builder quality control testing, perform tests for Design-Builder quality control, provide inspection, and exercise

:
management control (e.g. quality assurance testing) to ensure the work conforms to the contract requirements.

.20 *Request for Proposals* (*"RFP"*) is the document identified in Article 2 of the Agreement, inclusive of all of its parts, addenda, Department's Project Criteria, and any other document that is attached thereto or incorporated therein by reference.

.21 *Request for Qualifications* (*"RFQ"*) means all documents, whether attached or incorporated by reference, utilized for soliciting interested persons to apply for prequalification. The RFQ is the first phase of a Two-phase selection process for the purpose of inviting interested Offerors to submit qualifications for a project.

.22 *RFP Documents* refer to those documents identified in Part 1, Instructions for Offerors, Section 2.9.1 of the RFP.

.23 *Separate Contractor* means a contractor retained by the Department other than the Design-Builder to perform work or to provide services or materials in connection with the Project.

.24 *Site* is the land or premises on which the Project is located.

.25 *Standard Drawings* are the applicable drawings in the Virginia Department of Transportation *Road and Bridge Standards*, current as of the date of the Agreement.

.26 *Standard Specifications* are the Virginia Department of Transportation *Road and Bridge Specifications,* 2007.

.27 *State* means the Commonwealth of Virginia.

.28 *State Highway* means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

.29 *State Indemnitee* means and includes the Department, the Commissioner, the Commonwealth Transportation Board, the State and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

.30 *Subcontract* means any and all agreements between Design-Builder and its Subcontractors and other agreements between Subcontractors and Sub-subcontractors (and/or any other lower tier subcontractors), it being the intent that all this term encompasses all agreements deriving directly or indirectly from Design-Builder, in connection with the performance of the Work.

.31 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

:

.32 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

.33 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is complete in accordance with the Contract Documents so that Department can occupy and use the Project (or a portion thereof, if the Contract Documents provide for acceptance of portions of the Project upon Substantial Completion of such portions) for its intended purposes. It is intended that, as of Substantial Completion, the Department and the public (traveling and general) will have full and unrestricted use and benefit of the Work (or, if applicable, an agreed upon portion of the Work), from both an operational and safety standpoint, with only minor incidental Work remaining to be performed, corrected or repaired.

.34 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

.35 *Work Breakdown Structure ("WBS")* is a hierarchically-structured grouping of project elements that organizes and defines the total scope of the Project. Each descending level is an increasingly detailed definition of a project component. Project components may be products (a product-oriented WBS) or tasks (a task-oriented WBS).

.36 *Work Package* is a deliverable at the lowest level of the WBS. May be divided into activities and used to identify and control work flows in the organization.

Article 2
Design-Builder's Services and Responsibilities

2.1 General

2.1.1 Design-Builder's Representative shall be reasonably available to Department and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Department and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only by the mutual agreement of Department and Design-Builder.

2.1.2 The parties will meet within seven (7) days after the Agreement Date, and also will meet within seven (7) days after Date of Commencement, to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

:

2.1.3 Design-Builder shall provide Department with the Baseline Schedule, updates and monthly reports set forth in Section 11.1 of the Agreement.

2.1.4 Design-Builder shall be responsible for securing, executing and paying all costs associated with the procurement of all agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work, and shall provide all right-of-way acquisition services associated with this Project.

2.1.5 Design-Builder shall provide management for the Work in accordance with the organization chart set forth in the Proposal. Design-Builder acknowledges the importance of its Design-Build Project Manager, Design Manager, Quality Assurance Manager, Construction Manager (collectively, "**Key Personnel**"). None of the Key Personnel may be withdrawn from the Project without prior written approval of Department, with it being understood and agreed that Design-Builder will provide Department with at least thirty (30) days written notice of any request to withdraw any Key Personnel. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if Department has a reasonable objection to such person.

2.1.6 If Design-Builder wishes to deviate from the right-of-way limits shown on the approved Project right-of-way plans for property, such deviations will be subject to Department's prior written approval. It will be the responsibility of Design-Builder to coordinate directly with the affected property owners to acquire such right-of-way. Design-Builder shall be responsible for assuming all risks associated with exceeding such right-of-way limits, including any public hearings that may be required, and no modifications to the Contract Price or Contract Time(s) will be granted or considered.

2.1.7 Design-Builder shall submit its QA/QC Plan to VDOT for review and approval at the meeting held after the Date of Commencement as set forth in Section 2.1.2. Along with the QA/QC Plan submittal, the QA Manger shall provide a presentation of the QA/QC Plan utilizing project related scenarios.

2.1.8 Design-Builder shall participate in monthly progress meetings. During such meetings, progress during the prior month shall be reviewed The Design-Builder shall collect information from any key subcontractors/sub-consultant responsible for work completed during the specified duration and work scheduled during the upcoming reporting duration. These meetings shall be attended by the design-build project manager, construction manager, quality assurance manager and design manager, as well as other key personnel from the design and construction firms defined within the Offeror's proposal and Department representative's designated by the VDOT Project Manager. Meetings will occur monthly beginning the month after the issuance of the Notice to Proceed. Design-Builder shall be responsible for preparing, maintaining and distributing minutes of the meetings to all attendees for review. The meeting minutes shall be provided to the Department within two (2) days of the monthly progress meeting.

:

2.2 Scope Validation and Identification of Scope Issues

2.2.1 <u>Scope Validation Period</u>. Except as modified in Section 2.2.2 below, the term "**Scope Validation Period**" shall refer to the sixty (60) day period following the Date of Commencement. During the Scope Validation Period, Design-Builder shall thoroughly review and compare all of the then-existing Contract Documents, including without limitation the RFP Documents and the Proposal, to verify and validate Design-Builder's proposed design concept and identify any errors, omissions, inconsistencies, constructability problems, Site conditions or any other defects or concerns of any kind (collectively referred to as "**Scope Issues**") that may affect Design-Builder's ability to complete its proposed design concept within the Contract Price and Contract Time(s). If Design-Builder finds any Scope Issues, it shall notify Department in writing of such findings within the Scope Validation Period. Upon such notice, the Parties shall promptly meet and confer to discuss the resolution of such issues. If a Scope Issue could not have reasonably been identified by Design-Builder prior to the Agreement Date, and if resolution of the issue materially impacts Design-Builder's price or time to perform the Work, Design-Builder shall be entitled to submit a request for Work Order, and Department shall have the right to act upon such request, in accordance with Article 9 hereof. Notwithstanding anything to the contrary in the Contract Documents or as a matter of law, Design-Builder shall have the burden of proving that the alleged Scope Issue could not have been reasonably identified prior to the Agreement Date and that such Scope Issue materially impacts its price or time to perform the Work.

2.2.2 <u>Scope Validation Period for Non-Accessible Areas of the Site</u> *<u>[if applicable]</u>*. The Parties recognize that the Department will not have acquired and have complete right of entry to all areas of the Project as of the Date of Commencement, and that, as a result, Design-Builder will not have access to such areas to conduct any additional geotechnical evaluations as contemplated by Section 4.3.2 below. The Parties further recognize that there is a possibility that Design-Builder may be restricted, as of the Date of Commencement, from having full access to other areas of the Site for purposes of conducting geotechnical evaluations. For the limited purpose of determining Scope Issues that directly arise from geotechnical evaluations for such areas, the term "**Scope Validation Period**" shall be deemed to be sixty (60) days from the date that Department notifies Design-Builder that it has acquired and obtained complete right of entry to such areas.

2.2.3 <u>Design-Builder's Assumption of Risk of Scope Issues</u>. The Parties acknowledge that the purpose of the Scope Validation Period is to enable Design-Builder to identify those Scope Issues that could not reasonably be identified prior to the Agreement Date. By executing this Agreement, Design-Builder acknowledges that the Scope Validation Period is a reasonable time to enable Design-Builder to identify Scope Issues that will materially impact Design-Builder's price or time to perform the Work. Following completion of the Scope Validation Period, with the sole exception of those Scope Issues identified during the Scope Validation Period and subject to valid requests for Work Orders in accordance with Section 2.2.1 above, the Parties agree as follows:

:

.1 Design-Builder shall assume and accept all risks, costs, and responsibilities of any Scope Issue arising from or relating to the Contract Documents, including but not limited to conflicts within or between the RFP Documents and Proposal;

.2 Design-Builder shall be deemed to have expressly warranted that the Contract Documents existing as of the end of the Scope Validation Period are sufficient to enable Design-Builder to complete the design and construction of the Project without any increase in the Contract Price or extension to the Contract Time(s); and

.3 Department expressly disclaims any responsibility for, and Design-Builder expressly waives its right to seek any increase in the Contract Price or extension to the Contract Time(s) for, any Scope Issue associated with any of the Contract Documents, including but not limited to the RFP Documents.

2.3 Design Professional Services

2.3.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering, surveying, and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. All design professional services shall be performed by professionals properly licensed in the Commonwealth of Virginia.

2.3.2 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the Contract Documents establish a specific performance standard for any aspect of the Work, the design professional services shall be performed to achieve such standards.

2.3.3 No Design Consultant is intended to be, nor shall any Design Consultant be deemed to be, a third-party beneficiary of this Agreement. Department is intended to be and shall be deemed a third-party beneficiary of all contracts between Design-Builder and any Design Consultant. In the event that this Agreement is terminated, Design-Builder shall, upon the written demand of Department, assign such contracts to Department.

2.3.4 Design-Builder shall incorporate all obligations and understandings of the Contract Documents applicable to design services in its respective contracts with any Design Consultant, and require that such obligations be flowed down to lower-tiered Design Consultants, including the obligations relative to ownership of the Work Product set forth in Article 4 of the Agreement.

:

2.4 Design Development Services

2.4.1 Design-Builder shall, consistent with any applicable provision of the Contract Documents, provide Department with ten (10) sets of the following interim design submissions, which submissions generally correspond to the Department's concurrent engineering process, including but not limited to: (i) Preliminary Field Inspection ("PFI"); (ii) Field Inspection and Right-of-Way ("FI/RW"); and (iii) additional interim design submissions that Department may require. On or about the time of the scheduled submissions, Design-Builder and Department shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previous design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Department shall review and provide comments on the interim design submissions (except that it will specifically approve or disapprove of the FI/RW submissions) within twenty-one (21) days after receipt of the required submissions. Design-Builder shall promptly revise and modify all such submittals so as to fully reflect all comments and shall deliver to Department revised submittals for review and comment (and approval as the case may be).

2.4.2 Design-Builder shall submit to Department Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work, in full compliance with all Legal Requirements and Governmental Approvals. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting, as agreed upon in writing, and shall be submitted after Design-Builder has obtained all requisite Governmental Approvals associated with the Work contained in such documents. The parties shall have a design review meeting to discuss, and Department shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit ten (10) sets of approved Construction Documents to Department prior to commencement of construction.

2.4.3 Department's review, comment and/or approval of interim design submissions and the Construction Documents are for the purpose of establishing Design-Builder's compliance with the requirements of the Contract Documents and mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Department's review, comment and/or approval of any interim or final design submission (including but not limited to the Construction Documents) shall not be deemed to transfer any liability from Design-Builder to Department.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may, with the prior agreement of Department, prepare design submittals and Construction Documents for a portion of the Work to permit procurement and

:
construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall keep fully informed of and perform the Work in accordance with all Legal Requirements. Design-Builder shall provide all notices, and execute and file the documents, statements and/or affidavits applicable to the Work as required by the Legal Requirements. Design-Builder shall permit Department's examination of any records made subject to such examination by any applicable Legal Requirements.

2.5.2 Design-Builder may request, by submission of a Work Order request, that the Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the Agreement Date, affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements. Notwithstanding anything to the contrary, the relief afforded by this Section 2.5 shall not apply to changes in any tax laws, with Design-Builder bearing the risk of such changes.

2.6 Governmental Approvals

2.6.1 Except as identified in the Department's Governmental Approvals List attached as Exhibit 3.5.1, Design-Builder shall obtain and pay for all necessary Governmental Approvals required for the prosecution of the Work by any Governmental Unit. If any such Governmental Approval is required to be formally issued in the name of Department, Design-Builder shall undertake all efforts to obtain such Governmental Approvals subject to Department's reasonable cooperation with Design-Builder, including execution and delivery of appropriate applications and other documentation in forms approved by Department. Design-Builder shall deliver to Department, promptly after Design-Builder's receipt, a copy of each such Governmental Approval, with a listing of the status of all such Governmental Approvals included in the monthly reports required by Section 11.1 of the Agreement.

2.6.2 Design-Builder shall provide reasonable assistance to Department in obtaining those Governmental Approvals that are Department's responsibility, and no construction activity will commence until: (i) all Governmental Approvals required for the relevant construction activity (including any activity that may disturb the Site) have been obtained; (ii) Department has been notified that such Governmental Approvals have been obtained; and (iii) Department has, after reviewing the validity and scope of the Governmental Approval, authorized Design-Builder to proceed.

2.6.3 Design-Builder shall ensure that the Work conforms to the requirements and stipulations of all Governmental Approvals. Any violations of or noncompliance with any Governmental Approval, including but not limited to suspensions caused by Design-Builder violating or not being in compliance with a Governmental Approval, shall be at

:

the sole risk of Design-Builder, and shall not be a basis for adjusting the Contract Price and/or Contract Time(s).

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Department or a Separate Contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents, and shall maintain or cause to be maintained all licenses required of the Design-Builder or its employees in connection with the Work. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work lawfully in the Commonwealth of Virginia and consistent with the Contract Documents. Design-Builder shall not use any Subcontractor to whom Department has a reasonable objection, and shall obtain Department's written consent before making any substitutions or additions to Subcontractors previously identified to Department as being members of Design-Builder's Project team, including those who may have been identified in the Proposal.

2.7.4 Design-Builder assumes responsibility to Department for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Department and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Department performs other work on the Project or at the Site with Separate Contractors under Department's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Department to occupy the Project or a portion of the Project for its intended use.

2.7.7 Design-Builder shall be responsible for the security of the Site until Substantial Completion of the Work, or a portion of the Work.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable. Design-Builder shall provide minutes of each safety meeting to Department within five (5) days of such meeting.

2.8.2 Design-Builder shall provide, for Department's review, comment and acceptance, a Health, Safety and Welfare ("HS&W") plan on or before the earlier of fifteen (15) days of the Date of Commencement, or twenty-one (21) days before Design-Builder intends to commence any construction-related activities at the Site. Design-Builder shall not perform any construction-related activity (including any activity that disturbs the Site) until an acceptable HS&W plan is in place.

2.8.3 Design-Builder and Subcontractors shall comply with: (i) all Legal Requirements relating to safety; (ii) Design-Builder's HS&W plan; and (iii) any Department-specific safety requirements set forth in the Contract Documents, provided that such Department-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Department's Representative and, to the extent mandated by Legal Requirements, to all Governmental Units having jurisdiction over safety-related matters involving the Project or the Work.

2.8.4 Department shall have the right to immediately suspend any or all Work if Design-Builder fails to comply with its obligations hereunder.

2.8.5 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures

:
to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Department that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, damage, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Department with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Department with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents or applicable Legal Requirements or Government Approvals.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Department or the QA Manager that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Department, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Department will commence correction of such nonconforming Work with its own forces. If Department does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Department in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one (1) year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Department may have regarding Design-Builder's other obligations under the Contract Documents.

:

2.11 Department's Rights to Direct Design-Builder

2.11.1 When any act, omission, or other action of Design-Builder occurs that violates the requirements, conditions, or terms of the Contract Documents; or affects the health, safety, or welfare of the public or natural resources, Department will have the right, but not the obligation, to direct Design-Builder to take prompt action to repair, replace, or restore the damage or injury within a time frame established by Department. If Design-Builder fails to make such repair, replacement, or restoration within the established time frame, Department will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due Design-Builder.

Article 3
Department's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Department shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Department shall provide timely reviews and (where required) approvals of submittals, interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule, provided, however that, unless stated otherwise in the Contract Documents, Department shall have twenty-one (21) days after receipt of such submissions to act upon such submissions.

3.1.3 Department Project Manager shall be responsible for coordinating and participating in a monthly progress meeting day for the duration of the Project. Meetings will occur monthly beginning the month after the issuance of the Notice to Proceed.

3.2 Furnishing of Services and Information

3.2.1 Department has provided RFP Information Documents in Part 2 of the RFP Documents for Design-Builder to consider in developing the Proposal and for executing the Work. Design-Builder shall thoroughly review and compare all such documents during the Scope Validation Period and, to the extent that any Scope Issues arise, Department shall consider such issues in accordance with Section 2.2 above.

3.3 Financial Information

3.3.1 At Design-Builder's request, Department shall promptly furnish reasonable evidence satisfactory to Design-Builder that Department has adequate funds available and committed to fulfill all of Department's contractual obligations under the Contract

:

Documents. If Department fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Department's lenders or other financial sources. Notwithstanding the preceding sentence, after the Agreement Date, Design-Builder shall have no obligation to execute for Department or Department's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Department's Representative

3.4.1 Department's Representative shall be responsible for providing Department-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Department's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Governmental Approvals

3.5.1 Department shall obtain and pay for all necessary Governmental Approvals set forth in the Department's Governmental Approval List attached as Exhibit 3.5.1.

3.5.2 Department shall provide reasonable assistance to Design-Builder in obtaining those Governmental Approvals that are Design-Builder's responsibility.

3.6 Department's Separate Contractors

3.6.1 The Department may at any time contract or approve concurrent contracts for performance of other work on, near, or within the same geographical area of the work specified in an existing contract. Design-Builder shall not impede or limit access to such work by others.

3.6.2 When separate contracts are awarded within the limits of one project, contractors shall not hinder the work being performed by other contractors. Design-Builder(s) and/or Separate Contractor(s) working on the same project shall cooperate with each other. In case of dispute, the Engineer will be the referee, and his decision will be binding on all parties.

3.6.3 When contracts are awarded to Design-Builder(s) and/or Separate Contractor(s) for known concurrent construction in a common area, the Design-Builder(s) and/or Separate Contractor(s), in conference with the Engineer, shall establish a written joint schedule of operations. The schedule shall be based on the limitations of the individual contracts and the joining of the work of one contract with the others. The schedule shall

:
set forth the approximate dates and sequences for the several items of work to be performed and shall ensure completion within the contract time limit. The schedule shall be submitted to the Engineer for review and approval no later than twenty-one (21) days after the award date of the later contract and prior to the first monthly progress meeting. The schedule shall be agreeable to, signed by, and binding on each Design-Builder(s) and/or Separate Contractor(s). The Engineer may allow modifications of the schedule when benefit to the Design-Builder(s) and/or Separate Contractor(s) and the Department will result.

3.6.4 Any modification of the schedule shall be in writing, mutually agreed to and signed by the Design-Builder(s) and/or Separate Contractor(s), and shall be binding on the Design-Builder(s) and/or Separate Contractor(s) in the same manner as the original agreement.

3.6.5 If the Design-Builder(s) and/or Separate Contractor(s) fail to agree on a joint schedule of operations, they shall submit their individual schedules to the Engineer, who will prepare a schedule that will be binding on each Design-Builder and/or Separate Contractor.

3.6.6 The joint schedule and any modification thereof shall become a part of each contract involved. The failure of any Design-Builder and/or Separate Contractor to abide by the terms of the joint schedule will be justification for declaring the Design-Builder and/or Separate Contractor in default of his contract.

3.6.7 Each Design-Builder and/or Separate Contractor shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the Commonwealth from any and all damages and claims that may arise because of any inconvenience, delay, or loss he experiences as a result of the presence and operations of other Design-Builder(s) and/or Separate Contractor(s) working in or near the work covered by his contract. He shall also assume all responsibility for any of his work not completed because of the presence or operation of other Design-Builder(s) and/or Separate Contractor(s).

3.6.8 Except for an extension of the contract time limit, the Department will not be responsible for any inconvenience, delay, or loss experienced by the Design-Builder and/or Separate Contractor as a result of his failure to gain access to the work at the time contemplated. When the failure to gain access is not due to any fault or negligence of the Design-Builder and/or Separate Contractor, an extension of the contract time limit will be allowed on the basis of the amount of time delayed.

3.6.9 The Department will not assume any responsibility for acts, failures, or omissions of one Design-Builder and/or Separate Contractor that delay the work of another except as provided herein.

Article 4
Hazardous Environmental Conditions and Differing Site Conditions

4.1 Hazardous Environmental Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Environmental Conditions encountered at the Site. Upon encountering any Hazardous Environmental Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Department and, if required by Legal Requirements, all Governmental Units with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Environmental Conditions, Department shall take the necessary measures required to ensure that the Hazardous Environmental Conditions are remediated or rendered harmless. Such necessary measures shall include Department retaining qualified independent experts to: (i) ascertain whether Hazardous Environmental Conditions have actually been encountered; and, if they have been encountered, (ii) prescribe the remedial measures that Department must take either to remove the Hazardous Environmental Conditions or render the Hazardous Environmental Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Department's expert provides it with written certification that: (i) the Hazardous Environmental Conditions have been removed or rendered harmless; and (ii) all necessary Governmental Approvals have been obtained.

4.1.4 Design-Builder will be entitled to submit a request for a Work Order in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of Hazardous Environmental Conditions at the Site.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, Department is not responsible for Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.6 Design-Builder shall indemnify, defend and hold harmless each State Indemnitee from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from:

.1 those Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable;

.2 the spreading, migration, release, remediation, storing, transportation or disposal by Design-Builder, Subcontractors or anyone for whose acts they may be liable,

:
of pre-existing Hazardous Materials not discovered during the Scope Validation Period or thereafter; and

.3 exacerbation, due to negligence, recklessness or willful misconduct of Design-Builder, Subcontractors, or anyone for whose acts they may be liable of the release, spreading, migration or toxicity of Hazardous Materials at the Site which are known by Design-Builder to exist.

4.2 Inspection of Site Conditions

4.2.1 Design-Builder represents and warrants that it has, as of the Agreement Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface and subsurface conditions, and other general and local conditions (including labor) which might affect its performance of the Work or the cost thereof.

4.2.2 Design-Builder will, after the Date of Commencement, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including but not limited to additional geotechnical evaluations or Hazardous Materials studies. If Design-Builder intends to conduct additional geotechnical evaluations to supplement or corroborate the information contained in the RFP Documents, it shall do so during the Scope Validation Period. Any Scope Issues that arise from such evaluations shall be treated in the manner set forth in Section 2.2.3 above. All reports or analyses generated by Design-Builder's testing, inspections and investigations, including but not limited to additional geotechnical testing, shall be furnished to Department promptly after such reports or analyses are generated.

4.3 Differing Site Conditions

4.3.1 Concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ from the conditions indicated in the RFP Documents (as such conditions may be further described through reports or analyses undertaken during the Scope Validation Period); or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to submit a request for a Work Order for an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition as allowed for herein.

4.3.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Department of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.3.3 Design-Builder shall not be entitled to any adjustment in the Contract Price and/or Contract Time(s) due to impacts of Differing Site Conditions not identified during the Scope Validation Period.

Article 5
Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the Commonwealth of Virginia the insurance required by the Division I Amendments.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Division I Amendments and shall include completed operations insurance for the period of time set forth in such amendments.

5.1.3 Design-Builder's liability insurance set forth in Section 5.1.1 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 Prior to the Date of Commencement, Design-Builder shall provide Department with certificates evidencing that: (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Department.

5.2 Bonds and Other Performance Security

5.2.1 Design-Builder shall procure performance and payment bonds executed by a surety acceptable to Department, each in the amount of one hundred percent (100%) of the Contract Price, and in accordance with all other requirements of the Contract Documents, including the Division I Amendments.

Article 6
Payment

6.1 Schedule of Payments

6.1.1 Within ninety (90) days of the Date of Commencement, Design-Builder shall submit to Department, for its review and approval, and as part of its submission of the Baseline Schedule under Section 11.1.2 of the Agreement, pricing for the value of each work package, consistent with the Work Breakdown Structure submitted in Design-

:
Builder's Proposal ("**Earned Value Schedule**").
The approved Earned Value Schedule will: (i) include values for all items comprising the Work; and (ii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The parties agree that progress payments for Work performed prior to Department's approval of the Earned Value Schedule shall be based on the schedule of values provided in the Proposal.

6.1.3 Neither the Earned Value Schedule nor payments made under Section 6.1.2 above shall exceed the monthly payment schedule submitted with the Proposal, unless Department specifically approves this in writing.

6.2 Monthly Progress Payments

6.2.1 On the tenth (10th) day of each month, Design-Builder shall submit for Department's review and approval its Application for Payment requesting payment for all Work performed as of the first day of such month and coinciding with the progress reflected in the monthly Baseline Schedule update. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.2 hereof. Payment shall be made in accordance with the following earned value calculation:

.1 Design-Builder shall identify each work package, and the value in dollars of such work package, in accordance with Section 6.1.1 above. Applications for Payment shall be made based on the following earned values.

.1 Design-Builder shall earn twenty percent (20%) of the value of a work package upon initiation of the respective work package.

.2 Design-Builder shall earn eighty percent (80%) of the value of a work package upon completion of the respective work package.

.2 QA/QC shall be an integral part of each work package. As part of each Application for Payment that includes completed work packages, Design-Builder's designated quality assurance manager shall certify that each work package has been completed in accordance with the Contract Documents, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective work package have been resolved.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) Department, in its sole discretion, agrees that it is willing to allow payment for such equipment and materials; (ii) Department is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (iii) the equipment and materials are protected by

:
suitable insurance; and (iv) upon payment, Department will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Department free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Department shall pay Design-Builder all amounts properly due. If Department determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least seven (7) days prior to the date payment is due. The notice shall indicate the specific amounts Department intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Department's concerns. Design-Builder and Department will attempt to resolve Department's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Department shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

6.4.1 If Department wrongfully fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Department on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Department against any claims for payment and mechanic's liens as set forth in Section 7.2.1 hereof.

:

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Department when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within seven (7) days of Department's receipt of Design-Builder's notice, Department and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Department shall prepare and issue a Certificate of Substantial Completion that will set forth: (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Department's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Department shall pay to Design-Builder all amounts properly due, as applicable, to the entire Work or completed portion of the Work, less an amount equal to two hundred percent (200%) of Department's determination of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Department, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that: (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; and (ii) Design-Builder and Department have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate Governmental Units having jurisdiction over the Project.

6.7 Final Acceptance and Final Payment

6.7.1 Design-Builder shall notify Department when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is finally complete. Within seven (7) days of Department's receipt of Design-Builder's notice, Department and Design-Builder will jointly inspect such Work to verify that it is complete in accordance with the requirements of the Contract Documents. The Department will make the Final Acceptance of the Work in accordance with Section 105.15 of the Division I Amendments, whereupon Design-Builder will provide Department with a Final Application for Payment. Department shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

:

.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Department's interests;

.2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Department and remaining unsettled at the time of final payment, which claims shall be specifically listed in an attachment to the general release;

.3 consent of Design-Builder's surety to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents, including the correspondence files required by Section 11.1.9 of the Agreement; and

.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Department waives all claims against Design-Builder except claims relating to: (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Department's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Final Acceptance; and (iii) the terms of any special warranties and indemnifications required by the Contract Documents.

Article 7
Indemnification

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against any State Indemnitee based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. The State Indemnitee shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless State Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against State Indemnitees or Design-Builder in any such action or proceeding. Design-Builder agrees to keep the State Indemnitees informed of all developments in the defense of such actions.

7.1.2 If a State Indemnitee is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time,

:

Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright: (i) relating solely to a particular process or product of a particular manufacturer specified by Department and not offered or recommended by Design-Builder to Department; or (ii) arising from modifications to the Work by Department after acceptance of the Work.

7.2 Payment Claim Indemnification

7.2.1 Providing that Department is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless State Indemnitees from any claims or mechanic's liens brought against any State Indemnitee or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from a State Indemnitee that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, The State Indemnitee will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3 Design-Builder's General Indemnification

7.3.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend State Indemnitees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for: (i) bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable; and (ii) any violation of Sections 2.5, 2.6, or 2.8 hereof by Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.3.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, has a claim against a State Indemnitee, Design-Builder's indemnity obligation set forth in Section 7.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

:

7.4 Defense and Indemnification Procedures

7.4.1 If Department receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of Design-Builder's indemnification under the Contract Documents, it shall by writing as soon as practicable: (i) inform Design-Builder of such claim; (ii) send to Design-Builder a copy of all written materials Department has received asserting such claim and (iii) notify Design-Builder that either: (i) the defense of such claim is being tendered to Design-Builder; or (ii) Department has elected to conduct its own defense for a reason set forth below.

7.4.2 If the insurer under any applicable insurance policy accepts tender of defense, Design-Builder and Department shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then the following provisions shall apply.

7.4.3 If the defense is tendered to Design-Builder, it shall within forty-five (45) days of said tender deliver to Department a written notice stating that Design-Builder: (i) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (ii) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (iii) rejects the tender of defense if it reasonably determines it is not required to indemnify against the claim under the Contract Documents. If such notice is not delivered within such forty-five (45) days, the tender of defense shall be deemed rejected.

7.4.4 If Design-Builder accepts the tender of defense, Design-Builder shall have the right to select legal counsel for the State Indemnitees, subject to reasonable approval of the State Attorney General, and Design-Builder shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (i) Design-Builder shall at Design-Builder's expense, fully and regularly inform Department of the progress of the defense and of any settlement discussions; and (ii) Department shall, at Design-Builder's expense for all of Department's reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Department and maintain the confidentiality of all communications between it and Design-Builder concerning such defense to the extent allowed by law.

7.4.5 Department shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (i) the defense is tendered to Design-Builder and it refuses the tender of defense, or fails to accept such tender within forty-five (45) days, or reserves any right to deny or disclaim such full indemnification thereafter; or (ii) Department, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (i) a conflict exists between it and the Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (ii) Design-Builder is otherwise not providing an effective defense in connection with the

:
claim and Design-Builder lacks the financial capability to satisfy potential liability or to provide an effective defense. Department may assume its own defense pursuant to the above by delivering to Design-Builder written notice of such election and the reasons therefor.

7.4.6 If Department is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting therefrom) shall be reimbursed by Design-Builder after completion of the proceeding.

7.4.7 If Department is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with the Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of the Design-Builder's indemnity. Notwithstanding the foregoing, if the Department elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, the Department shall pay its own costs and expenses relating thereto. In addition, if the Department elects to conduct its own defense because it perceives a conflict of interest, the Department shall pay its own costs and expenses relating thereto.

Article 8
Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own, Subcontractors, Design Consultants, or those for whom Design-Builder, Subcontractors, or Design Consultants are responsible, Design-Builder may submit a request for a Work Order that the Contract Time(s) for performance be reasonably extended by Work Order. By way of example, events that Department may consider for an extension of the Contract Time(s) include acts or omissions of Department or anyone under Department's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Materials, wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force winds, tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site. It is specifically understood that other than floods in excess of the base flood, hurricane force winds and tornados, Design-Builder assumes the risk, and will not be entitled a time extension for any delays caused by weather or conditions resulting from weather.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to submit a request of a Work Order for an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Department, including the events of wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force wind, tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site.

8.2.3 As a condition precedent to Design-Builder receiving an extension of the Contract Time(s), Design-Builder shall demonstrate that: (i) notice has been given by Design-Builder as provided in these General Conditions; (ii) the delay impacts the critical path (as reflected on the most recent monthly Baseline Schedule update) and is outside the reasonable control of Design-Builder; (iii) Design-Builder's performance would not have been concurrently delayed or interrupted by any event other than those identified in Section 8.2.1 above; (iv) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid the delay and did not cause the delay; and (v) Design-Builder has complied with the requirements of Section 8.3 below. Delays of Subcontractors shall be deemed to be within the reasonable control of Design-Builder, unless such delays are themselves excusable in accordance with the provisions of Section 8.2.1.

8.2.4 Should Department have a reasonable belief that the Contract Time(s) will not be met for causes that do not constitute an excusable delay under Section 8.2.1 above, Department has the right, but not the obligation, to so notify Design-Builder, and Design-Builder shall then work additional overtime, engage additional personnel and take such other measures as necessary to complete the Work within the Contract Time(s). Design-Builder shall bear all costs related to such overtime, additional personnel and other measures.

8.2.5 Notwithstanding the right of Design-Builder to receive a time extension pursuant to Section 8.2.1, Design-Builder agrees that if it encounters an excusable delay, it will, if directed by Department, develop and implement a recovery schedule and plan to improve progress and take such measures to overcome such delay.

8.3 Time Impact Analysis for Proposed Time Extensions

8.3.1 If Design-Builder claims that any event, including but not limited to a change in the Work, justifies an extension to the Contract Time(s), Design-Builder shall submit to Department a written Time Impact Analysis ("TIA") establishing the influence of the event on the latest approved Baseline Schedule update. Each TIA shall include a Fragmentary Network, and for events that have yet to occur (such as proposed change orders), the Fragmentary Network shall demonstrate how Design-Builder proposes to incorporate such event into the Baseline Schedule. The TIA shall demonstrate: (i) the time impact based on the date the event occurred, or, in the instance of proposed change orders, the date such change order was given to Design-Builder; (ii) the status of the

:
Work at such point in time; and (iii) the time computation of all affected activities. Upon approval by Department, the event shall be included in the next Baseline Schedule update.

8.3.2 Activity delays shall not automatically mean that an extension of the Contract Time(s) is warranted or due Design-Builder. Design-Builder recognizes that certain events will not affect existing critical activities or cause non-critical activities to become critical, and that such events may result in only absorbing a part of the available total float that may exist within an activity chain of the network, thereby not causing any effect on the Contract Time.

8.3.3 Float is not for the exclusive use or benefit of either Department or Design-Builder, but rather shall be used for the benefit of the overall Project. Activity splitting or float suppression techniques will not be permitted. Extension of the Contract Time(s) will be granted only to the extent the equitable time adjustments to the activity or activities affected by the event exceeds the total float of a critical activity or path and extends the Contract Time(s).

8.3.4 Two (2) copies of each TIA shall be submitted in accordance with the following along with a written proposal for any requested time extension:

.1 Within seven (7) days after receipt of a written change order.

.2 Within ten (10) days from the beginning of any other event claimed to give rise to a delay.

.3 Within the time period required for the filing of a written notice of claim pursuant to Article 10 Contract Adjustments and Disputes.

8.3.5 In cases where Design-Builder does not submit a TIA within the time requirements stated above, it shall be considered a waiver of any request for an extension of the Contract Time(s).

8.3.6 Approval or rejection of each TIA by Department shall be made within ten (10) days after receipt of each TIA, unless subsequent meetings and negotiations are necessary. Upon approval, a copy of the TIA signed by Department shall be returned to Design-Builder, and incorporated into the next Baseline Schedule update.

8.3.7 The TIA related to a change order shall be incorporated into and attached to the applicable change order.

Article 9
Changes to the Contract Price and Time

9.1 Work Orders

9.1.1 A **Work Order** (change order), is a written instrument on VDOT Form C-10, issued after the Agreement Date signed by Department and Design-Builder, stating their agreement upon all of the following:

.1 The scope of the change in the Work;

.2 The amount of the adjustment to the Contract Price; and

.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Work Order shall be performed under the applicable conditions of the Contract Documents. Department and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Department requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Work Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Contract Change Directive

9.2.1 A **Contract Change Directive** ("CCD") is a written order prepared and signed by Department, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Department and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Contract Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Work Order reflecting the terms of the agreement.

9.2.3 The Department may issue a CCD by unilateral Work Order using VDOT Form C-10, subject further to the terms of Section 9.4.3.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the

:
Contract Documents, provided, however that Design-Builder shall promptly inform Department and the QAM, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

.2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Department;

.3 Costs, fees and any other markups set forth in accordance with Section 109.05 of the Division 1 Amendments; and

.4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Department issues a Contract Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Department or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted. Design-Builder shall bear the burden of proving that there is a substantial inequity in the unit rates.

9.4.3 If Department and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Department, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Department and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Department with a good faith estimate of the costs to perform the disputed services in accordance with Department's interpretations. If the parties are unable to agree and Department expects Design-Builder to perform the services in accordance with Department's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Department issuing a written order to Design-Builder: (i) directing Design-Builder to proceed; and (ii)

:

specifying Department's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable direct costs incurred to perform the services, and Department agrees to pay such amounts, with the express understanding that: (i) such payment by Department does not prejudice Department's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Department's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10
Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If Design-Builder believes that it is entitled to an adjustment to the Contract Price or Contract Times or other relief for any event arising out of or related to the Work or Project, including the acts or omissions of Department, it shall provide written notice to Department of the basis for such Contract Price or Contract Time adjustment or relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice of Design-Builder’s intention to seek a Contract Price or Contract Time adjustment or relief shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the request for Contract Price or Contract Time adjustment or relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request for Contract Price or Contract Time adjustment or relief, whichever is later. Such notice shall include sufficient information to advise Department of the circumstances giving rise to the request for Contract Price or Contract Time adjustment or relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes and disagreements. If disputes or disagreements do arise, Design-Builder and Department each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Department will first attempt to resolve all disputes or disagreements at the field level through best efforts and good faith negotiations between Design-Builder's Representative and Department's Representative. If the dispute or disagreement cannot be resolved through Design-Builder's Representative and Department's Representative, Design-Builder's Senior Representative and Department's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than forty-five (45) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute or disagreement. If the Senior Representatives determine that the dispute or disagreement cannot be resolved to the mutual satisfaction of both parties, despite their best efforts, then such dispute or disagreement shall be submitted administratively as set forth in Sections 10.2.3 and 10.2.4 below.

10.2.3 If the process established in Section 10.2.2 above does not result in the resolution of a dispute or disagreement, Design-Builder shall submit to Department a written claim which shall set forth the facts upon which the claim is based. Design-Builder shall include all pertinent data and correspondence that may substantiate the claim. Within ninety (90) days from the receipt of such claim, Department shall make an investigation and notify Design-Builder in writing by registered mail of its decision. Design-Builder and Department may, however, mutually extend such ninety-day period for another thirty (30) days. If dissatisfied with the decision, Design-Builder shall, within thirty (30) days from receipt of such decision, notify the Commissioner, in writing, that Design-Builder desires to appear before him, either in person or through counsel, and present any additional facts and arguments in support of its claim as previously filed.

10.2.4 The Commissioner or his designee will schedule and meet Design-Builder within thirty (30) days of receiving the Design-Builder's written request. Design-Builder and Commissioner may, however, mutually agree to schedule such appearance to be held after thirty (30) days but before sixty (60) days from the receipt of such written request. Within forty-five (45) days from the date of the appearance before him, the Commissioner shall make an investigation of the claim and notify Design-Builder in writing of his decision. Design-Builder and the Commissioner may, however, mutually agree to extend such forty-five day period for another thirty (30) days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with Design-Builder, but any such settlement shall be subject to the provisions of VA. CODE §2.2-514.

10.2.5 Failure of Department or the Commissioner to render a decision within the time period specified in Section 10.2.4 above, or within such other period as has been mutually agreed upon, shall be deemed a denial of the claim. Any mutual agreements for time extension permitted herein shall in no way extend the limitations set out in §33.1-192.1. If the Commissioner determines that a claim has been denied as the result of an administrative oversight, then the Department reserves the right to reconsider the claim.

:

10.2.6 As to such portion of the claim as is denied by the Commissioner, Design-Builder may institute a civil action for such sum as it claims to be entitled to under the Agreement for itself, and for anyone claiming by or through Design-Builder, by the filing of a petition in the Circuit Court of the City of Richmond, which shall be the exclusive jurisdiction for any civil actions brought by Design-Builder against Department. Any civil action brought by Design-Builder on behalf of a Subcontractor or Design Consultant shall only be brought for costs and expenses caused by the acts or omissions of Department and shall not be brought for costs and expenses caused by Design-Builder. Trial shall be by the court without a jury. The submission of the claim to the Department of Transportation within the times and as set out in Sections 10.2.3 through 10.2.5 above shall be a condition precedent to bringing a civil action. Department shall be allowed to assert any and all defenses in a case brought by Design-Builder on behalf of a Subcontractor or Design Consultant which are available to Design-Builder.

10.2.7 No civil action shall be brought against Department by Design-Builder (on behalf of itself or anyone claiming by or through Design-Builder) arising out of or related to this Agreement unless: (i) Design-Builder shall have exhausted the processes set forth in Sections 10.2.1 through 10.2.5 above; and (ii) such suit or action is initiated within twelve (12) months from Design-Builder's receipt of the decision of the Commissioner. The parties agree that the above-referenced conditions are conditions precedent to the initiation of a civil action, and that failure of Design-Builder to meet such conditions will be grounds for the civil action being dismissed.

10.2.8 Any moneys that become payable as the result of a settlement after Final Payment will not be subject to payment of interest unless such payment is specified as a condition of the settlement.

10.3 Duty to Continue Performance

10.3.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Department shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Department.

10.4 CONSEQUENTIAL DAMAGES

10.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.4.2 BELOW), NEITHER DESIGN-BUILDER NOR DEPARTMENT SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.4.2 The consequential damages limitation set forth in Section 10.4.1 above will not affect the payment of liquidated damages set forth in Article 5 of the Agreement, which

:
both parties recognize has been established, in part, to reimburse Department for some damages that might otherwise be deemed to be consequential.

Article 11
Stop Work and Termination for Cause

11.1 Department's Right to Stop Work

11.1.1 Department may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Department, by requesting a Work Order.

11.2 Department's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to do any of the following, then Design-Builder may be declared in default and Department, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Section 11.2.2 below:

.1 begin the Work on the Date of Commencement;

.2 provide a sufficient number of skilled workers, equipment, or supply the materials required by the Contract Documents;

.3 comply with applicable Legal Requirements;

.4 timely pay, without cause, Design Consultants or Subcontractors;

.5 prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; or

.6 perform material obligations under the Contract Documents;

11.2.2 If any of the conditions set forth in Section 11.2.1 above exists, Department will give written notice to Design-Builder and its surety of the condition. If, within ten (10) days after such notice, Design-Builder or its surety fails to cure, or reasonably commence to cure, such condition to the satisfaction of Department, then Department may then, or at any time thereafter, send a second written notice to Design-Builder declaring Design-Builder in default. Upon declaring Design-Builder in default, Department shall have the right, among other things, to terminate this Agreement for default.

:

11.2.3 Upon terminating this Agreement for default, Department will have the right to, in addition to any other right available at law, take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Department for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. Design-Builder specifically agrees that it will assign all Subcontractors and Design Consultants to Department, upon Department's written demand that it do so. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Department in completing the Work, such excess shall be paid by Department to Design-Builder. If Department's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Department. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Department in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.4 hereof.

11.2.4 If Department improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.2.5 Department shall have the right, upon the occurrence of any of the conditions set forth in Section 11.2.1 above, and regardless of whether or not Design-Builder is declared in default and/or terminated, to communicate with Design-Builder's surety and compel such surety to cure such conditions.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

.1 Department's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Department's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, before exercising its rights under this section, Design-Builder shall provide Department with written notice that Design-Builder will stop work unless said event is cured within ten (10) days from Department's receipt of Design-Builder's notice. If Department does not cure the problem within such ten (10) day period, Design-Builder may stop work. In such case,

:

Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

.1 The Work has been stopped for one hundred twenty (120) consecutive days, or more than one hundred eighty (180) days during the duration of the Project, because of court order, any Governmental Unit having jurisdiction over the Work, or orders by Department under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

.2 Department's failure to provide Design-Builder with any information, permits or approvals that are Department's responsibility under the Contract Documents which result in the Work being stopped for one hundred twenty (120) consecutive days, or more than one hundred eighty (180) days during the duration of the Project, even though Department has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Department's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Department that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ten (10) days of Department's receipt of such notice. If Department fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Department of its intent to terminate within an additional ten (10) day period. If Department, within such second ten (10) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Department of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Department had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Design-Builder

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate Department's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

:

.1 Design-Builder, its trustee or other successor, shall furnish, upon request of Department, adequate assurance of the ability of Design-Builder to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If Design-Builder fails to comply with its foregoing obligations, Department shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to Department under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of Department to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code. It shall also not limit the ability of Department to seek recourse against Design-Builder's surety, who shall be obligated to perform notwithstanding the bankruptcy proceedings against Design-Builder.

Article 12
Miscellaneous

12.1 Assignment

12.1.1 Design-Builder shall not, without the prior written consent of Department (which consent may be withheld or denied for any reason), assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Design-Builder and Department intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the Commonwealth of Virginia, without giving effect to its conflict of law principles.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the

:

provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Design-Builder or Department to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12..6 No Third-Party Beneficiary Status

12.6.1 Nothing under the Contract Documents shall afford any third party to this Agreement, including members of the public, third-party beneficiary status hereunder.

12.7 Headings

12.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.8 Notice

12.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given: (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, provided, however, that the intended recipient is present to receive the facsimile and the transmittal is immediately followed by a hard copy delivered in accordance with (i) or (ii) above.

12.9 Amendments

12.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.10 Exhibits

12.10.1 The following exhibits are specifically made part of, and incorporated by reference into, this Agreement (Attachment to Part 4 is included in the RFP Information Package):

EXHIBIT 3.5.1 -- GOVERNMENTAL APPROVALS LIST

END OF PART 4
GENERAL CONDITIONS OF CONTRACT

Exhibit 3.5.1

Governmental Approvals List

The following will be the responsibility of the Department to obtain:

1. National Environmental Policy Act approval, Programmatic Categorical Exclusion – has been completed by VDOT.

2. Environmental Certification (EQ-103) – Has been completed by VDOT.

3. Plans, Specifications & Estimate re-evaluation (EQ-200) – has been completed by VDOT.

PART 5

Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts Between Department and Design-Builder

These Division I Amendments supersede Division I of the 2007 Standard Specifications

SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01—Abbreviations and Acronyms

Abbreviations and Acronyms shall be as stated in Section 101.01 of the Standard Specifications.

101.02—Terms

In these Division I Amendments to the Standard Specifications and other Contract Documents, the following terms and pronouns used in place of them shall be interpreted as follows, except that if such terms and pronouns are defined in the Agreement or General Conditions of Contract, such definitions shall govern:

-A-

Advertisement, Notice of. A public announcement, as required by law, inviting in a one-phase procurement, the submission of proposals from interested Offerors in response to a Request for Proposals, or in a two-phase procurement, Statements of Qualifications from interested Offerors in response to a RFQ by the Department for a designated design-build project. The announcement will indicate the general nature and location of the project, and the time and place for submitting the Statements of Qualifications or Proposals.

Affiliate. means: (a) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding an interest in Design-Builder; and (b) any Person for which ten percent (10%) or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by: (i) Design-Builder; (ii) any of Design-Builder's members, partners or ten percent (10%) or greater shareholders; or (iii) any Affiliate of Design-Builder under part (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, a trust, contract, family relationship or otherwise.

Agreement. As defined in Article 1.2 of the General Conditions of Contract Part 4 ("General Conditions")

Alkali Soil. Soil in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent based on total solids.

Award. The decision of the Board to award a contract to an Offeror based on the selection processes identified in the Requests for Proposal. The Award is subject to the execution and approval of a satisfactory Agreement therefore, and such conditions as may be specified or required by law.

Award Date. The date on which the decision is made by the Board or Commissioner to accept the proposal of an Offeror.

-B-

Backfill. Material used to replace, or the act of replacing, Material removed during construction; may also denote Material placed, or the act of placing, Material adjacent to structures.

Balance Point. The approximate point, based on estimated shrinkage or swell, where the quantity of Earthwork Excavation and borrow, if required, is equal to the quantity of Embankment Material plus any surplus Excavation material.

Base Course. A layer of material of specified thickness on which the intermediate or surface course is placed.

Base Flood. The flood or tide having a one percent chance of being exceeded in any given year.

Bid (also referred to as Proposal). The documents submitted by an Offeror in response to a Request for Proposal.

Bidder (also referred to as Offeror). Any individual, partnership, Corporation, or Joint Venture that formally submits a SOQ or proposal for the work contemplated thereunder.

Bids, Invitation for. Used interchangeably with **"Advertisement, Notice of"** defined above.

Board. Commonwealth Transportation Board of Virginia.

Borrow. Suitable material from sources outside the Roadway that is used primarily for Embankments.

Brackish Water. Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent based on total solids.

Bridge. A structure, including supports, that is erected over a depression or an obstruction, such as water, a Highway, or a railway, that has a track or passageway for carrying traffic.

Bridge Lift. A layer of fill material placed in excess of standard depth over an area that does not support the weight of hauling Equipment and for which compaction effort is not required.

-C-

Camber. A vertical curvature induced or fabricated into beams or girders and a deck slab or slab span formwork; a vertical curvature set in the grade line of a pipe culvert to accommodate differential settlement.

Change Order (See Work Order).

Channel. A watercourse or drainage way.

Commissioner. Commonwealth Transportation Commissioner.

Commonwealth. Commonwealth of Virginia.

Composite Hydrograph. A graph showing the mean daily discharge versus the day, indicating trends in high and low flow for a one-year period.

Construction Area. The area where authorized construction on this Project occurs.

Construction Limits (On-Site). The disturbed area utilized for the construction of a Project including the intersection of side slopes with the original ground plus slope rounding and slopes for Drainage Ditches, Bridges, Culverts, Channels, temporary or incidental construction, and identified by the surface planes as shown or described within the Contract Documents.

Contract (also referred to as Contract Documents). The Agreement between the Department and Design-Builder for the Project, inclusive of all Contract Documents as defined in Article 2 of the Agreement. Oral representations or promises shall not be considered a part of the Contract.

Contract Bond(s). Those documents defined in Section 103.05.

Contract Engineer. The Engineer's authorized representative for administering the advertisement, receiving proposals, and awarding contracts for the Department.

Contract Item. A specifically described unit of work for which a price is provided in the Contract.

Contract Times. As defined in **Article 5 of the Agreement.** .

Corporation. A body of Persons granted a charter legally to conduct business recognizing them as a separate entity having its own rights, privileges, and liabilities distinct from those of its members.

Cul-de-sac. An area at the terminus of a dead-end Street or Road that is constructed for the purpose of allowing vehicles to turn around.

Culvert. A structure that is not classified as a bridge which provides an opening under any Roadway.

Cut. When used as a noun with reference to Earthwork, that portion of a Roadway formed by excavating below the existing surface of the earth and limited by design.

Cut Slope. See also Fill Slope**.** A surface plane generally designated by design, which is formed during Excavation below existing ground elevations that intersects with existing ground at its termini.

-D-

Day. As defined in Article 1.2 of the General Conditions.

Deflection. The vertical movement occurring between the supports of a Bridge superstructure or its components (beams, girders, and slabs) that results from their own weight and from dead and live loads. Although all parts of a structure are subject to deflections, usually only those deflections that occur in the superstructure are of significance during construction.

Department. Virginia Department of Transportation.

Design-Builder. Any individual, partnership, Corporation, or Joint Venture that contracts with the Department to perform the Work as an independent Design-Builder and not as an agent for the Department, Commissioner, or Board.

Design Flood. The magnitude of flood that a given structure can convey without exceeding a designated flood level.

Disincentive. A verifiable monetary deterrent used to discourage the Design-Builder from failing to meet an Interim Milestone or the Contract Time Limit that is identified and defined in the Contract.

Disposable Material. Material generally found to be unsuitable for Roadway construction or material that is surplus.

Disposal Areas. Areas generally located outside of the Construction Limits identified in the Contract Documents where Disposable Material is deposited.

Drainage Ditch. An artificial depression constructed to carry off surface water.

-E-

Earthwork. The work consisting of constructing Roadway earthwork in conformity with the specified tolerances for the lines, grades, typical sections, and cross sections shown on the Contract Documents. Earthwork shall include regular, borrow, undercut, and minor structure Excavation; constructing Embankments; disposing of surplus and Unsuitable Material; shaping; grading, compaction; sloping; dressing; and temporary erosion control work.

Easement. A grant of the right to use property for a specific use.

Embankment. A structure of soil, soil aggregate, soil-like materials, or broken rock between the existing ground and Subgrade.

Employee. Any individual working on the Project specified in the Contract who is under the direction or control of or receives compensation from the Design-Builder or a subcontractor.

Engineer. As defined in Article 1.2 of the General Conditions

Equipment. Machinery, tools, and other apparatus, together with the necessary supplies for upkeep and maintenance that are necessary for acceptable completion of the work.

Excavation (**Excavate).** The act of creating a man-made cavity in the existing soil for the removal of material necessary to obtain a specific elevation or to install a structure, material, component, or item necessary to complete a specific task or form a final surface or subsurface.

Extra Work. An item of work that was not provided for in the Contract as awarded but that is found to be essential to the satisfactory fulfillment of the Contract within its intended scope and authorized pursuant to Article 9 of the General Conditions.

-F-

Falsework. A temporary framework used to support work while in the process of constructing permanent structural units.

Federal Agencies or Officers. An agency or officer of the federal government and any agency or officer succeeding, in accordance with the law to the powers, duties, jurisdictions, and authority of the agency or officer mentioned.

Fill Slope (See also Cut Slope). A surface plane formed during the construction of an Embankment above existing ground elevations that intersects with existing ground at its termini.

Firm. A commercial partnership of two or more Persons formed for the purpose of transacting business.

Flood Frequency. A statistical average recurrence interval of floods of a given magnitude.

Formwork. A temporary structure or mold used to retain the plastic or fluid concrete in its designated shape until it hardens. Formwork shall be designed to resist the fluid pressure exerted by plastic concrete and additional fluid pressure generated by vibration and temporary construction loads.

Frontage Street or Road. A local Street or Road auxiliary to and located on the side of a Highway for service to abutting property and adjacent areas and control of access.

-G-

Gage. U.S. Standard Gage.

Grade Separation. Any structure that provides a Traveled Way over or under another Traveled Way or over a body of water.

-H-

Highway. The entire Right of Way reserved for use in constructing or maintaining the roadway and its appurtenances.

Historical Flood Level. The highest flood level that is known to have occurred at a given location.

Holidays. The days specifically set forth in Section 108.02 or in the Contract Documents.

Hydrologic Data Sheet. A tabulation of hydrologic data for facilities conveying a 100-year discharge equal to or greater than 500 cubic feet per second.

-I-

Incentive. A verifiable monetary amount used to encourage the Design-Builder to complete work prior to the Interim Milestone Dates or Substantial Completion Date or the Contract Times that are identified and defined by specific Contract.

Inspector. The Engineer's authorized representative who is assigned to make detailed inspections of the quality and quantity of the Work and its conformance to the requirements and provisions of the Contract.

Invert. The lowest point in the internal cross-section of a pipe or other drainage structure.

-J-K-

Joint Venture. Two or more individuals, partnerships, Corporations, or combinations thereof that join together for the purpose of bidding on and performing a contract.

-L-

Laboratory. The testing laboratory of the Department or any other testing laboratory that may be designated by the Contract or by the Design Builder.

Liquidated Damages. As defined in Article 5 of the Agreement.

-M-

Major Item. Any Pay Item specifically indicated as such in the Contract Documents.

Material. Any substance that is used in the Work specified in the Contract.

Median. The portion of a divided Highway that separates the Traveled Ways.

-N-

Non-Contract Item. An item of work required to permit completion of the specified Work in an acceptable manner, which item of work is located within the Construction Limits but is not included in the Contract Documents as being Design-Builder's responsibility, and which item of work will be completed by others prior to, during, or after the construction of the Project.

No Plan and Minimum Plan Concept Project. Generally a project of a very limited scope and duration requires few details to describe proposed work.

Notice to Proceed. As defined in Article 5.1 of the Agreement.

-O-

Offeror. See the definition for the term **"Bidder."**

Ordinary High Water. A water elevation based on analysis of all daily high waters that will be exceeded approximately 25 percent of the time during any 12 month period.

Overtopping Flood. The magnitude of flood that just overflows the Traveled Way at a given structure or on the approach Traveled Way of such structure.

-P-Q-

Pavement Structure. The combination of Select or stabilized materials, Subbase, Base, and surface courses, described in the typical pavement section in the Contract Documents that is placed on a Subgrade to support the traffic load and distribute it to the Roadbed.

Pay Item. A specifically described unit of work for which a price is provided in the Contract.

Person. Any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), Corporation, partnership, Joint Venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association, county, district, authority, municipality, political subdivision or other entity of the Commonwealth or the United States of America, or other entity.

Plans. The approved Project plans and profiles, which may include Standard Drawings, survey data, typical sections, summaries, general notes, details, plan and profile views, cross-sections, special design drawings, computer output listings, supplemental drawings, or exact reproductions thereof, and all subsequently approved revisions thereto which show the location, character, dimensions, and details of the Work specified in the Contract.

Prequalification. The procedure used by the Department to assure itself of the Design-Builder's ability to perform the Work with attention to quality and safety, including his experience in similar work, and sufficiency of Equipment to accomplish the Work and that the Design-Builder's financial resources will permit financing the cost in accordance with the Rules Governing Prequalification Privileges.

Professional Engineer (PE). An engineer holding a valid license to practice engineering in the State of Virginia.

Profile Grade. The line of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the Roadbed.

Project. The total scope of Work specified to be performed in the Contract Documents.

Project Showing. The scheduled event at which the Department's representative meets with prospective Offerors to describe and answer questions regarding the proposed work.

Proposal: As defined in Article 1.2 of the General Conditions.

-R-

Ramp. A connecting Roadway between two Highways or Traveled Ways or between two intersecting Highways at a Grade Separation.

Request for Proposals (RFP). As defined in Article 1.2 of the General Conditions.

RFP Documents. As defined in Article 1.2 of the General Conditions.

Request for Qualifications (RFQ). As defined in Article 1.2 of the General Conditions.

Right of Way. A general term denoting land, property, or interest therein, usually in the form of a strip, that is acquired for or devoted to transportation facilities but is not meant to denote the legal nature of ownership.

Road. A general term denoting a public way for purposes of vehicular travel including the entire area within the Right of Way; the entire area reserved for use in constructing or maintaining the Roadway and its appurtenances.

Roadbed. The graded portion of a Highway within the top and side slopes that is prepared as a foundation for the Pavement Structure and Shoulders.

Roadbed Material. The material below the Subgrade in cuts, Embankments, and Embankment foundations that extends to a depth and width that affects the support of the pavement structure.

Roadside. A general term that denotes the area within the Right of Way that adjoins the outer edges of the Roadway; extensive areas between the Roadways of a divided Highway.

Roadside Development. Items that are necessary to complete a Highway that provide for the preservation of landscape materials and features; rehabilitation and protection against erosion of areas disturbed by construction through placing seed, sod, mulch, and other ground covers; and such suitable plantings and other improvements as may increase the effectiveness, service life and enhance the appearance of the Highway.

Roadway. The portion of a Highway within the limits of construction and all structures, ditches, channels, and waterways which are necessary for the correct drainage thereof.

-S-

Schedule of Record (SOR). The latest accepted Baseline Schedule or Baseline Schedule update in accordance with Part 3, Article 11 of the Contract by which all schedule references will be made and progress evaluated.

Seawater. Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent of total solids.

Select Borrow. Borrow material that has specified physical characteristics.

Select Material. Material obtained from Roadway Cuts, Borrow areas, or commercial sources that is designated or reserved for use as a foundation for the Subbase, Subbase material, Shoulder surfacing, or other specified purposes designated in the Contract Documents.

Shoulder. The portion of the Roadway contiguous with the Traveled Way that is for the accommodation of stopped vehicles, emergency use, and lateral support of the Base and Surface courses.

Sidewalk. The portion of the Roadway constructed primarily for the use of pedestrians.

Skew. The acute angle formed by the intersection of a line normal to the centerline of the Roadway with a line parallel to the face of the abutments or, in the case of Culverts, with the centerline of the Culverts.

Special Provision (SP). A document that sets forth specifications or requirements for a particular project that are not covered by the Standard Specifications.

Special Provision Copied Note (SPCN). A document that sets forth specific specifications or requirements, usually limited in scope, for a particular project.

Specialty Item. An item of work designated as "Specialty Item" in the Proposal that is limited to work that requires highly specialized knowledge, craftsmanship, or Equipment that is not ordinarily available in contracting organizations prequalified to submit proposals and is usually limited to minor components of the overall Contract.

Specifications. A general term that includes all directions, provisions, and requirements contained herein and those that may be added or adopted as supplemental specifications, special provisions, or special provision copied notes. All are necessary for the proper fulfillment of the Contract.

Standard Drawings. Unless otherwise specified, applicable drawings in the Standard Specifications and such other standard drawings as are referred to in the Contract Documents.

Standard Specifications. As defined in Article 1.2 of the General Conditions.

State. As defined in Article 1.2 of the General Conditions

Statement of Qualifications (SOQ). The documents submitted by an Offeror in response to an RFQ.

Station. When used as a definition or term of measurement, 100 linear feet.

Street. A general term denoting a public way for purposes of vehicular travel including the entire area within the Right of Way; the entire Right of Way reserved for use in constructing or maintaining the Roadway and its appurtenances.

Structures. Bridges, Culverts, catch basins, inlets, retaining walls, cribs, manholes, end walls, buildings, steps, fences, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and are not otherwise classed herein.

Subbase. A layer(s) of specified or selected material of designed thickness that is placed on a Subgrade to support a Base Course.

Subcontractor. As defined in Article 1.2 of the General Conditions

Subcontracting. Contracting with a Subcontractor for the performance of a portion of the Work without relinquishing any of the responsibility that the Design-Builder has toward the Department for performance of the entire Contract.

Subgrade. The top Earthwork surface of a Roadbed, prior to application of Select (or stabilized) Material courses, shaped to conform to the typical section on which the Pavement Structure and Shoulders are constructed, or surface that must receive an additional material layer, such as topsoil, stone or other Select Material.

Subgrade Stabilization. The modification of Roadbed soils by admixing with stabilizing or chemical agents that will increase the load bearing capacity, firmness, and resistance to weathering or displacement.

Substructure. The part of a structure that is below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the back walls, wingwalls, and wing protection railings.

Successful Offeror. The Offeror that will be recommended for Award of the Contract in accordance with the RFP.

Superstructure. The portion of a structure that is not defined as Substructure.

Supplemental Specifications. Additions and revisions to the Standard Specifications

Surety. A corporate entity bound with and for the Design-Builder for full and complete fulfillment of the Contract and for payment of debts pertaining to the Work. When applied to the proposal guaranty, it refers to the corporate body that engages to be responsible in the execution by the Offeror, within the specified time, of a satisfactory Contract and the furnishing of an acceptable payment and Contract bond.

Surface Course (See Wearing Course). One or more top layers of a Pavement Structure designed to accommodate the traffic load, which is designed to resist skidding, traffic abrasion, and disintegrating effects of weather.

Surplus Material. Material that is present on the Project as a result of unbalanced Earthwork quantities, excessive swell, slides, undercutting, or other conditions beyond the control of the Design-Builder.

Suspension. A written notice issued by the Engineer to the Design-Builder that orders the work on the Project to be stopped wholly or in part as specified. The notice will include the reason for the suspension.

-T-

Temporary Structure. Any structure that is required to maintain traffic while permanent structures or parts of structures specified in the Contract are constructed or reconstructed. The Temporary Structure shall include earth approaches.

Theoretical Maximum Density. The maximum compaction of materials that can be obtained in accordance with the values established VTM-1.

Tidewater, Virginia. Areas within the State as defined in the Department of Conservation and Recreation Erosion and Sediment Control Manual.

Topsoil: The uppermost original layer of material that will support plant life and contains more than 5 percent organic material and is reasonably free from roots exceeding 1 inch in diameter, brush, stones larger than 3 inches in the largest dimension, and toxic contaminants.

Ton. A short ton; 2,000 pounds avoirdupois.

Top of Earthwork. The uppermost surface of the regular or Embankment Excavation, not including Select Material that is shaped to conform to the typical section shown in the Contract Documents.

Traveled Way. The portion of the Roadway for the movement of vehicles, not including Shoulders.

-U-

Unsuitable Material. Any material for use as embankment fill, and in cut areas to a depth of at least 3 ft below subgrade directly beneath pavements and at least 2 ft beneath the bedding of minor structures and laterally at least 2 ft beyond the outside edge of the pavement shoulders and bedding limits of the minor structures that classify as CH, MH, OH and OL in accordance with the Unified Soil Classification System (USCS); that contains more than 5 percent by weight organic matter; that exhibits a swell greater than 5 percent as determined from the California Bearing Ratio (CBR) test using VTM-8; and that exhibits strength, consolidation, durability of rock or any other characteristics that are deemed unsuitable by the Design-Builders' geotechnical engineer or as denoted in the

Contract Documents for use in the Work.. All materials within the uppermost 3 ft of the pavement subgrade that exhibits a CBR value less then that stipulated in the pavement design shall also be considered unsuitable. Saturated or very dry and/or loose or very soft coarse- and fine-grained soils that exhibit excessive pumping, weaving or rutting under the weight of construction equipment are also considered unsuitable unless they can be moisture conditioned through either mechanical or chemical means to an acceptable moisture content that allows adequate compaction to meet project specifications, and classification testing indicates they are not otherwise unsuitable. Topsoil, peat, coal and carbonaceous shale shall also be considered unsuitable material. All unsuitable material shall be disposed of and/or treated as discussed in Section 106.04 at no additional cost to the Department.

Utilities. Private, county, city, municipal or public facilities designed, owned, and maintained for public use such as electricity, water, sanitary sewer, storm sewer, drainage culverts, telecommunications, conduits, gas, oil, fiber optics, and cable television that are not identified as a Pavement Structure, Roadway, Highway, Street, or Traveled Way.

-V-

Vouchered. The action of approval by the Department; constitutes the date of release to the State Comptroller for payment.

-W-X-Y-Z-

Wearing Course (See Surface course). The top and final layer of any pavement

Work. As defined in Article 1.2 of the General Conditions

Working Drawings. 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 the Design-Builder is required to submit to the Engineer for review.

Work Order. As defined in Article 9 of the General Conditions

SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

102.01—Prequalification of Offerors

(a) Prospective Offerors and Subcontractors shall prequalify in accordance with the instructions in the RFQ or the RFP for each design-build project. When required, prospective Offerors and Subcontractors shall prequalify with the Department and shall have received a certification of qualification in accordance with the rules and regulations adopted by the Board.

The names of individuals authorized to sign proposals shall be on file with the Department. A name will be considered to be on file if it appears as that of an officer, a partner, or an owner on the current Design-Builder's Financial Statement. Requests by the Offeror to revise the list of individuals authorized to sign proposals shall be submitted in writing and approved prior to the date proposals are opened. A proposal signed by someone whose name is not on file may be rejected.

Unless otherwise designated by the Offeror, the proposal amount of a Joint Venture will be divided equally among the Joint Venture members to determine if the maximum capacity rating for each member is within that member's range.

An Offeror who makes a false certification on the proposal will be subject to forfeiture of the proposal bond, disqualification from bidding on future work for a 90-day period, or both.

When an individual is prequalified to submit a proposal jointly only with a specific company, the Joint Venture will be considered a unified entity for qualification purposes.

Offerors seeking new Prequalification must complete and submit the Prequalification package.

Offerors intending to submit proposals consistently shall prequalify at least once each two years using the Prequalification Renewal Application. However, the maximum capacity rating or classification, or both, may be changed by the Department during that period if additional favorable reports are submitted; or upon unsatisfactory performance as determined in accordance with the requirements of Section 108.03; or from the Contractor's performance evaluations; or upon non-performance as determined in accordance with the provisions of Section 108.07. The Department may require a Design-Builder to furnish a current financial and experience statement at any time.

Temporary disqualification of a Design-Builder as provided herein will result in the temporary disqualification of each member of a Joint Venture and any affiliate having substantially the same operational management or drawing from the same equipment or labor resource pool. Temporary disqualification will also result in non-approval of the Design-Builder and each member of a Joint Venture and affiliates as defined herein for performance of Work as Subcontractors, which, in the opinion of the Department, could adversely affect other work under contract to the Department.

(b) If Prequalification is approved, prospective Offerors will be placed on the Department's List of Prequalified Vendors. Offerors are subject to varying levels of pre-qualification as stated within the Rules Governing Prequalification Privileges. Offerors will be subject to removal from this list based on disqualification in accordance with the Contract Documents and Prequalification rules and regulations.

Unless otherwise stated, consideration for reinstatement to the Department's List of Prequalified Vendors will be made by the Contract Engineer.

102.02—Contents of RFQ and RFP (Not Used)

102.03—Interpretation of Quantities in RFP (Not Used)

102.04—Examination of Site of Work and Proposal

(a) Evidence of Examination of Site of Work and Proposal (Refer to General Conditions, Section 4.2)

(b) Subsurface Data

Subsurface data may be available for review by the Offeror in the office of the District Materials Engineer or State Materials Engineer or as stated elsewhere in the RFP documents. Such data may be reasonably relied upon by Offeror as being accurate with regard to test holes and are made available to the Offeror in good faith in order to apprise him of information in possession of the Department. Any conclusions drawn by the Department concerning subsurface conditions are based solely on the data and are merely indications of what appear to be existing subsurface conditions. The Department does not warrant these conclusions to be correct, either expressly or by implication. Further, the Department does not warrant the condition, amount, or nature of the material that may be encountered or the sufficiency of the data, either expressly or by implication. Prior to submitting a proposal, the Offeror shall make his own interpretation of the subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. After the Date of Commencement, the Successful Offeror shall comply with Section 4.2.2 of the General Conditions.

(c) Notice of Alleged Ambiguities

If a word, phrase, clause, or any other portion of the RFQ or RFP is alleged to be ambiguous, the Offeror shall submit written notice of the same in accordance with the requirements of and within the time periods specified in the RFQ or RFP. Responses by the Department will be provided accordingly. The

Department's responsibility for answering the notice will be limited to the processes defined by the RFQ or RFP.

The Department will not be responsible for any other explanations or interpretations of the alleged ambiguities except those brought to the attention of and responded to by the Department point of contact ("POC") as identified in the RFQ or RFP. No employee or agent of the Department shall have the authority to furnish any explanation or interpretation, verbal or written, of alleged ambiguities.

If the Offeror fails to give written notice and request an interpretation of the alleged ambiguity within the specified time, he shall waive any right he may have had to his own interpretation of the alleged ambiguity. The true meaning of the alleged ambiguity will be as interpreted by the Department through the POC.

102.05—Preparation of Proposal

(a) General (Refer to RFP)

(b) Design Options (Refer to RFP)

(c) Debarred Suppliers

The Offeror is cautioned against utilizing price quotes for materials for use in the preparation of proposals from suppliers that are debarred by the Department. The Department will not approve for use any material furnished by a supplier debarred by the Department. The Offeror shall ascertain from the Department's listings which suppliers are debarred. Lists of approved suppliers can be found on the Department's Materials Division web site.

If a previously debarred supplier is reinstated to eligibility subsequent to the Award of a contract, the Department may approve the use of the supplier when requested by the Contractor.

(d) Required Certifications (Not Used)

(e) Acknowledgement of Receipt of Revisions (Refer to RFP)

(f) Signing the Proposal (Refer to RFP)

(g) Additional Proposal Requirements

Offeror shall also comply with the requirements as set forth in the following exhibits attached herewith:

.1 Exhibit 102.05(g.1) *Use of Domestic Material*

.2 Exhibit 102.05(g.2) *FHWA Required Contract Provisions Federal-Aid Construction Contracts*

.3 Exhibit 102.05(g.3) *Executive Order 11246*

102.06—Irregular Proposals

Proposals will be considered irregular and may be rejected for *any* of the following reasons:

(a) if the Offeror fails to comply with the requirements of Sections 102.05 and 102.07;

(b) if the proposal is not written in ink or typed;

(c) if the Offeror adds any provisions reserving the right to accept or reject an Award or enter into a contract pursuant to an Award except as otherwise permitted in the RFP;

(d) if the Price Proposal is not in compliance with the RFP;

(e) if the proposal is not properly signed;

(f) if erasures or alterations in the Offeror's entries are not initialed by the Offeror;

(g) if the Offeror fails to provide a complete Acknowledgment of Revision Sheet (C-78);

(h) if there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind that may make the proposal incomplete, indefinite, or ambiguous;

(i) if the unit prices in the proposal are obviously unbalanced, or either in excess or below the cost analysis values as determined by the Department;

(j) if any papers included in the proposal are detached or altered when the proposal is submitted except as otherwise provided for herein;

(k) if proposals are submitted in envelopes showing a designation for a project other than the project for which the proposal is made;

(l) if the Offeror fails to submit a statement concerning collusion;

(m) if the proposal contains any other deviation from the RFP; or

(n) failure to be registered with "eVA Internet e-procurement solution" prior to the Award of the Contract.

102.07—Proposal Guaranty

A proposal in excess of $250, 000.00 will not be accepted or considered unless accompanied by a guaranty in the form of a proposal bond made payable to the Treasurer of Virginia. A proposal bond will be accepted only if executed on a form that contains the exact wording as the form furnished by the Department. Any proposal accompanied by a bond having wording that differs in any respect from that furnished by the Department will be rejected. The amount of the proposal guaranty shall be 5 percent of the Proposal Price.

When the principal is a Joint Venture, each party thereof shall be named and shall execute the proposal guaranty. Each surety to the proposal bond shall be named and shall execute the proposal bond. The proposal bond shall be accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

102.08—Disqualification of Offeror

Any of the following causes may be considered sufficient for the disqualification of an Offeror and rejection of its proposal:

(a) more than one proposal for the same work from an individual, partnership, Corporation, or Joint Venture under the same or different name. A proposal submitted by an Affiliate of an individual, partnership, Corporation, or any party of a Joint Venture will be considered as more than one proposal submitted for the same work. *Affiliate* as used herein shall conform to the definition in Section 101.02—Terms, with the term "Offeror" being used in lieu of the term "Design-Builder.";

(b) evidence of collusion among Offerors in which case the participants in such collusion will not be considered for future bids until re-qualified by the Board;

(c) incompetency or inadequate machinery, plants, or other Equipment as revealed by the Offeror's financial and experience statements required by the RFP and Contract Documents;

(d) unsatisfactory workmanship or progress as demonstrated by performance records of current or past work for the Department, other agencies or departments of the Commonwealth, or agencies or departments of other states in the United States or federal government;

(e) The Design-Builder may be temporarily disqualified from bidding on contracts with the Department when the Budgeted Cost of Work Performed ("BCWP") is more than 10 percent less than the Budgeted Cost of Work Scheduled ("BCWS") on the basis of the Design-Builder's latest approved progress schedule. Progress will be determined at the time of the monthly progress estimate. If the Design-Builder is delinquent by more than 10 percent, he may be notified that if the next monthly progress estimate shows a delinquency of more than 10 percent, his name may be removed from the list of prequalified Offerors unless he can establish that the delinquency was attributable to conditions beyond his control. If his name is removed, the Design-Builder will not be reinstated as a prequalified Offeror until the Department deems that his progress has improved to the extent that the Work can be completed within the Contract Time or until final acceptance of the Project.

(f) uncompleted work with the Department that in the judgment of the Department might hinder or prevent prompt completion of additional work if awarded;

(g) failure to pay or settle satisfactorily all bills for Materials, labor, Equipment, supplies, or other items specified in contracts in force at the time the new work comes before the Board for Award;

(h) failure to comply with any Prequalification regulation of the Department;

(i) failure to cooperate properly with representatives of the Commonwealth inspecting, monitoring, or administering construction or disorderly conduct toward any such representative in previous contracts;

(j) default under a previous contract; or

(k) Failure to pay back amounts owed the Department as specified in Section 103.08

Temporary disqualification of an Offeror as provided herein will result in the temporary disqualification of each member of a Joint Venture and any Affiliate. Temporary disqualification will also result in non-approval of the Offeror, each member of a Joint Venture, and Affiliates as defined herein, for performance of work as subcontractors that in the opinion of the Contract Engineer could adversely affect other work under contract to the Department.

The above listed reasons for possible disqualification are not totally inclusive and disqualification may also occur based on other requirements within the RFP or Contract Documents.

Offerors who are disqualified may be reinstated at the discretion of the Engineer or the Prequalification Panel upon satisfactory compliance with the requirements of the RFP.

102.09—Delivery of Proposal

Proposals shall be delivered in accordance with the instructions in the RFP. Unless clearly stated otherwise, proposals shall be submitted in two separate, sealed parcels containing the Technical Proposal in one and the Price Proposal in the other. Parcels shall be clearly marked to identify the Project and the Offeror, and to identify the contents as Technical Proposal or Price Proposal. Proposals shall be sealed in an envelope and addressed to the Point of Contact identified in the RFP for receipt of proposals, and shall be filed prior to the time and at the place specified in the RFP. Proposals received after that time will be returned to the Offeror unopened. The Department may defer the date for the opening of proposals in which case the Offerors will be notified.

102.10—Withdrawal of Proposal (Not Used)

102.11—Combination or Conditional Proposals

If the Department so elects, RFPs may be issued for projects in combination or separately. Proposals may be submitted for either the combination or separate units of the combination. The Department may make Awards on combination proposals or separate proposals to its best advantage. Combination proposals other than those set up in the RFP by the Department will not be considered.

Conditional proposals will be considered only when so stated in the RFP.

102.12—eVA Business-To-Government Vendor Registration
Offerors are not required to be registered with "eVA Internet e-procurement solution" at the time proposals are submitted, however, prior to Award of a contract, the Successful Offeror must be registered with "eVA Internet e-procurement solution" or the Proposal may be rejected. Registration shall be performed by accessing the eVA website portal www.eva.state.va.us, following the instructions, and complying with the requirements therein.

102.13—Public Opening of Proposals.

Price Proposals will be opened in accordance with the instructions in the RFP. Interested parties are invited to be present.

SECTION 103—AWARD AND EXECUTION OF DESIGN-BUILD CONTRACTS

103.01—Consideration of Proposals

After Price Proposals have been opened and read, they will be evaluated in accordance with the RFP for the design-build contract.

The Board reserves the right to reject any or all proposals, waive technicalities, advertise for new proposals, or proceed to do the work otherwise if it deems that the best interest of the Commonwealth would be promoted thereby.

103.02—Award of Contract (Not Used)

103.03—Cancellation of Award

The Board or the Commissioner, where permitted by law, may cancel the Award of any contract at any time before the execution of the contract by all parties without liability to the State.

103.04—Return of Proposal Guaranty

Proposal guaranties, except those of the two highest ranked Offerors, will be returned immediately after the evaluation of proposals, if requested. The proposal guaranties of the two highest ranked Offerors will be returned within 5 days after the Contract has been duly executed by both the Successful Offeror and Department, if requested. If the Successful Offeror withdraws his Proposal prior to Award, the proposal guaranty will be forfeited in accordance with the requirements of Section 2.2-4336 of the *Code of Virginia*.

103.05—Requirements of Contract Bond

Within 15 days after notification of Award of a contract, the Successful Offeror shall furnish the following bonds ("Contract Bonds") for contracts in excess of $250,000.00:

(a) a performance bond in the sum of one hundred percent (100%) of the Contract Price conditioned upon the faithful performance of the Work in strict conformity with the Contract Documents, and

(b) a payment bond in the sum of one hundred percent (100%) of the Contract Price conditioned upon the prompt payment for all labor, materials, public utility services, and rental of equipment used in the prosecution of the Work.

Offerors will not be awarded an unbonded contract when their proposal plus the balance of other unbonded contracts exceeds $250,000.00 or if their current Ability Factor is less than 8.0 as determined by their Prequalification status.

The Contract Bonds shall be made on official forms furnished by the Department and shall be executed by the Offeror and a Surety company authorized to do business in Virginia in accordance with the laws of Virginia and the rules and regulations of the State Corporation Commission. To be considered properly executed, the Contract Bonds shall include authorized signatures and titles.

In lieu of payment or performance bonds, the Offeror may furnish a certified check or cash escrow in the face amount required for each of the bonds, which will be held for the full statutory period as applicable for each bond.

Upon written request from the Offeror, the Contract Bonds may be reduced on Contracts having planting items with an establishment period after acceptance of all Contract Work and during the establishment period. The amount of Contract Bonds for the duration of the remaining establishment period shall be equal to 35 percent of the total contract price of the planting items.

103.06—Documents Required as a Condition to Award

The portion of the executed Contract submitted by the Successful Offeror shall include the following documents, unless the filing of any of them at a later date is specifically permitted by the RFP or Contract Documents, provided, however notwithstanding anything to the contrary in the Contract Documents, that the submission of an executed Agreement and Contract Bonds shall always be a precondition to Award

(a) **Contract:** The Agreement executed by the Successful Offeror.

(b) **Contract Bonds:** Contract Bonds shall conform to the requirements of Section 103.05.

(c) **Affidavits and Documents:** Affidavits and documents set forth in the RFP and executed by the Successful Offeror.

(d) **Progress Schedule:** (Not Used)

(e) **Certificates of Insurance:** The Design-Builder shall file certificates of insurance with the Department evidencing the coverages and limits described below within 15 days after notification of Award of the Contract. The certificates shall be executed by approved insurance companies authorized to do business in Virginia with a minimum "*Best Rating*" or "*B +*" and shall cover the Contract they accompany. The Design-Builder shall file notice with the Department at least 30 days prior to the cancellation or reduction of the required insurance, and shall cease operations on the date of the cancellation or reduction until new insurance is in force and the same evidence of insurance is provided to the Department. Insurance coverage in the minimum amounts set forth below shall not be construed to relieve the Design-Builder or Subcontractor(s) of liability in excess of such coverage, nor shall it preclude the State from taking such actions as are available to it under any other provision of this Contract or otherwise in law. The liability insurance policies required below shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

(i) **Contract Value Less Than or Equal to $50 Million:** For Contracts with a Contract Value less than or equal to $50 million, the following requirements shall apply:

(1) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of $1 million

bodily injury by disease, each employee. If necessary, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones' Act as may be appropriate for the work.

(2) Design-Builder's Bodily Injury and Property Damage Liability Insurance: The Design-Builder shall procure and maintain at his own expense, until Final Acceptance of the Work covered by the Contract, insurance of the kinds and in the amounts specified herein. The minimum limits of liability for this insurance shall be $1 million each occurrence and $2 million in the aggregate. The Design-Builder's Bodily Injury and Property Damage Liability Insurance shall cover liability of the Design-Builder for damage because of bodily injury to, or death of Persons and damage to, or destruction of property, that may be suffered by Persons other than the Design-Builder's own Employees as a result of the negligence of the Design-Builder in performing the Work covered by the Contract. If any part of the Work is sublet, insurance meeting the same requirements shall be provided by for or on behalf of the Subcontractors and evidence of such insurance shall be submitted with the sublet request. Insurance provided in compliance with this Section shall include liability of the Design-Builder for damage to or destruction of property that may be suffered by Persons other than the Design-Builder's own Employees as a result of blasting operations of the Design-Builder in performing the Work covered by the Contract.

(ii) **Contract Value Greater Than $50 Million:** For Contracts with a Contract Value greater than $50 million, the following requirements shall apply:

(1) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of $1 million bodily injury by disease, each employee. If necessary, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones' Act as may be appropriate for the work.

(2) Commercial General Liability Insurance including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability with limits of at least $2 million per occurrence and $4 million aggregate.

(3) Automobile Liability Insurance with a limit of at least $2 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired or borrowed vehicles on-site or off.

(4) Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of $100 million per occurrence and in the annual aggregate.

(5) Architects/Engineers Professional Liability Insurance covering the lead design engineer for acts, errors or omissions arising in connection with the work for not less than $15 million any one claim and in the aggregate. Such insurance shall specifically delete any design-build or similar exclusions that could compromise coverage because of the design-build delivery of the Project. Such insurance shall be maintained throughout the duration of any warranty period and for at least three years after the expiration of any warranty period.

(6) Contractor's Pollution Liability Insurance to indemnify for bodily injury or property damage or amounts which the Design-Build Contractor or its agents, Subcontractor(s), or employees are legally obligated to pay for clean up/remediation work arising out of the work undertaken pursuant to the Contract Documents. Such insurance shall have minimum limits of $10 million any one claim and in the aggregate and shall remain in full force and effect for fives years following Final Acceptance.

(7) Builder's Risk Insurance to provide coverage for physical loss, destruction or physical damage to the work. Such insurance shall cover the Design-Build Contractor, the Department, and all Subcontractors and shall be maintained at a limit of at least 100% of the Contract Value. Such insurance shall include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: right to partial occupancy, earthquake, earth movement, flood, transit, temporary and permanent works, expediting expenses, debris removal, offsite storage, and commissioning and start-up.

Design-Builder's liability insurance set forth in Sections 103.06 (a) through (e) above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

To the extent Owner requires Design-Builder to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

103.07—Failure to Furnish Bonds or Certificate of Insurance

Failure by the Successful Offeror to furnish the Department acceptable bonds, workers' compensation insurance, the Contractor's Bodily Injury and Property Damage Liability Insurance policy, or other applicable insurance policies within 15 days after being notified of the Award of a contract shall be considered just cause for cancellation of Award and forfeiture of the proposal guaranty. In such event, the proposal guaranty shall become the property of the Commonwealth, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next highest-ranked responsible and responsive Offeror, or the work may be re-advertised or constructed otherwise, as determined by the Board.

No plea of mistake in the proposal shall be available to the Offeror for the recovery of his proposal guaranty or in defense of action taken by the Department as a result of his neglect or refusal to execute a contract.

In the event the Successful Offeror on an unbonded contract is unwilling or unable to fulfill a contract and fails to notify the Department prior to execution of a contract by the Department, the Offeror will be declared in default in accordance with the requirements of Section 108.07.

In the event the Offeror on an unbonded contract notifies the Department prior to execution of a contract by the Department of such unwillingness or inability to fulfill a contract, the Offeror will be enjoined from bidding on any unbonded contracts for a period of no less than 90 days from the date of notice by the Department.

An Offeror who has never been enjoined or defaulted on an unbonded contract and who notifies the Department prior to contract execution of an unwillingness or inability to fulfill a contract will not be enjoined for the first occurrence; however, said Offeror will not be permitted to rebid or perform work on that specific contract.

103.08—Contract Audit

The Design-Builder shall permit the Department to audit, examine, and copy all documents, computerized records, electronic mail, or other records of the Design-Builder during the life of the Contract and for a period of not less than five years after the date of final payment, or the date the Design-Builder is declared in default of Contract, or the date of termination of the Contract. The documents and records shall include, but not be limited to:

(a) Those that were used to prepare and compute the Proposal, prepare all schedules used on the Project, record the progress of Work on the Project, accounting records, purchasing records, personnel payments or records necessary to determine Employee credentials, vendor payments and written policies and procedures used to record, compute and analyze all costs incurred on the Project, including those used in the preparation or presentation of claims to the Department.

(b) Records pertaining to the Project as the Department may deem necessary in order to permit adequate evaluation and verification of Design-Builder's compliance with contract requirements, compliance with the Department's business policies, and compliance with provisions for pricing Work Orders or claims submitted by the Design-Builder or Subcontractors, shall be made available to the auditor(s) at the Department's request. The Design-Builder shall make his personnel available for interviews when requested by the Department.

(c) Upon request, the Design-Builder shall provide the Department with data files on data disks, or other suitable alternative computer data exchange format. Data furnished by the Design-Builder that cannot be verified will be subject to a complete audit by the Department.

The Design-Builder shall ensure that the requirements of this provision are made applicable to Subcontractors. The Design-Builder shall cooperate and shall cause all related parties to furnish or make available in an expeditious manner all such information, materials, and data. The Design-Builder shall be forthcoming in disclosing all sources and locations of media.

The Design-Builder shall provide immediate access to records for the audit and provide immediate acceptable facilities for the audit. Failure on the part of the Design-Builder to afford the Department immediate access or proper facilities for the audit will be considered failure to cooperate and will result in disqualification as an Offeror in accordance with Section 102.08.

Upon completion of the Contract audit, any adjustments or payments due by the Design-Builder as a result of the audit shall be made within 60 days from presentation of the Department's findings to the Design-Builder. Failure on the part of the Design-Builder to make payment may result in disqualification as an Offeror in accordance with Section 102.08.

If the Design-Builder disagrees with the findings of the Department's audit, the Design-Builder may appeal the decision in accordance with provisions of Section 105.19 or the *Code of Virginia* as amended and as applicable, except that the provision for the Design-Builder to submit a claim within 60 days after final payment shall not apply. If the Design-Builder elects to appeal the decision of the audit he shall within 60 days of the date of the notice of the Department's findings submit a written request to appeal the decision to the Engineer. Failure on the part of the Design-Builder to file a claim disputing the Department's audit within 60 days will be interpreted as a waiver of any claim for dispute of the Department's findings.

103.09—Execution of Contract

The Proposal as submitted, including the documents specified in Section 103.06, shall be deemed accepted by the Department upon submittal of the contract bond, contract bodily injury and property damage liability insurance certificate, and workers' compensation insurance certificate, and the final execution by the Department. After the Department has recommended the Proposal for Award, the Successful Offeror shall be required to sign and return a paper copy of such documents to the Contract Engineer. Failure to sign and return such documents will result in forfeiture of the Proposal bond. If a contract is not awarded within the time limit specified in Section 103.02, the Offeror may withdraw his Proposal without penalty or prejudice unless the time limit is extended by mutual consent. No contract shall be considered effective until it has been fully executed by all parties.

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract

The intent of the Contract is to provide for completion of the Work specified therein within the Contract Price and Contract Times. Further it is understood that the Design-Builder will execute the Work under the Contract as an independent Design-Builder and not as an agent of the Department, the Commissioner, or the Commonwealth Transportation Board.

104.02—Alteration of Quantities or Character of Work

(a) General

The Department reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to complete the Project satisfactorily. Such changes shall be administered under Article 9 of the General Conditions, and shall not invalidate the Contract or release the Surety, and the Design-Builder shall agree to perform the Work as altered. No change, alteration, or modification in or deviations from the Contract Documents, or the giving by the Department of any extension of time for the performance of the Work, or the forbearance on the part of the Department shall release or exonerate in whole or in part either the Design-Builder or any Surety on the obligations of any bond given in connection with the Contract. Neither the Department nor the Design-Builder shall be under any obligation to notify the Surety or sureties of any such alteration, change, extension, or forbearance notice thereof being expressly waived. Any increase in the Contract Price shall automatically result in a corresponding increase in the penal amount of the bonds without notice to or consent from the Surety, such notice and consent being hereby waived. Decreases in the Contract Price shall not, however, reduce the penal amount of the bonds unless specifically provided in any Work Order as authorized in accordance with the provisions of Section 109.05 decreasing the scope of the Work.

(b) Value Engineering Proposals

The Design-Builder may submit to the Department written Value Engineering Proposals ("VEP") for modifying the requirements of Contract Documents for the purpose of reducing the total Contract Price or Contract Times without reducing the design capacity or quality of the finished product. If the VEP is accepted by the Department, the net savings or reduction of Contract Times will be equally divided by the Department and the Design-Builder.

Each VEP shall result in a net savings over the Contract Price or Contract Times without impairing essential functions and characteristics of the item(s) or of any other part of the Project, including, but not limited to, service life, reliability, economy of operation, ease of maintenance, aesthetics, and safety. At least the following information shall be submitted with each VEP:

- Statement that the proposal is submitted as a VEP
- Statement concerning the basis for the VEP benefits to the Department and an itemization of the contract items and requirements affected by the VEP
- Detailed estimate of the cost under the existing Contract and under the VEP
- Proposed specifications and recommendations as to the manner in which the VEP changes are to be accomplished
- Statement as to the time by which a contract Work Order adopting the VEP must be issued so as to obtain the maximum cost-effectiveness

The Department will process the VEP in the same manner as prescribed for any other proposal that would necessitate issuance of a Work Order. The Department may accept a VEP in whole or part by issuing a Work Order that will identify the VEP on which it is based. The Department will not be liable to the Design-Builder for failure to accept or act on any VEP submitted pursuant to these requirements or for delays in the Work attributable to any VEP. Until a VEP is put into effect by a Work Order, the Design-Builder shall remain obligated to the terms and conditions of the existing Contract. If an executed Work Order has not been issued by the date on which the Design-Builder's proposal specifies that a decision should be made or such other date as the Design-Builder may subsequently have specified in writing, the VEP shall be deemed rejected.

The Work Order effecting the necessary modification of the Contract will establish the net savings agreed on, provide for adjustment of the contract prices, or contract time, and indicate the net savings. The Design-Builder shall absorb all costs incurred in preparing a VEP. Costs for reviewing and administering a VEP will be borne by the Department. The Department may include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VEP. The Design-Builder's 50 percent share of the net savings or contract time shall constitute full compensation to him for effecting all changes pursuant to the agreement.

Unless specifically provided for in the Work Order authorizing the VEP, acceptance of the VEP and performance of the work thereunder will not change the Contract Time.

The Department may adopt a VEP for general use in contracts administered by the Department if it determines that the VEP is suitable for application to other contracts. VEPs identical with or similar to previously submitted VEPs will be eligible for consideration and compensation under these provisions if they have not been previously adopted for general application to other contracts administered by the Department. When a VEP is adopted for general use, compensation pursuant to these requirements will be applied only to those awarded contracts for which the VEP was submitted prior to the date of adoption of the VEP.

Proposed changes in the basic design of a Bridge or pavement type or those changes that require different right-of-way limits will not normally be considered an acceptable VEP. If a VEP is based on or is similar to a change in the Contract Documents prior to submission of the VEP, the Department will not accept the VEP.

The Department will be the sole judge of the acceptability of a VEP. The requirements herein apply to each VEP initiated, developed, and identified as such by the Design-Builder at the time of its submission to the Department. However, nothing herein shall be construed as requiring the Department to approve a VEP.

Subject to the provisions herein, the Department or any other public agency shall have the right to use all or part of an accepted VEP without obligation or compensation of any kind to the Design-Builder.

104.03—Differing Site Conditions (Refer to Part 4 – General Conditions – Section 4.3, Differing Site Conditions)

SECTION 105—CONTROL OF WORK

105.01—Notice to Proceed

The Department will issue a Notice to Proceed in accordance with the RFP. The commencement of Work and the Contract Time will start as set forth in Part 3. In no case shall work begin before the Contract is executed by the Department. The Design-Builder shall notify the Department at least 3 days prior to the date on which work will begin.

The Letter of Contract Execution will identify the Engineer's authorized representative who is responsible for written directives and changes to the Contract. The Department will contact the Design-Builder after notice of Award to arrange a pre-construction conference.

In the event the Design-Builder, for matters of his convenience, wishes to begin work later than 15 days from the date of Notice to Proceed he shall make such a request in writing to the Engineer promptly after the execution of the Contract. If the Design-Builder's requested start date is acceptable to the Engineer, the Design-Builder will be notified in writing; however, the Contract Time will not be adjusted but will remain binding. The Design-Builder's request to adjust the start date for the Work on the Contract will not be considered as a basis for claim that the time

resulting from Design-Builder's requested start date, if accepted by the Engineer, is insufficient to accomplish the Work nor shall it relieve the Design-Builder of his responsibility to perform the Work in accordance with the scope of work and requirements of the Contract. In no case shall work begin before the Department executes the Contract. The Design-Builder shall notify the Engineer at least 3 days prior to the date on which he plans to begin the Work.

105.02—Pre-Construction Conference (Not Used)

105.03—Authorities of Project Personnel

(a) Authority of Department

During prosecution of the Work, the Department will answer all questions that may arise as to the quantity, quality, and acceptability of Materials furnished and work performed; rate of progress of the Work; interpretation of the Contract Documents; acceptable fulfillment of the Contract by the Design-Builder; disputes and mutual rights between contractors; and compensation.

The Department has the authority to suspend the Work wholly or in part if the Design-Builder has created conditions that are unsafe or fails to correct conditions that are unsafe for workers or the general public or fails to carry out the provisions of the Contract. The Department may also suspend Work for such periods as it may deem necessary because of catastrophic or extraordinary weather in accordance with the definition of such in Section 108.04, conditions considered unsuitable for prosecution of the Work, or any other condition or reason deemed to be in the public interest.

The Department may issue written clarifications or directives that either enhance or alter the Contract Documents. The Department may order such work as may be necessary to complete the Contract satisfactorily.

(b) Authority of Inspector

Inspectors employed by the Department are authorized to inspect all Work performed and Materials furnished. Inspection may extend to all or any part of the Work and to the preparation, fabrication, and manufacture of the Materials to be used. The Inspector is not authorized to alter or waive the provisions of the Contract Documents, or make changes to the Contract Documents.

The Inspector is not authorized to make final acceptance of the Project, approve any operation or item, or act as foreman for the Contractor. However, the Inspector will have the authority to reject defective work and material and suspend work that is being improperly performed, subject to the concurrence of the Engineer. Such inspection shall not relieve the Contractor of any obligation to furnish acceptable Materials or provide completed construction that is in accordance with the requirements of the Contracts.

The Inspector will exercise only such additional authority as may be delegated by the Engineer. The Engineer will advise the Contractor in writing of delegations of authority that will affect his operations.

105.04—Gratuities

Gifts, gratuities, or favors shall not be given or offered by the Design-Builder to personnel of the Department. A gift, gratuity, or favor of any nature whatsoever or offer of such by the Design-Builder to personnel of the Department shall be a violation of this provision.

The Design-Builder shall not employ any personnel of the Department for any services without the prior written consent of the Department.

If the Department determines after investigation that the Design-Builder or the Design-Builder's Employees, representatives, or agents of any Person acting in his behalf have violated this provision, the Design-Builder may, at the discretion of the Engineer, be disqualified from bidding on future contracts with the Department for a period of six months from the date of the Engineer's determination of such a violation. Any implicated Employees, agents, or representatives of the Design-Builder may be prohibited from working on any contract awarded by the Department for the period of disqualification.

105.05—Character of Workers, Work Methods, and Equipment

(a) Workers

Workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special or skilled work shall have sufficient experience in such work and in the operation of Equipment required to perform it properly and satisfactorily.

Any Person employed by the Design-Builder or any Subcontractor who, in the opinion of the Department, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, when directed in writing by the Department, be removed by the Design-Builder or Subcontractor employing the individual and shall not be employed again on any portion of the Work without the written approval of the Department. If the Design-Builder fails to remove the individual or to furnish suitable and sufficient personnel for proper prosecution of the Work, the Department may withhold all monies that are or may become due the Design-Builder and may suspend the Work until the Design-Builder has complied with the Department directive.

(b) Equipment

Equipment shall be of sufficient size and in such mechanical condition as to comply with the requirements of the Work and produce a satisfactory quality of work. Equipment shall be such that no damage to the Roadway, adjacent property, or other Highways or danger to the public will result from its use. The Department may order the removal and require replacement of unsatisfactory Equipment.

(c) Work Methods

When methods and Equipment to be used by the Design-Builder are not prescribed in the Contract, the Design-Builder is free to use whatever methods or Equipment he feels will accomplish the Work in conformity with the requirements of the Contract.

When the Contract specifies that construction be performed by the use of particular methods and Equipment, they shall be used unless others are authorized by the Department. If the Design-Builder desires to use a different method or type of Equipment, he may request permission from the Department to do so. The request shall be in writing and shall include a full description of the methods and Equipment he proposes to use and an explanation of the reasons for desiring to make the change. If permission is not given, the Design-Builder shall use the specified methods and Equipment. If permission is given, it will be on the condition that the Design-Builder shall be fully responsible for producing construction work in conformity with contract requirements. If, after trial use of the substituted methods or Equipment, the Department determines that the work produced does not conform to the requirements of the Contract, the Design-Builder shall discontinue the use of the substitute method or Equipment and shall complete the remaining construction with the specified methods and Equipment. The Design-Builder shall remove any deficient work and replace it with work of the specified quality or take such other corrective action as the Department may direct. No change will be made in the basis of payment for the construction items involved or the Contract Times as the result of authorizing or denying a change in methods or Equipment under these provisions.

105.06—Subcontracting

The Design-Builder shall perform with his own organization Work amounting to not less than 30 percent (30%) of the original Contract Price unless otherwise specified in the Contract Documents.

The Design-Builder shall not subcontract any part of the Work to a contractor who is not prequalified with the Department in accordance with the requirements of Section 102.01, unless otherwise indicated in the Contract Documents. This restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, or haulers. Consent to subcontract or otherwise dispose of any portion of the Work shall not relieve the Design-Builder of any responsibility for the fulfillment of the entire Contract.

105.07—Cooperation of Design-Builder

The Design-Builder shall give the Work the constant attention necessary to facilitate quality and progress and shall fully cooperate with the Department, and other contractors involved in the prosecution of the Work. If any portion of the Project is located within the limits of a municipality, military installation, or other federally owned property; the Design-Builder shall cooperate with the appropriate officials and agents in the prosecution of the Work to the same extent as with the Department.

The Design-Builder shall have on the Project at all times during prosecution of Work a competent Construction Manager capable of reading and understanding the Contract Documents and experienced in the type of work being performed who shall receive instructions from the Design-Builder or the Department or the Department's authorized representatives. The Construction Manager shall have full authority to execute the orders and directions of the Department without delay and supply promptly such Materials, Equipment, tools, labor, and incidentals as may be required.

105.08—Cooperation With Regard to Utilities

The adjustment of utilities consists of the relocation, removal, replacement, rearrangement, reconstruction, improvement, disconnection, connection, shifting, or altering of an existing utility facility in any manner.

Existing private and public utilities within the Department's knowledge prior to the issuance of the RFP will be indicated in RFP Documents. To the extent such existing utilities require adjustment, they will be adjusted by the utility owner or, if denoted in the Contract as the responsibility of the Design-Builder, then they will be adjusted by the Design-Builder. The location of the adjustment will not normally be shown in the RFP Documents, and Design-Builder is on notice that some of the utilities may be adjusted within the construction limits simultaneously with Project construction operations.

The Design-Builder shall coordinate Project construction with planned utility adjustments and take all necessary precautions to prevent disturbance of the utility facilities. The Design-Builder shall report to the Department any failure on the part of the utility owner to cooperate or proceed with the planned utility adjustments.

The Design-Builder shall perform utility work under the Contract in a manner that will cause the least inconvenience to the utility owner and those being served by the utility owner.

Existing, adjusted, or new utility facilities that are to remain within the Right of Way shall be properly protected by the Design-Builder to prevent disturbance or damage resulting from construction operations. If during prosecution of the Work the Design-Builder encounters an existing utility that requires adjustment, he shall not interfere with the utility but shall take the proper precautions to protect the facility and shall promptly notify the Department of the need for adjustment.

Prior to preparing a Proposal, the Design-Builder shall contact known utility owners to determine the nature, extent, and location of existing, adjusted, or new utility facilities. Any additional cost resulting therefrom shall be reflected in the Proposal.

If the Design-Builder desires the temporary or permanent adjustment of utilities for his own benefit, he shall conduct all negotiations with the utility owners and pay all costs in connection with the adjustment.

Except as provided in the General Conditions, the Department will not be responsible for any claims for additional compensation from the Design-Builder resulting from delays, inconvenience, or damage sustained by him attributable to interference by utility appurtenances or the operation of moving the same.

105.09—Cooperation among Contractors

Section 3.6 of the General Conditions of Contract has precedence.

105.10—Plans and Working Drawings

(a) General

Refer to Article 2 of the General Conditions for Required Submittals.

(b) Plans

Design-Builder shall furnish all plans consisting of general drawings and showing such details as are necessary to give a comprehensive understanding of the work specified. Except as otherwise shown on the plans, dimensions shown on the plans are measured in the respective horizontal or vertical planes. Dimensions that are affected by gradients or vertical curvatures shall be adjusted as necessary to accommodate actual field conditions and shall be specifically denoted on the Working Drawings.

(c) Working Drawings

The Design-Builder shall furnish Working Drawings and maintain a set for the Department as may be required. Working drawings shall not incorporate any changes from the requirements of the Contract unless the changes are specifically denoted, together with justification, and are approved in writing by the Department. The Design-Builder shall identify Working Drawings and submittals by the complete state project and job designation numbers. Items or component materials shall be identified by the specific Contract Item number and Specification reference in the Contract.

A PE shall certify Working Drawings for Falsework supporting a Bridge superstructure.

The Design-Builder shall provide four sets of any submittal. If a railroad, municipality, or other entity as specified in the Contract Documents is required to review the Working Drawings, the reviewed Working Drawings will be returned within 45 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, but Design-Builder may submit, in accordance with the applicable requirements of the Contract Documents, a request for a time extension. Upon completion of the work, the original tracings, if required, shall be supplied to the Department.

Deviations from the Contract requirements initiated by the Design-Builder shall be requested in writing and clearly identified on the Working Drawings. Explicit supporting justification shall be furnished specifically describing the reason for the requested deviations as well as any impact such deviations shall have on the schedule of Work. Failure to address time or other impacts associated with the Design-Builder's request will be cause for rejection of the Design-Builder's request. Deviations from the Contract requirements shall not be made unless authorized by the Engineer. If authorized by the Engineer, such authorization shall not relieve the Design-Builder from the responsibility for complying with the requirements of the Contract for a fully functional finished work item as specified or designed.

Upon completion of the requested work, Working Drawings indicating the actual as-constructed field conditions, if required, shall be supplied to the Department.

The Design-Builder may authorize the fabricator in writing to act for him in matters relating to Working Drawings. Such authorization shall have the force and effect of any other representative of the Design-Builder's organization.

(1) Steel Structures

Working drawings for steel structures, including metal handrails, 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. Such drawings shall be signed and sealed by a PE.

(2) Falsework

Working drawings for Falsework supporting a Bridge Superstructure shall be signed and sealed by a PE.

(3) Concrete Structures and Prestressed Concrete Members

Working drawings for concrete structures and prestressed concrete members shall provide such details as required for the successful prosecution of the Work and which are not included in the RFP Documents furnished by the Department. Drawings shall include plans for items such as prestressing strand details and elongation calculations, location of lift points, Falsework, bracing, centering, form work, masonry, layout diagrams, and bending diagrams for reinforcing steel when necessary or when requested. Such drawings shall be signed and sealed by a PE.

(4) Lighting, signal and pedestal poles, overhead and Bridge mounted sign structures, breakaway support systems, anchor bolts, framing units, panels, and foundations.

Prior to fabrication or construction, the Design-Builder shall submit for review one original and six copies of each Working Drawing and design calculation for lighting, signal and pedestal poles, overhead and Bridge mounted sign structures, breakaway support systems, anchor bolts, framing units, panels, and foundations. All sheets of these submittals shall include the PE's signature and seal. Certification for foundations will be required only when the designs are furnished by the Design-Builder. The designs shall be in accordance with the specific editions of the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals* as required in Section 700. Such designs shall be signed and sealed by a PE.

(5) Reinforced Concrete Pipe

When specified, and prior to manufacture of reinforced concrete pipe, the Design-Builder shall furnish to the Department a certification of the acceptability of the design of such pipe, as determined from a review that has been signed and sealed by a PE. Such certification shall cover all design data, supporting calculations, and materials. Pipe designs previously certified or approved by the Department will not require recertification.

105.11—Conformity with Contract Documents

Values for Materials to be used in the Work shall conform to the specified values or range of values specified in the Contract. Less than complete conformity may be tolerated if obtaining exact or complete conformity would not be feasible and if authorized by the Department.

Permissible tolerances for the elevation of Subgrade and finished grade and for the thickness of the various courses of Pavement Structure are specified in the Contract Documents. If permissive tolerances are exceeded or if consistent deviations from the Contract Documents or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed to conform to the specified tolerance and provide a smooth riding surface.

When the Contract Documents require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface must coincide with the elevation of the structural item.

105.12—Coordination of Contract Documents

The Design-Builder shall be responsible for the coordination of the Contract Documents. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, such inconsistency, conflict or ambiguity shall be interpreted as set forth in Section 3.1 of the Agreement.

The Design-Builder shall not take advantage of any obvious or apparent error or omission in the Contract Documents. If the Design-Builder discovers an error or omission, he shall immediately notify the Department of the corrections in accordance with the Contract Documents and make such corrections as necessary for fulfilling the intent of the Contract Documents.

105.13—Construction Stakes, Lines, and Grades

The Design-Builder shall perform all construction and other surveying that the Design-Builder deems necessary to construct this Project in accordance with the Contract Documents. The cost for all surveying performed by the Design-Builder is included in the Contract Price. All construction surveys shall be performed under the direct supervision of a land surveyor duly registered and licensed in the State.

105.14—Maintenance during Construction

The Design-Builder shall prosecute his work so as to avoid obstructions to traffic to the greatest extent practicable. The Design-Builder shall provide for the safety and convenience of the general public and residents along the Roadway and the protection of Persons and property.

Highways closed to traffic shall be protected by barricades and other warning devices as required by the Department. Barricades and warning devices shall be illuminated where required during periods of darkness and low visibility. The Design-Builder shall erect warning devices in advance of a location on the Project where operations or obstructions may interfere with the use of the Road by traffic and at all intermediate points where the new work crosses or coincides with an existing Roadway. The Design-Builder shall maintain sign faces and reflective surfaces of warning devices in a clean and visible condition. The Design-Builder shall cover or remove signs when the messages thereon are not applicable. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of Section 512 of the Standard Specifications.

The Design-Builder shall maintain the Work from the beginning of construction operations until Final Completion Date. Maintenance shall be inherent to the continuous and effective work prosecuted day-by-day with adequate Equipment and forces to such end that the Roadway and structures are sustained in a safe and satisfactory condition at all times.

When a Contract specifies placing a course on another course or Subgrade previously constructed, the Design-Builder shall maintain the previous course or Subgrade in accordance with the Contract requirements during all construction operations.

The Road shall be kept open to all traffic while undergoing improvements unless otherwise permitted in the Contract. The Design-Builder shall keep the portion of the Project being used by public, pedestrian, and vehicular traffic in such condition that traffic will be safely and adequately accommodated. However, removal of snow and control of ice on Roads open to public travel will be performed by the Department.

The Design-Builder shall bear all costs of performing maintenance work before final acceptance and of constructing and maintaining necessary approaches, crossings, intersections, and other features without direct compensation except as provided for herein. When the Design-Builder confines his operation to the surface of the Roadway and reasonable width of the Shoulder and the surface is disturbed or damaged by his operations or Equipment, he shall be responsible for the restoration and maintenance of the surface that is disturbed or damaged.

The Design-Builder shall keep the portions of the Road being used by the public free from irregularities and obstructions that could present a hazard or annoyance to traffic. Design-Builder shall allay dust whenever required, or whenever directed by the Department, and the cost shall be included in the contract price. Holes in hard surface pavements shall be filled with approved asphalt patching material.

(a) **Detours:** Detours may be indicated in the Contract Documents or may be used with the approval of the Department. Unless otherwise designated in the Contract, the Design-Builder will furnish and erect all directional markings for through traffic on off-Project detours authorized or requested by the Department. Detours over existing State Roads will be designated, marked, and maintained by the Department. If any part of the Project is located wholly or in part within the corporate limits of a municipality and through traffic is to be detoured at the request of the municipality, the municipality will provide and maintain the detours within the corporate limits and will furnish and erect all directional markings. The provision of detours and marking of alternate routes will not relieve the Design-Builder of the responsibility for ensuring the safety of the public or from complying with any requirements of the Contract Documents affecting the rights of the public within his Contract limits, including those concerning lights and barricades. Maintenance of all other detours shall be the responsibility of the Design-Builder.

Right of Way for temporary Highways, diversion Channels, sediment and erosion control features or Bridges required by these provisions will be furnished by the Department.

(b) **Maintenance of Traffic during Suspension of Work:** During any suspension of Work, the Design-Builder shall temporarily open to traffic such portions of the Project and temporary Roadways as may be agreed upon by the Design-Builder and Department.

(c) **Flagging Traffic:** Certified flaggers shall be provided in sufficient number and locations as necessary for control and protection of vehicular and pedestrian traffic in accordance with the requirements of the *Virginia Work Area Protection Manual ("VWAPM").* Flaggers shall be able to communicate to the traveling public in English while performing the job duty as a flagger at the flagger station. Flaggers shall use sign paddles to regulate traffic in accordance with the requirements of the *VWAPM*.

Certification for flaggers will be awarded upon a candidate's satisfactory completion of an examination. Certification cards shall be carried by flaggers while performing flagging duties. Flaggers found not to be in possession of their certification card shall be removed from the flagging site and operations requiring flagging will be suspended by the Department. Further, flaggers performing duties improperly will have their certifications revoked.

(d) **Delays:** Unless indicated in the Contract Documents or otherwise approved by the Department, two-way traffic shall be maintained at all times. The Design-Builder shall not stop traffic without permission of the Department.

If one-way traffic is approved, the Design-Builder shall provide flaggers to direct the traffic. When specified in the Contract as a Pay Item, pilot vehicles shall be furnished in accordance with the requirements of Section 512 of the Standard Specifications. Upon request from the Design-Builder and where deemed appropriate by the Department, the Department will install traffic signals that may be used for the control of one-way traffic. The Design-Builder shall pay the costs of installation, electrical service, maintenance or repair work, and a predetermined rental charge per day for the signals and removal when no longer needed.

(e) **Connections and Entrances:** Connections with other Roads and public and private entrances shall be kept in a reasonably smooth condition at all times.

Stabilization or surfacing material shall be applied to connections and entrances.

The Design-Builder shall schedule construction operations so that approved continuous access is provided for all property adjacent to the construction when the property is shown in the Contract Documents to require access. When Frontage Roads are shown in the Contract Documents, they shall be constructed prior to the closing of any access routes unless other approved access is provided and is acceptable to the property owner.

Connections or entrances shall not be disturbed by the Design-Builder until necessary. Once connections or entrances have been disturbed, they shall be maintained and completed as follows:

1. **Connections:** Connections that had an original paved surface shall be brought to a grade that will smoothly and safely accommodate vehicular traffic through the intersection, using temporary pavement as soon as practicable after connections are disturbed. Connections that had an original unpaved surface shall be brought to a grade that will smoothly and safely accommodate vehicular traffic through the intersection, using either the required material or a temporary aggregate stabilization course that shall be placed as soon as practicable after connections are disturbed.

   If there are delays in prosecution of work for connections, connections that were originally paved shall have at least two lanes maintained with a temporary paved surface. Those that were not originally paved shall be maintained with a temporary aggregate stabilization course.

2. **Entrances:** Entrances shall be graded concurrently with the Roadway with which they intersect. Once an entrance has been disturbed, it shall be completed as soon as is practicable, including placing the required Base and Surface Course or stabilization. If the entrance must be constructed in stages, such as when there is a substantial change in the elevation of the Roadway with which it intersects, the surface shall be covered with a temporary aggregate stabilization course or other suitable salvaged material until the entrance can be completed and the required Base and Surface or stabilization Course can be placed.

(f) **Grading Operations:** When the Design-Builder elects to complete the rough grading operations for the entire Project or exceed the length of one full day's surfacing operations; the rough grade shall be machined to a uniform slope from the top edge of the existing pavement to the ditch line.

When the surface is to be widened on both sides of the existing pavement, construction operations involving grading or paving shall not be conducted simultaneously on sections directly opposite each other.

The surface of pavement shall be kept free from soil and other materials that might be hazardous to traffic. Prior to opening of new pavement to traffic, Shoulders shall be roughly dressed for a distance of 3 feet from the edge of the paved surface.

(g) **Obstruction Crossing Roadways:** Where the Design-Builder places obstructions such as suction or discharge pipes, pump hoses, steel plates, or any other obstruction that must be crossed by vehicular traffic; they shall be bridged as directed by the Department at the Design-Builder's expense. Traffic shall be

protected by the display of warning devices both day and night. If operations or obstructions placed by the Design-Builder damage an existing traveled Roadway, the Design-Builder shall cease operations and repair damages to the Roadway at no additional cost to the Department.

(h) **Patching Operations:** Where existing hydraulic cement concrete pavement is to be patched, the operation of breaking and excavating old pavement shall extend for a distance of not more than two miles. Patching shall be coordinated with excavating so that an area of not more than one-half mile in which excavated patches are located shall be left at the end of any day's work. Necessary precautions shall be taken to protect traffic during patching operations.

(i) **Temporary Structures:** The Design-Builder shall construct, maintain, and remove Temporary Structures and approaches necessary for use by traffic. After new structures have been opened to traffic, Temporary Structures and approaches shall be removed. The materials contained therein shall remain the property of the Design-Builder.

The proposed design of Temporary Structures shall be submitted to the Department prior to the beginning of construction in accordance with the requirements of Section 105.10.

(j) **Failure to Maintain Roadway or Structures:** If the Design-Builder fails to remedy unsatisfactory maintenance immediately after receipt of a notice by the Department, the Department may proceed with adequate forces, Equipment, and Material to maintain the Project. The cost of the maintenance, plus 25 percent for supervisory and administrative personnel, will be deducted from monies due the Design-Builder for the Project.

(k) **Haul Route:** The Design-Builder shall select haul routes between the Project and Material source(s) that will minimize disturbance to the community. The Design-Builder shall furnish to the Department, for review, his plan for the haul route and for minimizing the adverse effects of hauling operations on Persons who reside adjacent to the haul route or Persons who otherwise use a portion of the haul route for ingress or egress to their residential or work area. The Department may select alternate haul routes, divide the hauling traffic over several routes, and impose other restrictions deemed necessary to minimize the impact of the hauling operation on local residents.

(l) **Opening Sections of Projects to Traffic**

When specified in the Contract or when directed by the Department, certain sections of the Work may be opened to traffic. Such opening shall not constitute acceptance of the work or any part thereof or a waiver of any provision of the Contract.

On any section of the Work opened by order of the Department where the Contract does not provide for traffic to be carried through the Work, the Design-Builder will not be required to assume any expense entailed in maintaining the Road for traffic. Such expense will be borne by the Department or will be compensated for in accordance with the requirements of Section 109.05. Repair of slides and repair of damage attributable to traffic will be compensated for in accordance with the requirements of Section 109.05. Slides shall be removed by the Design-Builder in accordance with the requirements of Section 303.

On any section of the Work opened by order of the Department where the Contract does not provide for traffic to be carried through the Work, any additional cost for the completion of other items of work that are required because of the changed working conditions will be compensated in accordance with the requirements of Section 109.05.

If the Design-Builder is not continuously prosecuting the Work to the satisfaction of the Department, he shall not be relieved of the responsibility for maintenance during the period the section is opened to traffic prior to final acceptance. Any expense resulting from the opening of such portions under these circumstances, except slides, shall be borne by the Design-Builder. The Design-Builder shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

105.15—Removing and Disposing of Structures and Obstructions

The Design-Builder shall remove and dispose of or store, as directed by the Department, fences, buildings, structures, or encumbrances within the construction limits. Materials so removed, including existing drains or pipe culverts, shall become the property of the Design-Builder, with the exception of those materials to be stored or delivered to the Department or others as designated in the Contract.

(a) **Signs:** The Design-Builder shall relocate all signs within the construction limits that conflict with construction work as approved by the Department. Signs that are not needed for the safe and orderly control of traffic during construction as determined by the Department shall be removed and stored at a designated location within the Project limits. The removed signs shall be stored above ground in a manner that will preclude damage and shall be reinstalled in their permanent locations prior to final acceptance. If any of the removed signs are not to be reinstalled, the Design-Builder shall notify the Department at the time the signs have been properly stored. Such signs will be removed from the storage area by the Department. Any sign that is damaged or lost because of the fault of the Design-Builder shall be repaired or replaced at his expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the Contract Price and no additional compensation will be made.

(b) **Mailboxes and Newspaper Boxes:** When removal of mailboxes and newspaper boxes is made necessary by construction operations, the Design-Builder shall place them in temporary locations so that access to them will not be impaired. Prior to final acceptance, boxes shall be placed in their permanent locations as designated by the Department and left in as good condition as when found. Boxes or their supports that are damaged through negligence on the part of the Design-Builder shall be replaced at his expense. The cost of removing and resetting boxes shall be included in the Contract Price.

105.16—Cleanup

Removal from the Project of rubbish, scrap material, and debris caused by the Design-Builder's personnel or construction operations shall be a continuing process throughout the course of the Work. The work site shall have a neat, safe and orderly appearance at all times.

Before final acceptance, the Highway, Borrow pits, quarries, Disposal Areas, storage areas, and all ground occupied by the Design-Builder in connection with the Work shall be cleaned of rubbish, surplus materials, and Temporary Structures, except in the case where the property is owned or controlled by the Design-Builder. All parts of the Work and the Construction Area shall be left in a neat, safe, and orderly condition.

Within 30 days after final acceptance, the Design-Builder shall remove his Equipment, Materials and debris from the Right of Way and property adjacent to the Project that he does not own or control.

105.17—Inspection of Work

The Design-Builder is responsible for continuous quality control and quality assurance in accordance with the QA/QC Plan. However, all stages, Materials, and details of the work are subject to inspection. The Design-Builder shall provide the Department with full and safe access to all parts of the Work and shall be furnished such information and assistance by the Design-Builder as are required to make a complete, timely, and detailed inspection. The Department and its appointed representatives shall have ready access to machines and plant Equipment used in processing or placing Materials.

Prior to the beginning of operations, the Department will meet with the Design-Builder to establish an understanding of the critical stages of Work that shall be performed in the presence of the Inspector. In order for the Department to schedule inspection of the Work, the Design-Builder shall keep the Department informed of planned operations in accordance with the requirements of Section 108.03.

If the Department requests it, the Design-Builder shall remove or uncover such portions of the finished work as may be directed at any time before final acceptance. The Design-Builder shall restore such portions of the Work to comply with the appropriate requirements of the Contract Documents. If the work exposed is acceptable, the uncovering or removing and replacing the covering or making good the parts removed will be paid for as Extra Work in accordance with the General Conditions of the Contract. If the work is unacceptable, the cost of uncovering or removing and replacing the covering or making good the parts removed shall be borne by the Design-Builder.

When any unit of government, political subdivision, or public or private Corporation is to pay a portion of the cost of the Work specified in the Contract, its representatives shall have the right to inspect the Work. The exercise of this right shall not be construed as making them a party or parties to the Contract or conferring on them the right to issue instructions or orders to the Design-Builder.

If Materials are used or work is performed without inspection by Independent Quality Control staff and certified by the Quality Assurance Manager, the Department may order the Design-Builder to remove and replace the work or Material at his own expense.

If an inspection reveals that work has not been properly performed, the Design-Builder will be so advised and he shall immediately inform the Department of his schedule for correcting such work and the time when a reinspection can be made.

105.18—Removal of Unacceptable Work

Work will be considered as unacceptable if it: (a) does not conform to the requirements of the Contract Documents; (b) is performed contrary to the instructions of the Department; or (c) is performed without the authorization of the Department. Unacceptable work shall be remedied or removed immediately unless otherwise determined by the Department, and replaced in an acceptable manner at the Design-Builder's expense. The Department may elect, in its sole discretion, to accept otherwise unacceptable work at a reduced price and a warranty extended to five (5) years for the subject portion of the work when acceptance is considered to be in the best interest of the public.

The Design-Builder shall not perform destructive sampling or testing of the Work without written authorization of the Department. Unauthorized destructive sampling or testing will cause the Work to be considered unacceptable.

In the event the Design-Builder is granted authorization to perform destructive sampling or testing, the Design-Builder shall obtain the approval of the Department for the method and location of each test prior to beginning such sampling or testing. In addition, destructive sampling and testing shall be performed in the presence of the Department.

If the Design-Builder fails to comply immediately with any order of the Engineer made under the provisions of this Section, the Engineer will have the authority to cause unacceptable work to be removed and replaced and to deduct the cost from any monies due or to become due the Design-Builder.

105.19—Submission and Disposition of Claims (Refer to Part 4 – General Conditions – Article 10 Contract Adjustments and Disputes)

SECTION 106—CONTROL OF MATERIAL

106.01—Source of Supply and Quality Requirements

The Materials used throughout the Work shall conform to the requirements of the Contract. The Design-Builder shall regulate his supplies so that there will be a sufficient quantity of tested Material on hand at all times to prevent any delay of Work. Except as otherwise specified, Materials, Equipment, and components that are to be incorporated into the finished work shall be new.

At the option of the Department, Materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply Materials or Equipment conforming to the

requirements of the Contract, do not furnish the valid test data required to document the quality of the Material or Equipment, or do not furnish documentation to validate quantities to document payment, the Design-Builder shall change the source of supply and furnish Material or Equipment from other approved sources. The Design-Builder shall notify the Department of this change, and provide the same identifying information noted in this Section, at least 60 days prior to their use on the Project, but not less than two weeks prior to delivery.

Materials shall not contain toxic, hazardous, or regulated solid wastes or be furnished from a source containing toxic, hazardous or regulated solid wastes.

When optional Materials are included in the Contract, the Design-Builder shall advise the Department in writing of the specific Materials selected. Thereafter, the Design-Builder shall use the selected Materials throughout the Project unless a change is authorized in writing by the Department. However, when the Design-Builder has an option as to the type of pipe that may be used, he may use any of the approved types for each size of pipe, but he shall use the same type for a particular line. The Department may authorize other types and sources in an emergency that will not unreasonably delay delivery of the selected Material.

Equipment and Material guaranties or warranties that are normally given by a manufacturer or supplier, or are otherwise required in the Contract, shall be obtained by the Design-Builder and assigned to the Commonwealth in writing. The Design-Builder shall also provide an in-service operation guaranty on all mechanical and electrical Equipment and related components for a period of at least six months beginning on the date of partial acceptance of that specific item(s) or final acceptance of the Project.

106.02—Material Delivery

The Design-Builder shall advise the Quality Assurance Manager and the Department at least 2 weeks prior to the delivery of any Material from a commercial source. Upon delivery of any such Material to the Project, the Design-Builder shall provide the Department with one copy of all invoices (prices are not required). The following Materials shall also comply with the requirements of Section 109.01: asphalt concrete; dense graded aggregate, to include aggregate base, Subbase, and Select Material; fine aggregate; open graded coarse aggregate; crusher run aggregate; and Road stabilization aggregate. The printed weights of each load of these Materials, as specified in Section 109.01, shall accompany the delivery, and such information shall be furnished to the Inspector at the Project.

106.03—Local Material Sources (Pits and Quarries)

The requirements set forth herein apply exclusively to non-commercial pits and quarries from which Materials are obtained for use on contracts awarded by the Department.

Local Material sources shall be concealed from view from the completed Roadway and any existing public Roadway. Concealment shall be accomplished by selectively locating the pit or quarry and spoil pile, providing environmentally compatible screening between the pit or quarry site and the Roadway, or using the site for another purpose after removal of the Material, or restoration equivalent to the original use (such as farm land, pasture, turf, etc.). The foregoing requirements shall also apply to any pit or quarry opened or reopened by a Subcontractor. However, the requirements will not apply to commercial sand and gravel and quarry operations actively processing Material at the site prior to the date of the execution of the Contract.

The Design-Builder shall furnish the Department a statement signed by the property owner in which the property owner agrees to the use of his property as a source of Material for the Project. Upon completion of the use of the property as a Material source, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for commercial sources, sources owned by the Design-Builder, and sources furnished by the Department.

Local Material pits and quarries that are not operated under a local or State permit shall not be opened or reopened without authorization by the Department. The Design-Builder shall submit for approval a site plan, including, but not limited to, the following

(1) the location and approximate boundaries of the Excavation ; with a slope gradient of 3:1 or greater;

(2) procedures to minimize erosion and siltation;

(3) provision of environmentally compatible screening;

(4) restoration;

(5) cover vegetation;

(6) other use of the pit or quarry after removal of Material, including the spoil pile;

(7) the drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations;

(8) location of haul Roads and stabilized construction entrances if construction Equipment will enter a paved Roadway;

(9) constructed or natural waterways used for discharge;

(10) a sequence and schedule to achieve the approved plan and;

(11) the total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized.

The Design-Builder's design and restoration shall be in accordance with the Contract Documents and all Legal Requirements.

If the approved plan provides for the continued use or other use of the pit or quarry beyond the date of final acceptance, the Design-Builder shall furnish the Department a bond made payable to the Commonwealth of Virginia in an amount equal to the Engineer's estimate of the cost of performing the restoration work. If the pit or quarry is not used in accordance with the approved plan within 8 months after final acceptance, the Design-Builder shall perform restoration work as directed by the Department, forfeit his bond, or furnish the Department with evidence that he has complied with the applicable requirements of the State Mining Law.

Topsoil on Department owned or furnished Borrow sites shall be stripped and stockpiled as directed by the Department for use as needed within the construction limits of the Project or in the reclamation of Borrow and Disposal Areas.

If payment is to be made for Material measured in its original position, Material shall not be removed until Digital Terrain Model ("DTM") or cross-sections have been taken. The Material shall be reserved exclusively for use on the Project until completion of the Project or until final DTM or cross-sections have been taken.

If the Design-Builder fails to provide necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate the Department will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the Department. If the Work is not performed by the Design-Builder, the cost of performing the Work plus 25 percent for supervisory and administrative personnel will be deducted from monies due the Design-Builder.

Costs for applying seed, fertilizer, lime, and mulch; restoration; drainage; erosion and siltation control; regrading; haul Roads; and screening shall be included in the Contract price for the type of Excavation or other appropriate items.

If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Material sources, the Department may withhold and use for the purpose of performing such work any monies due the Design-Builder. The Design-Builder shall be held liable for penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation and take restorative action.

After removing the Material, the Design-Builder shall remove metal, lumber, and other debris resulting from his operations and shall shape and landscape the area in accordance with the approved plan for such work.

(a) **Sources Furnished by the Department:** Sources furnished by the Department will be made available to the Design-Builder together with the right to use such property as may be required for a plant site, stockpiles, and haul roads. The Design-Builder shall confine his Excavation operations to those areas of the property specified in the Contract.

The Design-Builder shall be responsible for Excavation that shall be performed in order to furnish the specified Material.

(b) **Sources Furnished by the Design-Builder:** When the Design-Builder desires to use local Material from sources other than those furnished by the Department, he shall first secure the approval of the Department. The use of Material from such sources will not be permitted until test results have been approved by the Department and written authority for its use has been issued.

The Design-Builder shall acquire the necessary rights to take Material from sources he locates and shall pay all related costs, including costs that may result from an increase in the length of the haul. Costs of exploring, sampling, testing, and developing such sources shall be borne by the Design-Builder. The Design-Builder shall obtain representative samples from at least two borings in parcels of 10 acres or less and at least three additional borings per increment of 5 acres or portion thereof to ensure that lateral changes in Material are recorded. Drill logs for each test shall include a soil description and the moisture content at intervals where a soil change is observed or at least every 5 feet of depth for consistent Material. Samples obtained from the boring shall be tested by an approved Laboratory for grading, Atterberg limits, CBR, maximum density, and optimum moisture. The Department will review and evaluate the Material based on test results provided by the Design-Builder. The Department will reject any Material from a previously approved source that fails a visual examination or whose test results show that it does not conform to the Contract Documents.

106.04—Disposal Areas

Unsuitable or Surplus Material shown in the Contract Documents shall be disposed of as specified herein. Material not used on the Project shall be disposed of by the Design-Builder off the Right of Way. The Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area. For the purpose of these Division I Amendments to the Standard Specifications an approved Disposal Area is defined as that which is owned privately, not operated under a local or State permit, and has been approved by the Department for use in disposing of Material not used on the Project.

The Design-Builder shall furnish the Department a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of Material from the Project. Upon completion of the use of the property as an approved Disposal Area, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for commercial sources, sources owned by the Design-Builder, and sources furnished by the Department.

When neither unsuitable nor surplus Material is shown in the Contract Documents, the Design-Builder shall dispose of it as shown herein. If the Design-Builder, having shown reasonable effort, is unsuccessful in obtaining the

necessary rights to property to be used as an approved Disposal Area, the Department will obtain rights for disposal unless otherwise provided for in the contract. Compensation, if not shown in the Contract, will be in accordance with the requirements of Section 104.02.

Prior to the Department approving a Disposal Area, the Design-Builder shall submit a site plan. The plan shall show:

(1) the location and approximate boundaries of the Disposal Area;

(2) procedures to minimize erosion and siltation;

(3) provision of environmentally compatible screening;

(4) restoration;

(5) cover vegetation;

(6) other use of the Disposal Area;

(7) the drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations;

(8) location of haul roads and stabilized construction entrances if construction Equipment will enter a paved Roadway;

(9) constructed or natural waterways used for discharge;

(10) a sequence and schedule to achieve the approved plan and;

(11) the total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized. Costs for the work described herein shall be included in the Contract Price. The Design-Builder shall certify that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations, all local, state, and federal ordinances, and Section 107.16.

Disposal Areas shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto. After the Material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved plan for such work or shall be used as approved by the Department. The Design-Builder’s design and restoration shall conform to the requirements of the contract and federal, state, and local laws and regulations.

Excavated rock in excess of that used in Embankments in accordance with the requirements of Section 303 shall be deposited off the Right of Way in an approved Disposal Area. Deposits whose surface is composed largely of rock shall be leveled by special arrangement of the Material or reduction of the irregularity of the surface by crushing projections to create a reasonably uniform and neat appearance.

The Design-Builder's design and restoration shall be in accordance with the requirements of the Contract Documents and Legal Requirements.

If the Design-Builder fails to provide and maintain necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate, the Department will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the Department. If the Work is not performed by the Design-Builder, the cost of performing the Work plus 25 percent for supervisory and administrative personnel will be deducted from monies due the Design-Builder.

Costs for applying seed, lime, fertilizer, and mulch; reforestation; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Contract Price.

Material encountered by the Design-Builder shall be handled as follows:

(a) **Unsuitable Material** -. The Design-Builders' geotechnical engineer shall confirm that slopes, earthwork, pavement, and foundation subgrades satisfy the design and Contract Document requirements. The Design-Builders' geotechnical engineer shall perform an inspection of all embankment and pavement subgrades and minor structure excavations immediately prior to placement of embankment fill, aggregate base, subbase or bedding materials to identify excessively soft, loose, dry or saturated soils that exhibit excessive pumping, weaving or rutting under the weight of the construction equipment. Such materials are considered unsuitable and must be removed or modified in place to provide adequate support for embankment, pavement subgrade or minor structures. Materials unsuitable for use in the Work shall be disposed of at an approved Disposal Area or landfill licensed to receive such Material unless the materials can be adequately treated in place through pre-approved methods of chemical and/or mechanically stabilization to satisfy the design and Contract Document requirements. All Unsuitable Materials shall be disposed of off-site and/or treated in place at no cost to the Department. Design-Builder shall identify unsuitable Materials and methods of treatment on the plans and cross sections.

(b) **Surplus Material** as shown in the Contract Documents that is not classified as unsuitable may be used to flatten slopes, to fill in ramp gores and medians provided the material is placed in accordance with the earthwork specifications. Surplus Material that is not needed shall be disposed of at an approved Disposal Area or a landfill licensed to receive such Material.

Surplus Material stockpile areas on the right-of-way shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and the haul Roads thereto. Placement of fill material shall not adversely affect existing drainage structures. If necessary, modified existing drainage structures, as approved by the Department, shall be paid for in accordance with Section 109.05. Within *7* days after the material has been deposited, the area shall be shaped and stabilized to minimize erosion and siltation.

(c) **Organic materials** such as, but not limited to, tree stumps and limbs (not considered merchantable timber), roots, rootmat, leaves, grass cuttings, or other similar materials shall be chipped or shredded and used on the Project as mulch, given away, sold as firewood or mulch, burned at the Design-Builder's option if permitted by local ordinance, or disposed of at a facility licensed to receive such materials. Organic material shall not be buried in State Rights of Way or in an approved Disposal Area.

(d) **Rootmat** for the purpose of these Division I Amendments to the Standard Specifications is defined as any material that, by volume, contains approximately 60 percent or more roots and shall be disposed of in accordance with (c) herein.

(e) **Inorganic materials** such as brick, cinder block, broken concrete without exposed reinforcing steel, or other such material may be used in accordance with Section 303.04 or shall be disposed of at an approved Disposal Area or landfill licensed to receive such materials. If disposed of in an approved Disposal Area, the material shall have enough cover to promote soil stabilization in accordance with the requirements of Section 303 and shall be restored in accordance with other provisions of this Section.

Concrete without exposed reinforcing steel, may be crushed and used as rock in accordance with Section 303. If approved by the Department, these materials may be blended with soils that meet AASHTO M57 requirements and deposited in fill areas within the right-of-way in accordance with the requirements of Section 303 as applicable.

(f) **Excavated rock** in excess of that used within the Project site in accordance with the requirements of Section 303 shall be treated as surplus material.

(g) **Other materials** such as, but not limited to, antifreeze, asphalt (liquid), building forms, concrete with reinforcing steel exposed, curing compound, fuel, Hazardous Materials, lubricants, metal, metal pipe, oil, paint, wood or metal from building demolition, or similar materials shall not be disposed of at an approved Disposal Area but shall be disposed of at a landfill licensed to receive such material.

If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Disposal Areas, the Department may withhold and use for the purpose of performing such work any moneys due the Design-Builder. The Design-Builder shall be held liable for all penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation.

106.05—Rights for and Use of Materials Found on Project

With the approval of the Department, the Design-Builder may use in the Project any materials found in the Excavation that comply with the requirements of the Contract Documents. The Design-Builder shall replace at his own expense with other acceptable material the Excavation material removed and used that is needed for use in Embankments, Backfills, approaches, or otherwise. The Design-Builder shall not excavate or remove any material from within the construction limits that is not within the grading limits, as indicated by the slope and grade lines.

106.06—Samples, Tests, and Cited Specifications

The Design-Builder shall inspect and test materials in accordance with the QA/QC Plan.

Unless reference is made to a specific dated specification or special provision, references in the Contract Documents to AASHTO, ASTM, VTM, and other standard test methods and materials requirements shall refer to either the test specifications that have been formally adopted or the latest interim or tentative specifications that have been published by the appropriate committee of such organizations as of the date of the Notice of Advertisement.

The inspection cost of structural steel items, precast concrete items, and prestressed concrete items fabricated in a country other than the continental United States shall be borne by the Design-Builder. Inspection of structural fabrication shall be performed in accordance with the requirements of the appropriate VTM by a commercial Laboratory approved by the Department. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Design-Builder's expense.

Materials requiring an MSDS will not be accepted at the Project site for sampling without the document.

106.07—Plant Inspection

If the Department inspects materials at the source, the following conditions shall be met:

(a) The Department shall have the cooperation and assistance of the Design-Builder and producer of the Materials.

(b) The Department shall have full access to parts of the plant that concern the manufacture or production of the Materials being furnished.

(c) For Materials accepted under a quality assurance plan, the Design-Builder or producer shall furnish equipment and maintain a plant laboratory at locations approved for plant processing of Materials. The Design-Builder or producer shall use the laboratory and equipment to perform quality control testing.

The laboratory shall be of weatherproof construction, tightly floored and roofed, and shall have adequate lighting, heating, running water, ventilation, and electrical service. The ambient temperature shall be maintained between 68 degrees F and 86 degrees F and thermostatically controlled. The laboratory shall be equipped with a telephone, intercom, or other electronic communication system connecting the laboratory and scale house if the facilities are not in close proximity to each other. The laboratory shall be constructed in accordance with the requirements of local building codes.

The Design-Builder or producer shall furnish, install, maintain, and replace, as conditions necessitate, testing equipment specified by the appropriate ASTM, AASHTO method, or VTM being used and provide necessary office equipment and supplies to facilitate keeping records and generating test reports. The Design-Builder or producer's technician shall maintain current copies of test procedures performed in the laboratory. The Design-Builder shall calibrate or verify all balances, scales, and weights associated with testing performed as specified in AASHTO R18. The Design-Builder or producer shall also provide and maintain an approved test stand for accessing truck beds for the purpose of sampling and inspection. Cast iron grinding pots and rubber mauls will be furnished by the Department where required. The Department may approve a single laboratory to service more than one plant belonging to the same Design-Builder or producer.

For crushed glass, the plant equipment requirements are waived in lieu of an independent third-party evaluation and certification of crushed glass properties by an AASHTO Materials Reference Laboratory ("AMRL")-accredited commercial soil testing Laboratory demonstrating that the supplied Material conforms to the specified requirements of Section 203. Random triplicate samples will be evaluated and analyzed for every 1,000 tons of Material supplied to the Project. The averaged results will be used for evaluation purposes. Suppliers of crushed glass shall maintain third party certification records for a period of three years.

(d) Adequate safety measures shall be provided and maintained.

(e) Design-Builder shall inspect all Materials upon delivery to the site for compliance with Contract requirements. All non-conforming Materials shall be rejected and removed from the site.

106.08—Storing Materials

Materials shall be stored in a manner so as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Department, Materials shall be stored in weatherproof buildings on wooden platforms or other hard, clean surfaces that will keep the Material off the ground. Materials shall be covered when directed by the Department. Stored Material shall be located so as to facilitate their prompt inspection. Approved portions of the Right of Way may be used for storage of Material and Equipment and for plant operations. However, Equipment and Materials shall not be stored within the clear zone of the travel lanes open to traffic.

Additional required storage space shall be provided by the Design-Builder at his expense. Private property shall not be used for storage purposes without the written permission of the owner or lessee. The Design-Builder shall furnish copies of the owner's written permission to the Department. Upon completion of the use of the property, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored.

Chemicals, fuels, lubricants, bitumens, paints, raw sewage, and other harmful materials as determined by the Department shall not be stored within any floodplain unless no other location is available and only then shall the material be stored in a secondary containment structure(s) with an impervious liner. Also, any storage of these materials in proximity to natural or man-made drainage conveyances or otherwise where the materials could potentially reach a waterway if released under adverse weather conditions, must be stored in a bermed or diked area or inside a container capable of preventing a release. Double-walled storage tanks shall meet the berm/dike

containment requirement except for storage within flood plains. Any spills, leaks, or releases of such materials shall be addressed in accordance with Section 107.16(b). Accumulated rain water may also be pumped out of the impoundment area into approved dewatering devices

106.09—Handling Materials

Materials shall be handled in a manner that will preserve their quality, integrity, and fitness for the Work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of materials.

106.10—Unacceptable Materials

Materials that do not conform to the requirements of the Contract Documents shall be considered unacceptable. Such Materials, whether in place or not, will be rejected and shall be removed from the site of the Work. If it is not practical for the Design-Builder to remove rejected Material immediately, the Department will mark the Material for identification. Rejected Material whose defects have been corrected shall not be used until approval has been given by the Department. The Department shall file documentation of the correction with resolution of the Non-conformance report ("NCR").

106.11—Material Furnished by the Department

The Design-Builder shall furnish all Materials required to complete the Work except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Design-Builder at the points specified in the Contract. The cost of handling and placing Materials after delivery to the Design-Builder shall be included in the Contract Price

After receipt of the Materials, the Design-Builder shall be responsible for Material delivered to him, including shortages, deficiencies, and damages that occur after delivery, and any demurrage charges.

106.12—Critical Materials (Not Used)

SECTION 107—LEGAL RESPONSIBILITIES

107.01—Legal Requirements to Be Observed (Refer to Part 4 - General Conditions – Section 2.5, Legal Requirements)

107.02—Permits, Certificates, and Licenses. (Refer to Part 4 - General Conditions – Section 2.6, Governmental Approvals, and Section 3.5, Governmental Approvals)

107.03—Federal-Aid Provisions

When the U.S. Government pays all or any portion of the cost of a project, the Design-Builder shall comply with all applicable federal Legal Requirements. The Work shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party to the Contract.

107.04—Furnishing Right of Way

The Design-Builder shall secure necessary rights of way and easements in advance of construction, in accordance with the provisions of the Contract. The Department will not be responsible for any delay in the acquisition of a Right of Way other than consideration of an extension of time. Easements for temporary uses and detours requested by the Design-Builder and approved by the Department in lieu of a detour within the Right of Way or Easement area shall be acquired by the Design-Builder without the Department being a party to the agreement, unless otherwise expressly stated in Part 2 of the Contract Documents.

107.05—Patented Devices, Materials, and Processes (Refer to Part 4 - General Conditions – Article 7, Indemnification)

107.06—Personal Liability of Public Officials

In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Board, Commissioner, Department, or their authorized representatives, either personally or as officials of the Commonwealth. In all such matters, they act solely as agents and representatives of the Commonwealth.

107.07—No Waiver of Legal Rights

The Commonwealth shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after final acceptance of the Work and payment therefore from showing (1) the true amount and character of the work performed and Materials furnished by the Design-Builder, (2) that any such measurement, estimate, or certificate is untrue or incorrectly made, or (3) that the work or Materials do not comply with the provisions of the Contract. The Commonwealth shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Design-Builder or his Surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

107.08—Protecting and Restoring Property and Landscape

The Design-Builder shall preserve property and improvements along the boundary lines of and adjacent to the Work unless their removal or destruction is specified in the Contract Documents. The Design-Builder shall use suitable precautions to prevent damage to such property.

When the Design-Builder finds it necessary to enter on private property, beyond the limits of the construction Easement shown in the Contract Documents, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to the Department.

The Design-Builder shall be responsible for any damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or attributable to defective work or Materials. This responsibility shall not be released until final acceptance of the Project and a written release from the owner or lessee of the property is obtained.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or in consequence of the non-execution thereof on the part of the Design-Builder, the Design-Builder shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Department, or making settlement with the property owner. The Design-Builder shall secure from the owner a release from any claim against the Department without additional compensation therefore. A copy of this release shall be furnished the Department.

107.09—Design-Builder's Responsibility for Utility Property and Services

At points where the Design-Builder's operations are on or adjacent to the properties of any utility, including railroads, and damage to which might result in expense, loss, or inconvenience, work shall not commence until arrangements necessary for the protection thereof have been completed.

The Design-Builder shall cooperate with owners of utilities so that removal and adjustment operations may progress in a timely, responsible, and reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate fully with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Design-Builder's work operations require the disconnection of "in service" fire hydrants, the Design-Builder shall notify the locality's fire department or communication center at least 24 hours prior to disconnection. In addition, the Design-Builder shall notify the locality's fire department or communications center no later than 24 hours after reconnection of such hydrants. The Design-Builder shall be responsible for any damage to utilities that, in the investigation and determination of the Department, is found to be attributable to the Design-Builder's neglect, means, or methods of performing the Work.

Nothing in this Section shall be construed to be in conflict with the provisions of Section 107.08.

The Design-Builder shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* (the Miss Utility law). The Design-Builder shall wait a minimum of 48 hours after notifying the Miss Utility notification center before commencing Excavation work. The Design-Builder may commence Excavation work after 48 hours only if confirmed through the Ticket Information Exchange ("TIE") System that all applicable utilities have either marked their underground line locations or reported that no lines are present in the Work vicinity. The Design-Builder shall wait an additional 24 hours before commencing Excavation operations if any utility operators have failed to respond to the TIE within the first 48 hours.

107.10—Restoration of Work Performed by Others

The Department may construct or reconstruct any utility service within the construction limits or grant a permit for the same at any time. The Design-Builder shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time, unless the Design-Builder's Work is damaged, altered or impeded by the condition.

When authorized by the Department, the Design-Builder shall allow any Person to make an opening in the Highway within the limits of the Project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits. When directed by the Department, the Design-Builder shall satisfactorily repair portions of the Work disturbed by the openings. The work for such repairs as authorized and directed by the Department will be paid for in accordance with the requirements of Section 109.05 and shall be subject to the same conditions as the original work performed.

107.11—Use of Explosives

The Design-Builder shall be responsible for damage resulting from the use of explosives. Explosives shall be stored in a secure manner in compliance with federal, state, and local laws and ordinances.

The Design-Builder shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the Work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. The review of the Design-Builder's plan of operations, blasting plan and the notification of property owners shall in no way relieve the Design-Builder of his responsibility for damage resulting from his blasting operations.

107.12—Responsibility for Damage Claims **(Refer to General Conditions,** Article 7 **Indemnification**

107.13—Labor and Wages

The Design-Builder shall comply with the provisions and requirements of the workers' compensation law and public statutes that regulate hours of employment on public work.

(a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Contract, shall be expressly made a part of any Contract hereunder. The Contractor and his agents shall promptly comply with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Contractor shall be responsible for determining local practices with regard to the application of the various labor classifications. For additional details of predetermined minimum wage rates, see Exhibit 107.13 attached herewith.

(b) **Labor Rate Forms:** The Design-Builder shall complete Form C-28, indicating by classification the total number of Employees, excluding executive and administrative Employees, employed on the Project. The Contractor shall also indicate on the form the compensation rate per hour for each classification. The Contractor shall submit an original and two copies of the form prior to the due date of the second estimate for payment and for each 90-day period thereafter until the Work specified in the Contract has been completed.

If at the time of final acceptance the period since the last labor report is 30 days or more, the Contractor shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

107.14—Equal Employment Opportunity

The Design-Builder shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity.

The Design-Builder shall maintain the following records and reports as required by the contract EEO provisions:

a. record of all applicants for employment

b. new hires by race, work classification, hourly rate, and date employed

c. minority and non-minority Employees employed in each work classification

d. changes in work classifications

e. Employees enrolled in approved training programs and the status of each

f. minority Subcontractor or Subcontractors with meaningful minority group representation

g. copies of Form C-57 submitted by Subcontractors

If the Contract has a stipulation or requirement for trainees, the Design-Builder shall submit semiannual training reports in accordance with the instructions shown on the forms furnished by the Department. If the Design-Builder fails to submit such reports in accordance with the instructions, his monthly progress estimate for payment may be delayed.

The Design-Builder shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Contract. The Design-Builder shall comply with the specific EEO requirements

specified herein and shall include these requirements in every subcontract of $10,000 or more with such modification of language as may be necessary to make them binding on the Subcontractor.

(a) **EEO Policy:** The Design-Builder shall accept as operating policy the following statement:

It is the policy of this Company to assure that applicants are employed and that Employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.

(b) **EEO Officer:** The Design-Builder shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active contractor EEO program and who shall be assigned adequate authority and responsibility to do so.

(c) **Dissemination of Policy:**

1. Members of the Design-Builder's staff who are authorized to hire, supervise, promote, and discharge Employees or recommend such action or are substantially involved in such action shall be made fully aware of and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:

   a. Periodic meetings of supervisory and personnel office Employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.

   b. New supervisory or personnel office Employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within 30 days following their reporting for duty with the Design-Builder.

   c. The EEO Officer or appropriate company official shall instruct Employees engaged in the direct recruitment of Employees for the Project relative to the methods followed by the Design-Builder in locating and hiring minority group Employees.

2. In order to make the Design-Builder's EEO policy known to all Employees, prospective Employees, and potential sources of Employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Design-Builder shall take the following actions:

   a. Notices and posters setting forth the Design-Builder's EEO policy shall be placed in areas readily accessible to Employees, applicants for employment, and potential employees.

      The Design-Builder shall furnish, erect, and maintain at least two bulletin boards having dimensions of at least 48 inches in width and 36 inches in height at locations readily accessible to all personnel concerned with the Project. The boards shall be erected immediately upon initiation of the Work and shall be maintained until the completion of such Work, at which time they shall be removed from the Project. Each bulletin board shall be equipped with a removable glass or plastic cover that when in place will protect posters from weather or damage. The Design-Builder shall promptly post official notices on the bulletin boards.

b. The Design-Builder's EEO policy and the procedures to implement such policy shall be brought to the attention of Employees by means of meetings, employee handbooks, or other appropriate means.

(d) **Recruitment:**

1. When advertising for employees, the Design-Builder shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the Project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, the Design-Builder shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges, and minority group organizations. The Design-Builder shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to him for employment consideration.

3. The Design-Builder shall encourage his Employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all Employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with Employees.

(e) **Personnel Actions:** Wages, working conditions, and Employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.

1. The Design-Builder shall conduct periodic inspections of the Project sites to ensure that working conditions and Employee facilities do not indicate discriminatory treatment of personnel.

2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.

3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected individuals.

4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect Persons other than the complainant, corrective action shall include those individuals. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.

(f) **Training:**

1. The Design-Builder shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.

2. Consistent with work force requirements and as permissible under federal and State regulations, the Design-Builder shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

3. The Design-Builder shall advise Employees and applicants for employment of available training programs and the entrance requirements for each.

4. The Design-Builder shall periodically review the training and promotion potential of minority group Employees and shall encourage eligible Employees to apply for such training and promotion.

5. If the Contract does not provide a separate Pay Item for trainees, the cost associated with the training specified herein shall be included in the contract price.

6. If the Contract requires trainees, training shall be in accordance with the requirements of Section 518.

(g) **Unions:** If the Design-Builder relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Design-Builder, either directly or through his Design-Builder's Association acting as agent, shall include the following procedures:

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.

2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.

3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Design-Builder, the Design-Builder shall so certify to the Department and shall set forth what efforts he made to obtain the information.

4. If a union is unable to provide the Design-Builder with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Design-Builder shall, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group individuals and women. If union referral practice prevents the Design-Builder from complying with the EEO requirements, the Design-Builder shall immediately notify the Department.

(h) **Subcontracting:** The Design-Builder shall use best efforts to use minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. Design-Builders shall obtain lists of MBE, DBE, and WBE construction firms from the Department. If MBE, DBE, or WBE goals are established in the Proposal, the Design-Builder shall comply with the requirements of Section 107.15.

The Design-Builder shall use best efforts to ensure Subcontractor compliance with his EEO obligations.

(i) **Records and Reports:** The Design-Builder shall keep such records as are necessary to determine compliance with his EEO obligations. The records shall be designed to indicate the following:

1. the number of minority and non-minority group members and females employed in each work classification on the Project,

2. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force,

3. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female Employees, and

4. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their Employees.

Records shall be retained for a period of three years following completion of the Work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

Each month for the first three months after construction begins and every month of July thereafter for the duration of the Project, Form C-57 shall be completed to indicate the number of minority, non-minority, and female Employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three weeks after the reporting period. Failure to do so may result in delay of approval of the Design-Builder's monthly progress estimate for payment.

107.15—Use of Minority Business Enterprises ("MBEs")

Design-Builder shall comply with all requirements of Exhibit 107.15, attached herewith. This Exhibit is a Special Provision from the Department. When the term "Contractor" is used, it is intended to refer to "Design-Builder".

107.16—Environmental Stipulations

By signing the Proposal, the Offeror shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. 1857, et seq., as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq. as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the Department will be promptly notified prior to the Award of the Contract if the Offeror receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the Work or precautions described herein.

Reference is made in various subsections of this section to Tidewater, Virginia. For the purposes of identifying the affected regions assigned to this designation and the requirements therein Tidewater, Virginia is defined as the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland and York and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

(a) **Erosion and Siltation**: The Design-Builder shall exercise every reasonable precaution, including temporary and permanent soil stabilization measures, throughout the duration of the Project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and impoundments. Soil stabilization or erosion control measures shall be applied to erodible soil or ground materials exposed by any activity associated with construction, including clearing, grubbing, and grading, but not limited to local or on-site sources of materials, stockpiles, Disposal Areas and haul roads.

The Design-Builder shall comply with the requirements of Sections 301.02 and 303.03. Should the Design-Builder as a result of negligence or noncompliance leave an area exposed more than 15 days, the cost of temporary soil stabilization in accordance with the provisions of Section 303 shall be at the Design-Builder's expense.

Temporary measures shall be coordinated with the Work to ensure effective and continuous erosion and sediment control. Permanent erosion control measures and drainage facilities shall be installed as the Work progresses.

For projects that disturb 10,000 square feet or greater of land or 2,500 square feet or greater in Tidewater, Virginia, the Design-Builder shall have within the limits of the Project during land disturbance activities, an Employee certified by the Department in Erosion and Sediment control who shall inspect erosion and siltation control devices and measures for proper installation and operation immediately after each rainfall, at least daily during periods of prolonged rainfall, and weekly when no rainfall event occurs and promptly report their findings to the Inspector. Failure of the Design-Builder to maintain a certified Employee within the limits of the Project will result in the Engineer suspending work related to any land disturbing activity until such time as a certified Employee is present on the Project. Failure on the part of the Design-Builder to maintain appropriate erosion and siltation control devices in a functioning condition may result in the Department notifying the Design-Builder in writing of specific deficiencies. Deficiencies shall be corrected immediately. If the Design-Builder fails to correct or take appropriate actions to correct the specified deficiencies within 24 hours after receipt of such notification, the Department may do one or more of the following: require the Design-Builder to suspend work in other areas and concentrate efforts towards correcting the specified deficiencies, withhold payment of monthly progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Design-Builder.

(b) **Pollution:**

1. **Water:** The Design-Builder shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of rivers, streams, and impoundments. Pollutants such as, but not limited to, chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into Channels leading to them. The Design-Builder shall provide the Department a contingency plan for reporting and immediate actions to be taken in the event of a dump, discharge, or spill within eight hours after he has mobilized to the Project site.

   Construction discharge water shall be filtered to remove deleterious materials prior to discharge into State waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag. Dewatering bags shall conform to the requirements of Section 245. During specified spawning seasons, discharges and construction activities in spawning areas of State waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy Equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible materials and shall be removed by the Design-Builder to natural ground when the Department so directs.

   If the Design-Builder dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional Governmental Units in accordance with the requirements of the Contract and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

   Excavation material shall be disposed of in approved areas above the mean high water mark shown in the Contract Documents in a manner that will prevent the return of solid or suspended materials to State waters. If the mark is not shown on the Plans, the mean high water mark shall be considered the elevation of the top of stream banks.

   Constructing new Bridge(s) and dismantling and removing existing Bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or Disposable Materials into rivers, streams, or impoundments.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where identified on the Plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of Falsework, piling, debris, or other obstructions placed therein or caused by construction operations. Stabilization of the streambed and banks shall occur immediately upon completion of work if work is suspended for more than 15 days.

The Design-Builder shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Design-Builder shall design and provide temporary Channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Design-Builder shall submit a temporary relocation design to the Department for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the Work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract. Stabilization of the streambed and banks shall occur immediately upon completion of, or during the Work, if the Work is suspended for more than 15 days.

Temporary Bridges or other minimally invasive structures shall be used wherever the Design-Builder finds it necessary to cross a stream more than twice in a 6 month period unless otherwise authorized by water quality permits issued by the U. S. Army Corps of Engineers, Virginia Marine Resources Commission, or the Virginia Department of Environmental Quality for the Contract.

Conduct all operations near rivers, streams, or impoundments in accordance with applicable water quality permits. Do not conduct clearing or grubbing within 100 feet of the limits of Ordinary High Water or a delineated wetland until authorized by the Department.

2. **Air:** The Design-Builder shall comply with the provisions of the Contract and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

   Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Design-Builder shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

   Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board.

   Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos or where the Design-Builder's methods for such actions will produce friable asbestos.

3. **Noise:** The Design-Builder's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall not exceed 80 decibels. Such noise level measurements shall be taken at a point on the perimeter of the construction limit that is closest to the adjoining property on which a noise sensitive activity is occurring. A *noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose and not present an unreasonable public nuisance. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

The Design-Builder shall monitor construction-related noise. If construction noise levels exceed 80 decibels during noise sensitive activities, the Design-Builder shall take corrective action before proceeding with operations. The Design-Builder shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

The Department may prohibit or restrict to certain portions of the Project any work that produces objectionable noise between 10 P.M. and 6 A.M. If other hours are established by local ordinance, the local ordinance shall govern.

Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

When feasible, the Design-Builder shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

These requirements shall not be applicable if the noise produced by sources other than the Design-Builder's operation at the point of reception is greater than the noise from the Design-Builder's operation at the same point.

(c) **Forests:** The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Design-Builder shall cooperate with the proper authorities of Governmental Units in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Design-Builder upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Design-Builder shall negotiate with the proper forest official for compensation for such labor, tools, or equipment

(d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of Work, the Design-Builder shall act immediately to suspend work at the site of the discovery and notify the Engineer. The Engineer will immediately notify the proper State authority charged with the responsibility of investigating and evaluating such finds. The Design-Builder shall cooperate and, upon the request of the Engineer, assist in protecting, mapping, and removing the findings. Labor, tools, or Equipment furnished by the Design-Builder for such work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the Commonwealth unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such findings delay the progress or performance of the Work, the Design-Builder shall notify the Department in accordance with the provisions of Sections 108.03 and Section 109.05.

(e) **Storm Water Pollution Prevention Plan**

The Storm Water Pollution Prevention Plan ("SWPPP") is comprised of, but not limited to, the Erosion and Sediment Control ("ESC") Plan, the Storm Water Management ("SWM") Plan, and related requirements contained within the Contract Documents and shall be required for all land-disturbing activities that disturb 10,000 square feet or greater, or 2,500 square feet or greater in Tidewater, Virginia.

For land-disturbing activities that disturb 1 acre or greater, or 2,500 square feet or greater in an area designated as a Chesapeake Bay Preservation Area, coverage under the Department of Conservation and Recreation's Virginia Storm Water Management Program ("VSMP") General Construction Permit DCR-01 is required. Where applicable, the Department will apply for and retain coverage under this permit for the land disturbing activity. The requirements of this permit will be satisfied by the Design-Builder's compliance with the Project's SWPPP terms and conditions.

The Design-Builder shall be responsible for reading, understanding, and complying with the terms and conditions of the DCR-01 General Permit and the Project's SWPPP as follows:

1. **Project Implementation Responsibilities**

   The Design-Builder shall be responsible for the installation, maintenance, inspection, and ensuring the functionality of all erosion and sediment control measures on a daily basis and all other storm water and pollutant runoff control measures identified within or referenced within the Contract Documents or applicable Governmental Approvals.

   The Design-Builder shall take all reasonable steps to prevent or minimize any storm water or non-storm water discharge that will have a reasonable likelihood of adversely affecting human health or public or private properties.

2. **Certification Requirements**

   In addition to satisfying the personnel certification requirements contained herein, the Design-Builder shall certify his activities by completing, signing, and submitting Form C-45 VDOT SWPPP Contractor and Subcontractor Certification Statement to the Engineer at least 7 days prior to commencing any Project-related land-disturbing activities, both on-site and off-site.

3. **Off Site (Outside the Construction Limits) Requirements**

   The Design-Builder shall develop erosion and sediment control plan(s) and storm water pollution prevention plan(s) for submission and acceptance by the Engineer prior to usage of any support facilities, off-site Borrow and Disposal Areas, construction materials or Equipment storage areas, and any other areas that may generate a storm water or non-storm water discharge directly related to the construction process. Such plans, upon acceptance, shall become a part of and subject to the overall Project plan, the VSMP General Construction Permit, and all other contract requirements.

4. **Reporting Procedures**

   a. **Inspection Requirements**

      The Design-Builder shall be responsible for conducting inspections in accordance with the requirements herein. The Design-Builder shall document such inspections by completion of Form C-107 (a) and (b), Construction Runoff Control Inspection Form and Continuation Sheet, in strict accordance with the directions contained within the form.

   b. **Unauthorized Discharge Requirements**

      The Design-Builder shall not discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances nor shall otherwise alter the physical, chemical, or biological properties of such waters that render such waters detrimental for or to domestic use, industrial consumption, recreational or other public uses.

      (1). **Notification of non-compliant discharges**

         The Design-Builder shall immediately notify the Department upon the discovery of or potential of any unauthorized, unusual, extraordinary, or non-compliant discharge from the land disturbing activity. Where immediate notification is not possible, such notification shall be not later than 24 hours after said discovery.

      (2). **Detailed report requirements for non-compliant discharges**

The Design-Builder shall submit to the Department within 5 days of the discovery of any actual or potential non-compliant discharge a written report describing details of the discharge to include its volume, location, cause, and any apparent or potential effects on private or public properties and State waters or endangerment to public health, as well as steps being taken to eliminate the discharge. A completed Form C-107 (a) and (b) shall be used for such reports.

5. **Plans, Changes, Deficiencies, and Revisions**

a. **Contractor SWPPP**

The Design-Builder shall develop and provide a SWPPP that documents the location and description of potential pollutant sources such as vehicle fueling areas, storage areas for fertilizers or chemicals, sanitary waste facilities, construction and waste material storage areas, etc. prior to any such pollutant sources being established on the Project site. Such plans and documentation shall include a description of the controls to reduce, prevent, and control pollutants from these sources including spill prevention and response. The Design-Builder shall submit such plans and documentation as specified herein to the Department and, upon review and approval, they shall immediately become a component of the Project's SWPPP and subject to all corresponding requirements contained therein.

The Design-Builder shall ensure that the SWPPP is kept on the Project site at all times in accordance with the provisions of Section 105.10 and shall be available for review upon request.

b. **Changes and Deficiencies**

The Design-Builder shall report to the Department when: (a) any planned physical alterations or additions are made to the land disturbing activity; or (b) deficiencies in the Contract Documents are discovered that could significantly change the nature or increase the quantity of the pollutants discharged from the land disturbing activity to surface waters.

c. **Revisions to the SWPPP**

Where site conditions or construction sequencing or scheduling necessitates revisions or modifications to the erosion and sediment control plan or any other component of the SWPPP for the land disturbing activity, such revisions or modifications shall be approved by the Department and shall be documented by the Design-Builder on a designated plan set (Record Set). Such Plans shall be kept on the Project site at all times and shall be available for review upon request.

107.17—Construction Safety and Health Standards

Compliance with construction safety and health standards is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Design-Builder and any Subcontractor shall not require any worker employed in performance of the Contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with the requirements of Section 107 of the Contract Work Hours and Safety Standards Act.

The Design-Builder shall comply with the Virginia Occupational Safety and Health Standards adopted under the *Code of Virginia* and the duties imposed under the Code. Any violation of the requirements or duties that is brought to the attention of the Design-Builder by the Department or any other individual shall be immediately abated.

At a minimum, all Design-Builder personnel shall comply with the following unless otherwise determined unsafe or inappropriate in accordance with OSHA regulations:

1. Hard hats shall be worn while participating in or observing all types of field work when outside of a building or outside of the cab of a vehicle, and exposed to, participating in, or supervising construction.

2. Respiratory protective equipment shall be worn whenever an individual is exposed to any item listed in the OSHA Standards as needing such protection unless it is shown that the Employee is protected by engineering controls.

3. Adequate eye protection shall be worn in the proximity of grinding, breaking of rock or concrete, while using brush chippers, striking metal against metal ,or when working in situations where the eyesight may be in jeopardy.

4. A safety vest shall be worn by all exposed to vehicular traffic and construction Equipment.

5. Standards and guidelines of the current Virginia Work Area Protection Manual shall be used when setting, reviewing, maintaining, and removing traffic controls.

6. Flaggers shall be certified in accordance with the Virginia Flagger Certification Program.

7. No individual shall be permitted to position themselves under any raised load or between hinge points of Equipment without first taking steps to support the load by the placing of a safety bar or blocking.

8. Explosives shall be purchased, transported, stored, used, and disposed of by a Virginia State Certified Blaster in possession of a current criminal history record check and a commercial driver's license with Hazardous Materials endorsement and a valid medical examiner's certificate. All Federal, State, and local regulations pertaining to explosives shall be strictly followed.

9. All electrical tools shall be adequately grounded or double insulated. Ground Fault Circuit Interrupter (“GFCI”) protection must be installed in accordance with the National Electrical Code (“NEC”) and current Virginia Occupational Safety and Health agency (“VOSH”). If extension cords are used, they shall be free of defects and designed for their environment and intended use.

10. No individual shall enter a confined space without training, permits, and authorization.

11. Fall protection shall be required whenever an Employee is exposed to a fall six feet or greater.

107.18—Sanitary Provisions

The Design-Builder shall provide and maintain in a neat, sanitary condition such accommodations for the use of Employees as may be necessary to comply with the requirements of the State and local Board of Health or other bodies or tribunals having jurisdiction.

107.19—Railway-Highway Provisions

If the Design-Builder’s work requires hauling materials across the tracks of a railway, he shall make arrangements with the railway for any new crossing(s) required. Access to existing rail crossings with off-road heavy Equipment shall also be arranged by the Design-Builder. Charges made by the railway company for the construction or use of new or existing crossings and their subsequent removal and for watchperson or flagger service at such crossings shall be reimbursed by the Design-Builder directly to the railway company under the terms of their separate individual arrangements before final acceptance.

Work to be performed by the Design-Builder in construction on or over the railway Right of Way shall be performed at times and in a manner that will not unnecessarily interfere with the movement of trains or traffic on the railway

track. The Design-Builder shall use care to avoid accidents, damage, or unnecessary delay or interference with the railway company's trains or other property. If any interruption of railway traffic is required by the Design-Builder's actions, he shall obtain prior written approval from the railway company.

The Design-Builder shall conduct operations that occur on or over the Right of Way of any railway company fully within the rules, regulations, and requirements of the railway company and in accordance with the requirements of any agreements made between the Department and the railway company. The applicable portions of such agreements shall be provided by Department to Design-Builder upon Design-Builder's request, unless the Contract Documents require the Design-Builder to obtain such agreement.

(a) **Flagger or Watchperson Services:** Flagger or watchperson services required by the railway company for the safety of railroad operations because of work being performed by the Design-Builder or incidental thereto will be provided by the railway company. The cost for such services as required for work shown in the Contract Documents will be borne by the Design-Builder. Any cost of such services resulting from work not shown in the Contract Documents or for the Design-Builder's convenience shall be borne by the Design-Builder and shall be paid directly to the railway company(s) under the terms of their separate individual agreement.

No work shall be undertaken on or over the railway Right of Way until the watchpersons or flaggers are present at the Project site. The Design-Builder shall continuously prosecute the affected work to completion to minimize the need for flagger or watchperson services. Costs for such services that the Department determines to be unnecessary because of the Design-Builder's failure to give notice as required herein before initially starting, intermittently continuing, or discontinuing work on or over the railway Right of Way shall be borne by the Design-Builder and will be deducted from monies due him.

(b) **Approval of Construction Methods on Railway Right of Way:** The Design-Builder shall submit to the Department a plan of operations showing the design and method of proposed structural operations and shall obtain its approval before performing any work on the railway company's Right of Way unless otherwise indicated in the railroad agreement. The plan shall be clear and legible and details shall be drawn to scale. The plan shall incorporate any stipulations or requirements the railroad may impose for the evaluation of the Design-Builder's contemplated operations. The plan shall show, but not be limited to, the following:

1. proximity of construction operations to tracks
2. depth of Excavation with respect to tracks
3. description of structural units
4. vertical and horizontal clearances to be afforded the railroad during installation and upon completion of Excavation
5. sheeting and bracing
6. method and sequence of operations

Approval shall not relieve the Design-Builder of any liability under the Contract. The Design-Builder shall arrange the Work so as not to interfere with the railway company's operation except by agreement with the railway company.

(c) **Insurance:** In addition to insurance or bonds required under the terms of the Contract, the Design-Builder shall carry insurance covering operations affecting the property of the railway company. The original railroad protective liability insurance policy and certificate of insurance showing insurance carried by the Design-Builder and any Subcontractors shall be submitted to the railway company for approval and retention.

Neither the Design-Builder nor any Subcontractor shall begin any work affecting the railway company until the railway company has received the insurance.

Notice of any material change in or cancellation of the required policies shall be furnished the Department and the railway company at least 30 days prior to the effective date of the change or cancellation. The insurance shall be of the following kinds and amounts:

1. **Design-Builder's public liability and property damage insurance:** The Design-Builder shall furnish evidence to the Department with respect to the operations to be performed that he carries regular contractor's public liability insurance. The insurance shall provide for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or the death of one person and subject to that limit for each person a total limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence, and regular design-builder's property damage insurance providing for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total or aggregate limit of at least the dollar value specified in the Contract for all damages arising out of injury to or destruction of property during the policy period. The Design-Builder's public liability and property damage insurance shall include explosion, collapse, and underground damage coverage. If the Design-Builder subcontracts any portion of the Work, he shall secure insurance protection in his own behalf under the Contract's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of persons and injury to, or destruction of property as a result of Work undertaken by the Subcontractors. In addition, the Design-Builder shall provide similar insurance protection for and on behalf of any Subcontractors to cover their operation by means of separate and individual design-builder's public liability and property damage policies. As an alternative, he shall require each Subcontractor to provide such insurance in his own behalf.

2. **Railroad protective insurance and public liability and property damage:** The policy furnished the railway company shall include coverage for contamination, pollution, explosion, collapse, and underground damage. The policy shall be of the type specified hereinafter and shall be expressed in standard language that may not be amended. No part shall be omitted except as indicated hereinafter or by an endorsement that states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule. The form of the endorsement shall be approved as may be required by the supervising authority of the State in which the policy is issued. A facsimile of the Policy Declarations form as shown in the Proposal shall be made a part of the policy and shall be executed by an officer of the insurance company. The several parts of the requirements and stipulations specified or inferred herein may appear in the policy in such sequence as the company may elect.

   a. **For a policy issued by one company:**

      (NAME AND LOCATION OF INDEMNITY COMPANY), a _____ Insurance
      (Type of Company)
      Company, herein called the Company, agrees with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declarations made by the named insured and subject to all of the terms of his policy.

      For a policy issued by two companies:

      (NAME AND LOCATION OF INDEMNITY COMPANY) and
      (NAME AND LOCATION OF INDEMNITY COMPANY),
      each a _____ Insurance Company, herein called the Company, severally
      (Type of Company)
      agree with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declaration made by the

named insured and subject to all of the terms of this policy, provided the named Indemnity Company shall be the insured with respect to Coverage _____ and no other and the named Insurance Company shall be the insurer with respect to Coverage _____ and no other.

b. **Insuring agreements:**

(1) **Coverages: Coverage A—Bodily injury liability:** To pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease including death at any time resulting therefrom (hereinafter called bodily injury) either (1) sustained by any person arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations; or (2) sustained at the designated job site by the Design-Builder, any Employee of the Design-Builder, any employee of the governmental authority specified in Item 5 of the Policy Declarations, or any designated employee of the insured, whether or not arising out of such acts or omissions.

Coverage B—Property damage liability: To pay on behalf of the insured all sums the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property because of such injury or destruction (hereinafter called property damage) arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations.

Coverage C—Physical damage to property: To pay for direct and accidental loss of or damage to rolling stock and other contents, mechanical construction Equipment, or motive power Equipment (hereinafter called loss) arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Policy Declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

(2) **Definitions:** *Insured* means and includes the named insured and any executive officer, director, or stockholder thereof while acting within the scope of his duties as such.

Design-Builder means the Design-Builder designated in Item 4 of the Policy Declarations and includes all Subcontractors of the Design-Builder but not the named insured.

Designated employee of the insured means (1) any supervisory employee of the insured at the job site; (2) any employee of the insured while operating, attached to, or engaged on work trains or other railroad Equipment at the job site that is assigned exclusively to the Design-Builder; or (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the Design-Builder for prevention of accidents or protection of property, the cost of whose services is borne specifically by the Design-Builder or governmental authority.

Contract means any contract or agreement to carry a Person or property for a consideration or any lease, trust, or interchange contract or agreement respecting motive power, rolling stock, or mechanical construction Equipment.

(3) **Defense and settlement supplementary payments:** With respect to such insurance as is afforded by this policy under Coverages A and B, the Company shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages that are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false, or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient.

In addition to the applicable limits of liability, the Company shall pay (1) all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest on the entire amount of any judgment therein that accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment that does not exceed the limit of the Company's liability thereon; (2) premiums on appeal bonds required in any such suit and premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds; (3) expenses incurred by the insured for first aid to others that shall be imperative at the time of the occurrence; and (4) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

(4) **Policy period and territory:** This policy applies only to occurrences and losses during the policy period and within the United States, its territories or possessions, or Canada.

c. **Exclusions:** This policy does not apply to the following:

(1) liability assumed by the insured under any contract or agreement except a contract as defined herein;

(2) bodily injury or property damage caused intentionally by or at the direction of the insured;

(3) bodily injury, property damage, or loss that occurs after notification to the named insured of the acceptance of the Work by the governmental authority, other than bodily injury, property damage, or loss resulting from the existence or removal of tools, uninstalled Equipment, and abandoned or unused Materials;

(4) under Coverage A(1), B, and C, to bodily injury, property damage, or loss, the sole proximate cause of which is an act or omission of any insured;

(5) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, employment compensation, or disability benefits law or under any similar law; provided that the Federal Employer's Liability Act, *U.S. Code* (1946) Title 45, Sections 51-60, as amended, shall for the purpose of this insurance be deemed not to be any similar law;

(6) under Coverage B, to injury to or destruction of property owned by the named insured or leased or entrusted to the named insured under a lease or trust agreement;

(7) under any liability coverage, to injury, sickness, disease, death, or destruction (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or (2) resulting from the hazardous properties of nuclear material and with respect to which any Person is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof or the insured is (or had this policy not been issued would be) entitled to indemnity from the United States or any agency thereof under any agreement entered into by the United States, or any agency thereof, with any Person;

(8) under any Medical Payments Coverage or any Supplementary Payments provision relating to immediate medical or surgical relief or to expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any Person;

(9) under any liability coverage, to injury, sickness, disease, death, or destruction resulting from the hazardous properties of nuclear material if (1) the nuclear material is at any nuclear facility owned or operated by or on behalf of an insured or has been discharged or dispersed therefrom; (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or (3) the injury, sickness, disease, death, or destruction arises out of the furnishing by an insured of services, Materials, or parts for Equipment in connection with the planning, construction, maintenance, operation, or use of any nuclear facility; if such facility is located in the United States, its territories or possessions, or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility;

(10) under Coverage C, to loss attributable to nuclear reaction, nuclear radiation, or radioactive contamination or to any act or condition incident to any of the foregoing.

As used in exclusions (7), (8), and (9), the following definitions apply: *Hazardous properties* include radioactive, toxic, or explosive properties. *Nuclear material* means source material, special nuclear material, or byproduct material. *Source material, special nuclear material, and byproduct material* have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof. *Spent fuel* means any fuel element or fuel component (solid or liquid) that has been used or exposed to radiation in a nuclear reaction. *Disposable material* means material containing byproduct material and resulting from the operation by any Person of any nuclear facility included in the definition of nuclear facility under 1 or 2 below. *Nuclear facility* means:

(1) any nuclear reactor

(2) any equipment or device designed or used for separating the isotopes of uranium or plutonium; processing or utilizing spent fuel; or handling, processing, or packaging waste

(3) any equipment or device designed or used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 (or any combination thereof) or more than 250 grams of uranium 235

(4) any structure, basin, Excavation , premises, or place prepared or used for the storage or disposal of waste (includes the site on which any of the foregoing is located, all operation conducted on such site, and all premises used for such operations)

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, *injury* or *destruction* includes all forms of radioactive contamination of property.

d. **Conditions:** The following conditions, except conditions (3) through (12), apply to all coverages. Conditions (3) through (12) apply only to the coverage noted thereunder.

(1) **Premium:** The premium bases and rates for the hazards described in the Policy Declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the requirements of the manuals used by the company. The term “contract cost” means the total cost of all Work described in Item 6 of the Policy Declaration. The term “rental cost” means the total cost to the Design-Builder for rental or work trains or other railroad Equipment, including the remuneration of all employees of the insured while operating, attached to, or engaged thereon. The advance premium stated in the Policy Declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the Company’s rules, rates, rating plans,

premiums, and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the Company shall look to the Design-Builder specified in the Policy Declarations for any such excess. If the earned premium is less than the estimated advance premium paid, the Company shall return to the Design-Builder the unearned portion paid. In no event shall payment or premium be an obligation of the named insured.

(2) **Inspection:** The named insured shall make available to the Company records of information relating to the subject matter of this insurance. The Company shall be permitted to inspect all operations in connection with the Work described in Item 6 of the Policy Declarations.

(3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the Policy Declarations as applicable to "each person" is the limit of the Company's liability for all damages (including damages for care and loss of services) arising out of bodily injury sustained by one Person as the result of any one occurrence. The limit of such liability stated in the Policy Declarations as applicable to "each occurrence" is (subject to the provision respecting each Person) the total limit of the Company's liability for all such damage arising out of bodily injury sustained by two or more Persons as the result of any one occurrence.

(4) **Limits of liability, Coverages B and C:** The limit of liability under Coverages B and C stated in the Policy Declarations as applicable to "each occurrence" is the total limit of the Company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of all property of one or more Persons or organizations, including the loss or use of any property attributable to such injury or destruction under Coverage B, as the result of any one occurrence. Subject to the provision respecting "each occurrence", the limit of liability under Coverages B and C stated in the Policy Declaration as "aggregate" is the total limit of the Company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of property, including the loss or use of any property attributable to such injury or destruction under Coverage B.

Under Coverage C, the limit of the Company's liability for loss shall not exceed the actual cash value of the property, or if the loss is a part thereof, the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property of such part thereof with other of like kind and quality.

(5) **Severability of interests, Coverages A and B:** The term *the insured* is used severally and not collectively. However, inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability.

(6) **Notice:** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of able witnesses shall be given by or for the insured to the company or any of its authorized agents as soon as is practicable. If a claim is made or a suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons, or other process received by him or his representative.

(7) **Assistance and cooperation of the insured, Coverages A and B:** The insured shall cooperate with the Company and upon the Company's request attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits. Except at its own cost, the insured shall not voluntarily make any payment, assume any obligations, or incur any expense other than for first aid to others that shall be imperative at the time of an accident.

(8) **Action against Company, Coverages A and B:** No action shall lie against the Company unless as a condition precedent thereto the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the Company. Any Person who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No Person shall have any right under this policy to join the Company as a part to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

(9) **Action against Company, Coverage C:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

(10) **Insured's duties in event of loss, Coverage C:** In the event of loss, the insured shall protect the property, whether or not the loss is covered by this policy. Any further loss attributable to the insured's failure to protect shall not be recoverable under this policy. Reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request.

The insured shall also file with the Company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged property.

(11) **Appraisal, Coverage C:** If the insured and the Company fail to agree as to the amount of loss, either may demand an appraisal of the loss within 60 days after the proof of loss is filed. In such event the insured and the Company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. An award in writing or any two shall determine the amount of loss. The insured and the Company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

(12) **Payment of loss, Coverage C:** The Company may pay for the loss in money, but there shall be no abandonment of the damaged property to the Company.

(13) **No benefit to bailee coverage:** The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee (other than the named insured) liable for loss to the property.

(14) **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefore against any Person. The insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

(15) **Application of insurance:** The insurance afforded by this policy is primary insurance. If the insured has other primary insurance against a loss covered by this policy, the Company shall not be liable under the policy for a greater proportion of such loss than the applicable limit of liability stated in the Contract bears to the total applicable limit of all valid and equitable insurance against such loss.

(16) **3-year policy:** A policy period of 3 years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

(17) **Changes:** Notice to any agent of knowledge possessed by any agent or by any other Person shall not affect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms except by endorsement issued to form a part of this policy signed by *_____ provided, however, changes may be made in the written portion of the Policy Declaration by *_____ when initialed by such *_____ or by endorsement issued to form a part of this policy signed by such *_____. [*Insert titles of authorized company representatives.]

(18) **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon.

(19) **Cancellation:** This policy may be cancelled by the named insured by mailing to the Company written notice stating when the cancellation shall become effective. This policy may be cancelled by the Company by mailing to the named insured, Design-Builder, and governmental authority at the respective addresses shown in this policy written notice stating when such cancellation shall be effective (not less than 30 days thereafter). The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or the Company shall be equivalent to mailing. If the named insured cancels, the earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, the earned premium shall be computed pro rata. The premium may be adjusted either at the time cancellation is effected or as soon as practicable after the cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

(20) **Policy Declarations:** By acceptance of this policy, the named insured agrees that such statements in the Policy Declarations as are made by him are his agreements and representations, that his policy is issued in reliance on the truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

e. **For a policy issued by one company:**

In witness whereof, the _____ Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the Policy Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)	(Facsimile of Signature)
Secretary	President

For a policy issued by two companies:

In witness whereof, the _____ Indemnity Company has caused this policy with respect to Coverages _____ and such other parts of the policy as are applicable thereto to be signed by its president and a secretary at _____ and countersigned on the Policy Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)	(Facsimile of Signature)
Secretary	President

(d) **Submitting Copies of Insurance Policies:** Prior to beginning construction operations on or over the railway Right of Way, the Design-Builder shall submit to the Department evidence of the railway company's approval and a copy of the required insurance policies. The State will not be responsible for any

claims from the Design-Builder resulting from delay in the acceptance of any of these policies by the railway company other than consideration of an extension of time. If the delay is caused by the failure of the Design-Builder or his insurer to file the required insurance policies promptly, an extension of time will not be granted.

(e) **Beginning Construction:** Preliminary contingent work or other work by the railway company may delay the starting or continuous prosecution of the work by the Design-Builder. The Design-Builder shall be satisfied as to the probable extent of such work and its effect on the operations prior to submitting a bid for the work. The State will not be responsible for any claims by the Design-Builder resulting from such delays except that an extension of time may be considered.

(f) **Arranging for Tests:**

1. **Railroad Specifications:** When ordering Materials that are to conform to railroad specifications, the Design-Builder shall notify the railway company, who will arrange for tests. The Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the railroad specifications and not those of the Department.

2. **Highway Specifications:** When ordering Materials that are to conform to highway specifications, the Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the Standard Specifications.

107.20—Construction Over or Adjacent to Navigable Waters

The Department will obtain a permit from the U.S. Coast Guard for the anticipated construction or demolition activities of structures on Department projects that cross a waterway(s) under the jurisdiction of the U.S. Coast Guard. As the permit holder, the Department must apply to the U.S. Coast Guard for approval of permit modifications that the Design-Builder requests to the original Department permit.

Prior to starting demolition or construction operations the Design-Builder shall meet with the Department and the U.S. Coast Guard (U.S. Coast Guard Coordination Meeting) to present its planned operations and the potential impacts those operations may pose to water traffic. As part of this meeting, the parties shall establish in writing the proper protocol for emergency closures and be governed accordingly.

(a) Activities subject to Coast Guard regulation under the Permit. Following the U.S. Coast Guard Coordination meeting, the Design-Builder shall submit its proposed schedule of operations in writing to the Department. The Department shall review and provide written comments, if applicable, to the Design-Builder within 7 days following receipt of the Design-Builder's schedule of operations. The Design-Builder shall incorporate the Department's comments and submit its notice of scheduled operations to the Department and to the U.S. Coast Guard at least 30 days prior to commencement of any permitted construction or demolition operations. U.S. Coast Guard acceptance of the Design-Builder's written schedule of operations is a condition precedent to the Design-Builder's commencement of those operations.

(b) **Activities that require Channel closures or restrictions**. In addition to the submittal of its proposed schedule of operations as described in (a) above, Design-Builder shall submit Plans that comply with the Permit for Falsework, cofferdams, floating Equipment and other obstructions to the Channel or Channels to the Department. The Design-Builder's attention is directed to the possibility that advance notification for consideration of approval may vary depending on the type and duration of proposed closures, the time of year for requested closure(s), and location of existing Bridge(s) and waterway(s) involved, and the impact to entities served along or through the waterway(s). The Department shall review and provide written comments, if applicable, to the Design-Builder within thirty (30) days following receipt of the Design-Builder's Plans. The Design-Builder shall incorporate the Department's comments and submit its Plans to the Department and to the U.S. Coast Guard at least 30 days prior to commencement of any permitted construction or demolition operations. The Design-

Builder may not commence activities that require Channel closures or restrictions without the prior written approval of the Department and the U.S. Coast Guard. The Design-Builder shall be responsible for complying with all operational requirements that the U.S. Coast Guard may place on the Design-Builder as conditions of approval.

In addition, the Design-Builder shall request and obtain Department and U.S. Coast Guard approval in writing before commencing any operations that deviate from the Design-Builder's schedule of operations when these operations interfere or have the potential to interfere with navigation of water traffic outside of timeframes previously approved by the Department and the U.S. Coast Guard.

Notices shall be sent to the U.S. Coast Guard, Fifth District Bridge Office ("OBR"), 431 Crawford Street, Portsmouth, VA 23704-5004. Payment of any penalty or fine that may be levied by the U.S. Coast Guard for Design-Builder violations of Bridge regulations found in 33 CFR Parts 115, 116, 117 and 118 shall be the responsibility of the Design-Builder. Further, any delay to the contract as a result of actions or inaction by the Design-Builder relative to the requirements herein that are determined by the Department to be the fault of the Design-Builder will not be compensable.

The cost to comply with the requirements of this provision and to provide and maintain temporary navigation lights, signals and other temporary work associated with the structure(s) under this contract required by the U.S. Coast Guard for the protection of navigation during construction or demolition operations shall be included in price Proposal for other appropriate items.

107.21—Size and Weight Limitations

(a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Design-Builder shall comply with legal size and weight limitations in the hauling or moving of Material and Equipment on public Roads open to traffic unless the hauling or moving is covered by a hauling permit.

(b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Design-Builder shall comply with legal weight limitations in the hauling or moving of Material and Equipment on public Roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Design-Builder shall be liable for damage that results from the hauling or moving of Material and Equipment. The hauling or moving of Material and Equipment on the Pavement Structure or across any structure during various stages of construction shall be subject to additional restrictions as specified or directed by the Department.

(c) **Furnishing Items in Component Parts of Sections:** If the size or weight of fabricated or manufactured items together with that of the hauling or moving vehicle exceeds the limitations covered by hauling permit policies and other means of transportation are not available, permission will be given to furnish the items in component parts of sections with adequately designed splices or connections at appropriate points. Permission for such adjustments shall be requested in writing, and approval in writing shall be secured from the Department prior to fabrication or manufacture of the items. The request shall state the reasons for adjustment and shall be accompanied by supporting data, including Working Drawings where necessary.

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01—Prosecution of Work

The Design-Builder shall provide a sufficient force of workers, Materials, Equipment, and tools and shall prosecute the Work with such diligence as is required to attain and maintain a rate of progress necessary to ensure completion of the Project in accordance with the Contract Documents.

Once the Design-Builder has begun work, it shall be prosecuted continuously and to the fullest extent possible except for authorized suspensions ordered by the Department as defined in Section 108.05. If approval is given to

discontinue the Work temporarily, the Design-Builder shall notify the Department at least 24 hours in advance of resuming operations.

At least once every 30 days, or as specified in the Contract Documents, the Design-Builder shall meet with the Department to discuss his current progress relative to his SOR and to establish the approximate date for starting each critical inspection stage during the following 30 days. The Department shall be advised at least 24 hours in advance of any changes in the Design-Builder's planned operations or critical stage work requiring inspection. For the purposes stated herein, the SOR is defined in accordance with the provisions of Section 108.03.

108.02—Limitation of Operations

(a) General.

The Design-Builder shall conduct the Work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Design-Builder shall not open any work to the prejudice or detriment of work already started. The Department may require the Design-Builder to finish a section of work before work is started on any other section.

(b) Holidays

Except as is necessary to maintain traffic, work shall not be performed on Sundays or the following holidays without the permission of the Department: January 1, Easter, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

108.03—Progress Schedule (Refer to Part 3 - Lump Sum Design-Build Agreement – Article 11 - Other Provisions)

The Design-Builder shall submit a Baseline Schedule and updates in accordance with the requirements of the General Conditions of Contract. Payment for Material stockpiled or stored in accordance with the requirements of Section 109.08 will not be considered in determining the Design-Builder's rate of progress.

108.04—Determination and Extension of Contract Time Limit (Refer to Part 4 - General Conditions – Article 8 Time, Article 9 Changes to the Contract Price and Time, and Article 10 Contract Adjustments and Disputes)

108.05—Suspension of Work Ordered by the Department (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.06—Failure to Complete on Time

For each day that any work remains incomplete after the Contract Times specified for the completion of the Work, the Department will assess liquidated damages against the Design-Builder in accordance with the Contract.

108.07—Default of Contract (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.08—Termination of Contract (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.09—Acceptance

(a) **Design-Builder's Responsibility for Work**: Until Substantial Completion of the Work by the Department in accordance with the requirements of this Section, the Design-Builder shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. The Design-Builder shall rebuild, repair, restore, and make good on damage to any portion of the Work occasioned by any of the foregoing causes before final acceptance and shall bear the expense thereof.

In case of suspension of work, the Department shall issue instructions and directions to the Design-Builder as to the implementation of the suspension, which may include directing Design-Builder to develop a maintenance and transition plan. Unless specifically directed otherwise by the Department, Design-Builder shall, during the suspension period, continue to have full responsibility for the Project, including but not limited to its obligations to take such precautions as may be necessary to prevent damage to the Work, comply with Governmental Approvals, and ensure public safety. Such obligations include, but are not limited to, erosion control and drainage and erection of any necessary Temporary Structures, signs, or other facilities.

(b) Partial Acceptance: (Not Used)

(c) Substantial Completion and Final Acceptance: Within seven (7) days of Department's receipt of a written notice from the Design-Builder that it believes the Work, or a designated portion of the Work, is substantially complete in accordance with the Contract Documents, along with certification from the Quality Assurance Manager ("QAM") that such Work is substantially complete, the Department and Design-Builder shall conduct a joint inspection to determine whether the Work, or the designated portion thereof, is substantially complete. If the Department concludes that the applicable Work is not substantially complete, it will so advise the Design-Builder, whereupon the preceding process will continue until the Department agrees that the applicable Work is substantially complete.

Once the Work is substantially complete, then the Department will provide to the Design-Builder a written list of remaining items of Work that have to be completed to achieve Final Acceptance. Within seven (7) days of Department's receipt of Design-Builder's notice that it believes the Work is finally complete, the Department and Design-Builder shall conduct a joint inspection to verify that the Work is complete in accordance with the Contract Documents. If all Work specified in the Contract Documents has been completed, the inspection will constitute the final inspection, and the Department will make the final acceptance. The Design-Builder will be notified in writing of the determination of final acceptance within seven (7) days of the date of the Department's final acceptance.

108.10—Termination of Design-Builder's Responsibilities (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

SECTION 109—MEASUREMENT AND PAYMENT

109.01—Measurement of Quantities

Unless otherwise specifically stated to the contrary in Article 6 of the Agreement, this Section 109.01 will only be applicable to Contract Price adjustments made under Article 9 of the General Conditions.

The methods of measurement and computations to be used to determine quantities of Material furnished and work performed will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface area computations will be made along the surface and transverse measurements will be the surface measure shown in the Contract Documents or ordered in writing by the Department. Individual areas of obstructions with a surface area of 9 square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured in accordance with the neat lines shown in the Contract Documents

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which they are placed.

Allowance will not be made for surfaces placed over an area greater than that shown in the Contract Documents or for any Material moved from outside the area of the cross-section and lines shown in the Contract Documents.

When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in the Contract Documents, manufacturing tolerances established by the industries involved will be accepted.

(a) **Measurement by Weight**: Materials that are measured or proportioned by weight shall be weighed on accurate scales as specified in this Section. When Material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the Department and shall be bonded to the Commonwealth of Virginia in the amount of $10,000 for the faithful observance and performance of the duties of the weigh Person required herein. The bond shall be executed on a form having the exact wording as the Weigh Persons Surety Bond Form furnished by the Department and shall be submitted to the Department prior to the furnishing of the tonnage Material. No payment will be made for Materials delivered in excess of the legal load limits established for each truck.

The Design-Builder shall have the weigh person perform the following:

1. Post and furnish a weekly tare weight of each truck used and keep a record of them for 12 months.

2. Furnish a signed weigh ticket for each load that shows the date, truck number, load number, plant name, size and type of Material, Project number, schedule or purchase order number, and the weights specified herein.

3. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of Material, by contract, can be readily identified.

4. Submit by the end of the next working day a summary of the number of loads and total weights for each type of Material by contract.

Trucks used to haul Material being paid for by weight shall display the truck uniform identification number and legal gross and legal net weight limits. These markings shall be no less than 2 inches high and permanently stenciled on each side of the truck with contrasting color and located as to be clearly visible when the vehicle is positioned on the scales and observed from normal position of the weigh Person at the scale house.

Trucks used to haul Material shall be equipped with a cover suitable to protect the Material and to protect the traveling public.

The truck tare to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the nearest 20 pounds. At the option of the Design-Builder, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of Materials that subsequently pass through a stationary mixing plant.

Scales shall conform to the requirements for accuracy and sensitivity as set forth in the *National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices.* Scales used in the weighing of Materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least 18 months, and copies of all scale service representative test reports shall be forwarded to the Department.

The quantity of Materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall print the net weight of each load. The weigh ticket shall also show the legal gross weight for Material weighed on truck scales and the legal net weight for Material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for 48 hours provided satisfactory visual verification of weights can be made. The written permission of the District Materials Engineer shall be required for the operation of scales after 48 hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the Materials in place and unit weights determined by the Department or by other methods deemed appropriate to protect the interests of the Commonwealth.

(b) **Measurement by Cubic Yard**: Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except streambed gravel, will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for streambed gravel. Such vehicles may be of any size or type acceptable to the Department provided the body is of such shape that the actual contents can be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity.

When approved by the Department in writing, Material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by the Department and shall be agreed to by the Design-Builder before they are used.

(c) **Measurement by Lump Sum**: When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit is specified as a Pay Item, the unit of measurement will be lump sum, and shall include all necessary fittings and accessories. The quantities may be shown in the Contract Documents for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only. Items that are to be measured as complete units will be counted by the Department in the presence of a representative of the Design-Builder.

(d) **Specific Items:**

1. **Concrete (Measured by Volume Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.

2. **Concrete (Measured by Square or Lineal Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their areas or measuring linearly along the item's surface.

3. **Excavation, Embankment, and Borrow**: In computing volumes of Excavation , Embankment, and Borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.

4. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60 degrees F using the following correction factors:

   a. 0.00035 per degree F for petroleum oils having a specific gravity 60/60 degrees F above 0.966

   b. 0.00040 per degree F for petroleum oils having a specific gravity 60/60 degrees F between 0.850 and 0.966

   c. 0.00025 per degree F for emulsified asphalt

Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60 degrees F:

$$V^1 = V/K(T—60) + 1$$

Where:
V = volume of asphalt to be corrected;
V^1 = volume of asphalt at 60 degrees F;
K = correction factor (coefficient of expansion); and
T = temperature in degrees F of asphalt to be corrected.

When asphalt is delivered by weight, the volume at 60 degrees F will be determined by dividing the net weight by the weight per gallon at 60 degrees F.

Asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the work.

When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

Only the quantity of asphalt actually placed in the work and accepted will be considered in determining the amount due the Design-Builder.

5. **Timber**: Timber will be measured in units of 1,000 foot-board-measure actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

6. **Equipment rental**: Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project except when another method of measurement is specified.

109.02—Plan Quantities (Not Used)

109.03—Scope of Payment

Payments to the Design-Builder will be made for the Work in accordance with the Agreement.

The Design-Builder shall accept the compensation provided for in the Contract as full payment for the following:

(a) furnishing all Materials, labor, tools, Equipment, and incidentals necessary to complete the work

(b) performing all Work contemplated in the Contract

(c) all loss or damage arising from the nature of the Work or from action of the elements or any other unforeseen difficulties that may be encountered during prosecution of the Work and until its final acceptance

(d) all risks of every description connected with the prosecution of the Work

(e) all expenses incurred in consequence of the suspension of the Work as herein authorized

(f) any infringement of patent, trademark, or copyright

(g) the completion of the Work in accordance with the requirements of the Contract

The payment of any partial estimate prior to final acceptance of the Project as provided for in Section 108.09 shall in no way affect the obligation of the Design-Builder to repair or renew any defective parts of the construction or to be responsible for all damages attributable to such defects.

109.04—Compensation for Altered Quantities [Refer to Agreement (Article 6, Contract Price) and General Conditions (Article 9, Changes to Contract Price and Time)]

109.05—Contract Price Adjustments

Contract Price adjustments shall be made in conformance with the requirements of Article 9 of the General Conditions. In the event the Contract Price adjustment is to be made under Subparagraphs .3 or .4 of Section 9.4.1, or in the event of claims by Design-Builder under Article 10, then the rates for labor, Equipment, Materials and otherwise will be compensated in the following manner:

(a) **Labor:** Unless otherwise approved, the Design-Builder will receive the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Design-Builder's most recent payroll. If workers performing the class of labor needed have not been employed on the Project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the Project, if applicable. An amount equal to 45 percent of the approved payroll will be included in the payment for labor to cover administrative costs, profit, and benefits or deductions normally paid by the Design-Builder.

(b) **Insurance and Tax:** The Design-Builder will receive an amount equal to 25 percent of the approved payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes.

(c) **Materials:** The Design-Builder will receive the actual cost of Materials accepted by the Department that are delivered and used for the work including taxes, transportation, and handling charges paid by the Design-Builder, not including labor and Equipment rentals as herein set forth, to which 15 percent of the cost will be added for administration and profit. The Design-Builder shall make every reasonable effort to take advantage of trade discounts offered by Material suppliers. Any discount received shall pass through to the Department. Salvageable temporary construction Materials will be

retained by the Department, or their appropriate salvage value shall be credited to the Commonwealth, as agreed on by the Department.

(d) **Equipment:** The Design-Builder shall provide the Department a list of all Equipment to be used in the work. For each piece of Equipment, the list shall include the serial number; date of manufacture; location from which Equipment will be transported; and for rental Equipment, the rental rate and name of the company from which it is rented. The Design-Builder will be paid rental rates for pieces of machinery, Equipment, and attachments necessary for prosecution of the work that are approved for use by the Department. Equipment rental will be measured by time in hours of actual time engaged in the performance of the work and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate adjustment tables that are current at the time the extra work is performed. Adjustment factors or rate modifications indicated in the *Rental Rate Blue Book* will not be considered when acceptable rates are determined. Hourly rates for Equipment on standby will be at 50 percent of the rate paid for Equipment performing work**.** Operating costs shall not be included in the standby rate. For the purposes herein "standby time" is defined as the period of time Equipment ordered to the jobsite by the Department is available on-site for the work but is idle for reasons not the fault of the Design-Builder or normally associated with the efficient and necessary use of that Equipment in the overall operation of the work at hand.

Payment will be made for the total hours the Equipment is performing work. When Equipment is performing work less than 40 hours for any given week and is on standby, payment for standby time will be allowed for up to 40 hours, minus hours performing work. Payment will not be made for the time that Equipment is on the Project in excess of 24 hours prior to its actual performance in the work. An amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be paid for all hours the Equipment is performing work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Department.

The Design-Builder will be paid freight cost covering the moving of Equipment to and from the specific work operation provided such cost is supported by an invoice showing the actual cost to the Design-Builder. However, such payment will be limited to transportation from the nearest source of available equipment. If Equipment is not returned to the nearest equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for Equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such Equipment by the Design-Builder at the time of the performance of the extra work. In the absence of such rates, prevailing rates being paid in the area where the authorized work is to be performed shall be used.

If the Design-Builder does not possess or have readily available Equipment necessary for performing the extra work and such Equipment is rented from a source other than a company that is an Affiliate, payment will be based on actual invoice rates, to which 15 percent of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be added for each hour the Equipment is performing work.

(e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for Equipment as defined in the *Rental Rate Blue Book*, general superintendents, timekeepers, secretaries, the use of small hand held tools or other costs for which no specific allowance is herein provided. The Design-Builder will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific work as determined by the Department. The Design-Builder shall supply documented evidence of such costs.

(f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Design-Builder as payment in full for work performed on the basis described in this Section 109.05. At the end of each day, the Design-Builder's Representative and the Inspector shall compare and reconcile records of the hours of work and Equipment, labor, and Materials used in such work. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of Materials or labor, and number and types of Equipment.

If all or a portion of the work is performed by an approved Subcontractor, the Design-Builder will be paid 10 percent of the subcontract net costs to cover the Design-Builder's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the labor, Materials, and Equipment from the other costs.

(g) **Statements:** Payments will not be made for work performed on the basis described in this Section 109.05 until the Design-Builder has furnished the Department duplicate itemized statements of the cost of such work detailed as follows:

1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and Superintendent

2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of Equipment

3. quantities of Materials, prices, and extensions

4. transportation of Materials

Statements shall be accompanied and supported by invoices for all Materials used and transportation charges. However, if Materials used are not specifically purchased for such work but are taken from the Design-Builder's stock, then in lieu of the invoices, the Design-Builder shall furnish an affidavit certifying that such Materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

109.06—Common Carrier Rates (Not Used)

109.07—Eliminated Items

The Department shall have the right to delete any item of Work in the Contract. In such case, the Department shall notify Contractor of such deletion and the parties shall proceed in accordance with Article 9 of the General Conditions.

109.08—Partial Payments

(a) General

Payment will be made in accordance with the Agreement and the General Conditions of the Contract.

(b) Payment To Subcontractors

Upon Department payment of the Subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Design-Builder for such work, the Design-Builder shall make compensation in full to the Subcontractor. For the purposes of this Section, payment of the Subcontractor's portion of the work shall mean that payment has been issued for that portion of the work that was identified on the monthly progress estimate for which the Subcontractor has performed service.

The Design-Builder shall make payment in full for the portion of the work identified on the monthly progress estimate to the Subcontractor who performed such work within seven days of the receipt of payment from the Department in accordance with the requirements of this Section. If the Design-Builder withholds any funds as part of his contract with the Subcontractor to ensure satisfactory compliance and completion and the Subcontractor achieves satisfactory compliance and completion as verified by payment from the Department to the Design-Builder, the Design-Builder shall make full payment to the Subcontractor within seven days.

If the Design-Builder fails to make payment to the Subcontractor within the time frame specified herein, the Subcontractor shall notify the Engineer and the Design-Builder's bonding company in writing. The Bonding Company shall be responsible for insuring payment in accordance with the requirements of this Section and Section 107.01.

(c.) Retainage (Not Used)

Retainage will be in accordance with the Agreement and the General Conditions of the Contract.

109.09—Payment for Material on Hand

When requested in writing by the Design-Builder, payment allowances may be made for Material secured for use on the Project. Such Material payments will be for only those actual quantities and cost identified as work packages in the contract, approved Work Orders, or otherwise documented as required to complete the Project and shall be in accordance with the following terms and conditions:

(a) **Structural Units:** An allowance of 100 percent of the cost to the Design-Builder for structural steel materials for fabrication not to exceed 60 percent of the contract price may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. An allowance of 100 percent of the cost to the Design-Builder for superstructure units, not to exceed 90 percent of the contract price, may be made when they have been fabricated. Prior to the granting of such allowances, the structural steel materials and fabricated units shall have been tested or certified and found acceptable to the Department and shall have been stored in accordance with the requirements specified herein.

(b) **Other Materials:** For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable Material, an allowance of 100 percent of the cost to the Design-Builder for Materials, not to exceed 90 percent of the contract price, may be made when such Material is delivered and stockpiled or stored in accordance with the requirements specified herein. Prior to the granting of such allowances, the Material shall have been tested and found acceptable to the Department.

(c) **Excluded Items:** No allowance will be made for cement, seed, plants, fertilizer, and other perishable material nor for fuels, form lumber, Falsework, Temporary Structures, ITS equipment, computer equipment, or other work that will not become an integral part of the finished construction.

(d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored Materials are lost or become damaged, the Design-Builder shall repair or replace them. If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store Materials within the limits of the Project, the Department may approve storage on private property or, for structural units, on the manufacturer or fabricator's yard. Requests for payment allowance for such Material shall be accompanied by a release from the owner 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:** If the Design-Builder requests a payment allowance for properly stored Material, he shall submit a certified and itemized inventory statement to the Department no earlier than five days and no later than two days prior to the progress estimate date. The statement shall be submitted on forms furnished by the Department and shall be accompanied by invoices or other documents that will verify the Material's cost. Following the initial submission, the Design-Builder shall submit to the Department a monthly-certified update of the itemized inventory statement within the same time frame. The updated inventory statement shall show additional Materials received and stored with invoices or other documents and shall list Materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If the Design-Builder fails to submit the monthly-certified update within the specified time frame, the Department will deduct the full amount of the previous statement from the progress estimate.

At the conclusion of the Project, the cost of Material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

109.10—Final Payment

Payment will be made in accordance with the Agreement and the General Conditions of Contract.

109.11—Exhibits

The following exhibits are specifically made a part of, and incorporated by reference into, these Division I Amendments to the Standard Specifications:

EXHIBIT 102.05(g.1)	--	SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL
EXHIBIT 102.05(g.2)	--	FHWA–1273, REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS
EXHIBIT 102.05(g.3)	--	NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)
EXHIBIT 107.13	--	PREDETERMINED MINIMUM WAGE RATES
EXHIBIT 107.15	--	SPECIAL PROVISION FOR SECTION 107.15

END OF PART 5
DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS

Exhibit 102.05(g.1)

S102CF1-0309

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
USE OF DOMESTIC MATERIAL

February 26, 2009

SECTION 102.05 PREPARATION OF BID of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as "Buy America", except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America regardless of the percentage they exist in the manufactured product or final form they take. Therefore, "Domestically produced in the United States of America" means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material) such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement "coating" is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.

For the purposes herein the manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and\or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America. The use of foreign source steel or iron billet is not acceptable under the provisions of Buy America. For the purposes of this provision all steel or iron material not meeting the criteria as domestically produced in the United States of America will be considered as "foreign" material. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein.

Domestically produced iron or steel ingots or billets shipped outside the United States of America for any manufacturing process and returned for permanent use in a project would not comply with "Buy America" requirements.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Section 635.410(b) of Title 23 CFR permits a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products

must not exceed one-tenth of one percent of the contract amount or $2500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.

In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth of one percent of the total contract cost or $2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

Waivers:

With prior concurrence from Federal Highway Administration (FHWA) headquarters, the Federal Highway Division Administrator may grant a waiver to specific projects provided it can be demonstrated:

1 that the use of domestic steel or iron materials would be inconsistent with the public interest; or

2. materials or products requested for use are not produced in the United States in sufficient or reasonably available quantities and are of satisfactory quality for use in the permanent work.

The waiver request shall be submitted with supportive information to include:

1. Project number\description, project cost, waiver item, item cost, country of origin for the product, reason for the waiver, and

2. Analysis of redesign of the project using alternative or approved equal domestic products

In order to grant such a waiver the request for the waiver must be published in the Federal Register for a period not less than 15 days or greater than 60 days prior to waiving such requirement. An initial 15 day comment period to the waiver will be available to the public by means of the FHWA website: http://www.fhwa.dot.gov/construction/contracts/waivers.cfm. Following that initial 15 day period of review and comment the request for waiver will be published by the FHWA in the Federal Register. The effective date of the FHWA finding, either to approve or deny the waiver request, will be 15 days following publication in the Federal Register.

Only the FHWA Administrator may grant nationwide waivers which still are subject to the public rulemaking and review process.

Alternative Bidding Procedures:

An alternative bidding procedure may be employed to justify the use of foreign iron and\or steel. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and\or iron materials.

In accordance with the provisions of Section 103.02 the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic iron or steel unless such total exceeds the lowest total bid based on furnishing foreign iron and\or steel by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron and\or steel based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic iron and\or steel in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign iron and\or steel materials meeting the other contract requirements into the work on the contract. If he chooses to submit such a

bid, that alternate bid shall clearly indicate which foreign iron and\or steel items will be permanently installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total “Foreign” bid.

In the event the contract is awarded to the bidder furnishing foreign iron and\or steel materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. index as stated in the Special Provision for Price Adjustment For Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to apply. In the event the contract is awarded to a bidder furnishing foreign iron and\or steel items and during the life of that contract the Contractor discovers he can not furnish foreign iron and\or steel material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such iron and\or steel materials meeting the contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked “Foreign” including Form C-7 and supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The “Foreign” bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor’s “Domestic” bid. The Contractor shall write the word “Foreign” by the bid total shown on Form C-7 as well as last page of Schedule of Items showing the total bid amount. The bidder shall also contact the State Contract Engineer to inform him that he is also submitting an alternate “Foreign” paper bid..

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and\or steel and prices given there for shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

Certification of Compliance:

Where domestic material is supplied, prior to final payment the Contractor shall furnish to the Department a certificate of compliance (such as may be furnished by steel mill test reports) that all steel and\or iron products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or $2,500, whichever is greater) and permanently incorporated into the work satisfies the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

In lieu of the Contractor providing personal certification, the Contractor may furnish a stepped certification in which each handler of the product, such as supplier, fabricator, manufacturer, processor, etc. furnishes an individual certification that their step in the process was domestically performed.

Exhibit 102.05(g.2)

SF010CF-0309

FHWA 1273, MEMORANDUM AND CFR CHANGE

January 19, 2009

REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (FHWA 1273) shall apply to this contract as well as the following:

- **FHWA memorandum with the subject titled "THE DISCONTINUANCE OF THE FHWA-45, FHWA-47 & FHWA-810"**. In accordance with this memorandum the Contractor shall be governed by the following:

  The submission of Form C-50 (FHWA 47) which is used to fulfill the reporting requirements of Section VI, Record of Materials, Supplies, and Labor of **FHWA 1273—Required Contract Provisions Federal-Aid Construction Contracts** is no longer required on Federal Aid Construction Contracts. Only that part of Section VI of **FHWA 1273** is thus eliminated. All the other parts remain in effect.

- **CFR (Code of Federal Regulations) change regarding Employee Social Security Numbers and Addresses on Payrolls**. In accordance with the US Department of Labor regulations change in 29 CFR Parts 3 and 5 the Contractor shall be governed by the following:

  Section V, Paragraph 2b of **FHWA 1273—Required Contract Provisions Federal-Aid Construction Contracts** is replaced with the following:

  The payroll records shall contain the name, and the last four digits of the social security number of each such employee, his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid.

==========

FHWA-1273 Electronic version -- March 10, 1994

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

Page
I. General 1
II. Nondiscrimination 2
III. Nonsegregated Facilities 5
IV. Payment of Predetermined Minimum Wage 6
V. Statements and Payrolls 10
VI. Record of Materials, Supplies, and Labor 11
VII. Subletting or Assigning the Contract 11
VIII. Safety: Accident Prevention 12
IX. False Statements Concerning Highway Project 12

X. Implementation of Clean Air Act and Federal Water Pollution Control Act 13
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion 13
XII. Certification Regarding Use of Contract Funds for lobbying 16

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendent and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

   Section I, paragraph 2;
   Section IV, paragraphs 1, 2, 3, 4, and 7;
   Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

   b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23

U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified

minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

   a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

   b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

   c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

   d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

   a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

   b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

   c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

   a. The records kept by the contractor shall document the following:

      (1) The number of minority and non-minority group members and women employed in each work classification on the project;

      (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

      (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

      (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

   b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

   a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

   b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

   c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

   a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

   b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

      (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

      (2) the additional classification is utilized in the area by the construction industry;

      (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

e The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of U.S. DOL) and Helpers:**

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of

Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage

and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain

written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. 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 (23 CFR 635).

   a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.

   b. "Specialty Items" shall be construed to be 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 on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall 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 of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project: **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. **Instructions for Certification - Primary Covered Transactions:**

   (Applicable to all Federal-aid contracts - 49 CFR 29)

   a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

   c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

   d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns

that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. **Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

FHWA MEMORANDUM

U.S. Department of Transportation
Federal Highway Administration

MEMORANDUM

Subject: **ACTION:** The Discontinuance of the FHWA-45, FHWA-47 & FHWA-810

Date: May 22, 2007

From: /s/ Original signed by
Dwight Horne,
Director Office of Program Administration

In Reply Refer to: HIPA-10

To: Directors of Field Services
Division Administrators
Federal Lands Administrator

Effective immediately, Divisions and/or our State Transportation Agency (STA) partners will no longer be required to submit data to HIPA-10 that is collected as it relates to:

The FHWA-45, Bid Price Data[1],

The FHWA-47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds[2], and

The FHWA-810, Bid Tabulation Data[3]

For several years, STAs have commented that the reports generated from the data collection efforts were of little utility and that there were statistical limitations, statistical significance, and accuracy issues with the data which were felt could result in misleading information. There was also a noted reporting burden on States and contractors. The suggestions have often been to eliminate the reporting requirements all together.

In 2003, the GAO conducted a review of the States' highway construction costs. As part of its review, the GAO reviewed FHWA's cost data collection requirements. In its discussions, the GAO also identified similar issues and concerns with the data series as discussed above. In a December 2003 report GAO made recommendations to FHWA to review the usefulness and accuracy and/or under reporting of the data collected.

As a result, FHWA has determined that it is appropriate to discontinue the reporting requirements for the FHWA 45, 47 and 810 as collection of this data for needed reports such as the "Highway Statistics" publication can be collected through other means. The main reasons for this decision are the strong disinterest in the data collection activities and comments provided to us by our STA partners suggesting that we are not collecting the data extensively enough to be of utility. We will also be going through an abridged regulatory update as appropriate to reflect this action.
Please contact Bob Wright, at 202-366-4630, to answer any questions and/or for additional information on this matter.

The FHWA 45, Bid Price Data, was collected on NHS projects over $500,000. The FHWA 45 served as a means to compute the highway construction bid price index, which is published in the document "Price

Trends for Federal-aid Highway Construction. The data was used in our "Highway Statistics" publication and by other outside sources, including its use by congressional committees in their deliberations on pending new highway legislation.

The FHWA 47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds, was collected on all NHS projects over $1,000,000. The FHWA 47 served as a means to collect data related to the quantities of materials, supplies and labor used for various types of highway construction. The data reported on this form was used primarily to compute usage factors for these various materials, supplies, and labor. These factors were used to determine the economic impacts of cuts or increases in the cost of Federal-aid highway construction.

FHWA 810, Bid Tabulation Data was collected on all NHS projects. The needs for the FHWA 810 have been to compute national summaries on the largest contract awards and contract size statistics. The data was also used to produce state-by-state summaries on contracts awards, number of bids and average number of bids.

Exhibit 102.05(g.3)

SF030AF-0708 Reissued July 2008

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

   Females- 6.9%
   Minorities - See Attachment "A"

   The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

   The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs <u>within 10 workings days</u> the award of any construction subcontract in excess of $10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As, used in this provision:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

   b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

   c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

   d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

   e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

   f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

   g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

   h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used m the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even thought the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246. as amended.

13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from Its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista: VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;	

VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.

022 Richmond, VA

SMSA Counties:

6140 Petersburg - Colonial Heights - Hopewell, VA 30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.

6760 Richmond, VA 24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.

Non-SMSA Counties 27.9
VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston

023 Norfolk - Virginia Beach - Newport News VA:

SMSA Counties:

5680 Newport News- Hampton, VA 27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.

5720 Norfolk - Virginia Beach - Portsmouth, VA - NC 26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.

Non-SMSA Counties 29.7
NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA lsle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.

Washington, DC:

020 Washington, DC.

SMSA Counties:

8840 Washington, DC - MD - VA 28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.

Non- SMSA Counties 25.2
MD Calvert; MD Frederick; MD St. Marys: MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren: VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.

Tennessee:

052 Johnson City - Kingsport - Bristol, TN - VA

SMSA Counties:

3630 Johnson City - Kingsport -Bristol, TN-VA 2.6
TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.

Non-SMSA Counties 3.2
TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.

Maryland:

019 Baltimore MD

Non-SMSA Counties 23.6

MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.

Exhibit 107.13

SF001AF-0708

Reissued July 2008

PREDETERMINED MINIMUM WAGE RATES

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON
DECISION OF THE SECRETARY

This case is before the Department of Labor pursuant to a request for a wage predetermination as required by law applicable to the work described.

A study has been made of wage conditions in the locality and based on information available to the Department of Labor the wage rates and fringe payments listed are hereby determined by the Secretary of Labor as prevailing for the described classes for labor in accordance with applicable law.

This wage determination decision and any modifications thereof during the period prior to the stated expiration date shall be made a part of every contract for performance of the described work as provided by applicable law and regulations of the Secretary of Labor, and the wage rates and fringe payments contained in this decision, including modifications, shall be the minimums to be paid under any such contract and subcontractors on the work.

The contracting officer shall require that any class of laborers and mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for determination.

Before using apprentices on the job the contractor shall present to the contracting officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and Training.

The contractor shall submit to the contracting officer written evidence of the established apprentice-journeyman ratios and wage in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

Fringe payments include medical and hospital care, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance (all designated as health and welfare), pensions, vacation and holiday pay, apprenticeship or other similar programs and other bona fide fringe benefits.

By direction of the Secretary of Labor

E. Irving Manger, Associate Administrator
Division of Wage Determinations
Wage and Labor Standards Administration

GENERAL DECISION: VA20080004 07/24/2009 VA4

Date: July 24, 2009
General Decision Number: VA20080004 07/24/2009

Superseded General Decision Number: VA20070004

State: Virginia

Construction Type: Highway

Counties: Amherst, Bedford, Campbell and Lynchburg* Counties in Virginia.

*INDEPENDENT CITY

HIGHWAY CONSTRUCTION PROJECTS (Excluding tunnels, building structures in rest area projects and railroad construction; bascule; suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008
2	07/24/2009

* SUVA1999-014 01/29/1999

	Rates	Fringes
BLASTER	$ 8.50	
Carpenters:		
Structure	$ 10.09	
Concrete Finisher	$ 10.00	
Electricians	$ 9.12	
FENCE ERECTOR	$ 7.86	
Form Setter	$ 8.48	
Guardrail erector	$ 9.27	
Laborers:		
Asphalt Rakers	$ 7.94	
Construction Workers I (Skilled Laborers)	$ 8.12	
Construction Workers II(Laborers)	$ 7.25	
Landscape Workers	$ 7.25	
Pipelayers	$ 7.25	
Painter, Bridge	$ 11.00	

PAINTER.....$ 11.00

Power equipment operators:
- Asphalt Distributor Operators.....$ 8.11
- Asphalt Paver Operators.....$ 8.15
- Backhoe Operators.....$ 10.44
- Bulldozer Operators, Utility.....$ 8.00
- Bulldozer Operators.....$ 8.97
- Concrete Finish Machine Operators, Utility.....$ 8.85
- Concrete Finish Machine/Screed Operators (Bridge).....$ 12.00
- Crane, Derrick, Dragline Operators.....$ 11.50
- Drill Operators.....$ 9.63
- Excavator Operators.....$ 12.00
- Front-End Loader Operators (2 yds. & under).....$ 9.44
- Front-End Loader Operators (Over 2 yds.).....$ 10.56
- Gradall Operators.....$ 14.00
- Hydro-Seeder Operators.....$ 8.00
- Mechanics.....$ 11.00
- Motor Grader Operators
  - Fine Grade.....$ 9.77
  - Rough Grade.....$ 10.95
- Pavement Planing Operators..$ 8.38
- Roller Operators
  - Finish.....$ 7.81
  - Rough.....$ 8.66
- Scraper Pan Operators.....$ 8.41
- Stone Spreader Operators....$ 8.25
- Tractor Operators (Utility).$ 7.70

Reinforcing metal workers.....$ 8.07

Structural workers.....$ 9.00

Truck drivers:
- Heavy Duty.....$ 8.44
- Multi-Rear Axle.....$ 8.18
- Tandem & Single Rear Axle...$ 7.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

END OF GENERAL DECISION.

GENERAL DECISION: VA20080013 07/24/2009 VA13

Date: July 24, 2009
General Decision Number: VA20080013 07/24/2009

Superseded General Decision Number: VA20070013

State: Virginia

Construction Type: Highway

Counties: Alleghany, Appomattox, Augusta, Bath, Bland, Buchanan, Buckingham, Buena Vista*, Carroll, Charlotte, Clifton Forge*, Covington*, Craig, Cumberland, Dickenson, Floyd, Franklin, Frederick, Galax*, Giles, Grayson, Halifax, Harrisonburg*, Henry, Highland, Lee, Lexington*, Martinsville*, Montgomery, Nelson, Norton*, Page, Patrick, Prince Edward, Pulaski, Radford*, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, South Boston*, Staunton*, Tazewell, Waynesboro*, Winchester*, Wise and Wythe Counties in Virginia.

*INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (Excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction and other major bridges)

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008
2	07/24/2009

* SUVA1999-016 02/11/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator	$ 10.95	
BLASTER	$ 11.33	
Carpenters:		
Structure	$ 9.99	
Concrete Finisher	$ 10.13	
Deckhand	$ 13.49	
Electricians	$ 14.00	
FENCE ERECTOR	$ 8.50	
Flagger	$ 7.25	

Form Setter.....$ 12.39

Guardrail erector.....$ 9.73

Laborers:
- **Asphalt Rakers.....$ 8.63**
- **Construction Workers I (Skilled Laborers).....$ 8.12**
- **Construction Workers II (Laborers).....$ 7.25**
- **Landscape Workers.....$ 7.25**
- **Pipelayers.....$ 8.95**
- **Power Tool Operators.....$ 7.94**

MASON
- **Structure.....$ 9.00**

Painter, Bridge.....$ 9.00

PAINTER.....$ 10.81

Plumbers.....$ 14.31

Power equipment operators:
- **Air Compressor Operators....$ 11.00**
- **Asphalt Distributor Operators.....$ 8.93**
- **Asphalt Paver Operators.....$ 9.68**
- **Backhoe Operators.....$ 10.14**
- **Bulldozer Operators, Utility.....$ 8.70**
- **Bulldozer Operators.....$ 10.02**
- **Concrete Finish Machine Operators, Utility.....$ 10.88**
- **Concrete Finish Machine/Screed Operators (Bridge).....$ 10.50**
- **Concrete Paving Machine Operators.....$ 10.75**
- **Concrete Pump Operators.....$ 8.33**
- **Concrete Saw Operators.....$ 8.25**
- **Crane, Derrick, Dragline Operators.....$ 11.52**
- **Crusher Tender Operators....$ 10.35**
- **Drill Operators.....$ 10.54**
- **Excavator Operators.....$ 12.00**
- **Front-End Loader Operators**
  - **2 yds. & Under.....$ 9.56**
  - **Over 2 yds.....$ 10.13**
- **Fuel and Lubricant Service Truck Drivers.....$ 7.50**
- **Gradall Operators.....$ 14.00**
- **Grade Checker.....$ 7.25**
- **Hydro-Seeder Operators.....$ 7.49**
- **Log Skidder Operators.....$ 9.00**
- **Mechanics.....$ 11.34**
- **Mobile Mixer Operators.....$ 10.30**

Motor Grader Operators
Fine Grade.....$ 11.59
Rough Grade.....$ 11.58
Oiler Greaser.....$ 8.00
Pavement Marker Operators...$ 8.88
Pavement Marking Truck
Operators.....$ 13.50
Pavement Planing
Groundmen.....$ 8.00
Operators.....$ 8.13
Pile Driver
Leadsman.....$ 9.00
Operators.....$ 9.88
Pipe Boring/Jacking
Machine Operators.....$ 8.50
Plant Operators.....$ 8.00
Roller Operators
Finish.....$ 8.60
Rough.....$ 8.31
Scraper Pan Operators.....$ 9.45
Shot Blast Machine
Operators.....$ 8.00
Shovel Operators
2 yds. and Under.....$ 8.04
Over 2 yds.....$ 10.00
Slip-Form Paver Operators...$ 7.25
Slurry Seal Paver
Machine Operators.....$ 8.25
Truck Drivers.....$ 10.33
Stabilizer Operators.....$ 10.00
Stone Spreader Operators....$ 9.67
Subgrade Machine Operators..$ 8.50
Tractor Operators
Crawlers.....$ 9.42
Utility.....$ 7.47
Transit Mix Truck Drivers...$ 9.75
Trenching Machine Operators.$ 8.73
Vacuum Machine Operators....$ 9.75

Reinforcing metal workers.....$ 9.73

Sheet Metal Worker.....$ 8.90

SIGN ERECTOR.....$ 8.50

Structural workers.....$ 13.25

TRAFFIC SIGNALIZATION:
Traffic Signal Installation
Maintainers.....$ 13.51

Truck drivers:
Heavy Duty.....$ 8.93
Multi-Rear Axle.....$ 8.65
Single Rear Axle.....$ 8.40
Tandem Rear Axle.....$ 8.60

WATERPROOFER.....$ 7.28

Welder.....$ 11.65

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

END OF GENERAL DECISION.

GENERAL DECISION: VA20080004 07/24/2009 VA4

Date: July 24, 2009
General Decision Number: VA20080004 07/24/2009

Superseded General Decision Number: VA20070004

State: Virginia

Construction Type: Highway

Counties: Amherst, Bedford, Campbell and Lynchburg* Counties in Virginia.

*INDEPENDENT CITY

HIGHWAY CONSTRUCTION PROJECTS (Excluding tunnels, building structures in rest area projects and railroad construction; bascule; suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008
2	07/24/2009

* SUVA1999-014 01/29/1999

	Rates	Fringes
BLASTER	$ 8.50	
Carpenters:		
Structure	$ 10.09	
Concrete Finisher	$ 10.00	
Electricians	$ 9.12	
FENCE ERECTOR	$ 7.86	
Form Setter	$ 8.48	
Guardrail erector	$ 9.27	
Laborers:		
Asphalt Rakers	$ 7.94	
Construction Workers I (Skilled Laborers)	$ 8.12	
Construction Workers II(Laborers)	$ 7.25	
Landscape Workers	$ 7.25	
Pipelayers	$ 7.25	
Painter, Bridge	$ 11.00	

PAINTER.....$ 11.00

Power equipment operators:
- Asphalt Distributor Operators.....$ 8.11
- Asphalt Paver Operators.....$ 8.15
- Backhoe Operators.....$ 10.44
- Bulldozer Operators, Utility.....$ 8.00
- Bulldozer Operators.....$ 8.97
- Concrete Finish Machine Operators, Utility.....$ 8.85
- Concrete Finish Machine/Screed Operators (Bridge).....$ 12.00
- Crane, Derrick, Dragline Operators.....$ 11.50
- Drill Operators.....$ 9.63
- Excavator Operators.....$ 12.00
- Front-End Loader Operators (2 yds. & under).....$ 9.44
- Front-End Loader Operators (Over 2 yds.).....$ 10.56
- Gradall Operators.....$ 14.00
- Hydro-Seeder Operators.....$ 8.00
- Mechanics.....$ 11.00
- Motor Grader Operators
  - Fine Grade.....$ 9.77
  - Rough Grade.....$ 10.95
- Pavement Planing Operators..$ 8.38
- Roller Operators
  - Finish.....$ 7.81
  - Rough.....$ 8.66
- Scraper Pan Operators.....$ 8.41
- Stone Spreader Operators....$ 8.25
- Tractor Operators (Utility).$ 7.70

Reinforcing metal workers.....$ 8.07

Structural workers.....$ 9.00

Truck drivers:
- Heavy Duty.....$ 8.44
- Multi-Rear Axle.....$ 8.18
- Tandem & Single Rear Axle...$ 7.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

END OF GENERAL DECISION.

GENERAL DECISION: VA20080013 07/24/2009 VA13

Date: July 24, 2009
General Decision Number: VA20080013 07/24/2009

Superseded General Decision Number: VA20070013

State: Virginia

Construction Type: Highway

Counties: Alleghany, Appomattox, Augusta, Bath, Bland, Buchanan, Buckingham, Buena Vista*, Carroll, Charlotte, Clifton Forge*, Covington*, Craig, Cumberland, Dickenson, Floyd, Franklin, Frederick, Galax*, Giles, Grayson, Halifax, Harrisonburg*, Henry, Highland, Lee, Lexington*, Martinsville*, Montgomery, Nelson, Norton*, Page, Patrick, Prince Edward, Pulaski, Radford*, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, South Boston*, Staunton*, Tazewell, Waynesboro*, Winchester*, Wise and Wythe Counties in Virginia.

*INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (Excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction and other major bridges)

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008
2	07/24/2009

* SUVA1999-016 02/11/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator	$ 10.95	
BLASTER	$ 11.33	
Carpenters:		
Structure	$ 9.99	
Concrete Finisher	$ 10.13	
Deckhand	$ 13.49	
Electricians	$ 14.00	
FENCE ERECTOR	$ 8.50	
Flagger	$ 7.25	

Form Setter.....$ 12.39

Guardrail erector.....$ 9.73

Laborers:
- **Asphalt Rakers.....$ 8.63**
- **Construction Workers I (Skilled Laborers).....$ 8.12**
- **Construction Workers II (Laborers).....$ 7.25**
- **Landscape Workers.....$ 7.25**
- **Pipelayers.....$ 8.95**
- **Power Tool Operators.....$ 7.94**

MASON
- **Structure.....$ 9.00**

Painter, Bridge.....$ 9.00

PAINTER.....$ 10.81

Plumbers.....$ 14.31

Power equipment operators:
- **Air Compressor Operators....$ 11.00**
- **Asphalt Distributor Operators.....$ 8.93**
- **Asphalt Paver Operators.....$ 9.68**
- **Backhoe Operators.....$ 10.14**
- **Bulldozer Operators, Utility.....$ 8.70**
- **Bulldozer Operators.....$ 10.02**
- **Concrete Finish Machine Operators, Utility.....$ 10.88**
- **Concrete Finish Machine/Screed Operators (Bridge).....$ 10.50**
- **Concrete Paving Machine Operators.....$ 10.75**
- **Concrete Pump Operators.....$ 8.33**
- **Concrete Saw Operators.....$ 8.25**
- **Crane, Derrick, Dragline Operators.....$ 11.52**
- **Crusher Tender Operators....$ 10.35**
- **Drill Operators.....$ 10.54**
- **Excavator Operators.....$ 12.00**
- **Front-End Loader Operators**
  - **2 yds. & Under.....$ 9.56**
  - **Over 2 yds.....$ 10.13**
- **Fuel and Lubricant Service Truck Drivers.....$ 7.50**
- **Gradall Operators.....$ 14.00**
- **Grade Checker.....$ 7.25**
- **Hydro-Seeder Operators.....$ 7.49**
- **Log Skidder Operators.....$ 9.00**
- **Mechanics.....$ 11.34**
- **Mobile Mixer Operators.....$ 10.30**

Motor Grader Operators
Fine Grade.....$ 11.59
Rough Grade.....$ 11.58
Oiler Greaser.....$ 8.00
Pavement Marker Operators...$ 8.88
Pavement Marking Truck
Operators.....$ 13.50
Pavement Planing
Groundmen.....$ 8.00
Operators.....$ 8.13
Pile Driver
Leadsman.....$ 9.00
Operators.....$ 9.88
Pipe Boring/Jacking
Machine Operators.....$ 8.50
Plant Operators.....$ 8.00
Roller Operators
Finish.....$ 8.60
Rough.....$ 8.31
Scraper Pan Operators.....$ 9.45
Shot Blast Machine
Operators.....$ 8.00
Shovel Operators
2 yds. and Under.....$ 8.04
Over 2 yds.....$ 10.00
Slip-Form Paver Operators...$ 7.25
Slurry Seal Paver
Machine Operators.....$ 8.25
Truck Drivers.....$ 10.33
Stabilizer Operators.....$ 10.00
Stone Spreader Operators....$ 9.67
Subgrade Machine Operators..$ 8.50
Tractor Operators
Crawlers.....$ 9.42
Utility.....$ 7.47
Transit Mix Truck Drivers...$ 9.75
Trenching Machine Operators.$ 8.73
Vacuum Machine Operators....$ 9.75

Reinforcing metal workers.....$ 9.73

Sheet Metal Worker.....$ 8.90

SIGN ERECTOR.....$ 8.50

Structural workers.....$ 13.25

TRAFFIC SIGNALIZATION:
Traffic Signal Installation
Maintainers.....$ 13.51

Truck drivers:
Heavy Duty.....$ 8.93
Multi-Rear Axle.....$ 8.65
Single Rear Axle.....$ 8.40
Tandem Rear Axle.....$ 8.60

WATERPROOFER.....$ 7.28

Welder.....$ 11.65

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

END OF GENERAL DECISION.

Exhibit 107.15

S107HF0-0708

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 107.15

January 17, 2008cc

Section 107.15 of the Specifications is replaced by the following:

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs)

Disadvantaged Business Enterprise (DBE) Program Requirements.

Any Contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the USDOT DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and VDOT's Road and Bridge Specifications and DBE Program rules and regulations.

All time frames referenced in this provision are expressed in workdays unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal workday.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Contractor of any changes to the appeal requirements, processes, and procedures after receiving notification of the Contractor's desire to appeal.

Miscellaneous DBE Program Requirements.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Contractor, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and state DBE Program regulations. By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

Required Contract Provisions.

For the purposes of this provision, Contractor is defined as the Prime Contractor of the contract; and sub-contractor is defined as any DBE supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Contractor shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate

Bank Services.

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit. Such information is available from the VDOT's Internet Civil Rights Division website: www.Virginiadot.org/business/bu-civil-rights-support-specs.

DBE Certification.

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Department of Minority Business Enterprises or VDOT in accordance with federal and VDOT guidelines. A directory listing of certified DBE firms can be obtained from Department of Minority Business Enterprises Internet website: www.dmbe.state.va.us

DBE Program-related Certifications Made by Bidders\Contractors.

Bids will be considered non-responsive and will be rejected for failure to comply with the requirements of this Special Provision and the contract specifications. By submitting a bid and by entering into any contract on the basis of that bid, the bidder/Contractor certifies to each of the following DBE Program-related conditions and assurances:

(1) That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.

(2) Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.

(3) To ensure that certified DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had and will have an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract.

    Any agreement between a bidder and a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders is prohibited.

(4) As a bidder good faith efforts were made to obtain certified DBE participation in the proposed contract at or above the goal for certified DBE participation established by VDOT. It has submitted as a part of its bid a true, accurate, complete, and detailed written explanation of the good faith efforts it performed to meet the contract goal for certified DBE participation.

(5) Once awarded the contract, the Contractor shall make good faith efforts to utilize certified DBE firms to perform work designated to be performed by certified DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Contractor's own forces or those of an affiliate of the

Contractor without the prior written consent of VDOT as set out within the requirements of this provision.

Once a contract is awarded, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for certified DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.

(6) Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. If it is awarded the contract and if VDOT determines that as the Contractor, a DBE or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract goals have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

(7) In the event a bond surety takes over the completion of work after VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract goals as were required of the original prime Contractor in accordance with the requirements of this specification.

Designation of DBE Firms to Perform on Contract.

The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all certified DBE firms that will participate in the contract, the specific line item(s) that each listed certified DBE firm will perform, and the creditable dollar amounts of the participation of each listed certified DBE. The specific line item must reference the VDOT line number and item number contained in the proposal. The bidder further certifies, by signing its bid, it has committed to use each certified DBE firm listed for the specific work item shown to meet the contract goal for certified DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents.

By signing the bid, the bidder certifies on work it proposes to sublet, it has made good faith efforts to seek out and consider certified DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.

When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

(1) When a Contractor has made a commitment to use a DBE firm that is not currently certified, thereby making the Contractor ineligible to receive DBE participation credit for work performed, and a subcontract has not been executed, the ineligible DBE firm does not count toward either the contract goal or overall goal. The Contractor shall meet the

contract goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the Engineer that it has made good faith efforts to do so.

When a Contractor has executed a subcontract with a certified DBE firm prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the contract and shall continue to receive DBE credit toward its DBE goal for the subcontractor's work.

When VDOT has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

(2) If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, the Contractor must promptly request approval to substitute or replace that firm in accordance with this section of this Special Provision. The Contractor, as aforementioned in (1) above, shall notify VDOT in writing before terminating and/or replacing the certified DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill certified DBE contract obligations during the contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a certified DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE

(a) Contractor's Written Request to Terminate DBE

All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:

(i) The date the Contractor determined the certified DBE to be unwilling, unable, or ineligible to perform;

(ii) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request;

(iii) A brief statement of facts describing and citing specific actions or inaction by the certified DBE giving rise to the Contractor's assertion that the certified DBE is unwilling, unable, or ineligible to perform;

(iv) A brief statement of the affected certified DBE's capacity and ability to perform the work as determined by the Contractor;

(v) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the certified DBE to perform;

(vi) The current percentage of work completed on each bid item by the certified DBE;

(vii) The total dollar amount currently paid per bid item for work performed by the DBE;

(viii) The total dollar amount per bid item remaining to be paid to the certified DBE for work completed, but for which the certified DBE has not received payment, and with which the Contractor has no dispute;

(ix) The total dollar amount per bid item remaining to be paid to the certified DBE for work completed, but for which the certified DBE has not received payment, and over which the Contractor and/or the certified DBE have a dispute.

(b) Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute With Another DBE

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the Engineer. The affected DBE firm may submit a response letter to the Department within two (2) working days of receiving the notice to terminate from the Contractor. The affected DBE firm shall explain its position concerning performance on the committed work. The Department will consider both the Contractor's request and the DBE's response and explanation before approving the Contractor's termination and substitution request, or determining if any action should be taken against the Contractor.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Contractor is unsuccessful in notifying the affected DBE firm, the Department will verify the affected, committed DBE firm is unable or unwilling to continue the contract, and the Department will immediately approve the Contractor's request for a substitution.

(c) Proposed Substitution of Another Certified DBE

Upon termination of a certified DBE, the Contractor shall use reasonable good faith efforts to replace the terminated DBE. The termination of such certified DBE shall not relieve the Contractor of its obligations pursuant to this section, and the unpaid portion of the terminated certified DBE's contract would not be counted toward the contract goal.

When a DBE substitution is necessary the Contractor shall submit in writing the name of another certified DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The Contractor shall furnish all pertinent information including contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special provision.

Should the Contractor be unable to commit the remaining required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are merely superficial or pro-forma will not be considered good faith efforts to meet the contract goal for certified DBE participation. The Contractor must document the steps taken that demonstrate good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

Bidding Procedures.

The following bidding procedures shall apply to the contract for DBE Program compliance purposes:

Contract Goal, Good Faith Efforts Specified.

All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111 as a part of the bid documents. Form C-111 may be submitted electronically or may be faxed to the Department, but in no case shall the bidder's Form C-111 be received later than 2 hours after the time stated in the bid proposal for the receipt of bids.

If, at the time of submitting its bid the bidder knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 exhibiting the DBE participation it attained as a part of its bid documents. The bidder shall then submit its good faith efforts within two (2) working days after the bid opening.

The lowest responsive and responsible bidder must submit its properly executed Form C-112 within two (2) working days after the bids have been opened and the determination of apparent lowest bidder. If, after review of the apparent lowest bid, VDOT determines the DBE requirements have not been met, the apparent lowest successful bidder must submit good faith documentation, which must be received by the Contract Engineer within two (2) working days after official notification of such failure to meet the aforementioned DBE requirements.

Good Faith Efforts Described.

Good faith efforts may be determined through use of the following list of the types of actions the bidder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

(1) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily newspaper of general circulation; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts on Department standard good faith documentation forms;

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

(3) Providing interested certified DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation;

(4) Negotiating for participation in good faith with interested DBEs;

(a) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;

(b) A bidder using good business judgment should consider a number of factors in negotiating subcontractors, including certified DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using certified DBEs is not sufficient reason for a bidder's failure to meet the contract goal for certified DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable; or greater than would normally be expected by industry standards;

(5) A bidder cannot reject a certified DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The certified DBE's standing within its industry, membership in specific groups, organizations, associations and political or social affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for certified DBE participation;

(6) Making efforts to assist interested certified DBEs in obtaining bonding, lines of credit, or insurance as required by VDOT or by the bidder/Contractor;

(7) Making efforts to assist interested certified DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in these provisions;

(8) Effectively using the services of appropriate personnel from VDOT and from the Virginia Department of Minority Business Enterprises, (VDMBE); available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

Bid Rejection.

The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid.

In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were to the extent a bidder actively and aggressively seeking to meet the requirements would make. Efforts to obtain DBE

participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

If the lowest bidder is rejected for failure to submit required documentation, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board (CTB).

Documentation, and Administrative Reconsideration of Good Faith Efforts.

During Bidding

As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, the bidder must provide certified written documentation of its good faith efforts made to meet the DBE contract goal as proposed by VDOT within the timeframe specified in this section of the provision. No extension of time for submittal of good faith effort documentation will be allowed. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain certified DBE firm participation in the proposed contract work.

However, regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111 and C-112 and good faith efforts as aforementioned, or face potential bid rejection. If a bidder does not submit its completed and executed C-111 or C-112 when required by this Special Provision the bidder's bid will be considered non-responsive and will be rejected.

Where the Department upon initial review of the bid results determines the apparent low bidder has failed or appears to have failed to meet the requirements of the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision and has failed to adequately document that it made a good faith effort to achieve sufficient DBE participation as specified in the bid proposal, that firm upon notification of the Department's initial determination will be offered the opportunity for administrative reconsideration before VDOT rejects that bid as non-responsive. The bidder shall address such request for reconsideration in writing to the Contract Engineer within five (5) days of receipt of notification by the Department and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel. The Administrative Reconsideration Panel will be made up of VDOT Division Administrators for the Civil Rights, Scheduling and Contract and Procurement divisions, none of who took part in the initial determination that the bidder failed to make the goal or make adequate good faith efforts to do so. After reconsideration, VDOT shall notify the bidder in writing of its decision and explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

During the Contract

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinment from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. The enjoinment period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

(1) Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.

(2) The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for certified DBE participation in accordance with the **Designation of DBE Firms to Perform on Contract** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the certified DBE firm itself or subcontracted by the certified DBE to other certified DBE firms.

(3) When a certified DBE performs work as a participant in a joint venture, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a certified DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the certified DBE's credit toward the DBE contract goal.

When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a VDOT certified DBE. Work that a certified DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will not count toward

the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the contract goal for certified participation.

(4) The Contractor may count expenditures to a certified DBE subcontractor toward the DBE contract goal only if the certified DBE performs a Commercially Useful Function (CUF) on that contract.

(5) A Contractor may not count the participation of a certified DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the certified DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified by VDOT as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a VDOT certified DBE manufacturer.

(a) For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the material, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the certified DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

(b) A certified DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the certified DBE both owns and operates distribution equipment for the products it sells and provides for the contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.

(c) If a certified DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that certified DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the certified DBE regular dealer, who shall be responsible for their distribution.

(d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the material, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.

(6) A Contractor may count toward the DBE contract goal the following expenditures to certified DBE firms that are not regular dealers or manufacturers for DBE program purposes:

(a) The entire amount of fees or commissions charged by a certified DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the

performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.

(b) The entire amount of that portion of the construction contract that is performed by the certified DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the certified DBE for contract work, including supplies purchased or equipment leased by the certified DBE, except supplies and equipment a certified DBE subcontractor purchases or leases from the prime Contractor or its affiliates.

(7) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a certified DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Nor could a Contractor count costs for the removal or relocation of excess material from or on the job site when the certified DBE trucking company is not also the manufacturer of or a regular dealer in those materials and supplies. The certified DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project.

(8) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a certified DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that arranges for delivery of material, supplies, and equipment, or arranges project services but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site. A broker typically shall not purchase or pay for the material, supplies, or equipment, and if the broker does purchase or pay for those items those costs will be reimbursed in full. To receive DBE contract goal credit VDOT must determine that the DBE broker has performed a CUF in providing the contract work or service.

Performing a Commercially Useful Function (CUF)

No credit toward the DBE contract goal will be allowed for contract payments or expenditures to a certified DBE firm if that DBE firm does not perform a CUF on that contract. A DBE performs a CUF when the DBE is solely responsible for execution of a distinct element of the contract work and the DBE actually performs, manages, and supervises the work involved with the firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the certified DBE alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the certified DBE's own forces and equipment, and paying for those materials and supplies. The amount the certified DBE firm is to be paid under the contract shall be commensurate with the work the certified DBE actually performs and the DBE credit claimed for the certified DBE's performance.

Monitoring CUF Performance

It shall be the Contractor's responsibility to ensure that all certified DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the contract goal, perform a CUF. Further, the Contractor is responsible for and shall ensure that each certified DBE firm fully performs the certified DBE's designated tasks with the certified DBE's own forces and equipment under the certified DBE's own direct supervision and management or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this provision the DBE 's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation or leased by the DBE and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the prime Contractor or an affiliate of the Contractor under this contract.

VDOT will monitor the Contractor's DBE involvement during the performance of the contract. However, VDOT is under no obligation to warn the Contractor that a DBE's participation will not count toward the goal.

DBEs Must Perform a Useful and Necessary Role in Contract Completion

A DBE does not perform a commercially useful function if the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

DBEs Must Perform The Contract Work With Their Own Workforces

If a DBE does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE's contract with the DBE's own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, VDOT will presume that the DBE is not performing a commercially useful function and such participation will not be counted toward the contract goal.

Factors Used to Determine if a DBE Trucking Firm is Performing a CUF

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

(1) To perform a CUF the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE is responsible by subcontract on a particular contract. There shall not be a contrived arrangement, including but not limited to any arrangement that would not customarily and legally exist under regular construction project subcontracting practices for the purpose of meeting the DBE contract goal;

(2) The DBE must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the necessary materials or supplies;

(3) The DBE receives full contract goal credit for the total reasonable amount the DBE is paid for the transportation services provided on the contract using trucks the DBE owns, insures, and operates using drivers that the DBE employs and manages;

(4) The DBE may lease trucks from another certified DBE firm, including from an owner-operator who is certified as a DBE. The DBE firm that leases trucks from another

certified DBE will receive credit for the total fair market value actually paid for transportation services the lessee certified DBE firm provides on the contract;

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

EXAMPLE: DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z. In all, full DBE credit would be allowed for the participation of eight (8) trucks. With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

(6) For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

VDOT Makes Final Determination On Whether a CUF Is Performed

VDOT has the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract. To determine whether a DBE is performing or has performed a CUF, VDOT will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Contractor or by employees or equipment of the Contractor may be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated.

Verification of DBE Participation and Imposed Damages.

Within fourteen days after contract execution, the Contractor shall submit to the Engineer a fully executed subcontract agreement for each DBE used to claim credit in accordance with the requirements stated on Form C-112. The subcontract agreement shall be executed by both parties stating the work to be performed, the details or specifics concerning such work and the price which will be paid to the subcontractor. Because of the commercial damage that the Contractor and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff shall treat subcontract agreements as proprietary Contractor trade secrets with regard to Freedom of Information Act requests. In lieu of subcontract agreements, purchase orders may be submitted for haulers, suppliers, and manufacturers. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each month during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63 and certified on Form C-63A, or by copies of cancelled checks with appropriate

identifying notations. Failure to provide the forms to the Engineer by the Contractor's monthly progress estimate date may result in delay of approval of the Contractor's monthly progress estimate for payment. The names and certification numbers of DBE firms provided by the Contractor on the various forms indicated in this Special Provision shall be exactly as shown on the Department's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the bidder as shown on Form C-32 or Form C-32A, or authorized by letter from the bidder. If certified DBE firms are used which have not been previously documented with the Contractor's bid and for which the Contractor now desires to claim credit toward the project goal, the Contractor shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE beginning work.

The Contractor shall submit to the Engineer its progress schedule as required by Section 103.06 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component or quarter of the work, as applicable, in which DBE work is to be performed, the Contractor shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any currently certified DBEs not previously submitted who will perform the work during that major component or quarter for which the Contractor seeks to claim credit toward the contract DBE goal. The Contractor shall obtain the prior approval of the Department for any assistance it may provide to the DBE beyond its existing resources in executing its commitment to the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If the Contractor is aware of any assistance beyond a DBE's existing resources that the Contractor, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, the Contractor shall submit a new or revised narrative statement for VDOT's approval prior to assistance being rendered.

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified timeframes, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

Documentation Required for Semi-final Payment.

On those projects nearing completion, the Contractor must submit Form C-63 and appropriate Form C-63A(s) marked "Semi-Final" within twenty (20) days after the submission of the last regular monthly progress estimate to the Engineer. The forms must include each certified DBE used on the contract work and the work performed by each certified DBE. The forms shall include the actual dollar amount paid to each certified DBE for the accepted creditable work on the contract and monies owed the certified DBE subcontractor. The forms shall be certified under penalty of perjury, or other applicable law, to be accurate and complete. VDOT will use this certification and other information available to determine applicable DBE credit allowed to date by VDOT and the extent to which the DBEs were fully paid for that work. The Contractor shall

acknowledge by the act of filing the forms that the information is supplied to obtain payment regarding a federal participation contract. A letter of certification, signed by both the prime Contractor and appropriate certified DBEs, will accompany the forms, indicating the amount, including any retainage that remains to be paid to the certified DBE(s).

Documentation Required for Final Payment.

On those projects that are complete, the Contractor shall submit a final Form C-63 and Form C-63A(s) marked "Final" to the Engineer within thirty (30) days of final acceptance. The forms must include each certified DBE used on the contract and the work performed by each DBE. The forms shall include the actual dollar amount paid to each DBE for the creditable work on the contract and monies owed the DBE subcontractor. VDOT will use these forms and other information available to determine if the Contractor and DBEs have satisfied the DBE contract goal percentage specified in the contract and the extent to which the DBEs were paid for that work. The Contractor shall acknowledge by the act of signing and filing the forms that the information is supplied to obtain payment regarding a federal participation contract.

Prompt Payment Requirements.

The Contractor shall make prompt and full payment to the subcontractor(s) of any retainage held by the prime Contractor after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08(a), and Section 109.10 of the Specifications.

Upon VDOT's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, the Contractor shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Contractor has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that VDOT paid to the Contractor on the monthly progress estimate.

The Contractor shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 109.08(b) of the Specifications.

If the Contractor fails to make payment of the subcontractor's portion of the work within the timeframe specified herein, the subcontractor shall contact the Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 109.08(b) of the Specifications.

The Department will withhold payment of the Contractor's monthly progress estimates until the Contractor ensures that the subcontractors have been promptly paid for the work that they have performed successfully and for which the Department has accepted and paid the Contractor.

By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations, and to bind the Contractor's subcontractors contractually to those prompt payment requirements.

Nothing contained herein shall preclude the Contractor from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Contractor from loss or cost of damage due to a breach of agreement by the subcontractor.

Data Collection

In accordance with 49CFR Section 26.11, all firms bidding on prime contracts and bidding or quoting subcontracts on federal-aid projects shall provide the following information to the Contract Engineer annually.

- Firm name;
- Firm address;
- Firm's status as a DBE or non-DBE:
- The age of the firm; and
- The annual gross receipts of the firm.

The above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application.

All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted within ten (10) days after the bid opening. Failure of bidders to submit this form in the timeframe specified will be cause for rejection of the bid.

Summary of Remedies Available to VDOT

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 107.15 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

Disadvantaged Business Enterprise (DBE) Program Requirements.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein.

DBE Program-related Certifications Made by Bidders\Contractors

Bids will be considered non-responsive and will be rejected for failure to comply with the requirements of this Special Provision and the contract specifications. Where a contract exists and where the Contractor, a DBE or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract goals have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

Bid Rejection

The failure of bidders to submit the required documentation within the timeframes specified in the Contract Goal, Good Faith Efforts Specified section of this Special Provision may be cause for rejection of the bid.

If the lowest bidder is rejected for failure to submit required documentation, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board (CTB).

Documentation and Administrative Reconsideration of Good Faith Efforts

During Bidding

Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111 and C-112 and good faith efforts as aforementioned or face potential bid rejection. If a bidder does not submit its completed and executed C-111 or C-112 when required by this Special Provision the bidder's bid will be considered non-responsive and will be rejected.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

During the Contract

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Verification of DBE Participation and Imposed Damages for Non-compliance

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified timeframes, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received by VDOT. Where such failures to provide required submittals or documentation are repeated, the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

Prompt Payment Requirements

The Department will withhold payment of the Contractor's monthly progress estimates until the Contractor ensures that the subcontractors have been promptly paid for the work that they have performed successfully, and for which the Department has accepted and paid the Contractor.

In addition to the remedies described heretofore in this provision VDOT also exercises its rights with respect to the following remedies:

Suspect Evidence of Criminal Behavior.

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

Suspected DBE Fraud

In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49CFR Part 31.