

GENERAL CONDITIONS FOR CONSTRUCTION 2016

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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PART I: PENNSYLVANIA STATUTES

PART II: FEDERAL STATUTES

SECTION 1

DEFINITION OF TERMS

SUBSECTION 1.1 DEFINITIONS

Wherever the words or expressions herein defined or pronouns used in their stead, occur in these General Conditions and the other contract documents, they shall have the meanings here given:

- A. AASHTO shall mean the American Association of State Highway and Transportation Officials. Reference to AASHTO shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- B. ACI shall mean the American Concrete Institute. Reference to ACI shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- C. ANSI shall mean the American National Standards Institute. Reference to ANSI shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- D. ASTM shall mean the American Society for Testing and Materials. Reference to ASTM shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- E. AWWA shall mean the American Water Works Association. Reference to AWWA shall refer to the specification or method of test in effect on the date that the project was advertised, except when a particular designation is specified.
- F. BID shall mean the written unit or lump sum price figures submitted by the bidder on the bid form.
- G. BIDDER shall mean any individual, partnership, joint venture, corporation or other legal entity submitting a bid for the work contemplated, acting directly or through a duly authorized representative, in response to an invitation for bids.
- H. BID FORM shall mean the approved prepared form on which the bidder is to submit, or has submitted, a bid for the work contemplated.
- I. BID GUARANTY shall mean the security designated in the bid form to be furnished by the bidder as guaranty of its ability to qualify for award of the contract and to enter into a contract with the Commonwealth for the performance

of the work and to furnish satisfactory bonds if the work involved in the bid form is awarded to it.

- J. CHANGE ORDER shall mean a written order by the Department which directs the Contractor to make changes to the original contract quantities of the contract, adds extra work not defined in the original scope of work in the contract or extends the contract completion date. The contract sum may be changed only by a Change Order.
- K. COMMONWEALTH shall mean the Commonwealth of Pennsylvania.
- L. CONSTRUCTION PROGRESS SCHEDULE shall mean the timeline prepared by the Contractor establishing Milestones for the work over the contract duration.
- M. CONSULTANT shall mean the individual, partnership, joint venture, corporation or other legal entity responsible for any and/or all the design of the project.
- N. CONTRACT shall mean a written agreement for the procurement of construction including collectively, all of the covenants, terms and stipulations contained in the various portions of the contract, to wit: bid documents, contract bonds, drawings, specifications, general conditions and notice to proceed, as well as any and all change orders, amendments and supplemental agreements which reasonably could be required to complete the work in a substantial and acceptable manner.
- O. CONTRACT BONDS shall mean the bonds required by the contract documents which must be executed by one or more surety companies legally authorized to do business in the Commonwealth including, but limited to, Performance Bond, Payment Bond and Maintenance Bond, as required by the Department.
- P. CONTRACT COMPLETION DATE shall mean the date in the contract for completion of work.
- Q. OFFICIAL CONTRACT START DATE shall mean ten (10) calendar days from contractor's receipt of the Notice To Proceed.
- R. CONTRACTOR shall mean the individual, partnership, joint venture, corporation or other legal entity which entered into a contract with the Commonwealth for the performance of the work described in the bid documents, acting directly or through its agents or employees, or the surety in case of default in the performance of the work.
- S. CONTRACTOR RESPONSIBILITY PROGRAM (CRP) shall mean the check completed to collect and disseminate information regarding contractor obligations; suspensions and debarments by the Commonwealth, the federal government and other government entities; and contractor performance issues.

- T. CONTRACT PLANS or DRAWINGS shall mean, collectively, all of the drawings or reproductions of drawings, pertaining to the contract and made part thereof, and also such supplementary drawings as the Department may issue from time to time in order to elucidate said contract drawings or for showing details which are not shown thereon, or for the purpose of showing changes in the work as authorized in SUBSECTION 5.4, MINOR CHANGES AND ALTERATIONS, and in SUBSECTION 6.6, MODIFICATION OF SPECIFICATIONS AND CONTRACT DRAWINGS.
- U. CPC shall mean the Act of May 15, 1998 (P.L. 358, No. 57), as amended, known as the “Commonwealth Procurement Code” (62 Pa. C.S. 101 et seq.) (“CPC”). To the extent that any requirement in these bid documents is prohibited under the CPC, the requirements of the CPC shall control.
- V. DEPARTMENT or PADEP or DEP shall mean the Commonwealth’s Department of Environmental Protection (or any agency successor thereto) and its agents or any agents which may be appointed.
- W. DEPARTMENT’S REPRESENTATIVE shall mean the Secretary’s properly authorized officers, agents, engineers, assistants or inspectors, acting within the scope of the particular duties assigned to them or of the authority given them.
- X. INVITATION FOR BIDS or BID DOCUMENTS shall mean all documents, including those either attached or incorporated by reference, used for soliciting bids.
- Y. MAINTENANCE BOND shall mean the approved form of security furnished by the contractor and its surety as a guaranty of good faith on the part of the contractor to correct defects which may develop within the warranty period, in accordance with the terms of the contract.
- Z. MILESTONE shall mean an indication on the Construction Progress Schedule that designates the start or completion of a significant construction activity.
- AA. NOTICE TO PROCEED shall mean a written notice issued by the Department to the contractor of the date on or before which it is to begin the prosecution of the work.
- BB. PADOT SPECIFICATIONS shall mean the current specifications of the Commonwealth’s Department of Transportation, Publication 408 as applicable with its supplements.
- CC. PAYMENT BOND shall mean the approved form of security furnished by the contractor and its surety as a guaranty of good faith on the part of the contractor to pay promptly or cause to be paid promptly in full such sums as may be due for material furnished and/or labor supplied or performed, and/or for equipment

rental, or for services rendered by public utilities or other required services during the prosecution of work in accordance with the terms of the contract.

DD. PERFORMANCE BOND shall mean the approved form of security furnished by the contractor and its surety as a guaranty of good faith on the part of the contractor to execute the work in accordance with the terms of the contract.

EE. SECRETARY shall mean the Secretary of the Commonwealth's Department of Environmental Protection.

FF. SEPARATE CONTRACTOR shall mean any of the below listed contractors or their authorized representatives:

1. CONTRACTOR FOR GENERAL CONSTRUCTION

The contractor holding a separate contract for general construction work.

2. HEATING/VENTILATING CONTRACTOR

The contractor holding a separate contract for heating, ventilating and air conditioning construction work.

3. PLUMBING CONTRACTOR

The contractor holding a separate contract for plumbing construction work.

4. ELECTRICAL CONTRACTOR

The contractor holding a separate contract for electrical construction work.

GG. SPECIFICATIONS shall mean the directions, provisions and requirements and any supplements, revisions, addenda, general conditions and special requirements referred to in, or bound with, the bid documents, together with all written agreements made or to be made, pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished in accordance with the terms of the contract.

HH. SUBCONTRACTOR shall mean the individual, partnership, joint venture, corporation or other legal entity, which with consent of the Department, has a contract with the Contractor to perform any part of the work.

II. SUPPLIER shall mean an individual, firm, partnership, association, corporation or other legal entity who receives compensation from the contractor, pursuant to the terms of a purchase order or invoice, to provide any materials and/or any equipment to the project. Nothing contained in the contract documents between

the contractor and the Department creates any contractual relationship between the Department and the Supplier.

- a. Stocking Supplier shall mean a firm that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - b. Non-Stocking Supplier shall mean a supplier that does not carry inventory but orders materials from a manufacturer, manufacturer's representative or stocking supplier. In order for a non-stocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price, and determining quality and quantity; and ordering materials; and paying for the materials).
- JJ. SURETY or SURETIES shall mean the corporate body or bodies or its authorized agent(s) which are bound with and for the contractor for the satisfactory performance of the work, prompt payment in full for material and labor and project maintenance upon contract completion as provided in the bonds.
- KK. SURETY BOND(S), CONTRACT BOND(S) OR BOND(S) shall mean the performance bond, the payment bond or the maintenance bond, or any combination of said bonds.
- LL. UNIT shall mean the specific portion or section of the work or project to be completed in accordance with the terms of the contract.
- MM. U.S. shall mean the United States of America.
- NN. WORKS or PROJECT shall mean all of the work to be performed and completed in accordance with the terms of the contract.

SUBSECTION 1.2 DIRECTION OR APPROVAL OF DEPARTMENT

Wherever in the contract, the words DIRECTED, REQUIRED, PERMITTED, ORDERED, INSTRUCTED, DESIGNATED, CONSIDERED NECESSARY, PRESCRIBED or words of like import are used, it shall be understood that the direction, requirement, permission, order, instruction, designation or prescription, etc., of the Department is intended, and similarly, the words, APPROVED, ACCEPTABLE, SATISFACTORY or words of like import, shall mean approved by, or acceptable or satisfactory to, the Department.

SUBSECTION 1.3 CONTRACTOR'S ADDRESS

The address, given in the bid form upon which the contract is founded, is hereby designated as the place to which notices, letters and other communications to the contractor shall be mailed or delivered. The delivery to the named place of any notice, letter or other communication from the Department to the contractor shall be deemed sufficient service thereof upon the contractor, and the date of said service shall be the date of such delivery. The address may be changed at any time by written notice from the contractor to the Department. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon the contractor personally.

SECTION 2

BID REQUIREMENTS AND CONDITIONS

SUBSECTION 2.1 GENERAL INFORMATION FOR BIDDERS

The bid document specifies how it must be delivered, the date, time, and place of opening of bids, the location and description of the work to be performed, the approximate quantities of work to be performed and materials to be furnished, the number of days or the date by which the work must be completed, the amount of the bid guaranty, and any special requirements pertaining to the particular works to be constructed which may vary from, or are not contained in, the General Conditions. All papers bound with or attached to the bid document are a necessary part thereof and shall not be detached.

SUBSECTION 2.2 QUALIFICATION OF BIDDERS

The bidder must present satisfactory evidence that it has been engaged in work of a general character covered by the bid form and that it is fully prepared and has the necessary capital to begin work promptly and to conduct it as required by the contract. The bidder may attach additional pages to the bid form to present the required evidence. The bidder shall present additional evidence of its experience and fitness within five (5) business days after a request is made by the Department following a bid opening, unless the time is extended by the Department.

If the Anti-Collusion Affidavit (affidavit) is included in the bid form, the bidder must execute a sworn statement on behalf of each person, partnership, joint venture, corporation or other legal entity submitting the proposal, certifying that such person, partnership, joint venture, corporation or legal entity has not, either directly or indirectly, entered into an agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this contract. The affidavit provided by the Department in the bid form must be executed by the contractor and notarized as a part of its bid.

All foreign corporations and individuals or legal entities doing business under fictitious names, shall register with the Secretary of the Commonwealth, Commonwealth's Department of State, before an award will be made to such corporation, individual or legal entity.

All contractors must be registered with the Supplier Relationship Management (SRM) system of the Commonwealth of Pennsylvania if they wish to do business with the Commonwealth. Registration may be done via the Internet or telephone registration and is required in order to be awarded a contract. SRM will assign each contractor a vendor ID number which will be used to identify that contractor within the Commonwealth.

Please use the following information to complete the registration process, or to update an existing vendor number:

Supplier Relationship Management
Phone: 1-877-435-7363
Web Address: www.pasupplierportal.state.pa.us

SUBSECTION 2.3 ESTIMATE OF QUANTITIES

The bidder's attention is called to the fact that the estimate of quantities of work to be done and equipment to be furnished under the specifications may be shown on the Schedule of Prices and in the agreement and if shown is approximate and is given only as a basis of calculation upon which the bids will be compared. The Department does not assume any responsibility that the quantities set forth shall be realized strictly in the work, nor shall the contractor plead misunderstanding or deception because of such estimate of quantities or of the character of the work, location or other conditions pertaining thereto. The Department reserves the right to increase or decrease any or all of the quantities of work and equipment or to omit any of them, as it may deem necessary and such increase or decrease of the quantities given for any of the items shall not be considered as sufficient grounds for granting an increase in the unit prices bid. The contractor will be paid at the unit prices bid for actual work performed in accordance with the terms of the contract.

The bidder is required to prepare its own estimate of quantities from the contract drawings and actual site investigation for lump sum items in the Schedule of Prices.

SUBSECTION 2.4 SITE INVESTIGATION

- A. GENERAL - The bidder acknowledges that it has satisfied itself as to: the nature and location of the work; the general and local conditions, including but not restricted to those bearing upon transporting, disposing, handling and storing of materials; availability of labor, water, electric power and roads; uncertainties of weather, river stages, tides or similar physical conditions at the site; the conformation and conditions of the ground; and the character of equipment and facilities needed preliminary to and during the prosecution of the work. The bidder further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Department, as well as from information presented by the specifications and contract drawings made a part of the contract. Any failure by the bidder to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Department does not assume any responsibility for any conclusions or interpretations made by the bidder on the basis of the information made available by the Department. The Department also does not assume responsibility for any understanding or representations made by its officers or agents during or prior to the execution of

the contract, unless (1) such understanding or representations are expressly stated in the contract and (2) the contract expressly provides that the responsibility therefor is assumed by the Department. Representations which are not expressly stated in the contract and for which liability is not expressly assumed by the Department in the contract shall be deemed only for the information of the bidder.

- B. TOPOGRAPHY - Contours, topography, profiles and/or cross sections of the existing ground are shown on the contract drawings (and/or disks if applicable) which accompany and are part of the bid documents. These contours, topography, profiles and/or cross sections are believed to be reasonably correct but are not guaranteed to be absolutely so and are presented only as approximations.
- C. SUBSURFACE INVESTIGATIONS - Where subsurface and foundation conditions have been investigated by borings and test pits at the site of work of the contract, these subsurface investigations have been made for design purposes only, and the logs and results are available at the offices of the Department.

Samples from drill holes may be available for inspection by the bidder, who will be advised on inquiry of the location where the samples are stored.

These subsurface data are offered in good faith solely for the purpose of placing the bidder in receipt of all the information available to the Department. The bidder agrees that it will not place reliance thereon in the preparation of its bid, or in the event that it does rely thereon that it will do so entirely at its own risk. Such data shall not in any event be considered a part of the contract. Bidders will be required to sign a waiver form for this subsurface information, and such bidders accept this subsurface information in accordance with the provisions of this subsection.

Borings are believed to represent accurately the strata encountered at the locations indicated, but the Department will not be responsible for deductions, interpretations, or conclusions drawn therefrom. Groundwater levels are those observed at the time of the subsurface exploration and may not reflect stable groundwater levels at the time of construction.

SUBSECTION 2.5 THE BID

The bid must be submitted on the forms provided by the Department for that purpose. They must not be changed in form and alteration or interlineation shall not be made therein. Should the bidder decide to explain or to qualify its bid, it should do so in a supplemental statement attached to the bid form; but any bid may be rejected which contains explanations or qualifications which change or modify the character of conditions of the bid form, or which make it incomparable with other bids, as determined by the Department.

The blank spaces in the bid form shall be filled in, for each and every item and the bidder must insert the price, not in pencil, for which it proposes to do the work. Unit price figures shall be considered as the prices bid. The extensions of the unit prices are only for the information of the Department, and will not be considered as part of the bid. However, if the bid contains an apparent extended unit price, but no unit price, for a bid line item, the Department may determine the unit price bid as the indicated apparent extended unit price divided by the estimated quantity for that bid line item.

Bids must be submitted based on the project as proposed and bids submitted assuming deviation from the project as detailed in the bid documents will result in rejection of bids.

The bidder shall sign the bid form correctly and enclose it in a sealed envelope, marked and addressed as indicated in the bid documents. The bidder **must ensure that the envelope reflects all of the information contained in the Bid Envelope Example of the Bid Documents**. Bids shall be mailed, shipped or hand carried to the provided address.

If the bid is made by an individual, it shall be signed by the individual; if it is made by a partnership, it shall be signed in the partnership name by a partner of the partnership and the name and address of each partner shall be given; if it is made by a corporation, the person signing should be the president or vice president of the corporation, attested to by the secretary or treasurer of the corporation, otherwise, the signing individual's certificate of authority to execute such documents should accompany the bid form and the name of the state under the laws of which the corporation is chartered and the names, titles and business addresses of the president, vice president, secretary and treasurer must appear therein. Bids will be opened and read publicly at the time and place given in the bid form. Bidders and other interested persons may witness the opening of bids.

Late bids will not be considered and will be returned unopened. If, due to inclement weather, natural disaster, or other cause, any of the Commonwealth offices associated with receipt and opening of bids are officially closed on the date and at the time scheduled for bid opening, the bid opening date shall be automatically postponed until the next Commonwealth business day, unless the bidders are otherwise notified by the Commonwealth. The bid opening time shall remain the same.

SUBSECTION 2.6 BID GUARANTY

Each bid must be accompanied by a monetary deposit (bid guaranty) in the amount stipulated in the bid form. The bid guaranty shall be made payable to the "Commonwealth of Pennsylvania" and shall be the bidder's check certified by the bank of deposit, or it may be a bank cashier's or trust company treasurer's check or equivalent at the Department's discretion. When specifically stated in the bid form, a bid bond in the same amount, executed by the bidder and a surety company, may be substituted in lieu of the specified check at the bidder's option. Bid bonds must be executed by a corporate surety authorized to do business in the Commonwealth. When the bid form contains a bid bond form, the bid bond shall be submitted in that format to the exclusion

of all other surety bid bond formats. Either the bid bond, or the specified check or the equivalent thereof shall be a guaranty that the bidder upon being declared the lowest responsible bidder and awarded the contract, will, within seven (7) calendar days after receipt of the agreement, execute the agreement and furnish the required contract bonds. The said agreement and contract bonds shall be on the standard forms prescribed by the Department. No other forms of contract bonds will be acceptable. Bid guaranties will be returned to bidders to whom the award is not made, other than the lowest and next lowest bidder under consideration for contract award, within thirty (30) calendar days of the bid opening. The bid guaranty of the bidder to whom the award is made and the next lower responsible bidder will be returned when notice to proceed is issued.

If the bidder to whom the award has been made shall fail to execute the agreement and to furnish satisfactory contract bonds within the time heretofore specified or extended by the Department, the award shall thereupon become void, at the option of the Department, in which case the proceeds of the bid guaranty shall become the property of the Commonwealth as liquidated damages, and the contract may be awarded to the next lowest responsible bidder. Bids which are not accompanied by a proper bid guaranty will be rejected.

SUBSECTION 2.7 REJECTION OF BIDS

The right is reserved to accept or reject any or all bids and to waive technical defects, if, in the judgment of the Department, the best interests of the Commonwealth shall require such action, as deemed necessary by the Department in its sole discretion.

More than one bid for a project from an individual, partnership, corporation, joint venture or other legal entity under the same or different names will invalidate all bids from such bidders.

A joint venture bid will be acceptable.

Bids in which the bid prices are obviously unbalanced may be rejected. This includes lump sum items, such as mobilization and demobilization, as well as unit price items.

SUBSECTION 2.8 ASSIGNMENT OF BIDS

The bidder may not assign its bid, or any of its rights or interests thereunder, without the written consent of the Department.

SUBSECTION 2.9 MODIFICATION OR WITHDRAWAL OF BIDS

Each and every bidder submitting a bid specifically waives any right to modify or withdraw it, except as hereinafter provided. Bids may be modified or withdrawn by written or telefax notice received at the Department's address for bid delivery prior to the exact hour and date specified in the bid form for the opening thereof. However, if the bidder chooses to attempt to provide such written notice by telefax transmission, the

Department shall not be responsible or liable for errors in telefax transmission or failure to deliver a telefax received from the receiving telefax machine to the depository for bids prior to the deadline for receipt of bids. Revisions must not divulge the total amount of the bid, either original or revised. Such divulgence shall disqualify the bid. Revisions must be confirmed by the Department via letter within seventy-two (72) hours. A bid may also be modified or withdrawn in person by a bidder or its authorized representative, provided its identity is made known and it signs a receipt for the bid, but only if the modification or withdrawal is made prior to the exact hour and date set for the opening of bids.

After bid opening, withdrawal of bids must conform to Sections 902(d) and 512(f) of the CPC; provided that a request to withdraw be made in writing to the Department within two (2) business days after the opening of bids. Supporting evidence of right to withdraw must be submitted by the bidder to the Department within ten (10) business days after the bid opening.

SUBSECTION 2.10 EQUIPMENT SCHEDULE

The bidder shall furnish a list of its available equipment it plans to use to complete the project on forms provided by the Department as a part of the bid form.

SUBSECTION 2.11 RECIPROCAL LIMITATIONS ACT

The Reciprocal Limitations Act, Section 107 of the CPC (62 Pa. C.S. 107) requires that, in the award of construction contracts in an amount exceeding \$10,000.00, the Department gives Commonwealth resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state. The amount of preference shall be equal to the amount of preference applied by the state of the nonresident bidder. A Commonwealth “resident bidder” is defined as a person, partnership, corporation or other business entity authorized to transact business in the Commonwealth and having a bonafide establishment for transacting business in the Commonwealth at which it was transacting business on the date bids for the contract were first solicited.

The following is a list of the states which have been found to have applied a preference favoring instate bidders and the amount of the preference:

STATE PREFERENCE

- | | |
|------------------|--|
| 1. Arizona | 5% (construction materials from Arizona resident dealers only) |
| 2. Montana | 3% |
| 3. West Virginia | 2.5% for construction, repair or improvement of any buildings. |
| 4. Wyoming | 5% |

In calculating the preference for purposes of determining the low bidder, the amount of a bid submitted by a Commonwealth resident bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residence.

The bidder must execute the "Bidder's Residence Certification" which is included in the bid form. The Department will use this certification in determining whether the bidder is a Commonwealth resident bidder or whether the bidder is a nonresident bidder from a state that applies a preference favoring bidders from that state.

SUBSECTION 2.12 CONTRACTOR OWNERSHIP AND CONTROL

For contracts funded in whole or in part by the federal government under the authority given it by P.L. 95-87 dated August 3, 1977 as amended, regulations promulgated by the United States Office of Surface Mining, Reclamation and Enforcement (OSM) require that any party eligible for award of a contract paid by these funds must meet the same requirements as an applicant for a mining permit. In order for the Department to determine this eligibility, the bidder must complete the Information Form, 5600-PM-MR0025, enclosed in the bid form.

If the bidder has previously submitted this information, has been issued a file number or mining license number and has no changes to be made, he may execute the certificate enclosed in the bid form. It will then not be necessary to execute the information form

SUBSECTION 2.13 NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Department of General Service's Bureau of Diversity, Inclusion & Small Business Opportunities (BDISBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.

The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

SUBSECTION 2.14 CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

- c. **“Contractor”** means the individual or entity that has entered into this contract with the Commonwealth.
- d. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. **“Financial Interest”** means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the *4 Pa. Code §7.153(b)*, shall apply.
- g. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in

connection with performance of work under this contract, except as provided in this contract.

- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must

also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.

- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of

anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

SUBSECTION 2.15 CERTIFIED MINORITY AND WOMEN BUSINESS UTILIZATION

SMALL DIVERSE BUSINESS PARTICIPATION

1. **General Information:** If the awarded amount of the Contract exceeds \$50,000, the Contractor must designate a choice in their Bid Form to either Opt-in or provide Good Faith Efforts to meet the Minimum Participation Level (MPL) for Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBE), and Service-Disabled Veteran Business Enterprises (SDVBE) (together referred to hereinafter as Small Diverse Businesses) on the Project. Each option is described as follows:
 - a. Opt-in - A Contractor selecting “Opt-in” agrees to meet or exceed the Project’s MPL as of the date of the Final Inspection of the project.

Good Faith Effort - A Contractor selecting “Good Faith Effort” agrees to document their use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontracts, and purchases greater than \$10,000 throughout the duration of the Project.
 - b. The participation level shall apply to the total **awarded contract value**.
 - c. The Small Diverse Business participation may include all tiers of design and/or construction.
2. **Contractor’s Duty**
 - a. The participation level is to be maintained throughout the term of the Contract and shall apply to the contract award value.
 - b. The Contractor shall submit a Small Diverse Business Utilization Report with each Progress Estimate regardless of the option chosen (**Opt-in or Good Faith Effort**) (See section C below).

- c. If **Opt-in** was selected, the Contractor has until the date of the Final Inspection to meet or exceed the MPL for the Project. This will be tracked through the Small Diverse Business Utilization Report.
- d. If the **Good Faith Effort** was selected, the Contractor must document its use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontracts and purchases greater than \$10,000 throughout the duration of the Project. Documentary evidence must include, but is not limited to, the following (“Good Faith Effort documentation”):
 - 1. A certification that the contractor accessed the DGS website database of DGS-certified Small Diverse Businesses to identify DGS-certified Small Diverse Businesses for the subcontract or purchase order. The Certification Form is included in Attachment A of the Bid Documents.
 - 2. A record of all companies solicited for the subcontractor or purchase that can perform the scope of work to be subcontracted or supply to be delivered, identifying any DGS certified Small Diverse Businesses.
 - 3. A record of the all quotes received showing company name and address, contact person, telephone number, Small Diverse Business status, subcontractor, manufacturer, or supplier, scope of work to be performed or supply to be delivered, and the amount of the quote and identification of the selected subcontractor/supplier.
 - 4. A certification that the contractor negotiated fairly with responsive DGS-certified Small Diverse Businesses and, if commitments were not made, that such non-commitment related to the Small Diverse Business’ capability or price. The Certification Form is included in Attachment A of the Bid Documents.

Upon written notice from the Department, the Contractor will be required to submit, within ten (10) calendar days from the date such notice is received, the above Good Faith Effort documentation for review and compliance. Failure to submit such documents within the timeframe provided will result in a noncompliance entry into the Commonwealth’s Contractor Responsibility Program (CRP) and may be considered a substantial breach of the Contract, as determined by the Department.

3. Small Diverse Business Utilization Report

- a. This report must be submitted with each Progress Estimate regardless of which option the Contractor selected. (A report form will be provided by the Department.)
- b. Starting with either the first full month after the Initial Job Conference or the first Progress Estimate (whichever is earlier), the Contractor must submit a Small Diverse Business Utilization Report. Thereafter, an updated Small Diverse Business Utilization Report shall be submitted with each Progress Estimate
- c. Each Small Diverse Business Utilization Report must have current data (totals to date) identifying at least each element as follows:
 1. Detailed information including, but not limited to, any subcontracts and purchases documenting the dollar value commitments to Small Diverse Business firms to be used toward the satisfaction of the Project's MPL. All Small Diverse Businesses identified on the Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.
 2. Detailed information regarding any work that is claimed to be self-performed by the Contractor, and therefore, allegedly not eligible for subcontracting to a Small Diverse Business.
 3. Construction Subcontracts and Purchases:
 - i. All Subcontract/Purchases awarded to date are \$_____
 - ii. Commitment total to Small Diverse Businesses to date:
 - \$_____
 - _____%
 4. For each subcontract and purchase awarded since the previous Progress Estimate the:
 - i. Identity and status of the Small Diverse Business as an MBE/WBE/VBE/SDVBE that will be performing the work; and

ii. The type of work/service/material to be performed/supplied; and

iii. The amount paid to date on each Small Diverse Business subcontract/purchase this month.

iv. The designation of Small Diverse Business Stocking Suppliers as either an MEP (i.e., mechanical, electrical, and plumbing) Stocking Supplier or a General Construction Stocking Supplier.

v. The fee or commission paid to the non-stocking supplier. No MPL credit will be given if the fee or commission is not listed and the maximum credit shall not exceed ten percent (10%) of the purchase cost.

d. Failure to submit a Small Diverse Business Utilization Report with each Progress Estimate will result in an incomplete Progress Estimate. Such incomplete Progress Estimate will be returned to the Contractor and no payment will be processed until a complete Progress Estimate is submitted.

4. The Contractor's Commitments toward the MPL will be Calculated and Credited as follows:

a. Only DGS-certified Small Diverse Businesses can be credited toward satisfying the MPL.

b. Small Diverse Business subcontractors performing at least sixty percent (60%) of the subcontract with their own employees will be credited toward the MPL at one hundred percent (100%) of the total dollar value of the subcontract/supply contract. Any Small Diverse Business subcontract, where the subcontractor performs less than sixty percent (60%) of the subcontract, will not be credited toward the MPL.

c. Small Diverse Business stocking suppliers are credited at sixty percent (60%) of the total cost of the materials or supplies purchased. A stocking supplier is a regular dealer that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials or supplies of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

d. Small Diverse Business non-stocking suppliers are credited at only the amount of the fee or commission charged by the Small Diverse Business non-stocking supplier for assistance in the procurement of the materials

and supplies provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services and under no circumstances shall the credit for a Small Diverse Business non-stocking supplier exceed ten percent (10%) of the purchase order cost. A non-stocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. In order for a non-stocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; AND determining quality and quantity; AND ordering materials; AND paying for the materials) and the fee or commission must be provided with the purchase order and the Small Diverse Business Utilization Report industry practices and other relevant factors will be considered.

- e. Small Diverse Business manufacturers are credited at one hundred percent (100%) of the total cost of the materials or supplies purchased.
- f. The Contractor is allowed to use contract amounts at any tier of supply or subcontracting; however, the dollar value of any commitment to a Small Diverse Business cannot be double counted.
 - i. If the Contractor or any of its non-Small Diverse Business subcontractors or suppliers makes a commitment to a Small Diverse Business, the credit for the subcontract/purchase order commitment, regardless of the level or tier, shall be calculated as indicated in Section D and credited toward the Contractor's MPL.
 - ii. In the event that the Small Diverse Business whose entire subcontract value is counted towards the Contractor's MPL and then subcontracts a portion of the work or supplies associated with this subcontract to another Small Diverse Business, the dollar value of the subcontract with/to this lower tier Small Diverse Business is NOT counted in the Contractor's Participation Level in order to prevent the duplicate counting of Small Diverse Business commitment dollars. In this case, the dollar value of this subsequent Small Diverse Business subcontract has already been included within the scope of work and dollar value of the Small Diverse Business commitment already counted as a part of the Contractor's MPL.
- g. All Small Diverse Businesses must present a photocopy of their current Small Diverse Business certificate from DGS to the Contractor. **The certificate must be current as of the subcontract/purchase execution date, not revoked, lapsed or pending, in order to obtain credit for the commitment.**

- h. A Contractor's Small Diverse Business participation level is calculated by adding all or a percentage of the dollar commitments (as described in this section D) to DGS-certified Small Diverse Business subcontractors of all tiers, DGS-certified Small Diverse Business manufacturers, DGS-certified Small Diverse Business stocking suppliers, and the fee or commission paid to the DGS-certified non-stocking supplier and dividing that total amount by the total contract award price.
- i. Upon receipt of the Contractor Small Diverse Business Utilization Report, the Department will verify the certification status of the subcontractor, manufacturer, stocking supplier, or non-stocking supplier. Once reviewed by the Department, the dollar value of the subcontract or purchase order, or a percentage thereof, shall be calculated as part of the total dollar value of the Small Diverse Business participation level.

5. Remedies

- a. The Department may, in accordance with Subsection 6.4 of the General Conditions for the Construction 2006 (Progress Estimates), decline to certify for Payment a Progress Estimate in whole or in part if the Small Diverse Business Utilization Report is not included with a certified Progress Estimate.
- b. If, after the first three (3) months following Contract execution, the Contractor fails to progress in achieving the MPL (based upon the data supplied in the Small Diverse Business Utilization Report), the Department may withhold payments until the Contractor and the Department discuss the reasons for lack of progress and achieve a resolution. The Contractor is not entitled to interest on any funds withheld due to their failure to submit a properly completed Small Diverse Business Utilization Report or their failure to progress in achieving the MPL.
- c. The Contractor's compliance with requirements of the Small Diverse Business participation component, including the fulfillment of any Small Diverse Business commitments in all subcontracts and purchase orders, is material to the contract between the Contractor and the Department. Any failure to comply with these requirements constitutes a substantial breach of the Contract. It is further understood and agreed that in the event the Department determines that the Contractor has failed to comply with these requirements, the Department may, in addition to any other rights and remedies the Department may have under the contract, any bond filed in connection therewith, or at law or in equity, impose remedies as applicable on the Contractor. Remedies for breach of this component may include entry into the CRP, termination, suspension, default, penalties, and/or debarment from future contracting opportunities with the Commonwealth of Pennsylvania. The remedies enumerated herein are for the sole benefit

of the Department and the Department's enforcement of any provision or the Department's indulgence of any non-compliance with any provision hereunder shall not operate as a waiver of any of the Department's rights in connection with the Contract, nor shall it give rise to actions by any third parties, including any Small Diverse Business enterprises.

SUBSECTION 2.16 DGS SELF-CERTIFIED SMALL BUSINESS INITIATIVE

A. Overview - Scope of Work for Small Construction Business Program

1. An Agency funded project with an estimated total project value between \$10,001 and less than \$300,000 is subject to this program. These projects are reserved to be bid, awarded and performed only by properly self-certified Small Construction Businesses.

B. The Small Business Construction Program

1. Qualifications – Businesses that wish to participate in the Small Business Initiative must be registered to do business with the Commonwealth, have a Vendor Number and be a DGS Self-Certified Small Business.
2. Performance and Restrictions
 - a. Small Construction Businesses must self-perform at least 51% of the labor cost of every contract it is awarded under this program, unless the Department directs otherwise.
 - i. 49% of the project work may be subcontracted, and Small Construction Business primes are strongly encouraged to utilize other Small Construction Businesses as subcontractors and suppliers.
 - b. Small Construction Businesses within the Small Business Construction program may:
 - i. be self-certified for more than one discipline; and
 - ii. bid on more than one contract on any project; and
 - iii. be awarded and perform multiple concurrent Small Construction Business contract; and
 - iv. bid on capital projects with an estimated value in excess of \$300,000.

- c. The Department reserves the right to declare a Small Construction Business a non-responsible bidder if DGS determines that performance on one or more of its current contracts is unsatisfactory.

C. Enforcement and Verification of Eligibility

1. Every Small Construction Business that is awarded a construction contract will be subject to examination by the Department to verify the accuracy of the statements made during the self-certification process or during the bidding process, and to verify self-performance of at least 51% of the contract and maximum subcontracting of 49% of the contract.
2. Before a contract can be issued for signature, the Small Construction Business must pass a Contractor Responsibility Program review.
3. Any individual or firm submitting a bid on a Department contract reserved for small business agrees to cooperate fully with the Department in verifying the accuracy and current status of the business' status.
4. Any business determined by the Department to have provided false information in connection with obtaining or attempting to obtain a contract under the DGS Small Business Construction Program shall repay all reasonable expenses incurred by the Commonwealth during the investigation of the business.

D. Submission of Bids

1. All bidders submitting a bid must attach their Self-Certification Certificate to the Bid Form.
2. Any potential bidder who has not completed the self-certification process and obtained a self-certification certificate as of the bid opening date will not be eligible to bid on projects encompassed by this Program.
3. Any person or company bidding on a Small Business Construction project that has not completed the self-certification process and obtained a self-certification certificate as of the bid opening date will have its bid rejected for that project on the ground that the bidder is not responsive.

E. Resources

1. DGS is available for technical assistance to all bidders submitting bids for this contract. DGS self-certification as a Small Business means only that the applicant for certification has submitted information that qualifies it as

a Small Business. It does not imply, and no Bidder shall infer, that the Department has in any way investigated or approved the entity's competence to perform work.

SUBSECTION 2.17 PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

During the term of this contract, the contractor agrees as follows:

Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. §35.101 et. seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to the benefits, services, programs and activities provided by the Commonwealth through contracts with outside contractors.

The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions as defined in the previous paragraph.

SUBSECTION 2.18 BID PROTESTS

Protests relating to bid decisions of the Department may be made only in the following manner:

- A. **PROTEST BY NON-BIDDERS** - A protest by a protestant who did not submit a bid must be received by the Secretary within seven (7) calendar days after the protestant knows or should have known the facts giving rise to the protest, but in not any event later than the bid opening deadline. Otherwise, the protest will be considered untimely and disregarded by the Department.
- B. **PROTEST BY BIDDERS** - A protest by a protestant who did submit a bid must be filed with the Secretary within seven (7) calendar days after it knows or should have known the facts giving rise to the protest.
- C. **RESOLUTION OF PROTEST** – The Secretary or his/her designee shall within sixty (60) calendar days from receipt of the protest issue a written decision regarding the protest, stating (1) the decision, (2) the reasons for the decision and (3) informing the protestant of its right to file an action in Commonwealth Court for review of the decision.

- D. NOTICE OF DECISION – The Department shall send the decision to the protestant and any other persons affected by the decision
- E. FINALITY OF DECISION – The Department's decision shall be conclusive unless the person adversely affected by the decision files an appeal in Commonwealth Court within fifteen (15) calendar days of the mailing date of the decision.
- F. STAY OF PROCUREMENT DURING PROTEST - The Department shall not proceed with the procurement until a bid protest has been concluded as set forth above, unless the Secretary or his/her designee determines in writing (1) the protest is clearly without merit or (2) contract award without delay is necessary to protect the substantial interests of the Commonwealth.

All protests shall be addressed to: Secretary, Department of Environmental Protection, c/o Chief, Construction Contracts Section, Division of Contracts, Procurement & Bonding, P.O. Box 8452, Harrisburg, PA 17105-8452.

SUBSECTION 2.19 CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it

becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.pa.gov> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

SECTION 3

AWARD AND EXECUTION OF CONTRACT

SUBSECTION 3.1 AWARD OF CONTRACT

Subject to the provisions in SUBSECTION 2.7, REJECTION OF BIDS, hereof, when a bid received has been determined by the Department to be satisfactory, a contract will be awarded to the lowest responsible bidder within sixty (60) calendar days of the date of the bid opening. However, if the award is delayed because of a required approval of another government agency, the sale of bonds or the award of a grant or grants, the Department will reject all bids or award the contract to the lowest responsible bidder within one hundred twenty (120) calendar days of the bid opening. Award in either case is subject to the Department's right to reject any or all bids, as hereinbefore stated. Extensions of the date for the award may be made by the mutual written consent of the Department and the lowest responsible bidder. The award will be based exclusively on the total results of computations of the estimated quantities and the prices bid, as applicable, provided the lowest bidder is qualified as determined by the Department.

Release of the lowest responsible bidder from any liability in respect to its bid or contract shall be in accordance with Section 3913 of the CPC (62 Pa. C.S. 3913).

All tie bids will be broken by the Secretary, or his/her designee, in the best interests of the Commonwealth.

The bidder's attention is called to Act 181 of 1984 which amends the Surface Mining Conservation and Reclamation Act to read:

The secretary shall not enter into a reclamation contract with any person or related party who has forfeited any bond or has been convicted of a misdemeanor within three (3) years for violating any provision of these acts: The Act of June 22, 1937 (P.L. 1987, No. 394), known as "The Clean Streams Law;" the Act of September 24, 1968 (P.L. 1040, No. 318), known as the "Coal Refuse Disposal Control Act;" the Act of April 27, 1966 (P.L. 31, No. 1), known as the "Bituminous Mine Subsidence and Land Conservation Act;" the Act of January 8, 1960 (P.L. 2119, No. 787), known as the "Air Pollution Control Act;" the Act of July 7, 1980 (P.L. 380, No. 97), known as the "Solid Waste Management Act;" or the Act of November 26, 1978 (P.L. 1375, No. 325), known as the "Dam Safety and Encroachments Act."

SUBSECTION 3.2 CANCELLATION OF AWARD

The Department reserves the right to cancel the award of the contract at any time before it is fully executed.

SUBSECTION 3.3 EXECUTION OF AGREEMENT

The lowest responsible bidder, to whom the award shall have been made, must execute the agreement and return it, together with properly executed contract bonds and insurance certificates, to the Department at 400 Market Street, 15th Floor, P.O. Box 8452, Harrisburg, Pennsylvania, 17105 within seven (7) calendar days after receipt of the documents. If the lowest responsible bidder to whom the contract shall have been awarded fails, refuses or neglects to return the agreement, contract bonds, and insurance certificates, the amount of the bid guaranty shall be forfeited and retained by the Commonwealth as liquidated damages for such neglect, refusal or failure. Any lapse of time beyond the seven (7) calendar days shall be added to the time limitations for execution of the agreement as provided in Section 3912 of the CPC (62 Pa. C.S. 3912). The lowest responsible bidder shall signify its consent to this extension by signing the form included in the agreement.

A bid shall not be considered binding upon the Commonwealth until the contract has been fully executed.

SUBSECTION 3.4 PERSONS INTERESTED IN CONTRACT

The contractor shall ensure that an individual, partnership, joint venture, corporation or other legal entity other than the contractor does not have any interest hereunder as contractor.

SUBSECTION 3.5 ASSIGNMENT AND SUBCONTRACTS

The personal services of the contractor are contemplated under the contract; therefore, not more than forty percent (40%) of the work to be performed may be sublet without the written approval of the Department. Subcontractor(s) shall be subject to the approval of the Department, which approval shall be contingent upon the subcontractor(s)'s proven ability to satisfactorily perform the subcontract work. If, in the opinion of the Department, the subcontract work is unnecessarily or unreasonably delayed, or is not being performed suitably, in accordance with the terms of the contract, or sufficient progress is not being made to complete the work in the required time, or, for any cause whatsoever, is not being carried on in an acceptable manner, then the Department may notify the contractor, in writing, to terminate the use of such subcontractor(s). The contractor shall then comply with such notification within two (2) calendar weeks and shall perform the work either by its own forces or by other approved means.

The contractor shall be responsible in all respects for its subcontractor(s)'s compliance with all provisions of the contract and at no time shall a subcontractor be permitted to work without prior approval of the Department.

In any event, the contractor shall not assign, transfer or otherwise dispose of the contract, or its right, title or interest in or to the same or any part thereof, without such previous

written consent of the Department. If the contractor shall, without the previous written consent, assign, transfer, convey or otherwise dispose of the contract, or of its right, title or interest therein to any other individual, partnership, joint venture, corporation or other legal entity, the contract may, at the option of the Department, be terminated in accordance with SUBSECTION 5.10.A., TERMINATION DUE TO NATURE OF PERFORMANCE BY CONTRACTOR, The Department shall thereupon be relieved and discharged from any and all liability and obligations, growing out of the same, to the contractor and to its assignee, trustee or transferee; and no right under the contract, or to any money to become due under the contract, shall be asserted, excepting as provided herein, against the Department, in law or equity, by reason of any so-called assignment of the contract or any part thereof, or of any moneys to become due under the contract, unless authorized as aforesaid by written consent of the Department.

SUBSECTION 3.6 SEPARATE CONTRACTS

- A. DEPARTMENT'S RIGHT TO AWARD SEPARATE CONTRACTS - The Department reserves the right to award other contracts in connection with other portions of the project under these or similar conditions of the contract.

When separate contracts are awarded for different portions of the project, the "contractor" in the contract documents in each case shall be the contractor who signs each separate contract.

- B. MUTUAL RESPONSIBILITY OF CONTRACTORS - The contractor(s) shall afford other separate contractor(s) reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its work awarded by the Department to other separate contractors.

If any part of the contractor(s)'s work depends for proper execution or results upon the work of any other separate contractor(s), the contractor(s) shall inspect and promptly report to the Department any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the contractor(s) to inspect and report shall constitute an acceptance of the other separate contractor(s)'s work as fit and proper to receive its work, except as to defects which may develop in the other separate contractor(s)'s work after the execution of the contractor(s)'s work.

- C. COORDINATION - The work shall be conducted so as not to interfere with the work of other separate contractor(s). If any part of a contractor(s)'s work depends on proper execution or results upon work being done by other separate contractor(s) (or its subcontractor(s)) not under contract to it, it shall inspect and promptly report to the Department any interference, defects or delays in the work done or being done by the other separate contractor(s) (or its subcontractor(s)). The Department may, if requested by the contractor(s), establish the sequence of the work in order to secure completion of the various portions of the work in

general harmony or the Department may order suspension of the work in accordance with SUBSECTION 4.1.C., SHUTDOWN REQUIRED BY DEPARTMENT, hereof, until such time as proper sequence of the work is established or both. In the event that any contractor shall not complete the various portions of the work in general harmony, and another contractor shall be caused damage or injury by the failure to so act in harmony, the contractor damaged or injured shall have the right to settle by agreement or arbitration such claim or disputes in accordance with the provisions in SUBSECTION 5.13, DISPUTES OR ACTIONS BETWEEN CONTRACTORS, The Department shall not be liable to any contractor for any increased costs or damages resulting from the defective work, interference or delays of other contractors.

SUBSECTION 3.7 REMOVAL OF EQUIPMENT

The contractor shall not sell, assign, mortgage, hypothecate or remove equipment which has been furnished, and which may be necessary, for the completion of the contract without the written consent of the Department.

SUBSECTION 3.8 NOTICE TO PROCEED

Within sixty (60) calendar days of the date that the contract is awarded, the contract shall be executed by the lowest responsible bidder and the Department, and the Department will issue a notice to proceed unless the time shall be extended by the mutual written consent of the Department and the lowest responsible bidder.

SUBSECTION 3.9 CONTRACT BONDS

The lowest responsible bidder to whom the contract is awarded will be required to execute a performance bond, covering satisfactory performance of the work contracted, in the sum of one hundred percent (100%) of the contract amount; a payment bond covering the prompt payment in full for materials, utility services rendered and all equipment furnished and/or labor supplied or performed, in the prosecution of the work, also in the sum of one hundred percent (100%) of the contract amount; and a maintenance bond in the sum of ten percent (10%) of the contract amount, conditioned for the contractor's remedy, without cost to the Department, of any defects which develop during the remedy guarantee period as outlined in SUBSECTION 5.18, REMEDY GUARANTEE PERIOD. All contract bonds must be executed by a corporate surety authorized to do business in the Commonwealth. If the contract bonds are executed by a non-resident agent, they must be countersigned by a resident agent registered with the Commonwealth's Department of Insurance. The same surety must execute all contract bonds and should the surety upon such contract bonds become unsatisfactory to the Department, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Department and of any individual, partnership, joint venture, corporations or other legal entity supplying materials, utility services, equipment and/or labor in the prosecution of the work contemplated by the contract.

If the lowest responsible bidder selects a surety company who must obtain reinsurance in another surety company, co-suretyship, etc., by deposit with it, in pledge of conveyance to it in trust for its protection of property or by conveyance or mortgage for its protection, such reinsurance, co-suretyships, etc., will be reviewed by the Department and any costs associated with appraisals or evaluations of pledged assets shall be borne by the lowest responsible bidder. The Department in its sole discretion will evaluate the reinsurance, co-suretyship, etc., to insure that the public is adequately protected under the contract.

The lowest responsible bidder shall acquaint itself with and shall abide by all provisions of Sections 903 and 904 of the CPC (62 Pa. C.S. 903 and 904). Although the CPC only requires performance and payment surety bonds each in the amount of 100% of the contract amount for contracts in amounts greater than \$100,000.00, such requirement shall be considered a part of the bid documents on all contracts, regardless of the monetary size of the contract.

The contractor shall require subcontractor(s) to notify its subcontractor(s) and supplier(s), in writing, that their right of recovery against the material and labor payment bond may not be exercised unless the contractor is notified of the claim by registered mail within ninety (90) calendar days from the last performance of labor or provision of materials for which it claims payment, stating with substantial accuracy the amount and the name of the person for whom the work was performed or to whom the material was furnished. The contractor shall furnish to the DEP a copy of this notification.

SUBSECTION 3.10 INSURANCE

The contractor shall not commence work, according to the terms of the contract until it has obtained all insurance required in this subsection and not until such insurance has been approved by the Department's Representative, nor shall the contractor permit its subcontractor(s), if any, to commence work until all similar insurance has been submitted and approved. The contractor shall either require 1) its subcontractor(s) to procure and maintain, for the contract term of its subcontract(s), subcontractor(s)'s insurance in the types and amounts specified, or 2) insure the activity of its subcontractor(s) in its own policies. All policies shall be issued by insurance companies authorized to conduct such business under the law of the Commonwealth. The certificate of insurance, and all correspondence pertaining to insurance, shall be submitted to the Construction Contracts Section, P.O. Box 8452, Harrisburg, PA 17105-8452.

The Contractors attention is called to the certification found in the bid package titled CONTRACTOR CERTIFICATION OF RECOGNITION OF AND COMPLIANCE WITH PROJECT INSURANCE REQUIREMENTS. This certification shall be signed by all bidders and submitted as a part of their bid proposal. Upon award, if subcontractor(s) are hired, the certification must be signed by the subcontractor(s) before their insurance certificate(s) are accepted by the Department's Representative.

REQUIRED INSURANCES shall be in the form of a certificate of insurance, of the contractual liability type and shall also name the Commonwealth as an ADDITIONAL INSURED. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to the work performed for the Commonwealth.

- A. **WORKERS' COMPENSATION INSURANCE** - The contractor shall take out and maintain, during the contract term, workers' compensation insurance for all of its employees employed on the project and, in case any of the work is sublet, the contractor shall require the subcontractor(s), similarly, to provide workers' compensation insurance, unless the latter's employees are covered by the protection afforded by the contractor.

The contractor shall accept, insofar as the work according to the terms of the contract is concerned, the provisions of the Act dated June 2, 1915 (P.L. 736), as reenacted and amended, known as "The Workers' Compensation Act" (77 P.S. 1 et seq.).

- B. **PUBLIC LIABILITY BODILY INJURY AND PROPERTY DAMAGE INSURANCE** -The contractor shall take out and maintain, for the contract term, such public liability bodily injury and property damage insurance as shall protect the Commonwealth, the political subdivision(s) where the work is performed, the contractor and subcontractor(s), if any, performing work according to the terms of the contract, from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise in execution of the contract, whether such be by the contractor or by the subcontractor(s) or by anyone directly or indirectly employed by either. The amount of public liability bodily injury insurance shall not be less than \$1,000,000.00 per occurrence. The amount of property damage insurance shall not be less than \$500,000.00 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount shall not be less than \$1,500,000.00 per occurrence. Coverage shall include underground, explosion and collapse hazards.

- C. **AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE INSURANCE** - The contractor shall take out and maintain for the contract term such automobile bodily injury and property damage insurance as shall protect the Commonwealth, the political subdivision(s) in which the work is performed, the contractor and subcontractor(s), if any, performing work according to the terms of the contract, from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise in execution of the contract, whether such be by the contractor or by the subcontractor(s) or by anyone directly or indirectly employed by either. The amount of the automobile bodily injury insurance shall be not less than \$500,000.00 per person and \$1,000,000.00 per occurrence. The amount of automobile property damage insurance shall not be less than \$500,000.00 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount shall not be

less than \$1,500,000.00 per occurrence. Automobile bodily injury and property damage insurance coverage shall include non-owned and leased vehicles. Evidence of such coverage shall be required even though the contractor claims to not own any vehicles to be employed on the project.

- D. **EXCESS INSURANCE** – The contractor may choose to take out and maintain for the contract term such excess/umbrella policy insurance to cover any additional amounts needed to meet the contract insurance requirements. For example, if the contractor holds \$1,000,000 combined Public Liability Bodily Injury and Property Damage Insurance and \$1,000,000 combined Automobile Bodily Injury and Property Damage Insurance, the contractor may choose to take out \$1,000,000 in Excess Liability Insurance to cover the addition \$500,000 needed in each Public and Automobile Insurance.
- E. **SPECIAL HAZARD** - Special hazards, if there is a possibility of such hazards existing in the work contemplated, shall be covered by separate insurance or by rider(s) to other required policy(ies). Possible hazards, such as blasting, and fire on insurable items shall be so covered.
- F. **MAINTENANCE OF INSURANCE** - Whenever the estimated aggregate of losses covered by the insurance, described in SUBSECTION 3.10.B., and SUBSECTION 3.10.C., hereof, equals or exceeds one-half (1/2) of the aggregate policy limits as determined by the Department, the said policy shall, upon fifteen (15) calendar days written notice by the Department, be endorsed to restore the initial policy limits or replaced by another policy having the same limits.
- G. **ACCIDENTS AND CLAIMS** - The contractor shall indemnify and save harmless the Commonwealth, the local political subdivision(s) in which the work is performed, and all the officials, agents and employees of both from all suits, actions or claims of any character, name and description brought for or on account of any claims of any injury or damage received or sustained by any person(s) or property on account of any actions of the contractor, its agents, employees or subcontractor(s) in the execution of the contract, whether caused by negligence or not, or from any improper or inferior workmanship or inferior materials used, and the contractor will be required to pay any judgment, with costs, which may be obtained against the Commonwealth or the local political subdivision(s), and all officials, agents and employees of both, growing out of such injury or damage. Contractors must respond to any damage claims in a timely manner.

If at any time during the contract term, contractor and/or subcontractor(s) fail to comply with the requirements of this subsection, the contractor and/or subcontractor(s) shall cease work at the site until compliance has been attained.

Insurance policies which terminate during the contract term: compliance shall not be attained until proof of coverage has been submitted to and approved by the Department's Representative in the Construction Contracts Section.

Any delays or additional costs to the contractor and/or subcontractor(s) attributable to failure to provide proof of coverage shall not be considered justification for an extension of time under SUBSECTION 4.2, EXTENSION OF TIME, nor be considered justification for increased compensation pursuant to SUBSECTION 6.6, MODIFICATION OF SPECIFICATIONS AND CONTRACT DRAWINGS, or SUBSECTION 6.7, EXTRA WORK.

SUBSECTION 3.11 SUBCONTRACTOR INSURANCE REQUIREMENTS

Unless otherwise specified by the Department, all subcontractors being employed on a project must submit and have approved the following information. The Contractor may not allow a subcontractor to begin work on a project until it has obtained all requirements of this Subsection, and been approved by the Department's Representative.

REQUIRED INSURANCES shall be in the form of a certificate of insurance, of the contractual liability type and shall also name the Commonwealth as an ADDITIONAL INSURED. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to the work performed for the Commonwealth.

- A. **WORKERS' COMPENSATION INSURANCE** - The subcontractor shall take out and maintain, during the contract term, workers' compensation insurance for all of its employees employed on the project, unless the subcontractor's employees are covered by the protection afforded by the prime contractor.

The subcontractor shall accept, insofar as the work according to the terms of the contract is concerned, the provisions of the Act dated June 2, 1915 (P.L. 736), as reenacted and amended, known as "The Workers' Compensation Act" (77 P.S. 1 *et seq.*).

- B. **PUBLIC LIABILITY BODILY INJURY AND PROPERTY DAMAGE INSURANCE** -The subcontractor shall take out and maintain, for the contract term, such public liability bodily injury and property damage insurance as shall protect the Commonwealth, the political subdivision(s) where the work is performed, the subcontractor performing work according to the terms of the contract, from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise in execution of the contract, or by anyone directly or indirectly employed by the subcontractor. The amount of public liability bodily injury insurance shall not be less than \$500,000.00 per occurrence. The amount of property damage insurance shall not be less than \$500,000.00 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount shall not be less than \$1,000,000.00

per occurrence. Coverage shall include underground, explosion and collapse hazards.

- C. **AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE INSURANCE** - The subcontractor shall take out and maintain for the contract term such automobile bodily injury and property damage insurance as shall protect the Commonwealth, the political subdivision(s) in which the work is performed, subcontractor, performing work according to the terms of the contract, from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise in execution of the contract, subcontractor or by anyone directly or indirectly employed by the subcontractor. The amount of the automobile bodily injury insurance shall be not less than \$500,000.00 per person and \$500,000.00 per occurrence. The amount of automobile property damage insurance shall not be less than \$500,000.00 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount shall not be less than \$1,000,000.00 per occurrence. Automobile bodily injury and property damage insurance coverage shall include non-owned and leased vehicles. Evidence of such coverage shall be required even though the subcontractor claims to not own any vehicles to be employed on the project.
- D. **EXCESS INSURANCE** – The subcontractor may choose to take out and maintain for the contract term such excess/umbrella policy insurance to cover any additional amounts needed to meet the contract insurance requirements. For example, if the contractor holds \$500,000.00 combined Public Liability Bodily Injury and Property Damage Insurance and \$500,000.00 combined Automobile Bodily Injury and Property Damage Insurance, the contractor may choose to take out \$1,000,000 in Excess Liability Insurance to cover the addition \$500,000 needed in each Public and Automobile Insurance.
- E. **SPECIAL HAZARD** - Special hazards, if there is a possibility of such hazards existing in the work contemplated, shall be covered by separate insurance or by rider(s) to other required policy(ies). Possible hazards, such as blasting, and fire on insurable items shall be so covered.
- F. **MAINTENANCE OF INSURANCE** - Whenever the estimated aggregate of losses covered by the insurance, described in SUBSECTION 3.11.B., and SUBSECTION 3.11.C., equals or exceeds one-half (1/2) of the aggregate policy limits as determined by the Department, the said policy shall, upon fifteen (15) calendar days written notice by the Department, be endorsed to restore the initial policy limits or replaced by another policy having the same limits.
- G. **ACCIDENTS AND CLAIMS** - The subcontractor shall indemnify and save harmless the Commonwealth, the local political subdivision(s) in which the work is performed, and all the officials, agents and employees of both from all suits, actions or claims of any character, name and description brought for or on account

of any claims of any injury or damage received or sustained by any person(s) or property on account of any actions of the subcontractor, its agents, or employees in the execution of the contract, whether caused by negligence or not, or from any improper or inferior workmanship or inferior materials used, and the subcontractor will be required to pay any judgment, with costs, which may be obtained against the Commonwealth or the local political subdivision(s), and all officials, agents and employees of both, growing out of such injury or damage. Contractors must respond to any damage claims in a timely manner.

If at any time during the contract term, the subcontractor fails to comply with the requirements of this subsection, the subcontractor shall cease work at the site until compliance has been attained.

Insurance policies which terminate during the contract term: compliance shall not be attained until proof of coverage has been submitted to and approved by the Department's Representative in the Construction Contracts Section.

Any delays or additional costs to the contractor and/or subcontractor(s) attributable to failure to provide proof of coverage shall not be considered justification for an extension of time under SUBSECTION 4.2, EXTENSION OF TIME, nor be considered justification for increased compensation pursuant to SUBSECTION 6.6, MODIFICATION OF SPECIFICATIONS AND CONTRACT DRAWINGS, or SUBSECTION 6.7, EXTRA WORK.

SECTION 4

CONDUCT OF WORK

SUBSECTION 4.1 TIME AND ORDER OF WORK

- A. GENERAL - The contractor shall commence work within ten (10) calendar days after receipt of the notice to proceed and the work shall be prosecuted on at such points and in such order of procedure and such times and seasons as may be necessary in order that all of the project may be constructed with safety during all stages of construction and completed within the time specified in the bid form. If the contractor does any work or incurs any expense in furtherance of the contract prior to receipt of the notice to proceed, such action shall be its sole responsibility.

Any shutdown will not in any way change the provisions in SUBSECTION 5.11, CONTRACTOR'S LIABILITY. The requirements and responsibilities outlined in that and other pertinent subsections shall remain in effect during the period when work has been discontinued.

- B. FIELD EXAMINATION - After the notice to proceed is issued for the contract and before work is started at the site the contractor or its authorized representative shall go over the project accompanied by a Department's Representative, and shall observe for itself, with the contract drawings before it, all pertinent conditions relative to the contract, including the status of right-of-way, working area and existing structures and utilities.
- C. SHUTDOWN REQUIRED BY DEPARTMENT - The Department shall have the right to have the work discontinued for such time as may be necessary, in whole or in part, should the condition of the weather, or of flood or other contingency make it desirable to do so, in order that the work shall be well and properly executed. Extensions of time may be granted the contractor for discontinuance of work so required, as provided in SUBSECTION 4.2, EXTENSION OF TIME.
- D. WINTER SHUTDOWN - Unless otherwise specified, the contractor may suspend operations for the winter season provided that: (1) progress of the work is such that no completion is expected within time specified or there are not any items of work which can be satisfactorily and efficiently performed during the winter season; and (2) written permission is obtained from the Department prior to shutdown. Extension of time for the winter season shutdown will not be considered unless the winter season is much longer than could ordinarily be anticipated from a study of local weather conditions, and then only for time in excess of the expected winter season duration.

- E. **CONSTRUCTION PROGRESS SCHEDULE (Schedule)** - Upon notification by the Department, the contractor, within fourteen (14) calendar days after receipt of such notification, shall submit to the Department for approval a proposed itemized schedule. This schedule shall be submitted on a standard form provided by the Department. A computer-generated schedule will be acceptable provided it includes all of the information required on the Department's standard form. The contractor shall follow this schedule as closely as practical, but shall not delay any portion of the work for the sole purpose of adhering to the approved schedule. The contractor shall submit a revised schedule if it changes its work program, or if requested by the Department. Until a satisfactory schedule is submitted as specified herein, payment on account of progress estimates for the work may be withheld by the Department.

Upon notification by the Department, on a multiple contract project, the Contractor for General Construction on the project, within fourteen (14) calendar days after receipt of such notification, shall furnish to each separate contractor a schedule of the proposed prosecution of the work under its contract. Each separate contractor shall submit to the Contractor for General Construction within fourteen (14) calendar days after the notification, a schedule of the proposed prosecution of the work under its respective contract. The Contractor for General Construction shall then submit to the Department within twenty-eight (28) calendar days after the notification a complete and comprehensive schedule signed by all separate contractors indicating their approval and showing in detail, to the satisfaction of the Department's Representative, the proposed coordinated dates for the performance of each phase of the work under every contract on the entire project, commencing with a date ten (10) calendar days after receipt of the notice to proceed and ending on the contract completion date. This schedule shall be submitted on a standard form provided by the Department. A computer generated schedule will be acceptable provided it includes all of the information required on the Department's standard form. Each separate contractor shall follow this schedule as closely as practical, but shall not delay any portion of the work for the sole purpose of adhering to the approved schedule. In the event that any separate contractor changes its work program or if requested by the Department, a revised schedule signed by all separate contractors indicating their approval shall be furnished promptly by the Contractor for General Construction, which shall also be subject to the approval of the Department's Representative.

- F. **JOB CONFERENCES** - Job conferences may be held as often as required and may be held as often as bi-weekly on a multiple contract project and must be attended by contractor(s), or representative(s) who is/are authorized to make decisions and representations affecting the contractor(s) and its progress on the project. The dates and time of job conferences will be given to all concerned parties and these conferences shall be attended whether or not a particular contractor may be affected. A failure to attend shall be construed to be a violation of the contract.

- G. CUTTING AND PATCHING UNDER SEPARATE CONTRACTS - The contractor shall do all cutting, fitting or patching of its work that may be required to fit it to receive or be received by the work of other separate contractors shown in the contract. The contractor shall not endanger any work of any other separate contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other separate contractors except with the written consent of the Department.

Any costs caused by the defective or ill-timed work shall be at the sole cost and expense of the contractor responsible therefor.

SUBSECTION 4.2 EXTENSION OF TIME

If the contractor is delayed at any time in the progress of the work by any act or neglect of the Department, by any separate contractor employed by the Department, or by any cause beyond the control of the contractor which are not foreseeable at the time of contract execution, then the contractor may be entitled to an extension of time for completing the work sufficient to compensate for such delay. An extension of time shall not be granted, however, unless the contractor shall, within ten (10) calendar days from the initiation of the delay, notifies the Department in writing of such delay and of the time of beginning and the cause of the delay, and unless it, within ten (10) calendar days after the expiration of such delay, notifies the Department in writing of the extension of time claimed on account thereof and then only to the extent, if any, allowed by the Department. Copies of such requests for extension of time shall be sent by the Department to all other separate contractors on the project. The Department will grant or deny such request for extension of time at the end of a ten (10) calendar day period. Should none of the other separate contractors raise written objections during the ten (10) calendar day period, the Department will assume such silence as indication of approval, and any contractor having remained silent may not at a later date claim damages therefor. An extension of time shall not release the surety or contractor from any of their obligations. The Department's Representative shall be fully authorized and empowered to make such deductions from the final progress estimate of the amount due the contractor, as are stipulated in the contract, for each calendar day that the contractor shall be in default for the completion of the work beyond the date to which the time of completion shall have been extended by the Department. Should the contractor be permitted to continue and finish the work, or any part thereof, after the time for completion fixed by the contract, or as it may have been extended, such permission shall not in any way operate as a waiver on the part of the Department of its right to collect the liquidated damages agreed upon in case of such delay, or of any of its rights under the contract.

The contractor declares that it has familiarized itself with the weather, local conditions and other circumstances which may, or are likely to, affect the performance and completion of the work. It agrees that, taking these conditions and circumstances into account, it will provide adequate equipment and prosecute the work in such manner and with such diligence that the same will be completed within the time specified in the

contract, or as the contract may be extended, even though the most adverse conditions which reasonably could be expected to occur during the period of construction do prevail during the performance of the work.

When the work of the Department is enjoined by legal proceedings which prevent the contractor from prosecuting any of the work of the contract, an extension of time, sufficient in the opinion of the Department, may be granted to compensate for the time lost by such delay.

Apart from extension of time, payment or claim for damages shall not be made to the contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the work, notwithstanding whether such delay may be avoidable or unavoidable. The Department shall grant extension of time, if any, by a change order to the contract.

SUBSECTION 4.3 INSPECTION AND RIGHT OF ACCESS

The Department contemplates, and the contractor hereby agrees to, a thorough inspection by the Department, or by any of its agents, or by any agents which the Department may appoint for such purpose, of all work and equipment furnished under the contract, in order to ascertain whether all workmanship is in strict accordance with the requirements of the contract.

The contractor shall furnish to the Department or any of its agents access at all times to the work or to the premises used by the contractor, and shall provide them every reasonable facility as may be desirable, for the purpose of inspection even to the extent of discontinuing portions of the work temporarily. The contractor shall not charge for temporary discontinuance of work for purposes of inspection.

The contractor shall regard and carry out the directions and instructions of the Department, or its agents, and shall correct any defective work found not to be in accordance with the specifications and/or contract drawings and in case of dispute the contractor may appeal to the Department, whose decision shall be final. The contractor shall not make claim for damages or delay on this account.

If construction operations are to be conducted other than during normal work hours, 8:00 am to 4:00 pm, Monday through Friday, approval must be obtained from the Department and the Department must be notified forty-eight (48) hours in advance to arrange for inspection services.

SUBSECTION 4.4 PROVIDING FOR EMERGENCIES

It is understood by all parties of the contract that unusual conditions may arise during the work which will require that immediate and unusual provisions be made to protect the public from danger, loss or damage, due directly or indirectly to the prosecution of the work, and that it is part of the service required of the contractor to make such provisions.

The contractor shall use such foresight and shall take such steps and precautions as may be necessary to protect the public from danger or damage or loss of life or property, which would result from the interruption of any public service, or from the failure of partly completed work.

Whenever, in the opinion of the Department, an emergency exists for which the contractor has not taken sufficient precaution for the safety of the public, or the protection of the work to be performed under the contract, or of adjacent structures or property which may be damaged by processes of work on account of such neglect and whenever, in the opinion of the Department, immediate action shall be considered necessary in order to protect public or private property interests liable to loss or damage on account of the operations under the contract, then, and in that event, the Department, upon giving notice to the contractor, the contractor shall provide suitable protection for said interests by causing such work to be done and equipment to be furnished as, in the opinion of the Department, may seem reasonable and necessary.

If emergency conditions arise which are due to the lack of foresight or failure to take proper precautionary measures on the part of the contractor, it shall be at the sole cost and expense of the contractor for any necessary remedial work, whether incurred by its own forces or by work and equipment provided by the Department. Cost and expenses for work and equipment, provided by the Department, shall be paid by the contractor, upon the presentation of the properly certified bills. If said bills are not paid, upon presentation by the contractor, then said cost and expense shall be deducted from any amount due, or which may become due, the contractor.

In case the Department shall decide that all or part of the expense incurred in meeting any emergency cannot be justly charged to the contractor it may compensate the contractor for all or part of the work done and equipment furnished in meeting such emergency.

SUBSECTION 4.5 PERSONAL ATTENTION OF CONTRACTOR

The contractor shall give its personal attention constantly to the faithful prosecution of the work, and shall be present on the site of the work continually during its progress. It shall at all times while the work is in progress keep a complete copy of the contract, including all addenda and permits, at the site of the work.

SUBSECTION 4.6 AGENTS, SUPERINTENDENTS AND/OR FOREMEN

When the contractor is not present on any part of the work where it may be desired to give directions, orders may be given by the Department's Representative and shall be received and obeyed by the agents, superintendents and/or foremen who may have charge of the particular part of the work in reference to which orders are given. Agents, superintendents and/or foremen must be qualified to perform the duties of their position in an orderly and efficient manner. Agents, superintendents and/or foremen who are not

qualified or who will not work in a cooperative manner with the Department's Representative shall be discharged from the project at the direction of the Department.

SUBSECTION 4.7 LABOR REGULATIONS

- A. **CONTRACT COMPLIANCE REGULATIONS** - The Commonwealth is an equal opportunity employer and requires conformance with all state and federal laws prohibiting discrimination in hiring or employment opportunities.

The contractor additionally shall comply with the nondiscrimination/sexual harassment clause included in SUBSECTION 2.13, NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

- B. **PREFERENTIAL HIRING OF VETERANS** - The contractor, subcontractor(s), or any person in either of their behalf, shall carry out the provisions of Section 1 of the Act of August 1, 1975 (P.L. 233, No. 92), 51 Pa. C.S.A. 7106, which concerns the giving of preferences to honorably discharged persons who have served in the armed forces of the U.S. during any war or armed conflict, in determining who shall be employed on public works, which act in part provides:

Whenever the Commonwealth issues specifications for the construction, alteration or repair of any public works, such specifications shall include a provision under which the contractors and subcontractors shall agree to give a preferential rating similar to that given by the Commonwealth to any soldier making application for employment upon such public works.

The word "soldier" as used herein shall mean a person who served in the armed forces of the U.S., or in any women's organization officially connected therewith, during any war or armed conflict in which the U.S., engaged, or who so served or hereafter serves in the armed forces of the U.S., or in any women's organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service.

- C. **PREFERENTIAL HIRING OF LOCAL LABOR** - The contractor shall endeavor to hire, whenever possible, local people living in the vicinity of the work when such people are qualified, able and available to perform the work to which the employment relates. The intent is to aid the unemployment situation in the vicinity of the work whenever possible.
- D. **CHARACTER AND RESIDENCE OF EMPLOYEES** - The contractor shall employ only competent, skillful, faithful and orderly persons to do the work, and whenever the Department shall notify the contractor, in writing, that any employee is, in its opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, the contractor shall discharge such employee and shall not again employ that person except with the written consent of the Department.

- E. **PREVAILING MINIMUM WAGE PREDETERMINATION (MINIMUM WAGE)** - If specified in the bid documents, contractor and subcontractor(s) shall comply with the provisions of the Act dated August 15, 1961 (P.L. 987), as amended, known as the "Pennsylvania Prevailing Wage Act" and the regulations issued pursuant thereto by the Commonwealth's Department of Labor and Industry (L&I).

Any person or firm or any firm, corporation or partnership in which they have any interest, who is debarred by the Secretary of the L&I pursuant to Section 11(e) of the Pennsylvania Prevailing Wage Act shall not be permitted to participate in the project in any way.

Payment of Wages - All employees on the project, whether hired by the contractor or subcontractor(s), shall not be paid less than the minimum wage as determined in the decision of the Secretary of the L&I which are contained in the bid documents. They shall be paid unconditionally, regardless of whether any contractual relationship exists, not less than once a week, without deductions or rebate on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Contractor and subcontractor(s) not parties to a contract requiring contributions for employee benefits which have been determined to be included in the minimum wage shall pay the monetary equivalent thereof directly to the employees. Payment of compensation to employees on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result, shall be deemed a violation of these requirements, regardless of the average hourly earnings resulting therefrom. Employees may not be hired for the project except in accordance with the classifications set forth in the decision of the Secretary of the L&I. Minimum wages for positions not covered therein will be determined by the Secretary of the L&I upon written application. Nothing in the contract, the Pennsylvania Prevailing Wage Act, or its regulations issued pursuant thereto, shall prohibit the payment of more than the minimum wage as determined by the Secretary of the L&I. Based upon an interpretation by the L&I, the minimum wage applies only to work performed within the project limits indicated on the contract drawings. They are not applicable to off-site work, even though such work is dedicated only to the performance of the contract.

Certification of Records - The contractor and subcontractor(s) shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day and the actual hourly rate of wage paid, including employee benefits, to employees hired by it in connection with this project. This record must include any deductions from each employee. The record shall be preserved for two (2) years from the date of payment and shall be open at all reasonable hours to the inspection of the DEP and its duly authorized representatives. Each week, the contractor and subcontractor(s) shall file a copy of the Form LLC-25

REV 10-03, WEEKLY PAYROLL CERTIFICATION FOR PUBLIC WORKS PROJECTS, with the DEP. A computer generated copy will be acceptable provided it contains all of the information required by Form LLC-25 REV 10-03. With the first and final payroll submission only, the contractor and subcontractor(s) shall complete the reverse side, FRINGE BENEFITS EXPLANATION (FB) and CERTIFIED STATEMENT OF COMPLIANCE, and shall have the statement notarized. If any employee remains unpaid, the amount owed to any employee must be set forth. The contractor and subcontractor(s) must also certify that it is not receiving, or requiring, and will not receive or require, directly or indirectly, from any employee, any refund of any such wage(s). The payrolls shall be submitted to the DEP's Representative within ten (10) calendar days of the close of each pay period. Payrolls must be submitted even if the minimum wage does not apply in order that compliance with other provisions may be verified. Progress estimates will be withheld if such payrolls and certification are not submitted using the proper form within the prescribed time limit.

Apprentices - Apprentices employed on the project shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council. Only apprentices whose training and employment are in full compliance with the provisions of the Act dated July 14, 1961 (P.L. 604), known as "The Apprenticeship and Training Act" and the rules and regulations issued pursuant thereto shall be employed. Any employee using the tools of a craft who does not qualify as an apprentice within the provisions shall be paid the minimum wage predetermined for journeymen in that particular craft and/or classification.

Posting - The minimum wage decisions of the Secretary of the L&I, including the effective date and changes thereof, must be posted in prominent and easily accessible place(s) at the project site and at the place where employees are paid their wages. The posted notice must include a statement advising employees that if they have been paid less than the minimum wage for their job classification or if the contractor and subcontractor(s) are not complying with the minimum wage in any manner whatsoever, the employees may file a protest with the Secretary of the L&I. The posted notice must also include that any employee paid less than the minimum wage specified in the contract shall have a civil right of action for the difference between the wage paid and the minimum wage stipulated in the contract. This right of action must be exercised within six (6) months from the occurrence of the event creating such right of action.

Penalties - Failure to comply with the Pennsylvania Prevailing Wage Act and its regulations will result in withholding money due or to become due on the contract, and may also result in termination of the right to proceed with the work under contract and/or other penalties prescribed by law.

- F. **PROVISIONS PROHIBITING DISCRIMINATION** - In the hiring of employees for the performance of work under the contract, contractor, subcontractor(s) or any other person acting on their behalf shall not by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

Contractor or subcontractor(s) or any person on their behalf shall not in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.

The contract may be canceled or terminated by the Department and all money due or to become due in accordance with the terms of the contract may be forfeited for a violation of the terms or conditions of this portion of the contract.

- G. **PUBLIC WORKS EMPLOYMENT VERIFICATION ACT** - The Public Works Employment Verification Act, 43 P.S. §§167.1-167.11, became effective on January 1, 2013. As a bidder on a public works contract, you are required to comply with Section 4 of the Act by submitting the Public Works Employment Verification Form as a condition to being awarded the contract. By completing the Form, you affirm that you have utilized the Federal E-Verify program to verify the employment eligibility of all new employees hired post January 1, 2013, and that you will continue to comply with the provisions of the Act for all new hires throughout the duration of the Contract. The Public Works Employment Verification Form and a link to the U.S. Department of Homeland Security's Employment Verification web site can be found on the Department of General Services' Construction and Public Works web page at www.dgs.state.pa.us.

SUBSECTION 4.8 SURVEYS

The Department will provide reference points and/or baselines throughout the project. In addition, bench marks for construction purposes will be located at intervals over the length of the project.

The contractor shall, if required, fabricate for use by the Department all stakes, targets and supports for establishing reference points and/or baselines.

From the reference points and/or baselines established by the Department, the contractor shall complete the layout of the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications and/or contract drawings, subject to such modifications as the Department may require to meet changed conditions.

The contractor shall furnish, at its sole cost and expense, such stakes, templates, platforms, equipment, tools and materials, and all labor as may be required in laying out any part of the work from the reference points and/or baselines established by the

Department. It shall be the responsibility of the contractor to maintain and preserve all stakes and other marks established by the Department until authorized to remove them and if such marks are destroyed by the contractor or through its negligence prior to their authorized removal, the expense of replacement may be deducted from any amounts due or to become due the contractor. The Department's Representative may require that work be suspended at any time when location and limit marks established by the contractor are not reasonably adequate to permit checking of the work.

The Department's Representative may check the grade and alignment of concrete forms prior to the placement of concrete. Any items of work which will be covered or made inaccessible by subsequent work will be checked by the Department's Representative prior to covering. If the contractor covers or makes inaccessible any unchecked work, the Department's Representative may direct the contractor to uncover or remove subsequent construction to permit a check of the previous work and the costs of uncovering or removing subsequent work and replacement of same will be at the sole cost and expense of the contractor as provided in SUBSECTION 5.5, CORRECTION OF WORK.

It is the intention not to delay the work for the checking of lines or grades, but, if necessary, working operations shall be suspended for such reasonable time as the Department's Representative may require for this purpose. Special compensation shall not be paid for the cost to the contractor of any of the work or delay occasioned by checking lines and grades, by making other necessary measurements, or by inspection; such costs shall be included in the contract price. The contractor shall keep the Department's Representative informed a reasonable time in advance of the times and places at which it intends to do work in order that necessary measurements for record and payment may be made with a minimum of inconvenience to the Department's Representative or of delay to the contractor.

SUBSECTION 4.9 WEATHER PROTECTION

The contractor shall furnish at its own expense, all equipment, materials and work necessary to protect the work from any weather conditions that may prevail. Construction shall be suspended at any time when, in the judgment of the Department's Representative, the conditions are unsuitable or the proper precautions are not being taken. Apparatus for protection shall be installed and operated in such manner that the finished work will not be damaged thereby.

SUBSECTION 4.10 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

- A. COMPLIANCE WITH LAWS - The contractor and subcontractor(s) shall keep themselves fully informed of all laws, ordinances and regulations in any manner affecting those engaged or employed in the work, or the equipment and appliances used in the work, or the conduct of the work, and of all orders and decrees of bodies or tribunals having jurisdiction or authority over the same. They shall at all times observe and comply with, and shall cause its agents to observe and comply with, such existing and future laws, ordinances, regulations,

orders and decrees, and shall protect the Department against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree, whether by themselves or by their employees. They shall procure all required permits and licenses, pay all charges and fees, and give all notices necessary and incident to the proper and lawful prosecution of the work.

B. RIGHT-TO-KNOW LAW

1. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.
2. Unless the Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the Contractor using the Contractor information provided by the Contractor in the legal contact information provided in this Contract if the agency needs the Contractor's assistance in any matter arising out of the Right to Know Law ("RTKL"). The Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
3. Upon notification from the Commonwealth that the Commonwealth requires the Contractor's assistance in responding to a RTKL request for records in the Contractor's possession, the Contractor shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the Contractor's possession which arises out of the Contract that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Contractor fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
4. The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Contractor agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the Contractor's written statement, the Commonwealth still decides to provide the Requested Information, Contractor will not challenge or in any way hold the Commonwealth liable for such a decision.

5. The Commonwealth will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
 6. Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL. Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.
- C. POLICE AND SANITARY REGULATIONS - The contractor and its employees shall promptly and fully carry out the police and sanitary regulations as hereinafter described, or as may from time to time be prescribed by the Department's Representative to the end that proper work shall be done, good order shall prevail, and the health of employees, and of the local people using water from the drainage area in which the work is being performed, and of the local communities affected by the operations under the contract, may be conserved and safeguarded. The contractor shall summarily dismiss and shall not again engage, except with the written consent of the Department's Representative, any employee who violates the police or sanitary regulations.
- D. INTOXICANTS - The contractor shall not permit or suffer the introduction or use of intoxicating liquor or illegal substances upon the works embraced in the contract, or upon any of the grounds occupied or controlled by it.
- E. DRINKING WATER REGULATIONS - In accordance with the regulations of the L&I for industrial sanitation, cool and wholesome water of a quality approved by the Department's Representative shall be supplied at all times in places accessible to employees. The common drinking cup for public use is prohibited. Either individual drinking vessels or bubbling fountains shall be used in lieu thereof. Bubbling fountains, if used, shall be maintained in a sanitary condition.

Before the contractor starts work it shall take adequate means to insure provisions of a drinking water supply in compliance with the above regulations. Containers in which drinking water is supplied to employees by the contractor must be maintained in a sanitary condition.

In case of the use of a public water supply, the contractor shall submit to the Department's Representative a certified statement from the utility showing that the water complies with all requirements of and has been approved for public use by the Department.

In case of the use of a private source of supply, the contractor shall submit to the Department's Representative the results of laboratory analysis by an approved testing agency indicating the water to be sufficiently pure for potable use.

- F. MEDICAL SERVICE - The contractor shall make satisfactory arrangements for medical service and for the proper care of employees who become sick on the job and employees who are injured during the course of the work. If ordered by the Department's Representative, it shall provide, at such places as directed, all articles necessary for giving first-aid to the injured. The contractor shall remove from the work any employee whose presence is, in the opinion of the Department's Representative, a danger to the health of other persons.
- G. PENNSYLVANIA FISH AND BOAT COMMISSION - Before any work is performed in a stream, the contractor must notify and/or obtain any required approvals from the appropriate regional office of the Pennsylvania Fish and Boat Commission for the proposed work. The contractor shall not use explosives in a stream channel without a prior written permit from the Pennsylvania Fish and Boat Commission.
- H. NO DIRECT COMPENSATION - Direct payment will not be made for any work or materials required to meet the requirements herein before specified, but compensation therefore shall be considered as having been included in the contract prices stipulated in the contract.
- I. ANTI-POLLUTION MEASURES - Section 3301 of the CPC (62 Pa. C.S. 3301) requires that the Commonwealth advise bidders on construction contracts of the federal and Commonwealth statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that apply to the project on which bids are being received.

The bidder shall thoroughly acquaint itself with and comply with the terms of the statutes, enumerated in this subsection and the rules and regulations promulgated pursuant thereto. All costs of complying with the erosion and sediment pollution control plan shall be included in the lump sum price bid for "Preparation and/or Implementation of Erosion and Sediment Pollution Control Plan". All other costs of compliance with other anti-pollution measures shall be considered incidental to the work and separate payment will not be made. In the event that the listed statutes, rules and regulations are amended, or if new statutes, rules or regulations become effective, which cause the contractor to perform additional or extra work, the Department will issue a change order setting forth any additional or extra work that must be undertaken. This change order will not invalidate the contract. The change order will specify the amount of additional payment, if any, that will be made to the contractor. If the Department and the contractor cannot arrive at a mutually agreeable price for the additional or extra work, payment will be made in accordance with SUBSECTION 6.6 MODIFICATION OF SPECIFICATIONS AND CONTRACT DRAWINGS, hereof, or SUBSECTION 6.7, EXTRA

WORK, hereof, as applicable. Payment will not be made for additional or extra work performed without written authorization to do so.

The contractor will be required to comply with the acts and regulations enumerated in Appendix A. This Appendix is comprised of two parts: Part I listing Pennsylvania statutes and Part II listing federal statutes.

The Appendix is illustrative only and in no way limits contractor's responsibility to comply with all federal, state and local laws, rules and regulations, as set forth in SUBSECTION 4.10.A., COMPLIANCE WITH LAWS.

The contractor will also be required to comply with local laws, codes and regulations that apply to this project. It is the responsibility of the bidder to determine what, if any, local laws, codes and regulations are applicable.

Each contractor shall comply with the regulations and standards of Title 25 of the Pennsylvania Code. Contractor will be solely responsible for any violations and shall be responsible for securing permits when required.

Burning - Burning of materials from clearing and grubbing operations, periodic and final clean-up and all related construction shall be governed by local codes and ordinances and the regulations of the Department. For each day that the contractor may contemplate open burning, it shall secure written approval from the appropriate Department's Regional Air Quality Control Engineer. Failure to secure permission for open burning will require the contractor to remove material from the project site and dispose of it in a manner acceptable to the Department's Regional Air Quality Control Engineer, and in compliance with the "Solid Waste Management Act", Act dated July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. 6018.101 et seq. If burning is permissible in a state forest, it shall be performed in a manner approved by the Commonwealth's Department of Conservation and Natural Resources' local district forester.

Solid Waste - Storage, collection, transportation, processing and final disposal of solid waste shall be in accordance with regulations and standards of the Solid Waste Management Act. Immediately upon notice of award of contract, the contractor shall apply for the necessary permit from the Department's Regional Waste Management Coordinator and conduct waste disposal on sites approved under this permit. A copy of this permit must be submitted to the Department's Representative before commencing waste disposal. The Department's Regional Waste Management Coordinator shall be contacted for the permit and for information concerning sites already approved for conducting waste disposal.

If, in the Department's opinion, a dust condition develops at the site, the contractor shall utilize specific control methods including, but not limited to, water trucks and mechanical brooms to control the creation of dust.

J. EROSION AND SEDIMENT POLLUTION CONTROL REQUIREMENT -

If required, an Individual or General National Pollution Discharge Elimination System (NPDES) Permit For Discharges of Stormwater Associated with Construction Activities has been obtained for this project. The contractor shall be required to become the co-permittee on the project by completing and filing Transferee/Co-Permittee Application For a General or Individual NPDES Permit For Stormwater Discharges Associated with Construction Activities (Form 3930-FM-WM0228) with the appropriate County Conservation District or Department's Regional Office. An application and a copy of an acceptable transferee agreement are enclosed in the bid documents with the NPDES Permit.

The contractor shall notify the County Conservation District or the Department's Regional Office, Permitting and Technical Services Section, by certified mail, at least seven (7) calendar days before construction is to begin, with a copy to the co-permittee.

Upon completion of the construction of the project, the contractor shall complete and file a Notice of Termination of an a General or Individual NPDES Permit For Stormwater Discharges Associated with Construction Activities (Form 3930-PM-WM0229) a copy of which is enclosed in the bid documents, with the appropriate County Conservation District or Department's Regional Office with a copy to the co-permittee, providing notification that the construction activity is complete and the site has been stabilized.

If applicable, an Erosion and Sediment Pollution Control (E&S) plan has been prepared and approved for this project, the provisions of which are shown on the contract drawings and contained in the Technical Specification entitled "Preparation and/or Implementation of the Erosion and Sediment Pollution Control Plan". Any loss or damage to any part of either the permanent or temporary work shall be the responsibility of the contractor who shall replace or repair the work as required, to the satisfaction of the Department. The contractor shall be required to perform the construction activities in accordance with the approved plan or approved revisions to the plan. Minor alterations may be made to the E&S plan with the approval of the Department, however, any major alterations must be approved by the appropriate County Conservation District or Department's Regional Office. The approved plan must be available at the construction site at all times.

All measures and facilities utilized in the control of erosion and sediment pollution shall be maintained in good condition. The E&S measures shall be inspected regularly and shall be cleaned of trapped sediment and promptly repaired as necessary. Any loss or damage to any part of either the permanent or temporary work shall be the responsibility of the contractor, who shall replace or repair any loss or damage, as required, to the satisfaction of the Department's Representative. Temporary E&S measures shall remain until the disturbed area

has been stabilized at which time the control measures shall be removed by the contractor, unless otherwise directed by the Department's Representative.

Preparation and/or Implementation of the Erosion and Sediment Pollution Control Plan will be paid in the following manner: Thirty percent (30%) when installed, ten percent (10%) for maintenance over the life of the contract, and sixty percent (60%) upon the removal of the temporary control measures.

A Preparedness, Prevention, and Contingency (PPC) plan is required if fuels, lubricants, fertilizers, chemicals, solvents, hazardous wastes or any materials with the potential for causing accidental pollution of air, land or water are stored or utilized on site. If applicable, the contractor shall be responsible for developing a PPC plan. The purpose of the PPC plan is to ensure that Best Management Practices (BMP) have been developed and implemented at the construction site to control potential discharges of pollutants into streams.

The PPC plan shall be submitted to the Department's office managing the contract. This office will provide a copy to the appropriate County Conservation District for review and comment. Payment for preparation and implementation of the PPC Plan is incidental to the E&S plan. The PPC plan must be available at the construction site at all times.

If the contractor is required to obtain borrow and/or spoil area(s), it shall make its own arrangements for the borrowing and/or disposal of materials and be solely responsible for all costs thereof. Location(s) of borrow and/or spoil area(s) shall be subject to the approval of the Department's Representative. The contractor shall obtain agreement(s) from the landowner(s) granting permission to borrow and/or spoil, and shall prepare and implement an E&S plan. For federally funded contracts, refer to SUBSECTION 4.10.K.15., ENVIRONMENTAL ASSESSMENT FOR BORROW/ DISPOSAL AREA(S), The E&S plan shall be submitted to the appropriate County Conservation District or Department's Regional Office for approval. A copy of the agreement(s) and approved E&S plan shall be furnished to the Department.

K. **FEDERAL REQUIREMENTS** - When the project is funded by the federal government, the following provisions apply:

1. All work under this contract shall be performed in accordance with applicable statutes, rules and regulations of the federal government. All applicable federal statutes and provisions of the Code of Federal Regulations (CFR) in effect on the date of execution of this contract are an integral part of this contract, including 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as adopted pursuant to 2 CFR § 1327.101, as applicable.

2. All applicable contract provisions specified by the federal government are an integral part of this contract.
3. Regardless of any agreement between the Commonwealth and the U.S. respecting contribution by the federal government to the cost of this contract, the U.S. shall not be considered to be a party to this contract or in any manner liable thereunder. Neither the federal government nor any of its officials, agents or employees shall be responsible for any loss, expense, damage to property or injuries to persons which may arise from or be incident to the use and occupation of any property affected by the operation contemplated from this contract, or for damages to the property of the contractor, or for injuries to the person of the contractor, damages to the property of, or injuries to, the contractor's officers, agents, servants, employees or others who may be on said premises at their invitation or the invitation of any of them. The contractor shall hold the federal government and any of its officials, agents or employees harmless from all such claims.
4. The DEP, the federal grantor agency, the Comptroller General of the U.S., or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts and transcriptions. Contractor shall maintain all required records for three (3) years after the DEP makes final payment and all other pending matters are closed.

This contract is subject to audit by federal and Commonwealth agencies, or their authorized representatives, in accordance with the auditing standards promulgated by the Comptroller General of the U.S. and specified in Standards for Audits of Governmental Organizations, Programs, Activities and Functions (Yellow Book - 1988 Revision).

The audit requirement of this contract will be satisfied if an audit is performed under the provisions of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and in accordance with the provisions of the Office of Management and Budget OMB Circular A-133.

The Commonwealth reserves the right for federal and Commonwealth agencies, or their authorized representatives, to perform additional audits of a financial/compliance, economy/efficiency or program results nature, if deemed necessary.

5. Assure the use of local labor to the maximum extent practicable in the implementation of the project.

Contractor or subcontractor(s) undertaking to do work on the project which is or reasonably may be done, as on-site work shall give preference to qualified persons who regularly reside in the labor area as designated by the U.S. Department of Labor wherein such project is situated or the Appalachian counties of the Commonwealth wherein such project is situated, except:

- A. To the extent that qualified persons regularly residing in the area are not available.
- B. For the reasonable needs of any such contractor and/or subcontractor(s) to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract.
- C. For the obligation of the contractor and/or subcontractor(s) to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident employees under this paragraph does not exceed twenty percent (20%) of the total number of persons employed by the contractor or subcontractor(s) on this project.

Contractor or subcontractor(s) shall furnish the appropriate U.S. Employment Service Offices with a list of all positions for which laborers, mechanics and other employees may be required.

Contractor or subcontractor(s) shall furnish periodic reports to the DEP on the extent to which local labor has been used in carrying out the contract work.

- 6. Equal Employment Opportunity (Federal Assisted Construction) - During the performance of this contract, the contractor agrees as follows:

The contractor must comply with U.S. Executive Order No. 11246, dated September 24, 1965, entitled "Equal Employment Opportunity" (EEO), as amended by U.S. Executive Order No. 11375, and as supplemented in U.S. Department of Labor Regulations (Title 41, Chapter 60 of the Code of Federal Regulations).

The contractor shall not discriminate against any employees or applicant for employment because of race, creed, color, religion, sex or national origin. The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, disability, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the DEP setting forth the provisions of this EEO.

The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, disability, color, religion, sex or national origin.

The contractor shall send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the DEP, advising the labor union or workers' representative of the contractor's commitments under Section 202 of the EEO, as amended by U.S. Executive Order No. 11375, and as supplemented in U.S. Department of Labor Regulations (Title 41, Chapter 60 of the Code of Federal Regulations), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor shall furnish all information and reports required by U.S. Executive Order No. 11246 dated September 24, 1965, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor, or pursuant thereto, and shall permit access to its books, records and accounts by the federal grantor agency, the DEP and the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the contractor's noncompliance with the EEO, as amended by U.S. Executive Order No. 11375, and as supplemented in U.S. Department of Labor Regulations (Title 41, Chapter 60 of the Code of Federal Regulations), or with any such rules, regulations or orders, this contract may be canceled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible for further federal government contracts or federally assisted construction contracts in accordance with procedures authorized in the EEO, as amended by U.S. Executive Order No. 11375, and as supplemented in U.S. Department of Labor Regulations (Title 41, Chapter 60 of the Code of Federal Regulations), and such other sanctions may be imposed and remedies invoked as provided in the EEO, as amended by U.S. Executive Order No. 11375, and as supplemented in U.S. Department of Labor Regulations (Title 41, Chapter 60 of the Code of Federal Regulations), or by rule, regulation or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.

The contractor shall include its EEO clause in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of the U.S. Department of Labor issued pursuant to Section 204 of U.S. Executive Order No. 11246 dated September 24, 1965, so that such provisions shall be binding upon subcontractor(s) or vendor(s). The contractor shall take such action with respect to any subcontract or purchase order as the federal grantor agency and the DEP may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with subcontractor(s) or vendor(s) as a result of such direction by the DEP, the contractor may request the U.S. to enter into such litigation to protect the interests of the U.S.

7. Certification of Nonsegregated Facilities - A Certification of Nonsegregated Facilities must be executed by the contractor as a part of the bid.

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the EEO clause.

Subcontractor(s) receiving award(s) exceeding \$10,000.00, which are not exempt from the provisions of the EEO clause, shall be required to provide for the forwarding of this notice to prospective subcontractor(s) for supplies and construction contracts where the subcontract(s) exceed \$10,000.00 and are not exempt from the provisions of the EEO clause.

8. Certification of Payment of Reclamation Fees or Civil Penalty Assessments - Certification that all reclamation fees or civil penalty assessments, required by the provisions of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. §1201 et seq., have been paid must be executed by the contractor as a part of the bid.

Further, this certification is also to be submitted for subcontractor(s) to be utilized in the project prior to award of the subcontract(s).

9. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - For all contracts in excess of \$100,000 for construction or repair, contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor and/or subcontractor(s) shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work,

to give up any part of the compensation to which it is otherwise entitled. The contractor and/or subcontractor(s) shall report all suspected or reported violations to the Federal Grantor Agency.

10. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) - For contracts in excess of \$100,000, the contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Regional Office of the EPA.

The contractor agrees that the work according to the terms of the contract will not, in any portion, be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date when the contract was awarded unless and until the EPA eliminates the name of the facility from the listing.

The contractor agrees to use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.

If the contract exceeds \$100,000, the contractor must include these provisions in all subcontracts.

11. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - All construction contracts awarded in excess of \$100,000 and other contracts in excess of \$2,500.00 that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5). Under Section 102 of the act, the contractor and/or subcontractor(s) shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
12. The contractor shall comply with mandatory standards and policies relating to energy efficiency in compliance with the “U.S. Energy Policy and Conservation Act” (P.L. 94-163).

13. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract shall not be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549.

A copy of the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" is contained in the bid form and must be executed as a part of the bid.

14. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - For contract awarded in excess of \$100,000, the bidder shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

The following requirements are applicable to the federal agency's grant program which provides funds for this contract:

Any person who receives a contract or subcontract exceeding \$100,000.00 at any tier under a federal grant shall execute the Certification Regarding Lobbying (Form DI-1963) contained in the bid form. If the bid exceeds \$100,000.00, the bidder must execute and submit this certification with its bid. If the contract does not exceed \$100,000.00 at the time of award but later is amended to exceed \$100,000.00 the contractor must execute the certification at that time.

If the contract exceeds \$100,000.00, the contractor must include the language of this certification in all subcontracts at all tiers and all subrecipients shall certify accordingly.

In addition, for contracts exceeding \$100,000.00, if any lobbying occurs at any tier, that tier must complete and submit Disclosure of Lobbying Activities, Standard Form LLL, which is included in the bid form.

15. Environmental Assessment for Borrow/Disposal Area(s) - For federally funded contracts, an approved environmental assessment is required for off-site borrow/disposal area(s) which are not located within a permitted area.

If the contractor intends to use an off-site permitted area as a source of the borrow material or as a disposal area, it shall submit to the Department's Representative the type of permit and the permit number. The permit must be valid and the operator must not be in violation of any permit requirement.

If the contractor intends to obtain borrow material from a site or use a site as a disposal area which is not permitted, it shall, as soon as practical after receipt of notice to proceed, provide the Department's Representative with the following information concerning its proposed borrow/disposal area(s) and associated access route(s):

- A. Location of borrow/disposal area(s) and access route(s) on a 7 1/2 minute U.S. Geological Survey quadrangle map and a 1"=100' sketch plan showing the location.
- B. Area(s) which is/are to be disturbed in acres.
- C. Material to be borrowed/disposed in cubic yards.
- D. Present and previous construction activities, if any, within the area(s).
- E. A brief narrative of the proposed erosion and sediment pollution control plan for the area(s) to be affected.
- F. Name and telephone number of the contractor's representative who can provide clarification and/or any additional information.

The contractor, when furnishing the above information, shall attest that:

- A. The affected area(s) does/do not contain any historical or archaeological features.
- B. The affected area(s) is/are not located within a 1/4 mile distance from any federally listed national wild and scenic river system.
- C. The affected area(s) do/does not have any wetlands.
- D. The affected area(s) is/are not located in and does not affect habitat of a federally listed endangered or threatened species.
- E. The affected area(s) is/are not located in a floodplain.
- F. The affected area(s) is/are not located in prime farmlands.

The Department may require supportive and backup information which shall be furnished within five (5) business days from the date of the request.

Based on the information provided, the Department will prepare and submit an environmental assessment to the appropriate federal agency for approval.

The contractor's attention is called to the fact that the time required for this process, which will normally not exceed sixty (60) calendar days, is included in the time allotted for the completion of this contract.

Earthmoving activity in the borrow/disposal area(s) may not begin until the environmental assessment has been approved by the appropriate federal agency. It is required that a copy of the approved environmental assessment be available at the construction site at all times.

All costs for the work required in this paragraph, 4.10.J.15., shall be included in the unit price bid for the bid item requiring the borrow/disposal area(s).

16. Contractor must comply with the Buy American Act at 41 U.S.C. § 8301 *et seq.*

SUBSECTION 4.11 SAFETY PRECAUTIONS

The contractor, subcontractor(s) and their employees shall comply at all times with applicable federal, Commonwealth and local laws, provisions and policies governing safety and health, including the "Federal Construction Safety Act" (Public Law 91-54), Federal Register Chapter XVII, Part 1926 of Title 29 Code of Federal Regulations, Occupational Safety and Health Regulations for Construction and subsequent publications updating these regulations. The contractor shall take any other needed action or proceed as directed, to protect the life, health and general occupational welfare of employees on the project. When, in the Department's Representative's opinion, employees are exposed to extraordinary conditions which could or do constitute a hazard, the contractor shall modify such equipment, devices and job procedures to insure protection against the hazard or reduce the risk to employees on the project.

It is the responsibility of the contractor to provide safe working conditions near and at the potentially hazardous areas. Personnel operating heavy equipment near and at the potentially hazardous area shall exercise extreme care when executing the item of work

All work areas, and other locations where unauthorized entry or presence would present a potential hazard to the health and safety of trespassers, shall be adequately posted to restrain unauthorized personnel. The Contractor shall install, at its sole cost and expense,

temporary safety fence when site conditions warrant or when directed by the Department. In most cases, orange plastic mesh safety fence will suffice.

The contractor shall provide, at its sole cost and expense, adequate lighting at all places where work in connection with the project is conducted and at any other place within the project area considered necessary by the Department's Representative. The contractor shall provide barricades and lights at night to safeguard the work sites from vehicular traffic and protect pedestrian traffic.

When any work is to be completed on public highways and streets, the contractor shall maintain traffic and protect the traveling public within the contractor's work area in accordance with requirements of the agency or authority responsible for that street or highway.

The contractor shall utilize extreme care when executing any items of work near, around and under utility poles, towers and wires. The contractor shall strictly adhere to all rules and regulations enforced by the appropriate utility company.

The contractor shall employ only experienced, licensed supervisors and workmen in the handling, loading and firing of explosives. The contractor shall comply with all federal, Commonwealth, county, and local laws and regulations governing the handling, storage and use of explosives and shall pay for required permits. All blasts shall be properly covered and every precaution taken to insure safety of persons and property. The contractor shall be responsible for all damages caused by blasting and shall notify the Department's Representative of any claims of damage from blasting at the time of claim.

The contractor shall immediately take corrective action upon notification by the Department's Representative of any non-compliance with the provisions of this subsection. Upon receipt of this notice, failure or refusal to promptly comply will cause a written order to be issued stopping all or part of the work until the corrective action has been taken. Claim for an extension of time, costs or damages because of time lost due to such orders will not be considered.

SUBSECTION 4.12 RIGHT-OF-WAY

The Department will furnish to the contractor all right-of-way which, in its opinion, is necessary for carrying out the work and for securing access to the site of the work. In some cases the contractor may be required to obtain right-of-way for borrow/disposal area(s). The contractor shall furnish the Department with one (1) copy of each access agreement for any area outside the project limits.

The contractor shall be responsible for trespassing or damage to private property and shall conduct its work in accordance with any laws or regulations relating thereto.

The contract drawings show the limits of the right-of-way and of the contractor's work area. The contractor's work area is for use by the contractor to complete the work as

directed by the contract. Buildings or structures adjacent to the contractor's work area shall not be moved or damaged in any way except with the written approval from the property owner(s) and at the sole cost and expense of the contractor; Department shall be notified in writing of such approval. All land within the contractor's work area must be restored equal to or better than the preconstruction condition before the acceptance of the project by the Department.

SUBSECTION 4.13 REQUIREMENTS FOR SECONDARY WORK

A. GENERAL - The Department reserves the right to have any agent(s) as it may elect to enter the property or location on which the work herein contracted is to be performed for the purpose of constructing or installing such secondary work as the Department may desire, or for the construction or reconstruction of telephone and telegraph lines, highways or other such facilities affected by the work. Such secondary work will be constructed or installed with as little hindrance or interference as possible with the contractor. The contractor hereby agrees not to interfere with, or prevent the performance of, any secondary work by the agent(s) of the Department.

B. PROTECTION OF EXISTING STRUCTURES - The contractor shall carefully protect from damage any existing improvements, property or structures that may be liable to damage by the work herein contracted, except insofar as work of the contract requires their modification or removal. The contractor shall take all precautions necessary for such protection and shall be responsible for and shall repair damage to such work, property or structures, that may occur by reason of its operations.

The contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site which do not unreasonably interfere with the construction, as may be determined by the Department's Representative. The contractor shall be responsible for all unauthorized cutting or damaging of trees and shrubs including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

The Contractor shall protect from damage any in-ground property corners and property line markers that may be liable to damage by the work herein contracted. The Contractor shall precisely reset any in-ground property corners and property line markers disturbed as a result of the work herein contracted, at no cost to the Department.

C. PUBLIC AND PRIVATE UTILITIES - The contractor shall comply with the act of December 10, 1974 (P.L. 852, No. 287), as amended, 73 P.S. 176 et seq., which defines the procedures for notification to public utilities prior to excavation, drilling or demolition work by use of powered equipment or explosives. The contractor is required to inform itself fully concerning location of public and private utilities located within the right-of-way which may or may not

require removal, resetting, construction and/or reconstruction and which may interfere with its operations and shall be assumed to have prepared its bid and entered into the contract in full contemplation of the conditions to be encountered and its responsibility in connection therewith. The contractor shall take all precautions necessary to protect existing utilities and shall be fully responsible for and shall repair any damage to such utilities that may occur by reason of its operations.

Necessary relocation or removal of utility structures within the project site will ordinarily be accomplished by others but if so indicated on the contract drawings shall be done by the contractor. If such work is to be done by others the contractor shall give the Department sixty (60) calendar days, unless otherwise specified in the bid document, written notice, prior to the time such removal or relocation will be necessary, in order to enable the utility owner to complete the work without delay to the contractor's operations.

- D. **WORK IN VICINITY OF RAILROADS** - In accomplishing the work required by the specifications and/or contract drawings adjacent to or on the railroad's right-of-way, the contractor shall make arrangements with the railroad for all operations on its right-of-way including all safety measures such as lights, flares, flagmen and inspectors, as may be required by the said railroad, for operations by the contractor on or about its premises. The contractor shall indemnify and hold harmless the said railroad from and against any loss, damages or destruction of property and injury or death of persons, growing out of or occasioned by the operations or presence of the contractor on or about the railroad's premises and shall provide insurance coverage satisfactory to the said railroad. Evidence of insurance coverage shall be submitted to the Department before the start of work on or adjacent to the railroad's right-of-way, in accordance with Subsection 3.10, Insurance.

Specific requirements of the railroad, if any, regarding work on or adjacent to the railroad's premises will be included as "Special Requirement(s)" in the bid documents. The contractor shall conduct its operations on or adjacent to the railroad's premises in full compliance with the "Special Requirement(s)".

The contractor will be reimbursed for actual costs incurred for the railroad inspection services. An amount has been inserted in the Schedule of Prices in the bid form as the bid item "Railroad Inspection Services". This amount is approximate only, and is inserted to insure uniformity of bidding. Payment will be made to the contractor for actual costs incurred for this work provided by the railroad. After review and approval of bills from the railroad, by the Department's Representative, the contractor shall pay to the railroad the amounts of bills presented to the contractor by the railroad. Upon receipt of the paid bills, the Department will then include the amount of such bills on the current progress estimate to reimburse the contractor.

Costs due for damages to railroad equipment, for compliance with the railroad's requirements, for the cost of insurance premiums, or for any cost other than the direct services provided by the railroad shall be at the sole cost and expense of the contractor. The contractor will not be reimbursed for inspection when it is not engaged in work on or immediately adjacent to the railroad's right-of-way.

SUBSECTION 4.14 STREETS AND PUBLIC THOROUGHFARES

- A. **ROADWAYS** - The contractor shall be responsible for the maintenance of streets and public thoroughfares outside the work area used by its vehicles during the progress of the work to the extent of cleaning up any materials spilled from or otherwise distributed by its vehicles and restoring the said streets and rights-of-way to their original condition, if damaged by the contractor. This will include entering into agreements concerning this obligation if requested by the controlling Commonwealth agency and/or local government. The cost and expense incidental to the fulfillment of this subsection shall be at the sole cost and expense of the contractor and should it create any public nuisance, in the opinion of the Department's Representative, by its failure to fulfill the requirements of this subsection, then the Department's Representative, upon written notice to the contractor, may request the appropriate public authority where the nuisance occurs, to correct the damage and the cost of this work shall be deducted from any amounts due, or to become due, the contractor under the terms of the contract.
- B. **MAINTENANCE OF TRAFFIC** - The contractor shall conduct the work so as to insure the least obstruction to traffic. It shall provide all necessary barricades, warning signs, lanterns, red flags, torches and other such items, and shall maintain them in operating condition, to the satisfaction of the DEP, Commonwealth's Department of Transportation, local government or other agency having jurisdiction over affected roads or streets.

SUBSECTION 4.15 DEPARTMENTAL REQUIREMENTS

- A. **OFFICE FACILITY** - The contractor shall provide an office facility at a location approved by the Department's Representative for the exclusive use of Department personnel. The contractor shall provide a suitable road to the office facility site and parking area for a minimum of four (4) vehicles. The contractor will be responsible for maintaining access, including snow removal and de-icing in and around the office facility.

The office facility must be erected complete as specified herein, within fourteen (14) calendar days after the initial job conference, unless such time is extended by the Department's Representative. The office facility shall remain on site, fully functional and available for use by the Department for fourteen (14) calendar days after final inspection or completion of punch list items whichever is later, and shall be removed to the satisfaction of the Department's Representative. All cost of the work required by this subsection shall be included in the Schedule

of Prices contained in the bid form, as a lump sum price bid for the bid item, "Office Facility" and paid in the following manner: forty percent (40%) when erected, fifty percent (50%) for the duration of the contract for maintaining the office facility and ten percent (10%) upon the removal of the office facility and cleanup of the office facility site.

The office facility shall be maintained by the contractor for the duration of the contract and loss or damage by any cause shall be repaired or replaced by the contractor without additional cost to the Department. The office facility shall remain the property of the contractor. The contractor shall provide necessary janitorial services (clean up, trash removal, trash cans, trash bags, brooms, etc.) at least weekly and upon the direction of the Department's Representative.

The office facility shall consist of a room having a minimum floor space of one hundred fifty (150) square feet and shall be provided with windows to furnish a minimum of thirty six (36) square feet of natural light. Each exterior door shall be capable of being securely locked. The office facility shall be entirely closed, waterproof and provided with suitable artificial light. Screened sash shall be provided for all exterior windows. If an office-type trailer is supplied a suitable landing and access with hand rails shall be constructed or installed for each exterior door. All exterior doors shall be equipped with a hasp type latch to accommodate a Department supplied lock. Prior to construction of the office facility, the contractor shall prepare and submit detailed plans for the approval of the Department's Representative.

The contractor shall furnish and install an automatic oil-fired, or electric heater in the office facility. The heater shall be capable of maintaining a temperature of at least seventy degrees (70°) F throughout the building in the coldest weather. In the event that a fuel oil storage tank is required the tank shall be located outside the office facility. Installation shall conform with regulations of the Commonwealth's State Police, Fire Marshall Division. The contractor shall also provide an air conditioner capable of maintaining a temperature not greater than seventy eight degrees (78°) F in the hottest weather.

Interior lighting shall be provided throughout the office facility, and duplex receptacles shall be provided on approximately ten (10) foot centers along the exterior walls. Electric power shall be from a commercial source. Other sources of electrical power, such as generators, are not acceptable unless approved by the Department's Representative.

The contractor shall provide and install a five (5) gallon bottle type drinking fountain with paper cups and a paper cup dispenser in the office facility. The fountain shall be capable of providing both cold and hot water and shall be replenished as needed for the length of the contract.

The contractor shall provide in the office facility, a minimum of one (1) desk, in good condition, one (1) industrial grade fabric covered pneumatic-lift 360 degree swivel chair with casters, in good condition, and sufficient tables and chairs to

meet the requirements of the personnel at the project, and it shall also furnish either:

Two (2), two (2) drawer, legal size, steel, fireproof file cabinets, locking type with two (2) keys for each cabinet,

or

One (1) four (4) drawer, legal size, steel, fireproof file cabinet, locking type with two (2) keys for the cabinet. The width of the drawers is to be such as to accommodate legal size folders. The cabinet(s) shall be equipped with suitable file hangers and/or separators.

Also to be provided is a drafting table having a surface area of three (3) feet by six (6) feet, sloped two (2) inches in twelve (12) inches with adjustable stool; plan rack; coat rack; chemical type fire extinguisher; first aid kit; and closet space with shelves for storage of supplies with a hasp type latch to accommodate a Department supplied lock.

A chemical type latrine or better facility shall be provided in the vicinity of the office facility for the exclusive use of Department personnel.

The contractor shall provide all fuel oil or gas, electricity, paper cups, drinking water, paper towels, hand sanitizer, hand soap, toilet paper and maintenance of the chemical toilet for the life of the contract.

The contractor shall provide a telephone, of the cordless variety, with answering machine, capable of recording up to five (5) minutes of messages, or voice mail service. The telephone line shall be for the exclusive use of the Department. The contractor shall be responsible for all installation and removal charges. The contractor at its sole cost and expense shall provide basic telephone service, including installation and removal, for the exclusive use by the Department, for the duration of the contract. All costs incurred to provide telephone service shall be included in the lump sum price bid for the bid item "Office Facility".

The contractor, at its expense, shall provide a digital laser copier having reduction/enlargement functions and capable of accepting maximum 8 1/2-inch by 14-inch size originals and producing 8 1/2-inch by 14-inch size copies at minimum rate of 10 letter size copies per minute. Include sufficient imaging cartridges (toner/drum/developer) as needed for the duration of the contract.

The contractor, at its expense, shall provide a high speed desktop facsimile machine capable of transmitting and receiving copies of standard 8 1/2-inch by 11-inch printed material, pictures, etc., over a standard telephone line.

Subject to the approval of the Department's Representative, the contractor may furnish space in an existing building near the site of the work, or an office-type trailer, in lieu of the herein described office facility. The space, facilities and service, however, shall be equivalent, in the opinion of the Department's Representative, to that specified for the office facility.

- B. **SIGNS DURING CONSTRUCTION** - The contractor, at its own cost and expense, shall fabricate, erect and maintain at the location designated by the Department's Representative one (1) project sign. The sign shall be erected prior to construction and shall be maintained for the job duration, unless otherwise directed by the Department, as specified in SUBSECTION 5.18, REMEDY GUARANTEE PERIOD. The construction details, materials, paint schedule and wording are shown on the drawing, FIGURE NO. 1, contained in the bid documents.

Advertisements will not be permitted on any temporary structures, or elsewhere on the work site, excepting signs required by the bid documents.

SUBSECTION 4.16 TEMPORARY SERVICES DURING CONSTRUCTION

- A. **GENERAL** - The contractor shall, at its sole cost and expense, install, operate, protect and maintain all temporary services as hereinafter specified or required during the construction period of the project. These temporary services shall include water supply, electric light and power, temporary heat, sanitary facilities, access roads and any other services as may be stipulated in these General Conditions, special requirements, technical specifications or elsewhere in the contract.

The contractor, at its sole cost and expense, is responsible for providing all of the services required, including, but not limited to, electric power for testing, water for testing and disinfection operations and temporary heat in all buildings which are to be permanently heated until the project is completed and accepted by the Department.

- B. **TEMPORARY ELECTRIC POWER** - The contractor shall provide adequate temporary electric power for light and construction purposes by any means it deems advisable and as approved by the Department's Representative. Temporary electric power shall comply with all laws, ordinances and regulations governing its installation and maintenance. The use of this temporary electric power must be made available to and must be adequate for the contractor and subcontractor(s) and their employees working on the project.

The expense of providing and maintaining temporary electric power, including conductor, conduit, poles, etc., shall be included in the price bid for the contract. The contractor shall maintain temporary electric power and shall remove it when it is no longer required.

- C. **TEMPORARY HEATING** - The contractor shall provide adequate temporary heating, including coverings or enclosures required to retain temporary heating, throughout the construction life of the project, and shall furnish and pay for all fuel, labor, materials, etc., required to accomplish the necessary temporary heating.

- D. **TEMPORARY WATER SERVICE** - The contractor shall provide adequate temporary water service for construction purposes from any acceptable source and by such means it deems advisable and as approved by the Department's

Representative. The temporary water service shall comply with all laws, ordinances and regulations governing its installation and maintenance. The use of this temporary water service must be made available to and must be adequate for the contractor and subcontractor(s) and their employees working on the project.

The expense of providing and maintaining temporary water service including all temporary facilities, shall be included in the price bid for the contract. The contractor shall maintain temporary water service and shall remove it when it is no longer required.

- E. **SANITARY FACILITIES** - Sanitary facilities for the use of all employees on the project shall be provided and maintained by the contractor, in sufficient number, in such manner and at such places as shall be approved by the Department's Representative. The contractor shall vigorously prohibit the committing of nuisances at the project site. Any employee found violating these provisions shall be discharged and not again employed. Such sanitary facilities shall be constructed in compliance with all laws, ordinances or regulations governing the same.

Unless sanitary facilities are provided by the Department, the contractor shall, at its sole cost and expense, provide and maintain in a clean and sanitary condition adequate and approved sanitary facilities in accordance with U.S. Occupational Safety and Health Administration (OSHA) requirements and as required in SUBSECTION 4.10.C., POLICE AND SANITARY REGULATIONS. All sanitary facilities shall be screened against insects. When directed by the Department's Representative the contractor shall dismantle and remove the sanitary facilities clean out pits and disinfect as required. Portable chemical toilets approved by the Department's Representative are acceptable.

Under temporary field conditions, provisions shall be made to assure that not less than one (1) sanitary facility is available.

Project sites, not provided with a sanitary sewer, shall be provided with a minimum of one (1) of the following sanitary facilities unless prohibited by local codes:

1. Chemical toilets
2. Recirculating toilets
3. Combustion toilets

- F. **DEWATERING** - The contractor shall provide all the necessary pumps, temporary pipes, drains, ditches and other means for satisfactorily removing water from any part of the project. All compensation for and all expenses incidental to

the fulfillment of the provisions of this paragraph, unless otherwise specifically provided, shall be included in the price bid for the contract.

SUBSECTION 4.17 SPECIFICATIONS AND CONTRACT DRAWINGS FURNISHED THE CONTRACTOR

The Department will provide free, to the contractor, five (5) sets of contract documents; upon request by the contractor additional sets will be provided.

SUBSECTION 4.18 COMPLETION AND MAINTENANCE

- A. REMEDYING DAMAGED WORK - If the work, or any portion thereof, shall be damaged in any way before the final completion and acceptance of the project, the contractor shall at its sole cost and expense, make good such damage in a manner satisfactory to the Department.
- B. CLEAN-UP - The contractor at all times shall keep the work area free from accumulation of waste materials or rubbish caused by its operations. The contractor shall promptly remove from the premises all empty cartons, boxes, crates and containers belonging to it, including cleaning and removal of all materials attached to fixtures and used as a protection during shipment and installation. The contractor shall at its own cost and expense pick up, move and deposit all discarded material and rubbish resulting from its work.

The contractor shall be responsible for general broom cleaning, at its own cost and expense, in addition to the specific cleaning provided in 4.15.A. applicable to the contractor and subcontractor(s). The contractor shall, at least weekly, remove from the work area all discarded material and rubbish described in 4.15.A., resulting from the work of the contractor and subcontractor(s) and assure that the building, premises and surrounding streets are clean and free of such materials. The surfaces which are to be finished shall have all plaster, mortar and other surplus materials removed before painting, varnishing and other finishing is begun. All temporary facilities shall be removed and satisfactorily disposed of and all plant and equipment removed.

The contractor shall promptly remove from the work area all excess excavated material that is the result of its excavation provided such material is not required elsewhere on the project for fill to attain elevations shown on the contract drawings.

If a dispute arises as to the responsibility for clean-up, the Department's Representative may clean up and charge the cost to the contractor as the Department's Representative shall determine to be just.

Final payment will not be made until clean-up is satisfactorily completed.

- C. **MAINTENANCE OF COMPLETED WORK** - The contractor shall maintain all completed work for the duration of the contract. This shall include any necessary repairs to structures, the removal of accumulations from improved channels and the reshaping and reseeding of levee and channel slopes. The completed work shall be in accordance with the contract plans and specifications when the work is accepted by the Department.
- D. **OCCUPATION OF PARTIALLY COMPLETED WORK** - The Department shall have the right to use, or permit the use of, or occupy any completed, or partially completed, portions of the project, whether or not the time may have expired for completing the entire project or said portions of the project, but such use or occupancy shall not be deemed an acceptance of the project so taken or used or any portion thereof. Prior, however, to such use or occupancy, an inspection shall be made by the Department's Representative of the completed, or partially completed work to determine if it is in accordance with the terms of the contract and any subsequent damage thereto due merely to the use and occupancy of the completed, or partially completed portion will not be the responsibility of the contractor.

SECTION 5

CONTROL OF WORK

SUBSECTION 5.1 DIRECTION OF WORK

It is mutually agreed that the Department shall have the right to require changes in the contractor's procedure, to determine the order of procedure and the times and seasons at which the work shall be conducted, as may be necessary, to secure the safe and proper progress and quality of the work, without any additional cost to the Department.

Upon all questions concerning the execution of the work and the interpretation of the specifications and/or contract drawings and on the determination of quantities, the decision of the Department shall be final and binding on both parties and its estimates and decisions shall be a condition precedent to the right of the contractor to receive any money under the contract.

The Department shall especially direct the manner of conducting the work when it is in locations where the Commonwealth is doing other work, either by contract or by its own forces, in order that conflict may be avoided and the work on the contract be harmonized with that on other contracts or with other work being done in connection with or growing out of any operations of the Department.

SUBSECTION 5.2 DEPARTMENT CANNOT WAIVE OBLIGATIONS

It is expressly agreed that the Department shall not have any power to waive the obligations of the contract for the performance of good work by the contractor as described. Failure or omission on the part of the Department to condemn defective or inferior work shall not imply acceptance of the work or release of the contractor from obligation to properly replace the same at once at its sole cost and expense, at any time upon discovery of said defective work, notwithstanding that such work may have been estimated for payment or payments may have been made. Neither shall such failure or omission, nor any acceptance by the Department, be construed as barring the Department, at any time, from recovery of damages and of such a sum of money as may be needed to build anew all portions of the work in which improper work was done.

SUBSECTION 5.3 MODIFICATION OF METHODS AND EQUIPMENT

Except where otherwise directly specified in the contract, the contractor shall design, lay out and be responsible for the methods and equipment used in fulfilling the contract but such methods and equipment, when required, shall have the approval of the Department's Representative.

If, at any time, the contractor's methods or equipment appear to the Department's Representative to be unsafe, inefficient or inadequate for securing the safety of the workers, the quality of work or the rate of progress required, the Department's Representative may order the contractor to increase their safety and efficiency, or to improve their character, and the contractor shall comply with such orders. If, at any time, the contractor's work force, in the opinion of the Department's Representative, shall be inadequate for securing the necessary progress, as herein stipulated, the contractor shall, if so directed, increase the work force, or equipment, to such an extent as to give reasonable assurance of compliance with the schedule of progress. The failure of the Department's Representative to make such demand shall not relieve the contractor of its obligation to secure the quality, the safe conduct of the work and the rate of progress required by the contract, and the contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, appliances and methods. All directives issued to comply with this subsection shall be accomplished without any additional cost to the Department.

SUBSECTION 5.4 MINOR CHANGES AND ALTERATIONS

The Department reserves the right to make alterations, eliminations and additions as it may elect in the grade, location or plan of the work herein contemplated, or any part thereof, either before or after the commencement of work, provided however, that they are of a character as not to affect materially the contract unit price(s) of the work involved. The contractor will be paid for said work at the contract unit price(s).

SUBSECTION 5.5 CORRECTION OF WORK

- A. UNCOVERING OF WORK - If any work should be covered contrary to the request of the Department's Representative, it must, if required by the Department's Representative, be uncovered for its observation and replaced at the contractor's sole cost and expense.

If any work has been covered which the Department's Representative has not specifically requested to observe prior to being covered, the Department's Representative may request to see such work and it shall be uncovered by the contractor. If such work is found to be in accordance with the contract, the cost of uncovering and replacement shall, by appropriate change order, be charged to the Department. If such work is found not to be in accordance with the contract, the contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in SUBSECTION 3.6, SEPARATE CONTRACTS, and in that event the Department shall pay the contractor for such costs and require reimbursement of such costs from the responsible separate contractor. If the Department elects to accept non-conforming work it may do so instead of requiring its removal and correction, in which case a change order shall be issued to reflect an appropriate reduction in the contract sum, or if the amount is determined after final payment it shall be paid to the Department by the contractor and/or its surety.

- B. **CORRECTION OF WORK** - The contractor shall promptly correct all work rejected by the Department as defective or non-conforming or as failing to conform to the contract whether observed before or after the final inspection and whether or not fabricated, installed or completed. The contractor shall be responsible for all costs and expenses of correcting such rejected work.
- C. **GENERAL** - All such defective or non-conforming work in SUBSECTION 5.5.A., above, and 5.18, **REMEDY GUARANTEE PERIOD**, shall be removed from the site where necessary and the work shall be corrected to comply with the contract without cost to the Department.

The contractor shall be responsible for the sole cost and expense of replacing or repairing all work of separate contractors destroyed or damaged by such removal or correction.

SUBSECTION 5.6 NO WAIVER OF LEGAL RIGHTS

The Department shall not be precluded or estopped by any measurements, estimate or certificate, made or given by it in accordance with the terms of the contract at any time, either before or after the completion and acceptance of the work and payment thereof pursuant to any measurements, estimate or certificate, from showing the true and correct amount and character of the work performed and materials furnished by the contractor or from showing at any time that any such measurements, estimate or certificate, is untrue or incorrectly made in any particular, or that the work or materials, or any part thereof do not conform, in fact, to the contract. The Department shall have the right to reject the whole or any part of the aforesaid work or materials, should the said measurements, estimate, certificate or payment be found, or be known to be inconsistent with the terms of the contract, or otherwise improperly given, and the Department shall not be precluded and estopped, notwithstanding any such measurement, estimate, certificate or payment in accordance therewith, from demanding and recovering from the contractor and/or its surety such damages as it may sustain by reason of its failure to comply with the terms of the contract or on account of any overpayments made on any measurements, estimate or certificate. Neither acceptance by the Department nor any measurements, estimate or certificate by the Department for any payment of money; nor any payment for, nor acceptance of, the whole or any part of the work by the Department; nor any extension or remission of time; nor any possession taken by the Department shall operate as a waiver of any terms of the contract, or of any power herein reserved by the Department or any right to damages herein provided, nor shall any waiver of any breach of the terms of the contract be held to be a waiver of any other or subsequent breach.

SUBSECTION 5.7 COMPLETENESS AND INTENT OF SPECIFICATIONS, AND/OR CONTRACT DRAWINGS

The specifications and/or contract drawings, taken in connection with the estimates and any provision(s) of the contract, are intended to describe and illustrate the work required

to be completed. The specifications and/or contract drawings are to be taken as indicating the approximate amount of work, its approximate nature and position. The work is intended to be performed in accordance with the best practices and with due regard for safety and, in the event of any doubt as to the meanings of any provision(s) of the contract, supplementary drawings or instructions of the Department, the interpretation adopted shall be understood to call for the best types of workmanship practicable.

The provision(s) of the contract are intended to be mutually explanatory. Anything mentioned in the specifications and not shown in the contract drawings, or shown in the contract drawings and not mentioned in the specifications, shall be of the like effect as if shown or mentioned in both.

Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in any provision(s) of the contract, the explanation of the Department shall be final and binding. Corrections of an error or omission in the specifications and/or contract drawings may be made by the Department when such correction is necessary to bring out clearly the intention which is indicated by a reasonable interpretation of the specifications and/or contract drawings as a whole.

Whenever in the specifications and/or contract drawings, or in supplemental drawings which may be furnished to the contractor for directing its work, the terms or descriptions of various qualities of workmanship, material, structures, processes, plant or other features of the contract as described in general terms; the meaning of fulfillment, of which must depend upon individual judgment, then in all cases the question of the fulfillment of such specifications or requirements shall be decided by the Department; and said material shall be furnished, said work shall be completed and said structures, processes, plant or features shall be constructed, furnished or carried on, in full and complete accordance, with its interpretation of the same and to its full satisfaction and approval.

It is the intent and purpose of the specifications and/or contract drawings to include under each item all materials, equipment, apparatus or systems and labor necessary to properly construct and put into perfect operation all of the various components of the respective items and to interconnect the various materials, equipment, apparatus or systems, to form a complete and properly coordinated whole. Any materials, equipment, apparatus or systems and labor not hereinafter specifically mentioned or shown in the specifications and/or contract drawings, which may be found necessary to complete or perfect the project in a substantial manner and in compliance with the requirements implied or intended in these specifications and/or contract drawings, shall be furnished by the contractor as part of the contract. The contract prices shall constitute full payment for all materials, devices or methods peculiar to the equipment, apparatus or systems intended, and labor.

SUBSECTION 5.8 SUBSTITUTION

Whenever the materials, equipment or apparatus or systems is identified in the specifications and/or contract drawings by reference to manufacturers' or vendors' names, trade names, catalog numbers, etc., it is intended merely to establish a standard and any materials, equipment, or apparatus or systems of other manufacturers and vendors, which will perform adequately the duties imposed by the general design, will be considered equally acceptable, provided the materials, equipment, or apparatus or systems so proposed is, in the opinion of the Department's Representative, of equal quality and function. It shall not be purchased or installed by the contractor without the Department's Representative's written approval.

The plumbing, heating, ventilating, and electrical contractor(s) shall include, as part of their respective bids, the connection of equipment by model number as provided in the specifications. If a different unit or model number is substituted as an "or equal", then the separate contractor(s) requesting the substitute item shall pay the difference in cost for the connection between the specified model and the substituted item.

SUBSECTION 5.9 SHOP DRAWINGS, CATALOG CUTS, CERTIFICATIONS AND/OR SAMPLE SUBMISSIONS

The contractor shall review and submit with reasonable promptness, in orderly sequence so as not to cause delay in the work or in the work of any other contractor, sample submissions and manufacturer's certifications that materials, equipment, or apparatus or systems to be supplied meet specifications; and ten (10) copies of all shop drawings, catalog cuts, certifications and/or sample submissions required by the contract or required subsequently by the Department for modifications. Certifications shall have original signatures and be notarized.

Any portion of the work requiring shop drawings, catalog cuts, certifications and/or sample submissions shall not begin until approved by the Department. All such portions of the work shall be in accordance with approved shop drawings, catalog cuts, certifications and/or sample submissions.

The shop drawings, catalog cuts, certifications and/or sample submissions shall be complete and shall contain all required detailed information. If approved by the Department each copy will be identified as having received such approval by being so stamped and dated. The contractor shall make any corrections required by the Department. Nine (9) sets of shop drawings, catalog cuts, certifications and/or sample submissions will be retained by the Department and one (1) set will be returned to the contractor. The approval of the shop drawings, catalog cuts, certifications and/or sample submissions by the Department shall not be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory. Approval of such shop drawings, catalog cuts, certifications and/or sample submissions will not relieve the contractor of the responsibility for the dimensions and design of adequate connections, details and satisfactory construction of all work. The right is

reserved to require submission to the Department of shop drawings, catalog cuts, certifications and/or sample submissions for any part of the work not particularly mentioned herein.

Contractors requiring chases, sleeves and openings for their work in any deck, concrete slab, concrete wall or any other structure shall furnish to the Department's Representative and all separate contractors a complete set of location sketch drawings in triplicate showing the size and shape of all required openings. Completion of these location sketch drawings must be consistent with the construction sequence. Each separate contractor shall be responsible for reviewing the location sketch drawings in order that there will not be any interference and/or conflict in its portion of the work. When this review is finalized, the contractor shall submit these location sketch drawings to the Department's Representative and all separate contractors in a final workable form. Reproducible prints of the contract drawings may be obtained from the Department's Representative for this purpose.

The contractor shall construct or have built in building walls, partitions and floors or any other structures all such chases, sleeves and openings as are required. All separate contractors shall be responsible to see that chases, sleeves and openings affecting its work are installed in accordance with the location sketch drawings in their final workable form.

All construction pertaining to the cutting of chases, sleeves and openings shall be completed to the satisfaction of the Department's Representative. Should the cutting of such chases, sleeves and openings be required after construction of walls, partitions and floors or other structures are completed, the Department's Representative may require the work to be performed in such a manner as to result in unmarred work even to the extent of requiring the removal and rebuilding of walls, partitions and floors or other structures, all of which shall be at the sole cost and expense of the responsible separate contractor(s).

SUBSECTION 5.10 TERMINATION

- A. **TERMINATION DUE TO NATURE OF PERFORMANCE BY CONTRACTOR** - If the work to be done in accordance with the terms of the contract shall be abandoned by the contractor, or the work assigned or sublet by the contractor otherwise than as herein specified, or if at any time the Department shall be of the opinion and shall so certify that the performance of the contract is unnecessarily or unreasonably delayed, or that the contractor is violating any of the conditions or agreements of the contract, or is executing the same in bad faith or not in accordance with the terms thereof, or is not making such progress in the execution of the work as to indicate its completion within the time specified in the contract, or within the time to which the completion of the contract may have been extended by the Department, the Department may notify the contractor to discontinue all work or any part thereof in accordance with the terms of the contract by a written notice of default to be served upon the contractor, as hereinbefore provided, and a copy of said written notice of default shall be served upon the contractor's surety. Upon receipt of written notice of default, the

contractor shall discontinue the work or such part thereof as the Department shall designate, whereupon the contractor's surety may, at its option, assume the contract or that portion thereof on which the Department has ordered the contractor to discontinue the work, and proceed to perform the same and may, with the written consent of the Department, sublet the work or portion of the work so taken over; provided however, that the contractor's surety shall exercise its option, if at all, fourteen (14) calendar days after written notice to discontinue the work has been served upon the contractor and upon its surety. The surety, in such event, shall take the contractor's place in all respects and will be paid by the Department for all work performed by it in accordance with the terms of the contract and if its surety, under the provisions hereof, shall assume said entire contract, all money remaining due the contractor at the time written notice of its default was served upon it shall thereupon become due and payable to its surety as the work progresses, subject to all of the terms of the contract.

In case the surety does not, within the hereinbefore specified time, exercise its right and option to assume the contract, or that portion thereof on which the Department has ordered the contractor to discontinue work, then the Department shall have the power to complete, by contract or otherwise as it may determine, the work herein described or such part thereof as it may deem necessary, and the contractor agrees that the Department shall have the right to possession of and use of any of the materials, plant, tools, equipment, supplies and property of every kind provided by the contractor for the purpose of its work and to procure other tools, equipment and materials for the completion of the work, and to charge to the contractor the expense of all contracts, labor, materials, tools and equipment, and expenses incident thereto.

The expense so charged will be deducted by the Department out of such moneys as may be due or may at any time become due the contractor in accordance with the terms of the contract or any part thereof. The Department shall not be required to obtain the lowest figures for the work of completing the contract but the expense to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the contract if the work had been completed by the contractor, then the contractor shall be entitled to receive the difference; and in case such expense shall exceed the amount which would have been payable under the contract, if the work had been completed by the contractor, then the contractor and its surety shall be jointly and severally liable for and shall pay the amount of such excess to the Department on notice from the Department of the excess so due, but such excess shall not exceed the amount due under the contract at the time the contractor is notified to discontinue said work or any part thereof, plus the amount of the contract bond executed by the surety and contractor for the performance of the contract. When any particular part of the work is being carried on by the Department, by contract or otherwise under the provisions of this subsection, the contractor shall continue the remainder of the work in accordance with the terms of the contract and in such

manner as not to hinder or interfere with the employees as above provided by the Department.

Conviction during the contract term of a misdemeanor for violation of the “Clean Streams Law”, the “Coal Refuse Disposal Control Act”, the “Bituminous Mine Subsidence and Land Conservation Act”, the “Air Pollution Control Act”, the “Solid Waste Management Act”, “Hazardous Sites Cleanup Act”, or the “Dam Safety and Encroachment Act” (which acts are referenced elsewhere), whether the conviction arises from or is related to the work in accordance with the terms of the contract or otherwise, is cause for termination of the contract.

- B. **TERMINATION FOR CONVENIENCE OF THE COMMONWEALTH** - It is understood and agreed that the Department may, at any time during the term thereof, cancel and terminate the contract in whole or in part for its convenience and award such compensation as in the Department’s best judgment is fair and reasonable but not including any anticipatory profits for work which has not been performed.
- C. **TERMINATION FOR NON-AVAILABILITY OF FUNDS** – The Department may terminate the contract in whole or in part at any time during its term should funds be unavailable to complete the project work

SUBSECTION 5.11 CONTRACTOR’S LIABILITY

The work in every respect, from the execution of the contract and during its progress until final acceptance shall be under the charge and in care of the contractor and at its risk. The foregoing sentence is intended to include risks of every kind and description including fire and flood risks.

The contractor shall properly safeguard against any or all injury or damage to the public, or to property of any kind, and shall alone be responsible for any such damage or injury.

The contractor’s liability shall include, but is not limited to, the indemnification obligation set forth in SUBSECTION 3.10.G., ACCIDENTS AND CLAIMS.

The contractor agrees that so much of the money due it under the contract, as shall be considered necessary by the Department, may be retained until all suits or claims for damages, as aforesaid, have been settled and evidence to this effect has been furnished to the Department.

Notwithstanding the above, the Department and the contractor agree that if the work is damaged by a natural disaster and said damaged work is eligible for disaster assistance by federal, Commonwealth or other source, the Department and contractor will pursue said assistance and the contractor will be relieved from its obligation under this subsection insofar as said assistance is actually received.

SUBSECTION 5.12 HINDRANCES AND/OR DELAYS

The risks and uncertainties in connection with the work are assumed by the contractor as a part of its contract and are compensated in accordance with the contract price for the work. The contractor, except as otherwise definitely specified in the contract, shall bear all loss or damage from hindrances and/or delays from any cause during the progress of any portion of the work embraced in the contract, including all loss or damage arising out of the nature of the work to be completed, or from the action of the elements, inclement weather and floods, or from any unforeseen and unexpected conditions or circumstances encountered in connection with the work, or from any cause whatsoever, and except as otherwise definitely specified in the contract, charges other than that so included in the contract price for the work shall not be made by the contractor against the Department for such loss or damage.

Should the work be stopped by order of the Department for any cause other than those authorized in the contract, then and in that event, such expense as, in the opinion of the Department, is caused to the contractor hereby, other than the legitimate cost of carrying on the contract, will be paid by the Department.

SUBSECTION 5.13 DISPUTES OR ACTIONS BETWEEN CONTRACTORS

Should the contractor, either itself or by its subcontractor(s) or their respective agents, servants or employees, cause damage or injury to the property or work of any separate contractor(s) or by failing to perform its work (including the work of its subcontractor(s)) hereunder with due diligence, delay any separate contractor(s) who shall suffer additional expense or damage thereby, the parties involved in such dispute shall settle by agreement or arbitrate said claim, dispute or disputes by referring same to the American Arbitration Association and said dispute or disputes shall be determined pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association in effect. The Department shall not be a party to disputes or actions between contractors concerning such expense or damage and such dispute(s) shall not be subject to the dispute resolution provided for in SUBSECTION 6.13, CLAIMS FOR DAMAGES, hereof, and SUBSECTION 6.14, BOARD OF CLAIMS. It is agreed by all parties that disputes or actions between contractors concerning the additional expenses or damage hereinbefore mentioned shall not delay completion of the work which shall be continued by the parties, subject to the rights hereinbefore provided. It is agreed by the parties of the contract (the Department as promisee and the contractor as promisor) that the intent of this clause is to benefit the other separate contractor(s) on the subject project or related projects and to serve as an indication of the mutual intent of the Department and the contractor that this clause raise such other separate contractor(s) to the status of third party beneficiaries only as to the terms and conditions of this clause and SUBSECTION 3.6, SEPARATE CONTRACTS. The contractor agrees that this clause and SUBSECTION 3.6, SEPARATE CONTRACTS, are provided as a benefit to the contractor and that they specifically exclude claims against the Department for delays or other damages.

The contractor agrees that all claims, disputes and other matters in question between separate contractor(s) arising out of, or relating to the contract, or the breach thereof as provided in the previous paragraph, held by separate contractor(s) pertaining to the project for which the work is performed, shall be settled by agreement or resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect unless the parties mutually agree otherwise. This agreement so to arbitrate shall be in consideration of the fact that all other separate contractor(s) agree to this same arbitration provision, as provided in each separate contract required for the construction of this project, and shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Department shall not be a party of this arbitration nor shall such claim or dispute be subject to dispute resolution as provided for in SUBSECTION 6.13, CLAIMS FOR DAMAGES, and SUBSECTION 6.14, BOARD OF CLAIMS.

Notice of the demand for arbitration shall be filed in writing with the other separate contractor(s) and with either the Philadelphia or Pittsburgh Regional Office of the American Arbitration Association and a copy shall be filed with the Department. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Department shall not be a party to the claim, dispute or other matter in question but shall be a witness in any arbitration at the request of any party to the arbitration.

SUBSECTION 5.14 PURCHASE AND DELIVERY OF SUPPLIES, EQUIPMENT AND MATERIALS

- A. ANTI-TRUST LAWS - The contractor and the Commonwealth recognize that in actual economic practice, overcharges by contractor's suppliers resulting from violations of state or federal anti-trust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this contract, and intending to be legally bound, the contractor assigns to the Commonwealth all right, title and interest in and to any claims the contractor now has or may hereafter acquire under state or federal anti-trust laws relating to the goods or services which are the subject of this contract.
- B. RECIPROCAL LIMITATIONS ACT - If the amount of this construction contract exceeds \$10,000, the contract is subject to the Reciprocal Limitations Act (62 Pa. C.S. 107).
 - 1. The Act (62 Pa.C.S. (2006 Supp.) § 107) requires the Department:
 - i. In the award of contracts, exceeding \$10,000, for the erection, construction, alteration, improvement or repair of any building or other public work, or the purchase or lease of any goods, supplies, equipment,

printing or materials, to give resident Bidders a preference against a nonresident Bidder from any state that gives or requires a preference to Bidders from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident Bidder. A resident Bidder is a person, partnership or corporation or other business entity authorized to transact business in Pennsylvania and having a bona fide establishment for transacting business within Pennsylvania at which it was transacting business on the date when bids for the public contract were first solicited.

- ii. In the erection, construction, alteration, improvement or repair of any public building or other public work, and in all purchases of goods, supplies, equipment, printing or materials, not to specify, use or purchase any goods, supplies, equipment, printing or materials which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public building or other works, when such items are not produced, manufactured, mined, grown or performed in such state.

2. List of Discriminating States.

- i. States which apply preference favoring in-state Bidders and the amount of such preference, (that may affect this contract), as found by the Department.

STATE	PREFERENCE
Arizona	5% (construction materials from Arizona resident dealers only)
Montana	3%
West Virginia	2.5% for construction, repair or improvements of any buildings
Wyoming	5%

- ii. States which prohibit the use of out-of-state goods, supplies, equipment, materials or printing and the prohibition (that may effect this contract); as found by the Department.

STATE	PREFERENCE
Georgia	Forest products only
Indiana	Coal
New Jersey	For Bidders for the following items: major household appliances, chain link fence, portable sanitation units, glass, glazier supplies, storage batteries, carpet and cushion, shades, room air conditioning, electrical supplies, plumbing supplies,

	hardware supplies, fasteners, lumber, building supplies, audio-visual/video equipment, fire extinguishers, fire hose, motor oils, fuel oil, photographic supplies, Venetian blinds, drapes, paper towel dispensers, water hose
New Mexico	Construction

If a bid discloses that the bidder is offering to supply products from a state which prohibits the use of out-of-state goods, supplies, equipment, materials or bidders, the bid shall be rejected. Furthermore, contractors are prohibited from supplying these items from these states in performance of the contract.

3. Calculations of Preference.

In calculating the preference, the amount of a bid submitted by a Pennsylvania Bidder shall be reduced by the percentage preference which would be given to a nonresident Bidder by its state of residence. Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment, materials and printing shall be reduced by the percentage preference which would be given to another Bidder by the state where the goods, supplies, equipment, materials or printing are produced, manufactured, mined, grown or performed.

THE BIDDER MUST COMPLETE AND RETURN AS PART OF ITS SEALED BID THE RECIPROCAL LIMITATIONS ACT “BIDDER’S CERTIFICATION AS TO CONSTRUCTION CONTRACTS” ATTACHED HERETO. The Department will use this Certification in determining whether the bidder is a Pennsylvania resident bidder and whether the bidder is a non-resident bidder from a state that applies a preference favoring bidders from that state.

- i. “The Buy American Act” (41 U.S.C. 8301 *et seq.*) provides that the government give preference to domestic construction material.

Components, used in this clause, means those articles, materials and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means articles, materials or supplies brought to the construction site for incorporation into the building or work. Construction material also includes as an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system,

shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this clause, means (a) an unmanufactured construction material mined or produced in the U.S., or (b) a construction material manufactured in the U.S., if the cost of its components mined, produced or manufactured in the U.S. exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to §12.810(a)(3) of 43 CFR part 12, subpart E, shall be treated as domestic.

- ii. The contractor agrees that only domestic construction material will be used by the contractor, subcontractor(s) and supplier(s) in the performance of the contract, except for foreign construction material if any, listed in the contract.

- C. STEEL PRODUCTS PROCUREMENT ACT - In accordance with the Act of March 3, 1978 (P.L. 6 No. 3), as amended, known as the "Steel Products Procurement Act" (73 P.S. 1881 et seq.), the contractor, subcontractor(s), or supplier(s) shall use or permit to be used ONLY steel products produced in the U.S. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed by a combination of two or more of such operations, from steel made in the U.S. by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process including cast iron products. With each shipment of steel or cast iron products delivered to the project site, the contractor shall provide evidence to the Department's Representative that such steel products comply with this act. When unidentified steel products are supplied, the contractor must provide documentation which includes but is not limited to: invoices, bills of lading and mill certification that the steel was melted and manufactured in the U.S., which establishes that the contractor has fully complied with the act. If a steel product is identifiable from its face, the contractor must provide certification that it has fully complied with the act. The definition of steel products shall include machinery and equipment listed in U.S. Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from or containing steel components. If a product contains both foreign and U.S. steel, such product shall be determined to be a U.S. steel product only if at least seventy-five percent (75%) of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the U.S. Transportation equipment shall be determined to be a U.S. steel product if it complies with Section 165 of Public Law 97-424 (96 Stat. 2136).

Compliance with the Steel Products Procurement Act will not be required for steel products used as construction tools and which will not serve a permanent functional use in the project. Steel casing must comply with the Steel Products Procurement Act only when it is permanently incorporated into the project such as a water well for a permanent water supply.

The Department will not provide for, or make any payments to, any person who has not complied with the Steel Products Procurement Act. Any such payments made to any person by the Department which should not have been made as a result of the act shall be recoverable directly from the contractor or subcontractor(s) who did not comply with the act. In addition to the above penalties any person who willfully violates the provisions of the act shall be subject to other penalties outlined in the act.

D. **TRADE PRACTICES ACT** - In accordance with the “Trade Practices Act” of July 23, 1968, P.L. 686, as amended (71 P.S. 773.101 et seq.), the contractor shall not use or permit to be used in the work (i.e., will serve a permanent functional use in the project) any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in the Commonwealth. The countries of Brazil, Spain, South Korea and Argentina have been found to discriminate against certain products manufactured in the Commonwealth; therefore, the use of these countries’ products, as listed below, is not permitted:

1. Brazil: welded carbon steel pipe and tube; carbon steel wire rod; tool steel; certain stainless steel products including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; prestressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.
2. Spain: certain stainless steel products, including stainless steel wire rod, hot- rolled stainless steel bar, and cold-formed stainless steel bar; prestressed concrete steel wire strand; and certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bar and cold-formed carbon steel bar.
3. South Korea: welded carbon steel pipe and tube; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.
4. Argentina: carbon steel wire rod; and cold-rolled carbon steel sheet.

Penalties for violation of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three (3) years. This paragraph in no way relieves the contractor of

responsibility to comply with the provisions of the Steel Products Procurement Act described herein.

- E. **RECYCLED CONTENT** – Unless specifically waived by the Department in writing, all construction products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

Construction Products	Material	% of Post-Consumer Materials	% of Total Recovered Materials
Structural Fiberboard	Recovered Materials	-	80
Laminated Paperboard	Post-consumer Paper	100	-
Rock Wool Insulation	Slag	-	75
Fiberglass Insulation	Glass Cullet	-	20
Cellulose Insulation (loose-fill and spray-on)	Post-consumer Paper	75	-
Perlite Composite Board Insulation	Post-consumer Paper	23	-
Plastic Rigid Foam, Polyisocyanurate/ Polyurethane: Rigid Foam Insulation	Recovered Material	-	9
Foam-in-Place Insulation	Recovered Material	-	5
Glass Fiber Reinforced Insulation	Recovered Material	-	6
Phenolic Rigid Foam Insulation	Recovered Material	-	5
Floor Tiles (heavy duty/commercial use)	Rubber Plastic	90 -	- 90
Patio Blocks	Rubber or Rubber Blends Plastic or Plastic Blends	90 -	- 90
Polyester Carpet Fiber Face	Polyethylene terephthalate (PET) resin	25	-
Latex Paint: --Consolidated ¹ --Reprocessed ² -----White, Off-White, Pastel Colors -----Grey, Brown, Earthtones, and Other Dark Colors	Recovered Material Recovered Material Recovered Material	100 20 50	- - -
Shower and Restroom Dividers/Partitions:	Plastic	20	-

¹ Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.

² Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.

	Steel ⁴	16 67	9 33
Carpet Cushion:			
--Bonded Polyurethane	Old Carpet Cushion	15	-
--Jute	Burlap	40	-
--Synthetic Fibers	Carpet Fabrication Scrap	-	100
--Rubber	Tire Rubber	60	-
Railroad Grade Crossing Surfaces			
--Concrete	Coal Fly Ash	-	15
--Rubber ³	Tire Rubber	-	85
--Steel ⁴	Steel	16 67	9 33

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

BIDDER’S CERTIFICATION - Bidder certifies that the construction product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

MANUFACTURER/MILL CERTIFICATION - In addition to the Bidders Certification in, a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

³The recommended recovered materials content for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives

⁴ The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

ENFORCEMENT - Awarded bidders may be required, after delivery of the construction product(s), to provide the Commonwealth with documentary evidence that the construction product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

F. SALES TAX – The Contractor shall pay all sales, consumer, use and other similar taxes required by law except as noted herein. A legal opinion issued by the Commonwealth’s Department of Revenue concerning the exemption from sales tax on purchases of tangible personal property used in abandoned mine land reclamation projects, if certain conditions are met, is as follows:

1. Sales and Use Tax Regulation 228 at 61 Pa. Code §32.35(a)(2)(i)(N) provides that exempt property includes machinery and equipment - such as dozers and graders - and materials - such as fill, seedlings, grass seed, shrubs, stone, concrete and soil nutrients - used in the backfilling and reclamation of underground shafts, strip pits, extinguishment of fires in underground mines and refuse banks, neutralization and control of acid mine drainage and other directly used mining facilities when required by law. The exemption applies only if the property is used more than fifty percent (50%) of the time directly in mining activities, which includes reclamation. In addition, the reclamation required by law must be performed on behalf of a governmental agency.
2. Contractors who are eligible for sales tax exemption may utilize the exemption certificate procedure providing they have a sales tax license number. If the contractor does not have a sales tax license number, the certification procedure outlined in the Commonwealth’s Department of Revenue Regulation 150 must be followed. Any questions on this procedure should be referred to Office of Chief Counsel, Commonwealth’s Department of Revenue, telephone number 717-787-1382.

For further information refer to Sales and Use Tax Regulation 228 at 61 Pa. Code §32.35.

G. OTHER - The contractor shall include the provisions of the acts cited in this subsection in subcontract(s) and supply contract(s) so that they shall be binding on subcontractor(s) and supplier(s).

Material(s) to be used for work in accordance with the terms of the contract shall be delivered sufficiently in advance of its proposed use to prevent delays and it shall be delivered approximately in the order required.

SUBSECTION 5.15 INFRINGEMENTS OF PATENTS

The contractor shall be held responsible for any claims made against the Commonwealth for any infringement of patents by its use of patented articles or methods in the performance and completion of the work or any patented process connected with the work agreed to be performed in accordance with the terms of the contract or of any patented materials used upon the said work, and shall save harmless the Commonwealth from all claims against it by reason of any infringement or alleged infringement of patents used in the construction and completion of the work.

The Department has been given notice by a law firm representing GPAC, Inc., that the use of its equipment for asbestos containment and removal might constitute a patent infringement.

Should the contractor desire to use the GPAC, Inc. system, as covered under the Natale U.S. Patent No. 4,604,111 issued on August 5, 1986, application for the license should be directed to:

Fox, Rothschild, O'Brien & Frankel
10th Floor
2000 Market Street
Philadelphia, PA 19103-3219

SUBSECTION 5.16 PROTECTION AGAINST CLAIMS FOR LABOR AND MATERIALS

The contractor agrees that it will save harmless the Commonwealth, from all claims against it for material furnished or work completed under the contract.

It is further agreed by the contractor that it shall, if so requested, furnish the Department with satisfactory evidence that all persons who have worked or furnished material in accordance with the terms of the contract have been duly paid for such work or material and, in case such evidence is demanded and not furnished as aforesaid, such amount as may, in the opinion of the Department, be necessary to meet the claim of the persons aforesaid, may be retained from the money due the contractor in accordance with the terms of the contract, until satisfactory evidence be furnished that all liabilities have been fully discharged.

When required by the laws of the Commonwealth, money due the contractor will be retained for protection against claims.

SUBSECTION 5.17 MATERIAL SAMPLES REQUIRING LABORATORY TESTS

Where required in the specifications and/or contract drawings, tests which are to be performed at the sole cost and expense of the contractor shall be conducted by a material supplier or by an independent testing laboratory either or both of which shall be subject

to the approval of the Department's Representative. The test results shall be forwarded in duplicate directly to the Department. The contractor shall pay all costs of the tests for which it is responsible including sampling, packing, shipping and laboratory fees. No separate payment will be made for the cost of testing, which shall be included in the appropriate contract price. The Department reserves the right to perform additional tests at its own expense and to use such tests as a basis of approval or rejection regardless of previous decisions.

SUBSECTION 5.18 REMEDY GUARANTEE PERIOD

The contractor shall remedy, without cost to the Department, any defects which may develop within one (1) year from the date of completion and acceptance of the work performed under the contract provided said defects, in the judgment of the Department, are caused by defective or inferior materials or workmanship.

SUBSECTION 5.19 OPERATIONS AND MAINTENANCE INSTRUCTIONS AND MANUAL(S)

The contractor shall for its scope of work carefully compile, during progress of work, operations and maintenance instructions and manual(s) to include methods of care and cleaning of all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment and methods of operations thereof. Descriptions shall give pertinent diagrams, identifying charts, color charts, color coding, connections, lubricating instructions and single-line and detailed wiring diagrams, using manufacturers' printed information where possible. Otherwise, the contractor shall obtain written instructions prepared by subcontractor(s). The contractor shall include names, addresses and phone numbers of subcontractor(s) and service firm(s) of each mechanical item for the Department's use after expiration of the remedy guarantee period. Before completion of the work, the contractor shall submit a rough draft of the operations and maintenance instructions and manual(s) in loose-leaf binder(s) for approval by the Department's Representative. After approval and before final payment, the contractor shall furnish three (3) corrected bound copies to the Department.

SECTION 6

PAYMENT

SUBSECTION 6.1 PAYMENT COVERAGE

The contractor agrees to accept as full compensation, satisfaction and discharge for all work completed and all materials furnished, whether mentioned in the bid form, specifications and/or contract drawings or not, and for all costs and expenses incurred and damages sustained and for each and every matter, thing or act performed, furnished or suffered in the full and complete performance and completion of the work of the contract in accordance with terms, conditions and provisions thereof and of the instructions, orders and directions of the Department's Representative, except extra work which will be paid as provided in SUBSECTION 6.7, EXTRA WORK, and except as otherwise specifically provided in the contract, the unit prices and/or lump sum prices stated in the contract.

SUBSECTION 6.2 PAYMENT ONLY IN ACCORDANCE WITH CONTRACT

PENNSYLVANIA ELECTRONIC PAYMENT PROGRAM (PEPP) - The Commonwealth will make contract payments through the Automated Clearing House (ACH) Network. Within 10 days of award of the contract, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the Department's payment of the invoice submitted. The estimate prepared by the Department and accepted by the Contractor shall be the submitted invoice.

It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

The Contractor may enroll for PEPP at:

www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf.

The contractor shall not demand, nor be entitled to receive, payment for the work or materials, or any portion thereof, except in the manner set forth in the contract and after the Department's Representative has given approval for such payment.

If the actual quantity of work performed exceeds the estimated contract quantity for an item of work, payment will be made for the increased quantity as long as payments made under the contract do not exceed the maximum dollar amount of the contract.

For purposes of interest payments required under Act 266 of 1982 and Section 3932 of the CPC (62 Pa. C.S. 3932): (1) if there is additional work; (2) if extra work is directed by the

Department's Representative; or (3) if the term of the contract has expired, payment will not be due hereunder until: (a) as to (1) above, after a change order for additional work (if payment for such work, when combined with all previous payments in accordance with the terms of the contract, would exceed the maximum dollar amount of the contract) or quantity adjustment (if payment for such work, when combined with all previous payments in accordance with the terms of the contract, would exceed the maximum dollar amount of the contract) has been fully executed by all of the parties; (b) as to (2) above, after a change order for extra work has been fully executed by all the parties; or (c) as to (3) above, an extension of time has been granted by a change order.

SUBSECTION 6.3 DELAYED PAYMENTS

Should any payment due the contractor on any progress estimate be delayed beyond the time stipulated, such delay shall not constitute a breach of contract or be the basis of a claim for damages.

SUBSECTION 6.4 PROGRESS ESTIMATES

The Department's Representative will, from time to time during the active progress of the work, at intervals of approximately once a month, make a determination of all work completed and materials incorporated into the work by the contractor up to that time and will prepare a progress estimate in writing showing the value of such work.

In addition, the Department's Representative may, at its discretion, prepare a progress estimate based upon receipted invoices or delivery tickets of the amount of money represented by the materials so delivered in storage on the job site or at some other secured location agreed upon in writing but not incorporated in the work. This payment will not exceed seventy five percent (75%) of the material cost.

The Department's Representative will determine any other amounts due the contractor.

The Department's Representative will enumerate all deductions to be charged against the contractor in accordance with the terms of the contract.

The Department's Representative will compute the resulting balance from amounts derived, as stated above.

A progress estimate will not be required to be made by strict measurements but it may be made either by measurements or by approximations. A progress estimate may at any time be omitted if, in the opinion of the Department's Representative, the protection of the Commonwealth so requires.

In case work is nearly suspended, or in case only unimportant progress is being made, the Department's Representative may, at its discretion, make a progress estimate at intervals exceeding once a month.

After a progress estimate is prepared by the Department's Representative and certified by the contractor in writing to the Department's Representative, the Department's Representative will

certify for payment the amount due the contractor. Contractors shall submit along with the certified progress estimate the Small Diverse Business Utilization Report. If the Small Diverse Business Utilization Report is not submitted the Progress Estimate will not be certified for payment until the Small Diverse Business Utilization Report is provided. The Department's Representative may at all times reserve and retain from such amount, any sum(s) which, by the terms hereof or of any law of the Commonwealth it is, or may be, authorized to reserve or retain.

Contractor may authorize its employees to certify progress estimates. Contractor's letterhead stationery shall include employee(s) name, title and signature. Contractor shall sign the letterhead stationery statement and deliver to the Department's Representative at the start of the project.

It is specifically understood and agreed that protection of any materials in storage on the job site on which payments have been made in accordance with this subsection shall be the sole responsibility of the contractor. Should the materials be pilfered, damaged or removed from the job site in any manner, subsequent deductions will be appropriately made by the Department's Representative and computed in said balance. The contractor shall not incorporate in the work any materials damaged during storage or at any other time.

In the absence of good and sufficient reasons, within fourteen (14) calendar days of the receipt of payment by the contractor, it shall pay all subcontractor(s) or supplier(s), with which it has contracted, their earned share of the payment which the contractor received. The contractor shall also require such subcontractor(s) or supplier(s) to make similar payments to its subcontractor(s) and/or supplier(s). If, when notified of such by the Department, the contractor alleges a dispute over the amount owed to a subcontractor or supplier, the contractor shall provide a written explanation of the alleged dispute and the amount of the dispute. Any undisputed amounts are to be paid in a timely fashion as indicated herein. Failure by the contractor to pay said subcontractor(s) and/or supplier(s) within the timeframe indicated herein may result in the Department not processing future Monthly Progress Estimates for payment until such time adequate, written proof is provided to indicate that required payments due to subcontractor(s) or supplier(s) have been made. Information concerning payment to the contractor is available by calling the Construction Contracts Section in Harrisburg at 717-783-7994.

SUBSECTION 6.5 DETERMINATION OF QUANTITIES

The Department's Representative will make all measurements; determine all quantities, amounts of work completed and materials furnished in accordance with the terms of the contract.

SUBSECTION 6.6 MODIFICATION OF SPECIFICATIONS AND CONTRACT DRAWINGS

The Commonwealth reserves the right to issue change orders at any time during the term of the contract or any renewals or extensions thereof:

- a. to increase or decrease the quantities resulting from variations between any estimated quantities in the contract and actual quantities
- b. to make changes to the work within the scope of the Contract

- c. to notify the Contractor that the Commonwealth is exercising a contract renewal or extension option
- d. to modify the time or performance that does not alter the scope of the contract to extend the completion date beyond the expiration date of the contract or any renewals or extensions thereof.

Any such change order shall be in writing signed by the Department. Such increases, decreases, changes or modifications will not invalidate the contract, nor, if performance security is being furnished in conjunction with the contract, release the security obligation. The contractor agrees to provide the work in accordance with the change order. Any dispute by the contractor in regard to the performance required under any change order shall be handled through Subsection 6.13, CLAIMS FOR DAMAGES.

If such modifications result in additional work, which is defined as “work determined by the Department, in its sole discretion, to be of the type already provided by the contract and for which there is a contract price”, additional payment will be made at the contract price for actual additional work performed, in the same manner as if it had been included in the original contract, so long as payments made under the contract do not exceed the maximum dollar amount of the contract. If payment for such additional work would result in payments made under the contract to exceed the maximum dollar amount of the contract, any such payment will only be made following execution of a change order stating an increase in the maximum dollar amount of the contract and only to the extent of the increase.

If such modifications result in a deletion of work which is determined by the Department, in its sole discretion, to be of a type already provided by the contract and for which there is a contract price, payment will be similarly decreased at the contract price based on the decrease in actual work performed.

If such modifications result in extra work, which is defined as “work determined by the Department, in its sole discretion, to be of a type not provided by the contract and not having a price included in the contract”, payment will be made following execution of a change order, in accordance with SUBSECTION 6.7, EXTRA WORK.

If such modifications materially increase the unit cost of work, the increased expense will be paid by the Department following execution of a change order in a dollar amount determined by the Department, in its sole discretion, to be fair and reasonable. If such modifications diminish the unit cost of the work the amount of said diminution may be retained or withheld by the Department. Consequent loss of anticipated profit on work not executed will not be paid to the contractor.

When additional work or deletion of work, which is covered by a lump sum item, is required due to a modification, not a normal overrun or underrun in estimated quantities, payment or credit for the work will be based upon apparent unit prices which will be derived by dividing the lump sum price by the estimated plan quantities.

Payment for additional work, extra work, and extra work on a force account basis is accepted as payment in full for all profit and for all equipment, labor, material, field overhead, home office

and general administrative expenses and every other expense incurred as a result of the additional or extra work. Claims for additional compensation of any kind arising out of or relating to such work cannot be asserted against the Department with the Board of Claims.

The contractor, in connection with any proposal it makes for a contract modification, shall furnish a price breakdown, itemized, as required by the Department's Representative. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract(s), and overhead costs, as well as profit, and shall cover all work involved in the modification whether such work was deleted, added or changed. Any amount claimed for subcontract(s) shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Department's Representative.

SUBSECTION 6.7 EXTRA WORK

If, during the performance of the contract, it shall become necessary or desirable for the proper completion of the work in accordance with the terms of the contract to order extra work done, as defined in SUBSECTION 6.6, MODIFICATION OF SPECIFICATIONS AND CONTRACT DRAWINGS, the contractor shall, if ordered in writing by the Department's Representative, perform such work. Any such work shall be completed as extra work at a price to be previously agreed upon in writing by the contractor and the Department. Where a lump sum or a unit price cannot be agreed upon by both parties, or where this method of payment is impracticable, the Department may order the contractor to do such extra work on a force account basis, as set forth in SUBSECTION 6.8, FORCE ACCOUNT WORK, below.

SUBSECTION 6.8 FORCE ACCOUNT WORK

The compensation as herein provided shall be received by the contractor as payment in full for extra work done on a force account basis, in which the fifteen percent (15%) markup which is allowed on the labor cost and the material cost and the ten percent (10%) markup for equipment cost, and when applicable the markup on subcontractor(s) work, is being made and accepted to cover all administration, general superintendence, other overhead, bonds, insurance, anticipated profit and use of small tools and equipment for which rental is not allowed. The contractor and the Department's Representative shall compare records of extra work done on a force account basis at the end of each day to insure agreement. All costs for extra work done on a force account basis shall be submitted to the Department's Representative by the contractor. Certified triplicate statement(s) shall have attached original paid bills covering the cost of, and the freight charges on, all materials furnished and used in such work and said statement(s) shall be filed during the month following that in which the work is actually performed. Should the contractor refuse to prosecute the work as directed or should it refuse to submit its costs as required, then the Department may withhold payment of all progress estimates until the contractor's refusal or failure is eliminated.

All extra work done on a force account basis will be paid in the following manner:

- A. LABOR - For all laborers, including equipment operators, and foremen in direct charge of the specific operation, and who receive an hourly rate as indicated on the certified

payrolls, the contractor will receive the current local rate of wage per hour, to be agreed upon in writing before starting such work for each and every hour that said laborers and foremen are actually engaged in such work, plus fifteen percent (15%) in addition thereto. Project superintendents are not included. The direct labor charges shall be the actual payroll rate of wages per hour and actual fringe benefits paid. The fringe benefits would be those included on a prevailing minimum wage predetermination, if applicable, which are actually paid. This would include health and welfare, apprentice training, supplemental unemployment benefits and pension plans but does not include profit sharing plans.

The contractor will also be allowed to add to such direct laborer and foremen costs the percentage rates paid for the following items:

1. Social security tax at the percentage legally required.
2. Unemployment tax at the percentage legally required.
3. Workmen's compensation insurance at the policy percentage rate.
4. Contractor's public liability insurance at the policy percentage rate.
5. Contractor's property damage liability insurance at the policy percentage rate, including coverage for damage due to blasting and explosions when such additional coverage is secured on projects where blasting is required.

The fifteen percent (15%) hereinbefore noted shall also be added to these tax and insurance items.

- B. **MATERIALS** - For all materials furnished and used, the contractor will receive the actual cost of such materials, including freight charges and sales tax as shown by original paid bills, to which cost will be added a sum equal to fifteen percent (15%).
- C. **EQUIPMENT** - For any machinery, trucks or equipment (exclusive of operators), except small tools and equipment for which rental is not allowed, which may be deemed by the Department's Representative to be necessary or desirable to use, the Department's Representative will allow the contractor a reasonable rate of hire for rental prices for machinery, trucks or equipment, which shall include fuel and lubricants to be agreed upon in writing before such work is begun for each and every hour that such machinery, trucks or equipment is in use on such work, and to which cost will be added a sum equal to ten percent (10%). The maximum rental rates which the Department will allow shall be computed in the following manner:
1. For equipment, either rented or owned, an hourly rate will be determined using the weekly rental rates, including applicable adjustment factors, taken from the current edition (including updated supplements) of the Rental Rate Blue Book for Construction Equipment and dividing by forty (40). An allowance will be made for operating cost for every hour the machinery or equipment is operating in accordance with rates listed in the Rental Rate Blue Book for Construction

Equipment. If machinery or equipment is required at the work site, but is not operating, compensation will be at the hourly rate exclusive of operating costs.

2. In the case of equipment not in the Rental Rate Blue Book for Construction Equipment, a weekly rate shall be computed on the basis of one and one half percent (1½%) of the manufacturer's list price for new equipment. The hourly rate shall be determined by dividing the weekly rate by forty (40) for equipment actually operating and dividing by forty-four (44) for equipment required at the work site but not operating.
 3. Mobilization of equipment for force account work will be paid on the basis of labor and equipment rates in accordance with this subsection.
- D. SUBCONTRACT(S) - Force account work may be performed by subcontractor(s) only when the type of work involved is specialized and is deemed, in the opinion of the Department's Representative, outside the scope of work normally performed in accordance with the terms of the contract.

Subcontractor(s) for force account work will be approved only when specifically authorized in writing by the Department. The work performed by the subcontractor(s) shall conform to contract requirements.

Payment for work performed by subcontractor(s) will be based upon actual labor, materials and equipment supplied and computed as specified in SUBSECTIONS 6.8.A., B., and C.. The markups of fifteen percent (15%) for labor and materials and ten percent (10%) for equipment includes the overhead and profit of the subcontractor(s). The contractor will be paid a five percent (5%) allowance or markup on the first \$10,000 of the force account work of the subcontractor(s) and two percent (2%) allowance or markup for all above \$10,000. Subcontractor(s) on a lump sum basis will not be accepted as a component of force account work.

SUBSECTION 6.9 FINAL INSPECTION AND ACCEPTANCE

As soon as practicable after the completion of the project a thorough inspection will be made by the Department at the site of the work. If such work is found to comply fully with the requirements of the contract, it will be accepted and final payment will be made in accordance with SUBSECTION 6.10, FINAL PAYMENT.

On those projects where temporary erosion and sediment pollution control measures have been required to remain in place the final inspection for those items will be made upon their removal. The remedy guarantee period for those items will commence at that time.

SUBSECTION 6.10 FINAL PAYMENT

Whenever, in the opinion of the Department, the work covered by the contract has been completed, the Department will prepare a final progress estimate showing the total amount of work completed by the contractor and its value with and according to the terms of the contract, any other amounts due the contractor, all deductions made in accordance with such provisions of

the contract and the amount due the contractor. However, the final payment will not be processed until the contractor submits the following in a form satisfactory to the Department:

An affidavit that all payrolls have been paid and that all payments have been in strict compliance with the provisions of the prevailing minimum wage predetermination applicable to the project.

An affidavit that all labor, material, equipment rentals and utility bills, including those of subcontractor(s), have been paid and releases the Department from any further claims on account of the contract except for the amount due under the final progress estimate.

A "Statement of Surety" approving the final payment.

If required by the Department other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the Department.

SUBSECTION 6.11 MONEY RETAINED FOR DEFECTS AND DAMAGES

The contractor shall pay to the Department, all expenses, losses and damages as determined by the Department, incurred in consequence of any defect, omission or mistake of the contractor of the repairing or replacing thereof and the Department may apply any money, which otherwise would be payable at any time in accordance with the terms of the contract, to the payment thereof.

Imperfect or damaged work shall be repaired or replaced where feasible but if the imperfection, in the opinion of the Department, shall not be of such magnitude or importance as to necessitate or be of such nature as to make impracticable or dangerous or undesirable the re-execution of the imperfect part then the Department shall have the right to make such reduction as may be just and reasonable from the amounts due or to become due the contractor instead of requiring the imperfect work to be redone.

SUBSECTION 6.12 OFFSET PROVISION

The contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation, of the contractor or its subsidiaries, to the Commonwealth against any payments due the contractor in accordance with the terms of any contract with the Commonwealth.

SUBSECTION 6.13 CLAIMS FOR DAMAGES

If the contractor shall claim compensation for any alleged damage by reason of the acts or omissions of the Department, it shall, within six (6) months after sustaining such damage, make a written statement to the Department, including the nature of the alleged damage, the date of occurrence and an itemization of the details and amount of such damage. This statement shall be mailed to: Secretary, Department of Environmental Protection, c/o Chief, Construction Contracts Section, Division of Contracts, Procurement & Bonding, P.O. Box 8452, Harrisburg, PA 17105-8452. Upon request of the Department, it shall give access to all books of account, receipts, vouchers, bills of lading and other books or papers containing any evidence of the

amount of such damage. Unless such statement shall be filed as required, its claim for compensation shall be forfeited and invalidated, and it shall not be entitled to payment on account of any such damages. All claims and disputes which the contractor may have against the Department in accordance with the terms of the contract shall be subject to the following procedure for resolution of same:

All claims, disputes, questions or other matters which the contractor may have against the Department in accordance with the terms of this contract, which have not previously been resolved, will be heard at a Pre-Claim Hearing by the Secretary or his/her designee. The Department will render its determination in writing following the conclusion of the Pre-Claim Hearing. The Department will send notice of the decision to the contractor via registered mail, including informing the contractor of the decision, the reasons for the decision and its right to review of the decision.

The contractor shall carry on the work and maintain the construction progress schedule during any proceedings under this subsection unless otherwise agreed by it and the Department in writing.

If the contractor is carrying on with the work under protest, it must notify the Department in writing prior to the commencing of the work.

The Department shall review a claim and issue a final written determination regarding the claim within 120 days of the receipt of the claim unless extended by mutual written consent of the Department and the Contractor. If the Department fails to issue a final determination within the 120 calendar days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the Department shall be the final order of the Department.

SUBSECTION 6.14 BOARD OF CLAIMS

All claims against the Department arising out of this contract which have not previously been resolved by the Pre-Claim Hearing may be referred to the Board of Claims, in the manner and under the terms and conditions provided in Section 1712.1 of the CPC (62 Pa.C.S. 1712.1). The timely submission of the claim in accordance with SUBSECTION 6.13, CLAIMS FOR DAMAGES, shall be a condition precedent to the referral of the claim to the Board of Claims.

Claims filed with the Board of Claims must be filed either (1) within fifteen (15) days of the mailing date of a final determination denying the claim or (2) within 135 days of filing a claim, if no extension is agreed to by the parties, whichever occurs first.

The contractor shall carry on the work and maintain the construction progress schedule during any Board of Claims' proceedings, unless otherwise agreed by it and the Department in writing.

APPENDIX A
PART I
PENNSYLVANIA STATUTES

I. Purdon's Statutes - Title 3 (Agriculture)

PA Pesticide Control Act of 1973, Act of March 1, 1974 (P.L. 90, No. 24), as amended, 3 P.S. 111.21 et seq.

Agricultural Liming Materials Act, Act of March 17, 1978 (P.L. 15, No. 9), as amended, 3 P.S. 132-1 et seq.

Noxious Weed Control Law, Act of April 7, 1982 (P.L. 228, No. 74), as amended, 3 P.S. 255.1 et seq.

Plant Pest Act, Act of December 16, 1992 (P.L. 1228, No. 162), as amended, 3 P.S. 258.1 et seq.

Conservation District Law, Act of May 15, 1945 (P.L. 547), as amended, 3 P.S. 849 et seq.

(Relating to Weather Modification), Act of January 19, 1968 (P.L. (1967) 1024), as amended, 3 P.S. 1101 et seq.

(Relating to Nutrient and Odor Management), Act of July 6, 2005 (No. 38), as amended, 3 Pa. C.S. 501 et seq.

The Fertilizer Act, Act of December 13, 2001 (P.L. 876, No. 97), as amended, 3 Pa. C. S. A. 6701 et seq.

Soil and Plant Amendment Act, Act of December 13, 2001 (P.L. 876, No. 97), as amended, 3 Pa. C. S. A. 6901 et seq.

Seed Act, Act of November 29, 2004 (P.L. 1302, No. 164), as amended, 3 Pa. C. S. A. 7101 et seq.

II. Purdon's Statutes - Title 16 (Counties)

(Relating to Land Use), Act of January 13, 1966 (P.L. (1965) 1292), as amended, 16 P.S. 11941 et seq.

III. Purdon's Statutes - Title 18 (Crimes and Offenses)

The Crimes Code, Act of December 6, 1972 (P.L. 1482, No. 334), as amended, 18 Pa. C. S. A. 101 et seq.

IV. Purdon's Statutes - Title 24 (Education)

Public School Code of 1949, Act of March 10, 1949 (P.L. 30), as amended, 24 P.S. 1-101 et seq.

V. Purdon's Statutes - Title 30 (Fish)

The Fish and Boat Code, Act of October 16, 1980 (P.L. 996, No. 175), as amended, 30 Pa. C. S. A. 101 et seq.

VI. Purdon's Statutes - Title 32 (Forests, Waters and State Parks)

(Relating to Water Power and Water Supply Permits), Act of June 14, 1923 (P.L. 704), as amended, 32 P.S. 591 et seq.

Water Well Drillers License Act, Act of May 29, 1956 (P.L. (1955) 1840), as amended, 32 P.S. 645.1 et seq.

(Relating to Flood Control), Act of August 7, 1936 (P.L. 106, 1st Ex. Sess., No. 46), as amended, 32 P.S. 653 et seq.

Flood Plain Management Act, Act of October 4, 1978 (P.L. 851, No. 166), as amended, 32 P.S. 679.101 et seq.

Storm Water Management Act, Act of October 4, 1978 (P.L. 864, No. 167), as amended, 32 P.S. 680.1 et seq.

Dam Safety and Encroachments Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. 693.1 et seq.

(Relating to Stream Clearance), Act of June 5, 1947 (P.L. 422), as amended, 32 P.S. 701 et seq.

(Relating to Potomac River Pollution), Act of May 29, 1945 (P.L. 1134), as amended, 32 P.S. 741 et seq.

(Relating to Schuylkill River Pollution), Act of June 4, 1945 (P.L. 1383), as amended, 32 P.S. 751.1 et seq.

(Relating to Delaware River Pollution), Act of April 19, 1945 (P.L. 272), as amended, 32 P.S. 815.31 et seq.

Delaware River Basin Compact, Act of July 7, 1961 (P.L. 518), as amended, 32 P.S. 815.101 et seq.

Ohio River Valley Water Sanitation Compact, Act of April 2, 1945 (P.L. 103), as amended, 32 P.S. 816.1 et seq.

Great Lakes Protection Fund Act, Act of July 6, 1989 (P.L. 215, No. 34), as amended, 32 P.S. 817.11 et seq.

Brandywine River Valley Compact, Act of September 9, 1959 (P.L. 848), as amended, 32 P.S. 818 et seq.

Wheeling Creek Watershed Protection and Flood Prevention District Compact, Act of August 2, 1967 (P.L. 189), as amended, 32 P.S. 819.1 et seq.

Susquehanna River Basin Compact, Act of July 17, 1968 (P.L. 368, No. 181), as amended, 32 P.S. 820.1 et seq.

Chesapeake Bay Commission Agreement, Act of June 25, 1985 (P.L. 64, No. 25), as amended, 32 P.S. 820.11 et seq.

(Relating to Preservation and Acquisition of Land for Open Space Uses), Act of January 19, 1968 (P.L. (1967) 992), as amended, 32 P.S. 5001 et seq.

Land and Water Conservation and Reclamation Act, Act of January 19, 1968 (P.L. (1967) 996), as amended, 32 P.S. 5101 et seq.

Bluff Recession and Setback Act, Act of May 13, 1980 (P.L. 122, No. 48), as amended, 32 P.S. 5201 et seq.

Wild Resource Conservation Act, Act of June 23, 1982 (P.L. 597, No. 170), as amended, 32 P.S. 5301 et seq.

Cave Protection Act, Act of November 21, 1990 (P.L. 539, No. 133), as amended, 32 P.S. 5601 et seq.

Rails to Trails Act, Act of December 18, 1990 (P.L. 748, No. 188), as amended, 32 P.S. 5611 et seq.

VII. Purdon's Statutes - Title 34 (Game)

The Game and Wildlife Code, Act of July 8, 1986 (P.L. 442, No. 93), as amended, 34 Pa. C.S.A. 101 et seq.

VIII. Purdon's Statutes - Title 35 (Health and Safety)

(Related to Public Eating and Drinking Places), Act of May 23, 1945 (P.L. 926), as amended, 35 P.S. 655.1 et seq.

The Public Bathing Law, Act of June 23, 1931 (P.L. 899), as amended, 35 P.S. 672 et seq.

The Clean Streams Law, Act of June 22, 1937 (P.L. 1987), as amended, 35 P.S. 691.1 et seq.

PA Safe Drinking Water Act, Act of May 1, 1984 (P.L. 206, No. 43), as amended, 35 P.S. 721.1 et seq.

Phosphate Detergent Act, Act of July 5, 1989 (P.L. 166, No. 31), as amended, 35 P.S. 722.1 et seq.

Plumbing System Lead Ban and Notification Act, Act of July 6, 1989 (P.L. 207, No. 33), as amended, 35 P.S. 723.1 et seq.

PA Sewage Facilities Act, Act of January 24, 1966 (P.L. (1965) 1535), as amended, 35 P.S. 750.1 et seq.

Publicly Owned Treatment Works Penalty Law, Act of March 26, 1992 (P.L. 23, No. 9), as amended, 35 P.S. 752.1 et seq.

PA Solid Waste-Resource Recovery Development Act, Act of July 20, 1974 (P.L. 572, No. 198), as amended, 35 P.S. 755.1 et seq.

(Related to Pollution from Abandoned Mines), Act of December 15, 1965 (P.L. 1075), as amended, 35 P.S. 760.1 et seq.

Sewage System Cleaner Control Act, Act of May 28, 1992 (P.L. 249, No. 41), as amended, 35 P.S. 770.1 et seq.

Combustible and Flammable Liquids Act, Act of February 11, 1998 (P.L. 58, No. 15), as amended, 35 P.S. 1241 et seq.

(Related to Camp Regulation), Act of November 10, 1959 (P.L. 1400), as amended, 35 P.S. 3001 et seq.

Air Pollution Control Act, Act of January 8, 1960 (P.L. (1959) 2119), as amended, 35 P.S. 4001 et seq.

(Related to Noise Pollution), Act of June 2, 1988 (P.L. 452, No. 74), as amended, 35 P.S. 4501 et seq.

Lead Certification Act, Act of July 6, 1995 (P.L. 291, No. 44), as amended, 35 P.S. 5901 et seq.

Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. 6018.101 et seq.

(Related to Infectious and Chemotherapeutic Waste Disposal), Act of July 13, 1988 (P.L. 525, No. 93), as amended, 35 P.S. 6019.1 et seq.

Hazardous Sites Cleanup Act, Act of October 18, 1988 (P.L. 756, No. 108), as amended, 35 P.S. 6020.101 et seq.

Storage Tank and Spill Prevention Act, Act of July 6, 1989 (P.L. 169, No. 32), as amended, 35 P.S. 6021.101 et seq.

Hazardous Material Emergency Planning and Response Act, Act of December 7, 1990 (P.L. 639, No. 165), as amended, 35 P.S. 6022.101 et seq.

Oil Spill Responder Liability Act, Act of June 11, 1992 (P.L. 303, No. 52), as amended, 35 P.S. 6023.1 et seq.

Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995 (P.L. 4, No. 2), as amended, 35 P.S. 6026.101 et seq.

Radiation Protection Act, Act of July 10, 1984 (P.L. 688, No. 147), as amended, 35 P.S. 7110.101 et seq.

Low-Level Radioactive Waste Disposal Act, Act of February 9, 1988 (P.L. 31, No. 12), as amended, 35 P.S. 7130.101 et seq.

Waste Tire Recycling Act, Act of December 19, 1996 (P.L. 1478, No. 190), as amended, 35 P.S. 6029.101 et seq.

Worker and Community Right-to-Know Act, Act of October 5, 1984 (P.L. 734, No. 159), as amended, 35 P.S. 7301 et seq.

IX. Purdon's Statutes - Title 36 (Highways and Bridges)

State Highway Law, Act of June 1, 1945 (P.L. 1242), as amended, 36 P.S. 670-101 et seq.

(Related to Junkyards Along Highways), Act of July 28, 1966 (P.L. 91, Sp. Sess.), as amended, 36 P.S. 2719.1 et seq.

Highway Vegetation Control Act, Act of December 20, 1983 (P.L. 293, No. 79), as amended, 36 P.S. 2720.1 et seq.

X. Purdon's Statutes - Title 37 (Historical and Museums)

History Code, Act of May 26, 1988 (P.L. 414, No. 72), as amended, 37 Pa. C.S.A. 101 et seq.

XI. Purdon's Statutes - Title 43 (Labor)

(Related to General Safety), Act of May 18, 1937 (P.L. 654), as amended, 43 P.S. 25-1 et seq.

Seasonal Farm Labor Act, Act of June 23, 1978 (P.L. 537, No. 93), as amended, 43 P.S. 1301.101 et seq.

XII. Purdon's Statutes - Title 52 (Mines and Mining)

The Coal Mine Sealing Act of 1947, Act of June 30, 1947 (P.L. 1177), as amended, 52 P.S. 28.1 et seq.

Coal Refuse Disposal Control Act, Act of September 24, 1968 (P.L. 1040, No. 318), as amended, 52 P.S. 30.51 et seq.

(Related to Coal Land Improvement), Act of July 19, 1965 (P.L. 216, No. 117), as amended, 52 P.S. 30.101 et seq.

(Related to Mine Fires and Subsidence), Act of April 3, 1968 (P.L. 92, No. 42), as amended, 52 P.S. 30.201 et seq.

PA Anthracite Coal Mine Act, Act of November 10, 1965 (P.L. 721, No. 346), as amended, 52 P.S. 70-101 et seq.

(Related to Discharge of Coal into Banks of Streams), Act of June 27, 1913 (P.L. 640), as amended, 52 P.S. 631 et seq.

(Related to Caving-in, Collapse, Subsidence), Act of May 27, 1921 (P.L. 1198), as amended, 52 P.S. 661 et seq.

(Related to Subsidence), Act of September 20, 1961 (P.L. 1538), as amended, 52 P.S. 672.1 et seq.

Anthracite Strip Mining and Conservation Act, Act of June 27, 1947 (P.L. 1095), as amended, 52 P.S. 681.1 et seq.

(Related to Control and Drainage of Water from Coal Formations), Act of July 7, 1955 (P.L. 258), as amended, 52 P.S. 682 et seq.

PA Bituminous Coal Mine Act, Act of July 17, 1961 (P.L. 659), as amended, 52 P.S. 701-101 et seq.

(Related to Abandoned Mines), Act of May 7, 1935 (P.L. 141), as amended, 52 P.S. 809 et seq.

(Related to Maps and Plans), Act of June 15, 1911 (P.L. 954), as amended, 52 P.S. 823 et seq.

Surface Mining Conservation and Reclamation Act, Act of May 31, 1945 (P.L. 1198), as amended, 52 P.S. 1396.1 et seq.

The Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966 (P.L. 31, 1st Sp. Sess.), as amended, 52 P.S. 1406.1 et seq.

(Related to Cave-in or Subsidence of Surface Above Mines), Act of July 2, 1937 (P.L. 2787), as amended, 52 P.S. 1407 et seq.

(Related to Coal Stripping), Act of June 18, 1941 (P.L. 133), as amended, 52 P.S. 1471 et seq.

(Related to Coal under State Lands), Act of June 1, 1933 (P.L. 1409), as amended, 52 P.S. 1501 et seq.

(Related to Mining Safety Zones), Act of December 22, 1959 (P.L. 1994), as amended, 52 P.S. 3101 et seq.

(Related to Coal Mine Subsidence Insurance Fund), Act of August 23, 1961 (P.L. 1068), as amended, 52 P.S. 3201 et seq.

Interstate Mining Compact, Act of May 5, 1966 (P.L. 40, Sp. Sess. No. 1), as amended, 52 P.S. 3251 et seq.

Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984 (P.L. 1093, No. 219), as amended, 52 P.S. 3301 et seq.

XIII. Purdon's Statutes - Title 53 (Municipal Corporations)

Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988 (P.L. 556, No. 101), as amended, 53 P.S. 4000.101 et seq.

XIV. Purdon's Statutes - Title 58 (Oil and Gas)

Oil and Gas Conservation Law, Act of July 25, 1961 (P.L. 825), as amended, 58 P.S. 401 et seq.

PA Used Oil Recycling Act, Act of April 9, 1982 (P.L. 314, No. 89), as amended, 58 P.S. 471 et seq.

Coal and Gas Resource Coordination Act, Act of December 18, 1984 (P.L. 1069, No. 214), as amended, 58 P.S. 501 et seq.

Oil and Gas Act, Act of December 19, 1984 (P.L. 1140, No. 223), as amended, 58 P.S. 601.101 et seq.

XV. Purdon's Statutes - Title 63 (Professions and Occupations)

Waste and Wastewater Systems Operators' Certification Act, Act of November 18, 1968 (P.L. 1052, No. 322), as amended, 63 P.S. 1001 et seq.

XVI. Purdon's Statutes - Title 64 (Public Lands)

PA Appalachian Trail Act, Act of April 28, 1978 (P.L. 87, No. 41), as amended, 64 P.S. 801 et seq.

XVII. Purdon's Statutes - Title 71 (State Government)

The Administrative Code of 1929, Act of April 9, 1929 (P.L. 177, No. 175), as amended, 71 P.S. 51 et seq.

Conservation and Natural Resources Act, Act of June 28, 1995 (P.L. 89, No. 18), as amended, 71 P.S. 1340.101 et seq.

XVIII. Purdon's Statutes - Title 72 (Taxation and Fiscal Affairs)

Project 70 Land Acquisition and Borrowing Act, Act of June 22, 1964 (P.L. 131, Sp. Sess., No. 8), as amended, 72 P.S. 3946.1 et seq.

(Related to Pollution Control Devices), Act of March 4, 1971 (P.L. 6, No. 2), as amended, 72 P.S. 7602.1 et seq.

XIX. Purdon's Statutes - Title 73 (Trade and Commerce)

(Related to Explosives), Act of July 1, 1937 (P.L. 2681), as amended, 73 P.S. 151 et seq.

(Related to Explosives), Act of July 10, 1957 (P.L. 685), as amended, 73 P.S. 164 et seq.

(Related to Black Powder), Act of May 31, 1974 (P.L. 304, No. 96), as amended, 73 P.S. 169 et seq.

(Related to Excavation and Demolition), Act of December 10, 1974 (P.L. 852, No. 287), as amended, 73 P.S. 176 et seq.

Site Development Act, Act of May 6, 1968 (P.L. 117, No. 61), as amended, 73 P.S. 361 et seq.

XX. Purdon's Statutes - Title 75 (Vehicles)

Vehicle Code, Act of June 17, 1976 (P.L. 162, No. 81), as amended, 75 Pa. C.S.A. 101 et seq.

Snowmobile and All-Terrain Vehicle Law, Act of June 17, 1976 (P.L. 162, No. 81), as amended, 75 Pa. C. S. A. 7701 et seq.

(Related to Hazardous Materials Transport), Act of June 30, 1984 (P.L. 473, No. 99), as amended, 75 Pa. C.S.A. 8301 et seq.

XXI. Purdon's Statutes - Title 77 (Workmen's Compensation)

PA Workmen's Compensation Act, Act of June 2, 1915 (P.L. 736), as amended, 77 P.S. 1 et seq.

PA Occupational Disease Act, Act of June 21, 1939 (P.L. 566, No. 284), as amended, 77 P.S. 1201 et seq.

XXII. Pennsylvania Constitution-Article I, Section 27 (Adopted May 18, 1971).

PART II

FEDERAL STATUTES

Acid Precipitation Act of 1980 (42 U.S.C. 8901-8912)

Act to Prevent Pollution from Ships (33 U.S.C. 1901-1915)

Asbestos Hazard Emergency Response Act of 1986 (see Toxic Substances Control Act Sections 201-214 (15 U.S.C. 2641-2654))

Atomic Energy Act of 1954 (42 U.S.C. 2014, 2021, 2022, 2111, 2113, 2114)

Clean Air Act (42 U.S.C. 7401-7671q)

Clean Water Act (see Federal Water Pollution Control Act)

Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951-3956)

Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1465)

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9675)

Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001-11050)

Endangered Species Act of 1973 (16 U.S.C. 1531-1544)

Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791-798)

Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371-4375)

Federal Facility Compliance Act of 1992 (42 U.S.C. 6901 note)

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y)

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1785)

Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

Global Climate Protection Act of 1987 (15 U.S.C. 2901 note)

Hazardous Substance Response Revenue Act of 1980 (see 26 U.S.C. 4611, 4612, 4661, 4662)

Healthy Forest Reforestation Act of 2003 (see 16 U.S.C. 6501-6591)

Lead-Based Paint Exposure Reduction Act (15 U.S.C. 2681-2692)

Lead Contamination Control Act of 1988 (42 U.S.C. 300j-21 to 300j-26)

Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b-2021j)

Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401-1445)

Mining and Mineral Resources Research Institute Act of 1984 (30 U.S.C. 1221-1230a)

National Climate Program Act (15 U.S.C. 2901-2908)

National Contaminated Sediment Assessment and Management Act (33 U.S.C. 1271 note)

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f)

National Invasive Species Act of 1996 (16 U.S.C. 4701-4751)
National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701-1709)
Noise Control Act of 1972 (42 U.S.C. 4901-4918)
Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101-10270)
Oil Pollution Act of 1990 (33 U.S.C. 2701-2761)
Outer Continental Shelf Land Act Amendments of 1978 (43 U.S.C. 1801-1866)
Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109)
Public Health Service Act (42 U.S.C. 300f-300j-26)
Renewable Resources Extension Act of 1978 (16 U.S.C. 1671-1676)
Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6992k)
Safe Drinking Water Act (see Public Health Service Act Sections 1401-1451 (42 U.S.C. 300f-300j-26))
Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300f-300j-18)
Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001-2009)
Solid Waste Disposal Act (42 U.S.C. 6901-6992k)
Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201-1328)
Toxic Substances Control Act (15 U.S.C. 2601-2692)
Wood Residue Utilization Act of 1980 (16 U.S.C. 1681-1687)