**CHAPTER 12, APPENDIX 12-2**

**ADDITIONAL CONSTRUCTION**

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**[FOR LOCALLY ADMINISTERED FEDERAL AID**

**CONSTRUCTION PROJECTS WHICH DO NOT**

**USE NYSDOT STANDARD SPECIFICATIONS]**

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If Sponsors use their own specifications for construction, the following requirements in Appendix 12-2, Package B are required to be included in the bid proposal in addition to Package A in Appendix 12-1.

□ **Prevailing Wages, Convict Labor and Material Provisions**.

□ **Buy America Provisions** Waivers to this provision must be approved by

FHWA. Supporting documentation requesting a waiver should be

submitted to the RLPL for FHWA approval.

□ **Disadvantaged Business Enterprise Utilization Provisions** (See Section

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□ **Special Training Provisions**.

□ **Changed Conditions, Dispute Resolution and Disputed Work**

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**PROVISIONS RELATING TO THE NEW YORK STATE LABOR LAW, PREVAILING WAGES, AND THE USE OF CONVICT LABOR AND MATERIALS ON FEDERAL & STATE CONTRACTS**

**GENERAL PROVISIONS.** All projects funded with Federal aid and let to contract in New York State shall conform to the provisions of the New York State Labor Law, except that in accordance with the authorization in Article 4, Section 85 of the New York State Highway Law, any provisions of the above referenced Labor Law which are in conflict with the following enumerated mandatory Federal Aid highway construction compliance requirements, as contained in Section 635 of the Code of Federal Regulations, Title 23-Highways, and other Federal legislation, rules, and regulations, as referenced below, are superseded:

**CONVICT LABOR.** No convict labor, unless performed by convicts who are on parole, supervised release, or probation, shall be employed in construction or used for maintenance or any other purposes at the site or within the limits of any Federal Aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the Owner.

**SELECTION OF LABOR.** No procedures or requirements shall be imposed by any state or municipal subdivision thereof which will operate to discriminate against the employment of labor from any other state, possession, or territory of the United States, in the construction of a Federal Aid project. The selection of labor to be employed by the Contractor on any Federal Aid project shall be of his/her own choosing.

**WAGE RATES ON FEDERAL AID PROJECTS.** Attention is directed to the statutory provisions governing the prevailing rates of wages for workmen, mechanics, and laborers who are employed on this project. Section 220 of the New York State Labor Law, as amended, requires that the wages paid for a legal day's work shall be not less than the rate of wages plus the supplements prevailing at the time the work is performed, the current schedules of which shall be included in the contract documents. Such schedules may be amended or supplemented from time to time, and such amendments or supplements shall be forwarded to the Contractor.

The Federal Aid Highway Act of 1968 provides for the payment of wages at rates not less than those determined in accordance with the Davis-Bacon Act (40 USC, Section 276-a), the schedule of which shall also be included in the contract documents.

On-site materials suppliers, in addition to all subcontractors, are subject to the provisions of the Davis-Bacon Act. This will not necessarily be construed as causing the on-site material suppliers to be classified as subcontractors as part of the 50% limitation on the subcontracting of this project.

In case of a variance between (1) the schedules of prevailing rates of wages and supplements as determined under Section 220 of the New York State Labor Law, and (2) the schedule of rates of wages as determined pursuant to the Davis-Bacon Act, the Contractor shall accept and use the schedule or schedules that establish the higher rate of wages as the minimum for the workmen who are employed on the project.

**CONSTRUCTION BY FEDERAL AGENCIES.** When construction on Federal Aid highways is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct federal contracts shall be applicable.

**NON-DISCRIMINATION.** Employment shall be provided without regard to race, color, religion, sex, or national origin.

**CONVICT-PRODUCED MATERIALS.** The use of convict-produced materials on any Federal or Federally-assisted contract must comply with the following requirements:

a. Materials produced by convict labor may only be incorporated in a Federal Aid highway construction project if such materials have been:

1. Produced by convicts who are on parole, supervised release, or probation from a prison; or

2. Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal Aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal Aid highway construction during the 12-month period ending July 1, 1987.

b. "Qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1. 1997, produced materials for use in Federal Aid highway construction projects.

c. Standard State and Federal Aid contract procedures may be used to assure compliance with the requirements of this paragraph.

**REQUIRED IN ALL FEDERAL AID CONSTRUCTION CONTRACTS. IF NYSDOT SPECIFICATIONS ARE USED, THIS SECTION IS REFERENCED IN 102-10F, AND DOES NOT HAVE TO BE PLACED IN THE BID PROPOSAL.**

**STRAIGHT PURCHASE CONTRACTS WHICH DO NOT INVOLVE INSTALLATION OR LABOR DO NOT REQUIRE WAGE RATES.**

**"BUY AMERICA" REQUIREMENTS & WAIVERS FOR FEDERAL AND STATE CONTRACTS**

**GENERAL BUY AMERICA BID REQUIREMENTS AND DEFINITION.** In accordance with New York State Department of Transportation Official Order No. 1511 establishing consistency for application of Section 146 of the State Finance Law, and Section 165 of the U. S. Surface

Transportation Act of 1982, as amended, the Bidder must submit a bid based on permanently incorporating only domestic steel and/or iron in the construction of this contract.

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

When bids are submitted based upon domestic and foreign steel and/or iron, both bids are to be submitted in the same envelope.

To qualify as domestic, all manufacturing processes (including the fabrication of any product containing steel and/or iron) must have been performed in the United States. To further define the coverage, a domestic product is a manufactured steel and/or iron construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States. Raw material used in the steel and/or iron may be imported. All manufacturing processes to produce steel and/or iron products must occur domestically. Raw materials are materials such as iron ore, limestone, waste products, etc., which are used in the manufacturing process to produce the steel and/or iron products. Waste products would include scrap; i.e., steel and/or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks, and the like. Also, steel and/or iron trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw material which is customary to prepare them for transporting are exempt from Buy America.

**AWARD OF CONTRACT.**  Award of this contract will be made to the lowest bidder who submits the lowest total bid based upon furnishing domestic steel and/or iron unless such total bid exceeds the lowest total bid based upon furnishing foreign steel and/or iron by more than 25 percent, in which case award will be made to the lowest responsible bidder based upon furnishing foreign steel and/or iron.

**CONTROL OF MATERIALS.** All items, regardless or origin, shall comply with their individual specification requirements. In the event the contract is awarded based upon using only domestic steel and/or iron, the Contractor must supply only domestic steel and/or iron and will be paid the domestic steel and/or iron bid prices. The Contractor will be responsible for ensuring that the domestic steel and/or iron is supplied in conformance with the above referenced laws. Such responsibility extends to informing all affected subcontractors and material suppliers of these specific requirements and ascertaining that steel and/or iron being supplied is in conformance with the standard specifications.

In the event that the contract is awarded based upon being allowed to permanently incorporate

foreign steel and/or iron in the work, the Contractor may supply either domestic or foreign steel and/or iron and will be paid the foreign steel and/or iron bid prices. If the contract is awarded based upon the domestic steel and/or iron bid, the Contractor may permanently incorporate in the construction of this contract a minimal amount of foreign steel and/or iron if the combined cost of such materials does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500.00, whichever is greater. The combined cost of foreign steel and/or iron will be that shown to be the value of the steel and/or iron products as they are delivered to the project.

**BUY AMERICA WAIVERS.** In addition to the award of a bid based on foreign steel and/or iron materials, waivers to the Buy America requirement may be requested by the State to the Division Federal Highway Administration if it can be demonstrated that the use of domestic steel and/or iron materials would be inconsistent with the public interest, such materials and products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality provided one or more of the above requirements are met, the Contractor may submit a request for a waiver to the Engineer. The request shall include copies of all documentation verifying the unavailability of the material or product, and/or justification of the application for a waiver. For Federally Aided contracts, final approval of the Buy America Waiver request will be made by the Division Federal Highway Administration and concurred with by the Director, Construction Division. For non-Federally Aided contracts, upon final approval of the affected Department program areas, notification and approval of the Buy America Waiver request will be made by the Director, Construction Division.

**Note: The following is a list of materials or products which have been granted waivers or exclusions from the "BUY AMERICA" provisions:**

1. Hollow 'I'-shaped steel extrusions

**REQUIRED IN ALL FEDERAL AID CONTRACTS. IF NYSDOT SPECIFICATIONS ARE USED, THIS SECTION IS REFERENCED IN 106-11 AND DOES NOT HAVE TO BE CONTAINED IN THE BID PROPOSAL.**

**DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

**FOR FEDERAL AID CONTRACTS**

**[SEE SECTION 102-12 OF THE**

**NEW YORK STATE**

**DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS]**

**SPECIAL TRAINING PROVISIONS**

GENERAL. The primary objective of this Training Special Provision is to provide training opportunities to minority and disadvantaged persons and women in construction trades for two purposes:

1. To maintain a pool of qualified minority and disadvantaged persons and women to replace those journeyworkers who, in the natural course of events, will leave the workforce; and

2. To provide minority and disadvantaged persons and women as indentured apprentices or trainees in those geographic areas where shortages in minority and women journeyworkers are recognized because of the Contractor's inability to meet the Equal Employment Opportunity (EEO) goals set forth in this contract.

This work shall consist of the employment and meaningful and effective training of minority and disadvantaged persons and women in training programs approved by the N. Y. S. Department of Transportation leading to their qualifications as journeyworkers in the skilled trades required in highway construction. This Training Special Provision supplements the Equal Employment Opportunity requirements included elsewhere in this Proposal entitled either "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) or "Equal Employment Opportunity Requirements." Each of the foregoing prescribes specific percentage goals for utilization of minorities and women in the performance of work for the geographic area location of the contract.

Each contract which contains this Training Special Provision shall require the training of at least one minority or woman indentured apprentice or trainee. Such individual shall be either approved or selected by the Owner with concurrence by the Department of Transportation. Other than this initial training obligation, to be undertaken and provided by the Contractor, no additional training obligations will exist under this Training Special Provision unless the goals for minority and women employment and training in the skilled workforce (exclusive of laborers) are not continuously met on the contract and generally distributed amongst the trades. In the five counties of New York City, the goals specified for each trade are applicable. Whenever the goals are not met, additional minority and/or women indentured apprentices and/or trainees will be assigned or approved in numbers necessary to meet the goals. Data necessary to determine if goals are being met will be provided on Contractor and Subcontractor Monthly Employment Utilization Reports (Form AAP 33LL) submitted by the Contractor on a monthly basis to the Engineer-in-Charge of the construction contract, or other agent of the Owner responsible for administering the contract, or other forms approved by the Department of Transportation.

The data will be verified by the visual observance of the Engineer-in-Charge, or designated project inspectors, or other agent of the Owner, and hours of employment reported on Contractor and Subcontractor certified weekly payrolls. The number of minority and women indentured apprentices and trainees required to be trained under this item shall not exceed the equivalent of 12 1/2% of the total journeyworker workforce on the contract (counted in hours worked), i.e., no more than 1 in 8 of the skilled workforce is required to be a minority or woman indentured apprentice or trainee. This limitation applies regardless of minority or women representation in the trades. However, this limit on required training in no way absolves the Contractor of the responsibility to comply with the EEO contract requirements.

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1/ Disadvantaged means a person who is either: (a) a member of a family that receives public assistance; or (b) a member of a family whose income during the previous six (6) months, on an annualized basis, was such that: (1) the family would have qualified for public assistance, if it had applied for such assistance; or (2) it does not exceed the poverty level. NOTE: The name, address, and social security number of candidates to be trained under the disadvantaged criteria must be submitted to the Owner accompanied by related economic documentation for approval prior to commencing training

2/ Journeyworker means a person who is capable of performing all the duties within a trade or a given work classification of a trade approval prior to commencing training, subject to concurrence by the Department of Transportation.

PRECONSTRUCTION MEETING. Before the Contractor will be allowed to begin work, the Contractor shall attend a Preconstruction Meeting and shall submit for the Owner's use and acceptance, a Manpower and Training Utilization Schedule (Form AAP 35) which shall be correlated to the Contractor's work schedule. The Schedule shall include at least the following information:

1. A work schedule for the entire contract,

2. An estimate of the work force required to conform to the work schedule on a monthly basis including an estimate of the work force in each trade and/or work classification projected to be used,

3. Separate estimates of the number of minority and women indentured apprentices or trainees that would be required in each skilled trade to meet the contract EEO employment goals for that trade assuming no minority or women journeyworkers in the workforce,

4. The approved training programs to be used and the proposed starting dates for training in each trade and/or work classification,

5. An estimate of the availability of minority and women journeyworkers in numbers sufficient to meet the EEO contract goals, and

6. Any proposal by the Contractor to use trainees or indentured apprentices to make up for anticipated EEO goal shortfalls. Such proposals shall include the name and craft of any individual proposed by the Contractor as the required trainee or indentured apprentice. In the case of an indentured apprentice, evidence of indentureship and registration of the approved apprenticeship program must be included.

No contract work may be undertaken until the Owner has accepted the Schedule and obtained the concurrence of the Department of Transportation. The Contractor shall submit a revised Manpower and Training Utilization Schedule at such times as major changes in the contract work schedule or a significant workforce buildup occurs which substantially affect the previously submitted Schedule.

RECRUITMENT. Although the training requirements of this Training Special Provision are not intended, and shall not be used to discriminate against any applicant for training, whether a member of a protected class or not, it is recognized that non-minority males have traditionally been and continue to be trained, either formally or on-the-job in an informal manner, for work in the trades utilized in construction work. Therefore, until such time that representative numbers of minorities and women complete training and their utilization as journeyworkers is demonstrated to the extent of the participation goals set forth in the Department of Transportation's construction contracts, training required under this Training Special Provision will be primarily limited to minorities, women, and disadvantaged individuals.

Thus, the Contractor shall demonstrate compliance with the intent of this Training Special provision by affording the Owner, with the concurrence of the Department of Transportation's appropriate Regional Compliance Specialist (RCS), the opportunity to:

1. First, approve the use of a minority or woman indentured apprentice known to the Contractor through an existing Joint Apprenticeship Training Program, or

2. Second, provide a partially-trained minority or woman trainee who is currently enrolled in a New York State Department of Transportation approved training program, or

3. Third, work cooperatively with the Contractor in recruitment of new minority or women trainees, when needed.

In conformance with the foregoing, the Contractor should submit a Department of Transportation Form AAP-17, Request for Personnel, to the Owner at the Preconstruction Meeting, and the Owner should seek concurrence of that from Department of Transportation's Regional Compliance Specialist. The Contractor is responsible for ensuring that on-the-job orientation for approved indentured apprentices or assigned trainees is provided to such individuals within their first month of employment.

WORK HISTORY. No individual shall be employed as a trainee or indentured apprentice in any trade and/or work classification in which such person has successfully completed a training course providing journeyworker status in the same trade or work classification, or in which such person has been gainfully employed as a journeyworker by virtue of informal on-the-job training. Detection of individuals in the above categories may be accomplished by including appropriate questions on employee application forms, inquiries to the Department of Transportation Regional Compliance Specialist, checking personal references, or by other suitable means. Regardless of the method used, the Contractor shall document the findings for each indentured apprentice or trainee provided training under this requirement. A copy of the findings shall be given to the Owner's Engineer or agent in charge of the project, who shall request concurrence of the Department of Transportation. In the case of indentured apprentices, evidence of indentureship in a registered approved apprenticeship program shall also be provided.

SUBCONTRACTING. In the event the Contractor subcontracts a portion of the contract work, the Contractor shall ensure that the requirements of this Training Special Provision are physically incorporated into such subcontracts to ensure that the workforce utilized by the Subcontractor meets the goals for minority and women employment and training, either independently or in combination with the Contractor's workforce. The Contractor must determine the hours of training, if any, and in which trade or work classifications, minority or women indentured apprentices or trainees are to be trained by the Subcontractor(s). However, the Contractor shall retain the primary responsibility for meeting the training requirements of this Training Special Provision. Subcontractors are herewith advised that disregard of these requirements may result in the Department of Transportation either rescinding approval or disapproving their use on subsequent contracts let by the Department of Transportation or on contracts let by other agencies under agreement to the Department of Transportation.

TRAINING AND APPRENTICESHIP PROGRAMS. The minimum length, type of training, and rate of pay for the trade or the work classification of the trade will be specified in the training program approved or sanctioned by the New York State Department of Transportation with the concurrence of the Federal Highway Administration. Both of these agencies shall approve or sanction a training program if it meets the Equal Employment Opportunity obligation of the Contractor and qualifies the trainee for journeyworker status in the trade or work classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Office of Manpower Development, Apprentice Training Section, and training programs approved, but not necessarily sponsored, by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided they are administered in a manner consistent with the Equal Employment Opportunity obligations of New York State Department of Transportation construction contracts. A copy of the training programs approved by the NYSDOT will be made available by the NYSDOT upon request by the Owner or the Contractor. The Contractor shall provide a copy of the approved apprenticeship or training program to the indentured apprentice or trainee.

Where training is to be provided under this Training Special Provision, the Contractor shall obtain acceptance or approval of the training or apprenticeship program to be used, and the starting time for training, prior to commencing training. The Contractor shall provide on-the-job training directed toward developing journeyworkers in the trade, or work classification(s) of the trade, involved. To the extent that the work involved on the contract permits, such training should include all phases and facets of a trade, or work classification of a trade, to satisfy usual construction industry requirements for continued or future employment therein. Additionally, the Contractor shall provide a minimum of 144 hours per calendar year of related classroom training at an approved facility for each individual so enrolled, in accordance with Article 23 of the New York State Labor Law, Section 815.3.

WAGES. Indentured apprentices will be paid at least 60 percent of the appropriate prevailing wage rate specified in the contract for the same trade or work classification for which they are being trained for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. Trainees will be paid the appropriate prevailing wage specified in the contract for the same trade or work classification for which they are being trained.

Indentured apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determinations for the applicable classification. On-the-job (OJT) trainees shall be paid fringe benefits in accordance with the provisions of the prevailing wage rates.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determinations unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyworker wage rate on the wage determination which provides for less than full benefits for apprentices.

DURATION OF TRAINING. Once an indentured apprentice is approved or a trainee is assigned to the contract under this Training Special Provision, that individual shall be trained in the designated trade throughout the duration of the contract whenever such trade is in use on the contract until the trainee or indentured apprentice has completed the approved training program. Where training is provided under a multi-phase apprenticeship or training program, it is expected that training will be provided continually through all phases to the extent that opportunities for such training exist in the work under contract. Upon satisfactory completion of a phase of training under a multi-phase apprenticeship or training program, if training in the remaining phases is not available and work in the completed phase is available, the minority or woman indentured apprentice or trainee shall continue employment, and be compensated at the prevailing journey worker wage rate for such work. Hours of employment as a journey worker described above will not be credited toward training hours required by the approved training or apprenticeship program.

A trainee may be terminated at any time during training for excessive absenteeism, lack of punctuality, accident-proneness, lack of interest, poor attitude, and continued failure to conduct his/herself in a professional manner. However, termination will not occur prior to proper counseling, documentation, and notification in writing to the Owner's Engineer or agent in charge of the project, and to the Department of Transportation's Regional Compliance Specialist, and subsequently, the concurrence of the Owners’ engineer or agent and the NYSDOT Regional Compliance Specialist, with that termination.

REQUIRED RECORDS. The Contractor shall provide each minority or woman trained under this provision with a certification showing the type and length of training satisfactorily completed. In addition, the Contractor shall keep records on the job site indicating the nature and hours of training provided to each trainee or indentured apprentice documenting performance under this Training Special Provision to the Owner's Engineer or agent in charge of the project and to the Department of Transportation's Regional Compliance Specialist. Form AAP-42a, Training Report, will be submitted once the trainee or indentured apprentice commences training, completes training, or is terminated and each December 31st that individual is in training. Form AAP-26a, Monthly Training Progress Report, will be submitted every month after the individual commences training. No measurement will be made of training provided to indentured apprentices or trainees for whom no work history has been provided to the Owner's Engineer or agent in charge of the project. In addition, no measurement will be made of the training provided to apprentices for whom no evidence of indentureship in a registered program has been provided to the Owner's Engineer or agent in charge of the project.

NO PAYMENT FOR TRAINING. No payment will be made to the Contractor for the training required by this Training Special Provision. The required training is a labor cost which is included in the unit prices bid by the Contractor for the items of work comprising the contract.

LISTS OF OJT & REGISTERED APPRENTICESHIP PROGRAMS. Effective April 1, 1992, the New York State Department of Transportation commenced a demonstration program in NYSDOT Regions 2, 3, 5, and 11 requiring the exclusive use of apprenticeship training to fulfill the Training Special Provision and supplement EEO goal attainment. In the remaining NYSDOT Regions, contractors will be allowed to use on-the-job training (OJT) programs during the period of the demonstration project. However, only OJT programs for crafts that have been deemed as apprentice-able occupations will be approved. In order to ease the transition from OJT to apprenticeship, it is required that all OJT participants receive related classroom instruction.

It is the policy of the New York State Department of Transportation to afford equal employment opportunity to traditionally socially and economically disadvantaged persons by providing training opportunities to minority and disadvantaged persons and women to improve their potential for construction employment. NYSDOT, therefore, provides training as a contract requirement on selected construction contracts, including those let by other agencies and local governments under an agreement with NYSDOT.

When OJT is to be provided under this Training Special Provision, the Contractor shall obtain acceptance from the Owner and NYSDOT for the OJT Program to be utilized and the starting time frame for training, prior to commencing training. Accordingly, the following is a listing of OJT programs which have been approved by the NYSDOT and the Federal Highway Administration (FHWA) for utilization in NYSDOT Regions 1, 4, 6, 7, 8, and 10.

**NOTE: A contractor in these Regions may opt to use either OJT or apprenticeship programs. However, the use of apprenticeship programs is strongly encouraged.**

APPROVED OJT PROGRAMS

1. Carpenter

10.10 Carpenter Training Program (Highway and Bridge)

2. Mason

20.10 Concrete Finisher/Cement Mason Training Program

3. Operating Engineer

30.20 Roller & Bulldozer Operator Training Program

30.21 Crane, Clamshell, Derrick, and Dragline Operator Training Program (1 1/2 yd. under/over)

30.22 Roller and Front End Loader Operator Training Program (1 cu yd under/over)

30.23 Roller and Grader Operator Training Program

30.24 Roller and Scraper Pan Operator Training Program

30,25 Heavy Duty Mechanic Training Program

4. Ironworker

40.10 Ironworker (Reinforcing and Structural) Training Program

5. Rodman

50.10 Instrument person Training Program

6. Painter

60.10 Painter Training Program

7. Welder

90.10 Heavy Duty Welder Training Program

REQUIREMENTS REGARDING TRAINING IN FEDERAL AID CONTRACTS

Apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with the New York State Department of Labor, Office of Manpower Development, Apprentice Training Section, and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided that they are being administered in a manner consistent with the Equal Employment Opportunity obligations of NYSDOT construction contracts.

APPROVED APPRENTICESHIP PROGRAMS

NYS Dept. of

Labor # NYSDOT # TITLE

1. Carpenter

860.381.022 10.01 Carpenter Apprentice Locals # 1093, 1379, 1772, 1292 & Carpenters JAC of Nassau County

842.361.010 10.02 Lather (Carpenter)

860.381.022 10.03 Carpenter Apprentice Open Shop Association

2. Mason

844.364.010 20.01 Cement Finisher Apprentice

861.381.018 20.02 Bricklayer & Mason Apprentice Locals #1, 9, 21, 30, 34, 37, & 41, and Bricklayer JAC of New York

844.364.010 20.03 Cement Mason Apprentice

844.364.010 20.04 Cement Mason Open Shop Association

4. Operating Engineer

859.683.010 30.01 Heavy Equipment Operator Apprentice Locals #138, 138A, 138B, & International Union of Operating Engineers

859.683.010 30.02 Equipment Operator Apprentice Locals #106, 410, 463, 545, & 832

620.261.022 30.03 Operating Engineer Apprentice-Heavy Duty Repairperson

859.683.010 30.04 Equipment Operator Apprentice Grade 7 Paving

859.683.010 30.05 Operating Engineer Open Shop Association

859.683.010 30.06 Operating Engineer Apprentice Program - Local 17

859.683.010 30.07 Operating Engineer Apprentice program - Local 825

859.683.010 30.08 Operating Engineer Universal Equipment Apprentice - Local 137

018.167.018 30.09 Field Engineer Surveyor Apprentice - Local 825

859.683.010 30.10 Heavy Equipment Operator Apprentice (International Union of Operating Engineers) - Locals 14 & 14B

5. Ironworker

801.361.014 40.01 Ornamental Ironworker Apprentice

801.361.014 40.02 Ironworker Apprentice

6. Technical Engineer

018.167.018 50.01 Technical Engineer Apprentice

018.167.018 50.02 Technical Engineer Surveyor Apprentice - Locals 106, 410, 463, 545, & 832

869.381.010 50.03 Rodperson Apprentice

7. Painter

840.381.010 60.01 Painter & Decorator Apprentice

8. Electrician

824.261.010 80.01 Electrician Apprentice Program - Locals 3 & 25

**REQUIRED ON ALL FEDERAL AID CONTRACTS OF $1,000,000 OR MORE, AND MUST BE PUBLISHED IN THE BID PROPOSAL REGARDLESS OF WHOSE SPECIFICATIONS ARE USED.**

**CHANGED CONDITIONS AND DISPUTED WORK PROVISIONS:**

It is the goal of the Sponsor to resolve disputes that may arise under the contract in a timely, just and fair manner consistent with the terms of the contract. Towards this goal, the Sponsor is specifying the dispute resolution and disputed work provisions of this Section. This dispute resolution process may be undertaken at any time from the contract award to the submission of the final estimate for payment by the Sponsor. The process recognizes and will take into consideration the risks and controls inherent in construction which the Contractor or the Sponsor have agreed to assume pursuant to the terms of the contract.

If the Contractor considers its disputes unresolved after following the requirements of this Section then at any time prior to the submission of the final agreement for payment to the Sponsor, the Contractor may request in writing a meeting with the Sponsor, or its designated representative, to review any outstanding dispute or items of a dispute that have not been previously resolved to the satisfaction of the Contractor through the dispute resolution process. If the contractor fails to comply with the requirements of this section, any claim of the Contractor with respect thereto shall be deemed waived.

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

1.

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

b. The term ‘time related dispute’ shall mean any dispute arising from any event not within the Contractor's control, performance, action, force, or factor which affects the scheduled time of performance depicted in the Contractor's most recent Sponsor approved progress schedule submitted to the Sponsor. This Subsection is intended to cover all such events which include termination, major deductions or increases to quantities of work, Contingencies, Extra Work, Deductions, and suspension of work and cancellation of contract, Right to Suspend Work and Cancel Contract, as well as actions, forces or factors, whether they be termed ‘delay’, ‘disruption’, ‘interference’, ‘inefficiencies’, ‘impedance’, ‘hindrance’, ‘acceleration’, or otherwise. This subsection shall cover all such applicable events under Differing Site Conditions, Suspensions of Work, and Significant Changes in the Character of the Work Provisions. Notwithstanding the foregoing, for time related compensation requests, the Sponsor will compensate the Contractor for only those instances arising out of the issuance by the Sponsor of a stop work order relative to a substantial portion of the work, or arising out of the unavailability of critical rights of way parcels, either of which are determined by the Sponsor to significantly affect the scheduled completion of the work.

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

3. Except for situations that come within the terms of Differing Site Conditions, Suspensions of Work, Significant Changes in the Character of the Work Provisions, subsection 2, Suspensions of Work, within ten work days after the Contractor has knowledge or should have had knowledge of an event, matter or occasion, that will result in time related damages, the Contractor must provide the Engineer with written notice of a dispute for time related damages.

The Sponsor shall have no liability and no adjustment will be made for any time related damages which accrued more than ten work days prior to the filing of such a notice with the Engineer. Failure of the Contractor to give such written notice in a timely fashion will be grounds for denial of the dispute and the Sponsor does not have to show prejudice to its interest before such denial is made. In the event the Contractor fails to provide the required written notice within the ten work day period and the Contractor demonstrates justifiable excuse or cause as determined by the Sponsor for not providing the required written notice, then said 10 day notice period may be lengthened but only if the Contractor has maintained and submits the specified records set forth in these provisions and the Sponsor has knowledge of the matter or occasion that may result in time related damages. In the event the Contractor fails to maintain and submit such specified records, or fails to demonstrate justifiable excuse or cause if such notice is not given, or demonstrates such justifiable excuse or cause but fails to maintain and continue to maintain and submit such specified records, the Contractor hereby agrees to waive the dispute for compensation, notwithstanding the fact that the Sponsor may have actual notice of the facts and circumstances which comprise such dispute and is not prejudiced by said failure.

As directed by the Engineer, the work shall continue during the pendency of the dispute. The Engineer shall make the initial determination in writing on the dispute and the Contractor, if it considers the issue unresolved, shall promptly notify, within ten (10) work days after receipt of the Engineer's decision, notify the Sponsor, in writing with copies to the Engineer of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Engineer and its rebuttal of his or her previous findings or determinations. The Sponsor, or its designee, shall make a finding thereon and notify the Contractor of same in writing.

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

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

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

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

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

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

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

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

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

(3) Identification of all manufacturers’ numbers of all items of equipment for which costs are being compiled.

6. In addition, after submitting the required notice specified in this section, the contractor shall complete its dispute submission by complying with Extra Force Account Work, Dispute Compensation and Record keeping, Part (E), Required Content of Dispute Submission, when such information is ascertainable by the contractor and Part (F), Required Certification of Disputes.

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

If the Contractor does accelerate its work efforts pursuant to a written order or express written approval by the Sponsor, the Contractor shall be compensated for its effort, in the same manner and as limited by Extra Force Account Work, Dispute Compensation and Record keeping, Part (D). The Sponsor, in determining whether or not any compensation under this Section is warranted, will evaluate the facts and circumstances which led to the acceleration to determine whether they were in the Contractor's control.

If the Contractor is claiming a <constructive acceleration,= it must follow the requirements of this section, Part (A).

C. DISPUTED WORK. If the Contractor is of the opinion that any work ordered by the Engineer to be done as contract work is extra work and not contract work, or that any order of the Engineer exceeds the work requirements of the provisions of the contract, the Contractor shall promptly, within ten work days of receipt of the order or direction, notify the Engineer in writing of its contentions thereto. The Contractor must progress the work as required and ordered. In the meantime, the Contractor, if it considers the issue unresolved, shall promptly, within ten work days of receipt of the Engineer's written decision, notify the Sponsor in writing with copies to the Engineer, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Engineer and its rebuttal of their previous findings. The Sponsor, or its designated representative, shall make a finding thereon and notify the Contractor of same in writing. If such work is determined by the Sponsor or its designee to be extra work pursuant to the provisions of this Section, compensation will be made pursuant to Extra Force Account Work, Dispute Compensation and Record keeping, Part B. In addition, after submitting the required notice specified in this section, the contractor shall complete its dispute submission by complying with Extra Force Account Work, Dispute Compensation and Record keeping, Part (E), Required Content of Dispute Submission, when such information is ascertainable by the contractor and Part (F), Required Certification of Disputes. This subsection shall cover all such applicable extra work under Differing Site Conditions, Suspensions of Work, Significant Changes in the Character of the Work Provisions. During the progress of such disputed work, the Contractor and Engineer shall keep daily records and make reports of all labor, material and equipment used in connection with such work and the cost thereof as specified in Extra Force Account Work, Dispute Compensation and Record keeping, Part (C), Force Account Reports.

If the Sponsor or its designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct the Contractor to continue the disputed work and the Contractor must promptly comply. The Contractor's right to pursue a dispute under this Section for extra compensation or damages will not be affected in any way by the Contractor's complying with the directions of the Sponsor or Engineer to proceed with the work, provided the Contractor continues to keep and furnish the Engineer with Force Account Reports as specified in Extra Force Account Work, Dispute Compensation and Record keeping, Part (C).

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

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

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

1. Daily time sheets, job superintendent diaries or log sheets and foreman's daily reports.

2. Union agreements and reports, if any.

3. Insurance policies, welfare and benefits records or plans for union and non-union

personnel.

4. Payroll register.

5. Individual employee earnings records.

6. Payroll tax returns.

7. Material invoices, purchase orders, and all material and supply acquisition contracts.

8. Material cost distribution work sheet.

9. Equipment records (list of company equipment, rates, depreciation schedules, daily equipment reports or logs, fueling logs or records, equipment lease purchase agreements, and equipment purchase invoices).

10. Vendor rental agreements, subcontractor invoices, agreements and back

charge records.

11. Subcontractor payment certificates.

12. Canceled checks (payroll and vendors).

13. Job cost ledger or report.

14. Job payroll ledger, petty cash journal and supporting vouchers.

15. General ledger, general journal (if used), and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.

16. Cash receipts, cash disbursements journal, and purchase journal.

17. Audited and unaudited financial statements for all years reflecting the operation on this project.

18. Depreciation records on all company equipment whether such records are maintained by the company involved, its accountant, or others.

19. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.

20. All documents which reflect the Contractor's actual overhead during the years this Project was being performed.

21. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.

22. All documents which relate to each and every dispute together with all documents which support the amount of damages as to each dispute.

23. Work sheets used to prepare the dispute establishing the cost components for items of the dispute including, but not limited to, labor, benefits, insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

In the event the Contractor fails to substantially furnish the above required reports and accounting records, such failure shall constitute a waiver of the dispute for payment other than for payment at contract unit prices for the work performed.

CONTRACTOR'S RESPONSIBILITY FOR WORK. The Contractor is responsible for carrying out the provisions of the contract at all times, regardless of whether an authorized inspector is present or not. Any work or item that is, at any time, found to be out of specification or not in compliance with the plans shall remain the responsibility of the Contractor and shall be subject to such corrective measures that are approved in writing by the Engineer.

A. CONTRACT ITEM CHARGES. When an order-on-contract provides for similar items of work or materials which increase or decrease the itemized quantity provided for in the primary contract, the price to be paid therefor shall not exceed the unit bid price in the primary contract for such items.

B. NEW ITEM CHARGES.

1. Agreed Prices. Agreed prices for new items of work or materials may be incorporated in the order-on-contract as the Sponsor may deem them to be just and fair and beneficial to the Sponsor. These prices must be supported by a complete price analysis in the order-on-contract or, by reference to average bid prices for similar type and quantity of work from other recent contracts. The price analysis will be based on an estimated breakdown of charges listed in the following paragraph 2. "Force Account Charges," unless some other basis is approved by the Sponsor.

2. Force Account Charges

3. Contractor Charges. Where there are no applicable unit prices for extra work ordered and agreed prices cannot be readily established or substantiated, the Contractor shall be paid the actual and reasonable cost of the following:

(1) Necessary Materials (including transportation to the site.) Materials is defined to include all products incorporated in the temporary or permanent work. The following items consumed in progressing the work are also considered to be materials for which reimbursement with an allowance for profit and overhead will be made. These are oxygen, acetylene, propane, welding rods, grinding wheels, and saw blades. Separate reimbursement will not be made for all other products which may be consumed in progressing the work and reimbursement for these items is considered to be included in the reimbursement for overhead. Material used, if acquired by direct purchase, must be documented by bills or acceptable invoices. All prices on used material incorporated in either temporary or permanent work shall be billed at a fair value, less than the original cost when new. A reasonable salvage credit shall be given for substantial salvageable material recovered. Salvage value of substantial material recovered shall be determined by the Engineer-in-Charge in coordination with the Contractor.

(2) Necessary labor costs including supplemental benefit payments. Each class of labor shall be billed separately at actual payroll rates. Average rates based on different classes of labor will not be accepted.

(3) Necessary payroll taxes and insurance payments and other such reasonable charges that are paid by the Contractor pursuant to existing written agreements with its employees and/or labor organizations.

(4) Sales taxes, if any, required to be paid on materials not permanently incorporated into the work under the order-on-contract.

(5) Equipment, truck and plant rentals, other than small tools. The Contractor shall be reimbursed for the number of hours that the equipment truck or plant is actually used on a specified force account job. Equipment used by the Contractor shall be specifically described by the manufacturer, model number and date of manufacture and be of suitable size and suitable capacity required for the work to be performed. In the event the Contractor elects to use equipment of a higher rental rate than the equipment suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment upon which the rental rate is based will be recorded as a part of the record for force account work. The Engineer shall determine the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be related to the suitable equipment.

(a) Contractor Owned Equipment, Trucks and Plant -- Contractor shall be reimbursed for its ownership costs and for its operating costs for self owned equipment at the rates listed in the Rental Rate Blue Book published by the Dataquest, Inc. applied in the following manner as modified by the 'Rate Adjustment Table'.

[1.0] Ownership Costs -- It is mutually understood that the rates for ownership costs reimburse the Contractor for all nonoperating costs of owning the equipment, truck or plant including depreciation on the original purchase, insurance, applicable taxes, interest on investment, storage, overhead, repairs, moving the equipment onto and away from the project or work site, and profit. Reimbursement will be made for the hours of actual use as described below:

[1.1] Less than 8 hours of actual use, the product of the actual number of hours used or fraction thereof multiplied by the hourly rate, or the daily rate, whichever is less.

[1.2] Between 8 hours and 40 hours of actual use, the product of the actual number of hours used divided by 8 multiplied by the daily rate, or the weekly rate, whichever is less.

[1.3] Between 40 and 176 hours of actual use, the product of the actual number of hours used divided by 40 multiplied by the weekly rate, or the monthly rate, whichever is less.

[1.4] Over 176 hours of actual use, the product of the actual number of hours used divided by 176 multiplied by the monthly rate.

[2.0] Operating Costs -- the rate for operating costs includes fuel, lubricants, other operating expendables, and preventative and field maintenance. Operating cost does not include the operator's wages. The Contractor shall be reimbursed the product of the number of hours of actual use multiplied by the Estimated Operating Cost/Hour.

[3.0] The rates used shall be those in effect at the time the force account work is done as reflected in the then current publication of the Rental Rate Blue Book. When force account type analysis are used to establish agreed prices in accordance with Section B.1 above, the rates used shall be those in effect when the agreed price is developed by the Contractor and submitted to the Engineer-in-Charge.

[4.0] The geographic Area Adjustment Factor shown on the map at the beginning of each section of the Rental Rate Blue Book shall not be applied to the equipment rates subsequently listed in each section, and shall not be used as a basis for payment.

[5.0] In the event that a rate is not established in the Rental Rate Blue Book for Construction Equipment for a particular piece of equipment, truck or plant, the Owner shall establish rates for ownership costs and operating costs for that piece of equipment, truck or plant that is consistent with its cost and expected life.

(b) Rented Equipment, Trucks and Plant --

[1.0] In the event that the Contractor does not own a specific type of equipment and must obtain it by rental, it shall be paid the actual rental rate for the equipment for the time that the equipment is used to accomplish the work or is required by the Engineer-in-Charge to be present, not to exceed the adjusted rental rate in the Rental Rate Blue Book, plus the reasonable cost of moving the equipment onto and away from the project site.

[2.0] The Contractor shall also be reimbursed for the operating cost of the equipment unless reflected in the rental price. Such operating cost shall be determined in the same manner as specified for Contractor Owned Equipment above.

[3.0] In the event that area practice dictates the rental of fully manned or fueled and maintained equipment, truck or plants, payment will be made on the basis of an invoice for the rental of the fully manned, fueled and/or maintained equipment, trucks or plants including all costs incidental to its use, including costs of moving to and from the site, provided the rate is substantiated by area practice.

(c) Maximum Amount Payable -- The maximum amount of reimbursement for the ownership costs of Contractor owned or the rental cost of rented equipment, trucks or plant is limited to the original purchase price of the equipment, truck or plant for any force account work as listed in the Green Guide for Construction Equipment published by the Dataquest, Inc. In the specific event when the ownership or rental reimbursement is limited by the original purchase price, the Contractor shall, nevertheless, be reimbursed for the Operating Cost/Hour for each hour of actual use.

(6) Profit and Overhead. Profit and overhead cost shall be computed at 20 percent of the following:

(a) Total Direct Labor Cost (actual hours worked multiplied by the basic hourly wage rate) plus supplemental benefits payments, payroll taxes, insurance payments and other labor related fringe benefits payments, payroll taxes, insurance payments and other related fringe benefit payments as defined in (2) and (3) above, but not including the overtime additive payments. Profit and overhead shall not be paid on the premium portion of overtime.

(b) Total Cost of Materials as defined in (1) above including the cost of transportation to the project site.

(7) Overhead shall be defined to include the following:

(a) Premium on bond;

(b) Premium on insurance required by the owner other than Workers Compensation Insurance, premium on public liability and property damage insurance, unemployment insurance, Federal old-age benefits, other payroll taxes and such reasonable charges that are paid by the Contractor pursuant to written agreement with its employee;

(c) All salary and expenses of executive officers, supervising officers or supervising employees;

(d) All clerical or stenographic employees;

(e) All charges for minor equipment such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc, and other miscellaneous supplies and services;

(f) All drafting room accessories such as paper, tracing cloth, reproduction costs, etc.

(2) Subcontractor Charges. When the work is performed by a subcontractor, the Contractor shall be paid the actual and reasonable cost of such subcontracted work as outlined above in items (1) through (5) under a. Contractor Charges, but profit and overhead shall be figured at (25%) unless some other basis is approved by the Owner.

(3) Service Charges. When work is performed by, or a fee is paid to, a service provider, the contractor shall be paid the actual cost of the service fee plus a maximum five percent (5%) for contract supervision, overhead and profit. This 5% shall be applied once to the service fee regardless of who makes direct payments to the service provider.

H. FORCE ACCOUNT REPORT. Payment for force account work will be made on the basis of the following reports.

1. The Contractor will deliver to the Engineer-in-Charge a daily summary of FORCE ACCOUNT WORK done on the contract. This summary on 8 2" x 11" paper will be delivered to the Engineer-in-Charge not later than closing time on the day following that for which the work is reported.

The summary shall contain:

a. A list of materials used indicating the amount and nature of each material. The cost (if known) should also be included. This must be documented later by proper receipts.

b. A list of equipment used indicating the number of hours used and the kind, type, and size of equipment.

c. A list of personnel by name, including the hours worked, and labor classification at which they were used on the force account work and the location by station or station of the work proposed.

d. A statement of the work accomplished by force account for that day.

e. This summary will be dated and signed by the Contractor's authorized representative and the Engineer-in-Charge.

f. The contract number and other identification as well as the name of the Contractor shall appear on the statement.

g. The Engineer-in-Charge will make any notations, remarks or comments on this form that may assist in final payments.

2. Within 5 calendar days after the end of each pay period, the Contractor shall deliver to the Engineer-in-Charge a FORCE ACCOUNT SUMMARY OF LABOR used on the work which shall include the name, hourly rate of pay, hours worked, fringe benefits, and/or other items as shown on the actual payroll.

3. On completion of the specific force account work, the Contractor shall within 10 calendar days, deliver to the Engineer-in-Charge a Force Account Summation wherein all materials, equipment, and labor charges are shown and totaled together with such other expenditures as are concerned with the force account item. This summation shall be dated and signed by the Contractor's authorized representative and the Engineer-in-Charge.

4. In the event the contractor fails to deliver the required force account documentation to the EIC within the time period specified in subsection c, of these General specifications, and as a result the Order-on-Contract for the force account work is not fully approved at the date of final acceptance, the number of calendar days of the time period between final acceptance and the issuance of this force account Order-on-Contract, attributable to the Contractor's late force account submissions will extend the required payment data by an equal period of time.

D. TIME RELATED DISPUTE COMPENSATION.

1. As limited by Differing Site Conditions, Suspensions of Work, Significant Changes in the Character of the Work Provisions, the following elements of damage, and only the following elements, will be recoverable by the Contractor as <time related dispute damages= provided that they are actual and reasonable:

a. Documented additional or escalated job site labor expenses;

b. Documented additional or escalated costs for materials;

c. Documented additional or escalated equipment costs less appropriate credits, as such are determined in accordance with this Section;

d. Documented costs of extended job-site overhead (field costs, including field supervision); job-site overhead would include job superintendent, office engineer and clerical staff, but would not include working foremen;

e. An additional 10 percent of the total of items a, b, c and d for home office overhead and 10% for profit thereon except for the differing site conditions or significant change in character of the work clauses (Differing Site Conditions, Suspensions of Work, Significant Changes in the Character of the Work Provisions, Part (A) (1) and (3)) apply, no anticipated profits shall be allowed and where the suspension of work clause (Part (A) (2)) applies, no profit or anticipated profits shall be allowed;

f. Documented additional or escalated insurance and bond costs;

g. When the work is performed by a subcontractor, the Contractor shall be paid the actual and reasonable cost of such subcontracted work as outlined above in paragraphs 1(a) through 1(d) and the Contractor's main office overhead and profit shall be figured at 15% and 10% respectively, except for where the differing site conditions or significant change in character of the work clauses ('10.06 (A) (1) and (3)) apply, no anticipated profits shall be allowed and where the suspension of work clause ('10.06 (A) (2)) applies, no profit or anticipated profits shall be allowed;

h. The phrase <additional expenses= shall include expenses above or below those normally incurred in the performance of the work, less any appropriate credit. The phrase <escalation expenses= shall include unanticipated higher or lower costs and expenses attributable, with appropriate credits, to the performance of work or portions of work in a different time period than that which was indicated on the Owner approved progress schedule.

2. Equipment, truck or plant rentals, other than small tools:

a. Equipment used by the Contractor shall be specifically described by the manufacturer, model number and date of manufacture and be of suitable size and capacity required for the work to be performed. In the event the Contractor elects to use equipment of a higher cost than the equipment suitable for the work, payment will be made at the actual cost rate applicable to the suitable equipment unless otherwise provided for in this section. The Engineer shall determine the suitability of equipment.

For purposes of computing Contractor's self-owned equipment, truck or plant costs, the rate used shall be based on the rate listed in the Rental Rate Blue Book published by Dataquest, Inc., with the appropriate adjustments noted in this specification, Part (B) (2).

b. In the event that a rate is not established in the Rental Rate Blue Book for Construction Equipment for a particular piece of equipment, truck or plant, the Owner shall establish a rate for ownership costs and operating costs for that piece of equipment, truck or plant that is consistent with its cost and expected life.

c. The Contractor shall be reimbursed for its operating costs for self-owned equipment based on actual cost data. Operating costs shall include fuel, lubricants, other operating expendables and preventive and field maintenance. Operating costs do not include the operator's wages. In the event, after documented and demonstrated due diligence, actual operating costs are not ascertainable, then the Contractor will be compensated utilizing not more than 50% of the operating costs set forth in the <Rental Rate Blue Book= and the Contractor shall be reimbursed the product of the number of hours of actual use multiplied by the operating cost per hour.

d. The rate for idle equipment and stand-by equipment, shall be based upon the rate of depreciation specified in the Contractor's books and records, or 50% of the rate set forth in the <Rental Rate Blue Book,= published by Dataquest, Inc. with the appropriate adjustments noted in this specification, whichever is greater. In the event the equipment is fully depreciated, the Sponsor will pay the actual ownership costs based upon Sponsor audit of the Contractor's books and records.

e. The maximum amount of reimbursement for the ownership costs of Contractor owned or the rental cost of rented equipment, trucks or plant is limited to the original purchase price of the equipment, truck or plant as listed in the Green Guide for Construction Equipment published by the Dataquest, Inc. In the specific event when the ownership or rental reimbursement is limited by the original purchase price, the Contractor shall, nevertheless, be reimbursed for the operating cost per hour for each hour of actual use.

f. For purposes of rented equipment, the provisions of this specification, Part (B), New Item Charges, are controlling.

3. The parties agree that, in any dispute for time related damages, the Sponsor will have no liability for the following items and the Contractor further agrees it shall make no claim for the following items:

a. Profit, in excess of that provided in this specification, Part (D) (1)(e) and (g);

b. Loss of anticipated or unanticipated profit;

c. Labor inefficiencies and loss of productivity;

d. Home office overhead in excess of that provided in this specification, Part (D) (1)(e) and (g);

e. Consequential damages, including but not limited to interest on monies in dispute, including interest which is paid on such monies, loss of bonding capacity, bidding opportunities, or interest on retainage or investment, or any resultant insolvency;

f. Indirect costs or expenses of any nature;

g. Direct or indirect costs attributable to performance of work where the Contractor, because of situations or conditions within its control, has not progressed in a manner satisfactory to the Engineer.

h. Attorneys fees, or claims preparation expenses.

4. REMEDIES EXCLUSIVE: With respect to time related dispute compensation provisions, the parties agree that the Sponsor shall have no liability to the Contractor for expenses, costs, or items of damage other than those which are specifically identified as payable under this specification, Part D. In the event any legal action is instituted against the Sponsor by the Contractor on account of any such dispute for additional compensation, whether on account of time related dispute, delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Sponsor’s liability will be limited to those items which are specifically identified as compensable under this specification, Part D. The Contractor further agrees to make no claim for expenses other than those which are specifically identified as compensable under this specification, Part (D). Nothing in this Section is intended to create any liability of the Sponsor not existing at common law or pursuant to the terms of this contract or to prevent the Contractor from filing a claim in a court of law.

E. REQUIRED CONTENT OF DISPUTE SUBMISSION. All disputes must be submitted in writing to the Engineer, and must be in sufficient detail to enable the Engineer to ascertain the basis and the amount of each dispute. If requested and as a minimum, the following information must be provided when such information is ascertainable by the Contractor:

1.TIME RELATED DISPUTE SUBMISSIONS.

a. A description of the operations that were delayed, the reasons for the delay, how they were delayed, including the report of all scheduling experts or other consultants, if any.

b. An as-built chart, <Critical Path Method= scheme or other diagram or chart depicting in graphic form how the operations were or are presumed to be adversely affected.

c. The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.

d. A copy of the notice of dispute required as per Dispute Resolution and Disputed Work Provisions, Part (A)(3) for the specific dispute by the Contractor.

e. To the extent known, the name, function, and activity of each Sponsor official, or employee or agent, involved in, or knowledgeable about facts that gave rise to such dispute.

f. The name, function, and activity of each Contractor or subcontractor official, or employee, involved in, or knowledgeable about facts that gave rise to such dispute.

g. The identification of any pertinent documents, and the substance of any material oral communication relating to such dispute.

h. A statement as to whether the additional compensation or extension of time if requested is based on the provisions of the contract or is an alleged breach of contract.

I. The amount of additional compensation sought and a breakdown of that amount into the categories specified as payable under this specification, Part (D) above.

j. If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction progress schedule.

2. FOR OTHER DISPUTES INCLUDING ACCELERATION DISPUTES.

a. A detailed factual statement of the dispute providing all necessary dates, locations and items of work affected by the dispute.

b. The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.

c. A copy of the <notice of dispute= required for the specific dispute by the contract pursuant to Dispute Resolution and Disputed Work Provisions, Parts (B) or (C).

d. The name, function, and activity of each Sponsor official or employee or agent involved in, or knowledgeable about facts that gave rise to such dispute.

e. The name, function and activity of each Contractor or subcontractor official, employee or agent involved in or knowledgeable about facts that gave rise to such dispute.

f. The specific provisions of the contract which support the dispute and a statement of the reasons why such provisions support the dispute.

g. The identification of any pertinent documents and the substance of any material oral communications relating to such dispute.

h. A statement as to whether the additional compensation or extension of time requested is based on the provisions of the contract or an alleged breach of contract.

I. If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction schedule.

j. The amount of additional compensation sought and a breakdown of that amount shall conform to the requirements of this specification, Part (B) except for acceleration disputes which shall conform to the requirements and categories specified in Part (D) above.

F. REQUIRED CERTIFICATION OF DISPUTES. When submitting any dispute over $50,000, the Contractor must certify in writing, under oath and in accordance with the formalities required by the contract, as to the following:

1. That supportive data is accurate and complete to the Contractor's best knowledge and belief;

2. That the amount of the dispute and the dispute itself accurately reflects what the Contractor in good faith believes to be the Sponsor's liability;

3. If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by:

(1) Senior company official in charge at the Contractor's plant or location involved;

or

(2) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

CONTRACTOR'S COST RECORDS. The Contractor shall maintain records of all required payrolls, and of the details that comprise its total cost pursuant to any and all records maintained pursuant to Dispute Resolution and Disputed Work Provisions and Extra Force Account Work, Dispute Compensation and Recordkeeping, and it shall, at any time within six years following the date of final payment of the project, make such records available, upon request therefor, to the Sponsor for review and audit, if deemed necessary by the Sponsor. In case all or a part of such records are not made so available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records shall be disallowed, or if payment therefor has already been made, the Contractor shall, upon demand in writing by the Sponsor, refund to the Sponsor the amount so disallowed.

**DIFFERING SITE CONDITIONS, SUSPENSIONS OF WORK, SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK PROVISIONS.**

**The following provisions shall apply to this contract:**

(1) Differing site conditions.

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

(v) The aforesaid differing site condition clause (Part (A) (1)) shall be governed by the notice provisions set forth above, and the recordkeeping and other requirements of Dispute Resolution and Disputed Work Provisions, and additional compensation via order on contract(s), if any, shall be made pursuant to Extra Force Account Work, Dispute Compensation and Recordkeeping, Part (B), New Item Charges, 1 (Agreed Price) or 2 (Force Account Charges) and E. Required Content of Dispute Submission (2) and F, Required Certification of Dispute. However, the equipment compensation provisions shall be governed and controlled by the provisions of Part (D) (2).

(2) Suspensions of work ordered by the Engineer.

(I) If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment. The record keeping requirements of Section 10.02 must be complied with in connection with any requests for reimbursement.

(ii) Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

(v) The aforesaid suspension of work clause (Part (A)(2)) shall be governed by the notice provisions set forth above, and the recordkeeping and other requirements of Dispute Resolution and Disputed Work Provisions, and additional compensation via order on contract(s), if any, shall be made pursuant to Extra Force Account Work, Dispute Compensation and Recordkeeping, Part (D), Time Related Dispute Compensation, E., Required Content of Dispute Submission and F, Required Certification of Dispute.

(3) Significant changes in the character of work.

(i) The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work, or by affecting other work, cause such other work to become significantly different in character, an adjustment excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term <significant change= shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(C) The term “major item” of work shall mean any item for which the original bid price multiplied by the original contract quantity exceeds $50,000 or 2% of the total contract bid price, whichever is less.

(D) Certain items of work may be <fixed quantity= items. That is, payment will be restricted to the quantity stated in the Estimate of Quantities. If, during the progress of the work the stated quantity is determined to be in error, the terms of Dispute Resolution and Disputed Work Provisions, Part (3)(iv) (B) shall apply with the following alterations:

1. The major item of work requirement shall not apply.

2. Significant change shall be defined as an actual quantity in excess of 125 percent of the stated quantity, or less than 75 percent of the stated quantity.

(v) The aforesaid significant change in character of work clause (Part (A)(3)) shall be governed by the notice, recordkeeping and other requirements of Dispute Resolution and Disputed Work Provisions, and additional compensation via order on contract(s) shall be made for time related costs, if any, pursuant to Extra Force Account Work, Dispute Compensation and Recordkeeping, Parts (D) and (E) and (F) and for increased costs, if any, pursuant to Part (B), New Item Charges, 1 (Agreed Price) or 2 (Force Account Charges) and E (2), Required Content of Dispute Submission and F, Required Certification of Dispute, but, the equipment compensation shall be governed and controlled by the provisions of Part (D) (2).

(vi) In respect to the aforesaid significant changes in the character of work clause (this specification, Part (A) (3)), the contractor or the sponsor, as the case may be, must make written notification to the other party of the existence of the 'significant change'. This notice shall be given in a timely manner with respect to the date that either party had, or should have had, knowledge of an event, matter, occurrence of work order which results in a significant change in the work. If the affected work is in progress, notice shall be given within 3 days of knowledge of the change. If the affected work is not in progress, notice shall be given within 10 days of knowledge of the change. The timely issuance of a notice of 'significant change' shall be a necessary requirement for consideration of contract alterations as provided in this section.

B. If the Sponsor determines that as a result of the aforesaid differing site condition, suspension of work clauses and significant change in the character of work clauses, that an adjustment in the contract price is warranted, the Sponsor shall first attempt to arrive at an agreed price with the contract. If unsuccessful, the Sponsor may make such adjustments to the contract as is determined to be fair and equitable utilizing Owner estimates. Commencing with the issuance of notice, and through the date of agreement between the Sponsor and the contractor, all work subject to these provisions shall be treated as Disputed Work, with daily recordkeeping in accordance with the provisions of Dispute Resolution and Disputed Work Provisions.

C. If any of the notice or other provisions of this specification, Part (A) are in conflict with any other of the provisions of the Standard Specifications, then the provisions of this specification, Part (A) shall prevail and take precedence and be of force over and against any said conflicting provision of said contract.

D. Solely for purposes of the aforesaid specification, Parts (A)(1),(2) and (3), and solely for purposes of disputes as to records pursuant to Dispute Resolution and Disputed Work Provisions, Part (A)(4), the Engineer shall be the Engineer-in-Charge.

**THE ABOVE CONTAINS NECESSARY CLAUSES REQUIRED IN ALL FEDERAL AID CONTRACTS. IF NYSDOT SPECIFICATIONS ARE USED, THIS SECTION IS REFERENCED IN 105-14, AND DOES NOT HAVE TO BE PUBLISHED IN THE BID PROPOSAL**

**CLAUSES REQUIRED BY 23 CFR 635.109**

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 USC 106:

(1) Differing Site Conditions. (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the SHA=s at their option)

(2) Suspensions of work ordered by the engineer. (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor=s request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract accordingly. The contractor will be notified of the engineer=s determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

3) Significant changes in the character of work. (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term significant change shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125% or decreased below75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of the original contract item quantity, or in the case of a decrease, below 75%, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph

(a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State’s action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator’s approval as part of the P, S, and E.

[The use of these clauses ONLY is not recommended. A process must be developed around these required clauses which provides an administrative basis for the owner to manage the kind of disputes generated by changed conditions, differing site conditions, and work stoppages. Such a process must be pre-approved by the Division Administrator, as it must provide a basis for the clauses to function as intended.