



## *Florida Department of Transportation*

CHARLIE CRIST  
GOVERNOR

1000 Northwest 111 Ave, Room 6203  
Miami, FL 33172

STEPHANIE C. KOPELOUSOS  
SECRETARY

### **ADDENDUM NO. 03** **DATED MAY 27, 2009**

#### **FAILURE TO ACKNOWLEDGE RECEIPT OF THIS DOCUMENT MAY RESULT IN YOUR BID BEING DECLARED NON-RESPONSIVE**

**PROJECT/PROPOSAL NUMBER:** E-6F10  
**FINANCIAL PROJECT NUMBER(S):** 250238-8-52-01  
**CONTRACT NUMBER:** E-6F10  
**COUNTY(IES):** Miami-Dade  
**LETTING DATE/TIME:** May 28, 2009, at 2:00 P.M.  
**LOCATION:** District Six Adam Leigh Cann Building  
Front Lobby  
1000 NW 111<sup>th</sup> Avenue,  
Miami, Florida 33172

**PROJECT DESCRIPTION:** Sealed bids are requested for repair work and improvements to the District 6 SunGuide Intelligent Transportation Systems (ITS) Building located at 1001 Northwest 111 Avenue, Miami, Florida 33172.

#### **THE ABOVE MENTIONED PROJECT IS AMENDED AS FOLLOWS:**

Letting Date/Time is being postponed from May 28, 2009, at 2:00 P.M., until June 25, 2009, at 2:00 P.M. Sealed bids are due at the above address not later than 2:00 P.M., June 25, 2009.

Division 1, Sections 1 – 9, of FDOT's 2007 Standard Specifications for Road and Bridge Construction are attached hereto and incorporated herein by reference.

Specifications websites:

<http://www2.dot.state.fl.us/SpecificationsEstimates/Implemented/CurrentBK/Default.aspx?PageAddr=lt;a%20hrefeq:qt:http://www.dot.state.fl.us/specificationsofficeqt:gt:Specifications%20and%20Estimateslt;/agt:#Dev1>

<http://www.dot.state.fl.us/specificationsoffice/>

Click on the purple book icon.

**ADDENDUM NO. 03**  
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CONTRACT NUMBER: E-6F10  
Page 2 of 3

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**Below, please find the answers to technical questions received from prospective bidders on this project:**

**Question #1**

Do you need a mechanical contractor license (as opposed to any other class of air conditioning license) to perform on the mechanical work as a subcontractor?

**Answer to Question #1**

*Yes. The Bid Solicitation Notice for this project states:*

*"THE SUCCESSFUL CONTRACTOR MUST ALSO EMPLOY LICENSED ELECTRICAL, PLUMBING AND MECHANICAL SUBCONTRACTORS FOR ALL WORK UNDER THIS CONTRACT PERTAINING TO BUILDING RESTORATION AND REPAIRS WITH A MINIMUM OF 10 YEARS EXPERIENCE IN SIMILAR WORK."*

**Question #2**

The plans and specifications reference Appendix #1 for scope of work, but I can't find Appendix 1?

**Answer to Question #2**

*On the Proposal CD sent to all eligible prime contractors, open the folder labeled 'Proposal'. In that folder, open the folder labeled '250238-8-52-01'. In that folder, open the folder labeled '250238-8-52-01 SUNGUIDE 2-REV-03-20-09'. In that folder, open the folder labeled 'REPORTS'. Appendix 1 refers to the MEP Non Destructive Visual Report.*

**Question #3**

The specifications do not indicate any liquidated damages and there was not a sample contract on the proposal disc.

**Answer to Question #3**

*Based on the project budget, and, in accordance with Section 8-10.2, Division 1, FDOT's 2007 Standard Specifications for Road and Bridge Construction, liquidated damages for this project are \$1,423.00 per day.*

*Sample contract documents may be viewed at the following website:*

<http://formserver.dot.state.fl.us/capture/listings/FormListing.aspx?ListType=FormOffice>

*Select 'Contracts Administration Office'. Scroll all the way to the bottom of the screen. Click on 'Sample Contract Documents'.*

**Question #4**

Re: Blueridge carpet products. The manufacturer has indicated that the product specified has been discontinued for over 5 years. Attached you will find the technical data sheets on the new carpets that are very similar to the items originally specified. Please take a look at the product specs and let me know if these items can be considered as an acceptable alternate for the original spec?

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Page 3 of 3

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**Answer to Question #4**

*The removal/installation of carpet in areas indicated on the drawings is to be omitted and not considered as a requirement of this contract. These items will be addressed by others prior to award of this contract.*

*Comment #1: Add fabric upholstered acoustic panels to the areas where new drywall is to be installed in the Rotunda (Control Room/Dispatch-Callers Room). Refer to sheets SK-1 and SK-2 for details.*

*Comment #2: The installation of floor finishes to the following areas are to be deleted from this contract:  
Bridge connection to the FHP building (Room #229) – VCT  
Northern Hallway Corridor leading to Bridge (Room #209) – Carpet  
Offices 141 through 147 (Ground Floor) – Carpet*

*These areas will be addressed by others prior to award of this contract.*

*Attached hereto and incorporated herein by reference:  
Architectural Sheets: **SK-1 and SK-2** all dated May 22, 2009.*



KENNETH ROBERTSON  
DISTRICT CONTRACTS AND PROCUREMENT MANAGER

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PLEASE ACKNOWLEDGE RECEIPT OF THIS ADDENDUM BY SIGNING IN THE AREA PROVIDED. **RETURN THIS ACKNOWLEDGMENT BY FAX (305) 470-5717, TO MY ATTENTION.**

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COMPANY NAME

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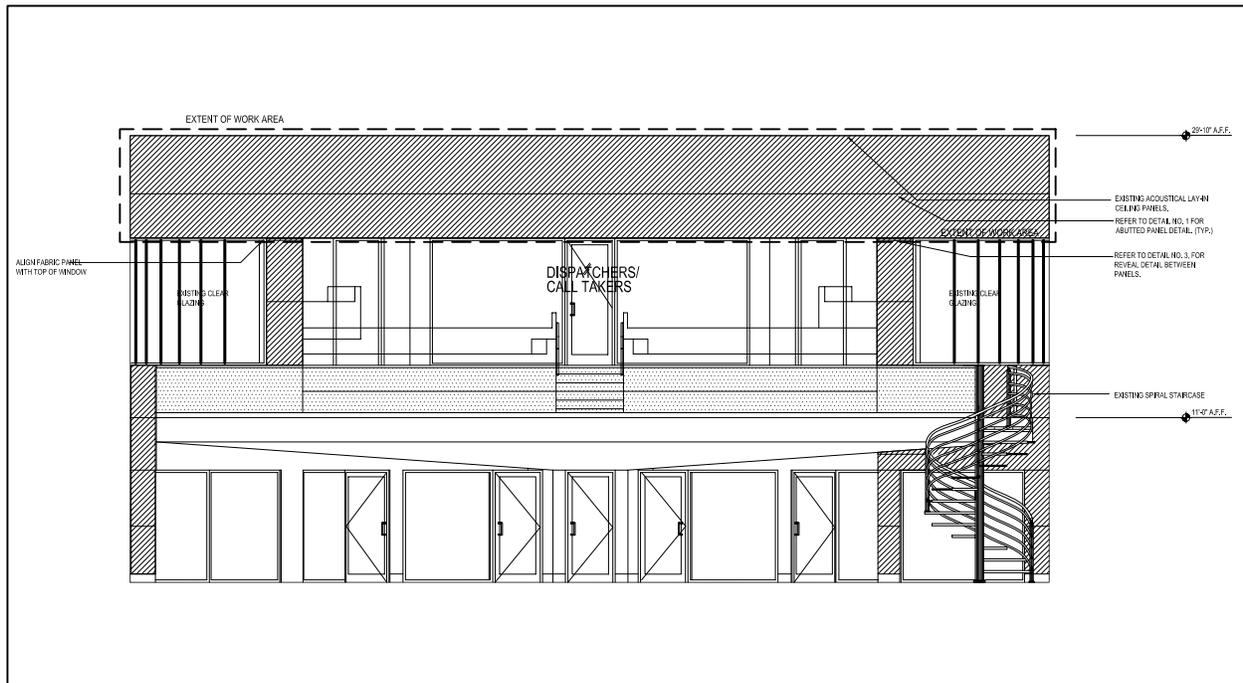
SIGNATURE

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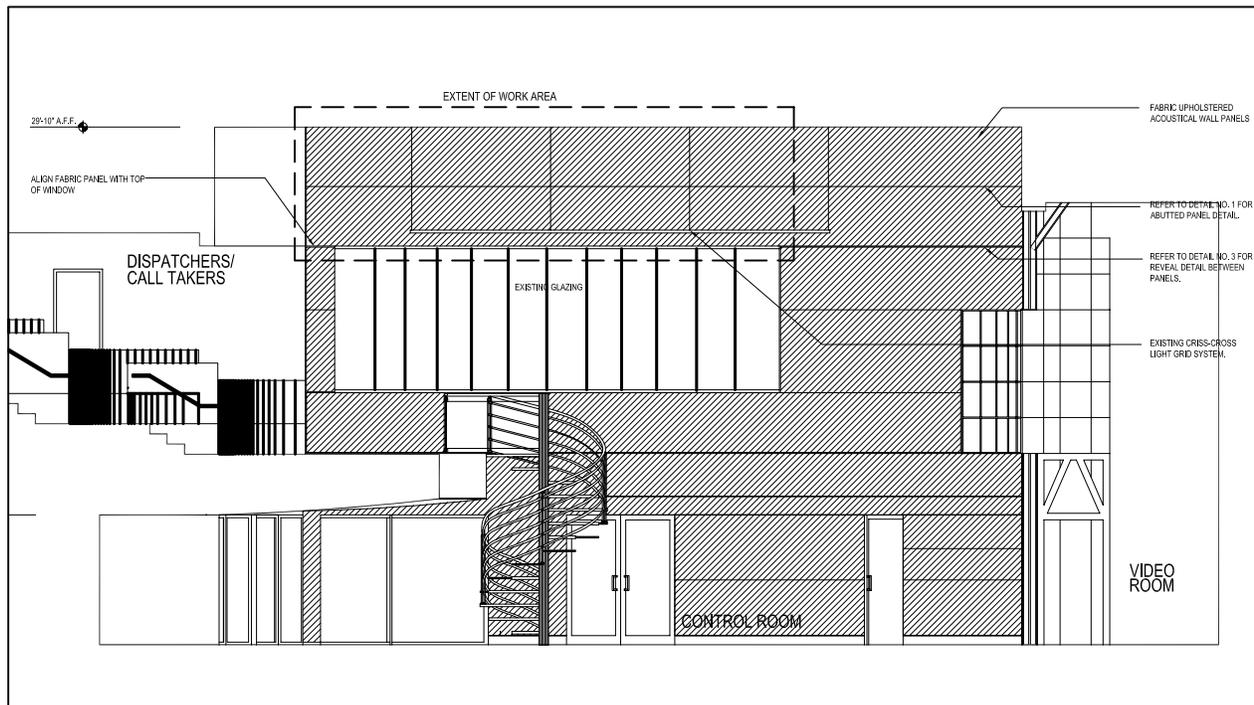
TITLE

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PRINT NAME



**A** ELEVATION (CONTROL ROOM)  
NOT TO SCALE



**B** ELEVATION (CONTROL ROOM)  
NOT TO SCALE



**APEC CONSULTANTS, INC.**  
*architects . planners . engineers . cost consultants*  
 2780 SW DOUGLAS ROAD SUITE 300  
 MIAMI, FLORIDA 33133  
 TEL: 305 476 9031 FAX 305 529 0900  
 EMAIL: jonapec@bellsouth.net

**FDOT – SUNGUIDE BUILDING**  
 INTERIOR REMEDIAL WORKS – PHASE 2

**PROJECT #**

**ELEVATIONS- CONTROL ROOM**

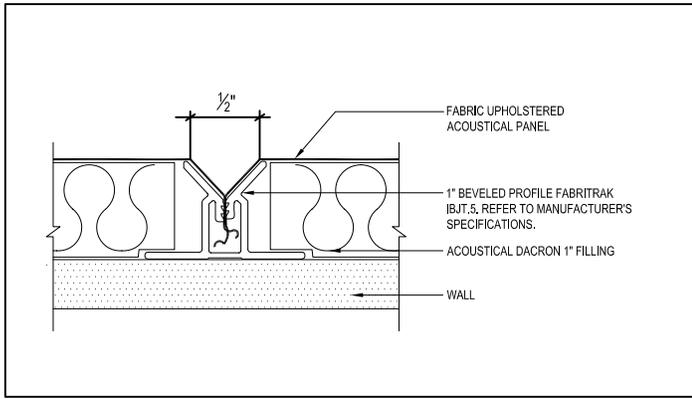
**SCALE: N.T.S.**

**ADDENDUM # 3**

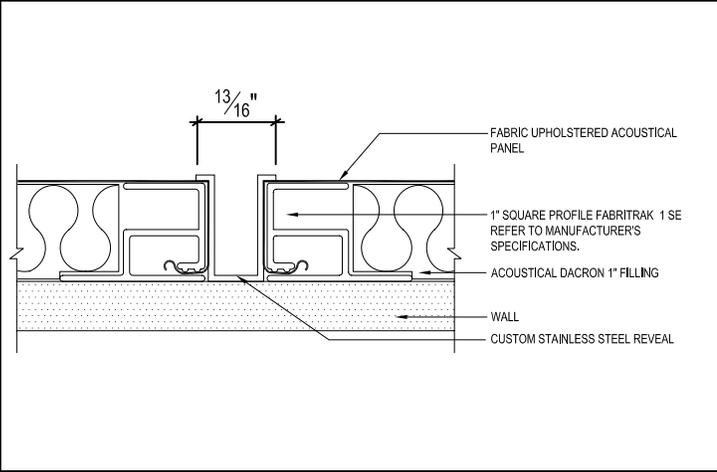
**DATE: MAY 22, 2009**

**REF. DWG. #**

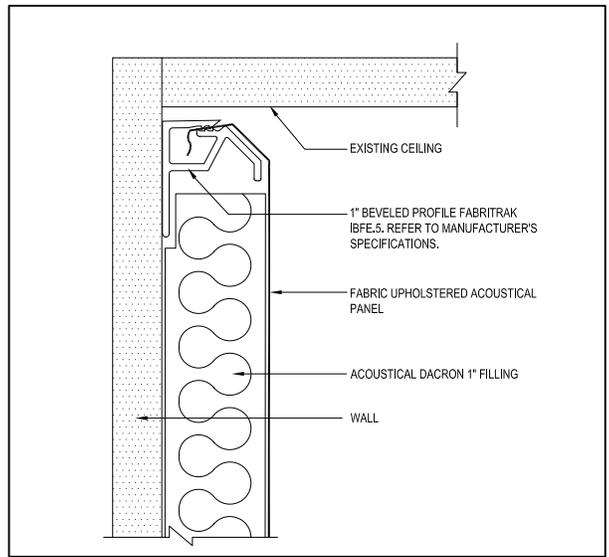
**SK-1**



**1** FABRIC PANEL DETAIL (ABUTTED)  
NOT TO SCALE



**3** FABRIC PANEL DETAIL (REVEAL)  
NOT TO SCALE



**2** FABRIC PANEL CLG. CONNECTION  
NOT TO SCALE

**FABRIC UPHOLSTERED ACOUSTICAL PANEL**

FABRITRACK SYSTEM, 1" THICK, NRC. 70

SUBSURFACE FILLER: ACOUSTICAL DACRON/FABRILOK PROFILES #1BE & 1 SE WITH A CUSTOM STAINLESS STEEL REVEAL.

FABRIC: CARNEGIE, #5114 ON LINE

COLOR: 111

WIDTH: 66"

CONTENT: 100%

FLORIDA  
DEPARTMENT  
OF  
TRANSPORTATION



Standard Specifications  
for  
Road and Bridge  
Construction

2007

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These Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 2007, are hereby approved for application on highway and related construction contracts as referenced in the contract plans or specifications, and they shall apply as noted and amended by those documents.

Approved,

Robert W. Greer, P.E.  
Director, Office of Design

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I hereby certify that this Standard Specifications Book was prepared by me or under my responsible charge, compiled from specifications prepared, examined, adopted and implemented by the Florida Department of Transportation in accordance with established procedures, and as approved by the Federal Highway Administration.

Duane F. Brautigam, P.E.  
State Specifications Engineer

## **TABLE OF CONTENTS**

### **DIVISION I GENERAL REQUIREMENTS & COVENANTS**

1	Definitions and Terms .....	1
2	Proposal Requirements and Conditions.....	9
3	Award and Execution of Contract .....	16
4	Scope of the Work.....	19
5	Control of the Work .....	32
6	Control of Materials .....	52
7	Legal Requirements and Responsibility to the Public.....	60
8	Prosecution and Progress.....	78
9	Measurement and Payment .....	93

### **DIVISION II CONSTRUCTION DETAILS**

#### **GENERAL CONSTRUCTION OPERATIONS**

100	Construction Equipment - General Requirements.....	105
101	Mobilization .....	106
102	Maintenance of Traffic .....	107
103	Temporary Work Structures .....	125
104	Prevention, Control, and Abatement of Erosion and Water Pollution ...	126
105	Contractor Quality Control General Requirments.....	135

#### **CLEARING CONSTRUCTION SITE**

110	Clearing and Grubbing .....	146
-----	-----------------------------	-----

#### **EARTHWORK AND RELATED OPERATIONS**

120	Excavation and Embankment.....	155
121	Flowable fill .....	172
125	Excavation for Structures and Pipe .....	174
145	Geosynthetic Reinforcement .....	184
160	Stabilizing.....	188
162	Prepared Soil Layer .....	196
175	Cracking and Reseating Existing Concrete Pavement .....	198

#### **BASE COURSES**

200	Rock Base.....	200
204	Graded Aggregate Base.....	206
210	Reworking Limerock Base.....	208
230	Limerock Stabilized Base.....	210
234	Superpave Asphalt Base.....	212
283	Reclaimed Asphalt Pavement Base.....	215

**DIVISION I**  
**General Requirements and Covenants**

**SECTION 1**  
**DEFINITIONS AND TERMS**

**1-1 General.**

These Specifications are written to the bidder, prior to award of the Contract, and to the Contractor. Within Divisions I and II of the specifications, sentences that direct the Contractor to perform work are written in the active voice-imperative mood. These directions to the Contractor are written as commands. In the imperative mood, the subject “the bidder” or “the Contractor” is understood.

All other requirements to be performed by others, with the exception of the Method of Measurement and the Basis of Payment Articles, have been written in the active voice, but not in the imperative mood. Sentences written in the active voice identify the party responsible for performing the action. For example, “The Engineer will determine the density of the compacted material.” Certain requirements of the Contractor may also be written in the active voice, rather than active voice-imperative mood.

Division III of the Specifications (Materials) is written in the passive voice writing style.

**1-2 Abbreviations.**

The following abbreviations, when used in the Contract Documents, represent the full text shown.

<b>AAN</b>	American Association of Nurserymen, Inc.
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACI</b>	American Concrete Institute
<b>AGC</b>	The Associated General Contractors of America, Inc.
<b>AGMA</b>	American Gear Manufacturers Association
<b>AIA</b>	American Institute of Architects.
<b>AISI</b>	American Iron and Steel Institute
<b>ANSI</b>	American National Standards Institute, Inc.
<b>AREA</b>	American Railway Engineering Association
<b>ASCE</b>	American Society of Civil Engineers
<b>ASME</b>	American Society of Mechanical Engineers
<b>ASTM</b>	American Society for Testing and Materials
<b>AWG</b>	American Wire Gauge
<b>AWPA</b>	American Wood Preservers Association
<b>AWS</b>	American Welding Society
<b>AWWA</b>	American Water Works Association
<b>CRSI</b>	Concrete Reinforcing Steel Institute
<b>EASA</b>	Electrical Apparatus Service Association

<b>EPA</b>	Environmental Protection Agency of the United States Government
<b>FDOT</b>	Florida Department of Transportation
<b>FHWA</b>	Federal Highway Administration
<b>FSS</b>	Federal Specifications and Standards
<b>IEEE</b>	Institute of Electrical and Electronics Engineers
<b>IES</b>	Illuminating Engineering Society
<b>IPCEA</b>	Insulated Power Cable Engineers Association
<b>ISO</b>	International Organization for Standards
<b>MSTCSD</b>	Minimum Specifications for Traffic Control Signals and Devices
<b>MUTCD</b>	Manual on Uniform Traffic Control Devices
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturers Association
<b>NFPA</b>	National Fire Protection Association
<b>NIST</b>	National Institute for Standards and Technology
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>OSHA</b>	Occupational Safety and Health Administration
<b>SAE</b>	Society of Automotive Engineers
<b>SI</b>	International System of Units
<b>SSPC</b>	Society of Protective Coatings
<b>UL</b>	Underwriters' Laboratories

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown.

Use standards, specifications, test methods, or other codes as specified in the current edition at the time of the bid opening.

### **1-3 Definitions.**

The following terms, when used in the Contract Documents, have the meaning described

#### **Advertisement.**

The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished, usually issued as “Notice to Contractors,” or “Notice to Bidders.”

#### **Article.**

The numbered prime subdivision of a Section of these Specifications.

#### **Bidder.**

An individual, firm, or corporation submitting a proposal for the proposed work.

#### **Bridge.**

A structure, including supports, erected over a depression or over an obstruction such as water, highway or railway, or for elevated roadway, for carrying traffic or other moving loads, and having a length, measured along the

center of the roadway, of more than 20 feet between the inside faces of end supports. A multiple-span box culvert is considered a bridge, where the length between the extreme ends of the openings exceeds 20 feet.

**Calendar day.**

Every day shown on the calendar, ending and beginning at midnight.

**Change Order.**

A written order issued by the Department and accepted by the Contractor, covering minor changes in the plans, specifications, or quantities of work, within the scope of the Contract, when prices for the items of work affected are previously established in the Contract.

**Contract.**

The term “Contract” means the entire and integrated agreement between the parties thereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

**Contract Claim (Claim).**

A written demand submitted to the Department by the Contractor in compliance with 5-12.3 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.

**Contract Documents.**

The term “Contract Documents” includes: Advertisement for Proposal, Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Standard Specifications, Supplemental Specifications, Special Provisions, plans, Addenda, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, change orders, field orders, and supplemental agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of contract.

Note: As used in Sections 2 and 3 only, Contract Documents do not include change orders, field orders, and supplementary agreements. As used in Section 2 only, Contract Documents also do not include Resolution of Award of Contract, Executed Form of Contract, and Performance and Payment Bond.

**Contract Bond.**

The security furnished by the Contractor and the surety as a guaranty that the Contractor shall fulfill the terms of the Contract and pay all legal debts pertaining to the construction of the project.

**Contract Letting.**

The date that the Department opened the bid proposals.

**Contract Time.**

The number of calendar days allowed for completion of the Contract work, including authorized time extensions.

**Contractor.**

The individual, firm, joint venture, or company contracting with the Department to perform the work.

**Contractor's Engineer of Record.**

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing of components of the permanent structure as part of a redesign or VECP, or for repair designs and details of the permanent work. The Contractor's Engineer of Record may also serve as the Specialty Engineer.

The Contractor's Engineer of Record must be an employee of a pre-qualified firm. The firm shall be pre-qualified in accordance with the Rules of the Department of Transportation, Chapter 14-75. Any Corporation or Partnership offering engineering services must hold a Certificate of Authorization from the Florida Department of Business and Professional Regulation.

As an alternate to being an employee of a pre-qualified firm, the Contractor's Engineer of Record may be a pre-qualified Specialty Engineer. For items of the permanent work declared by the State Construction Office to be "major" or "structural", the work performed by a pre-qualified Specialty Engineer must be checked by another pre-qualified Specialty Engineer. An individual Engineer may become pre-qualified in the work groups listed in the Rules of the Department of Transportation, Chapter 14-75, if the requirements for the Professional Engineer are met for the individual work groups. Pre-qualified Specialty Engineers are listed on the State Construction Website. Pre-qualified Specialty Engineers will not be authorized to perform redesigns or VECP designs of items fully detailed in the plans.

**Controlling Work Items.**

The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.

**Culverts.**

Any structure not classified as a bridge that provides an opening under the roadway.

**Delay.**

Any unanticipated event, action, force or factor which extends the Contractor's time of performance of any controlling work item under the Contract. The term "delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the

Contractor, or the Contractor's subcontractors, materialmen, suppliers or other agents. This term does not include "extra work".

**Department.**

State of Florida Department of Transportation.

**Developmental Specification.**

See definition for Specifications.

**Engineer.**

The Director, Office of Construction, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

Note: In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where "acceptable, accepted, approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory," it shall be understood as if the expression were followed by the words "by the Engineer," "to the Engineer," or "of the Engineer."

**Engineer of Record.**

The Professional Engineer or Engineering Firm registered in the State of Florida that develops the criteria and concept for the project, performs the analysis, and is responsible for the preparation of the Plans and Specifications. The Engineer of Record may be Departmental in-house staff or a consultant retained by the Department.

The Contractor shall not employ the Engineer of Record as the Contractor's Engineer of Record or as a Specialty Engineer.

**Equipment.**

The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the construction and acceptable completion of the work.

**Extra Work.**

Any "work" which is required by the Engineer to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a "delay".

**Highway, Street, or Road.**

A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

**Holidays.**

Days designated by the State Legislature or Cabinet as holidays, which include, but are not limited to, New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the following Friday, and Christmas Day.

**Inspector.**

An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the work performed by the Contractor.

**Laboratory.**

The official testing laboratory used by the Department.

**Major Item of Work.**

Any item of work having an original Contract value in excess of 5% of the original Contract amount.

**Materials.**

Any substances to be incorporated in the work under the Contract.

**Median.**

The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.

**Plans.**

The approved plans, including reproductions thereof, showing the location, character, dimensions, and details of the work.

**Proposal (Bid, Bid Proposal).**

The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

**Proposal Form.**

The official form or the expedite program generated bid item sheets on which the Department requires formal bids to be prepared and submitted for the work.

**Proposal Guaranty**

The security furnished by the bidder as guaranty that the bidder will enter into the Contract for the work if the Department accepts the proposal.

**Right-of-Way.**

The land that the Department has title to, or right of use, for the road and its structures and appurtenances, and for material pits furnished by the Department.

**Roadbed.**

The portion of the roadway occupied by the subgrade and shoulders.

**Roadway.**

The portion of a highway within the limits of construction.

**Secretary.**

Secretary of Transportation, State of Florida Department of Transportation, acting directly or through an assistant or other representative authorized by him; the chief officer of the Department of Transportation.

**Section.**

A numbered prime division of these Specifications.

**Special Provisions.**

See definition for Specifications.

**Specialty Engineer.**

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant, who undertakes the design and drawing preparation of components, systems, or installation methods and equipment for specific temporary portions of the project work or for special items of the permanent works not fully detailed in the plans and required to be furnished by the Contractor such as but not limited to pot bearing designs, non-standard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may also provide designs and details for items of the permanent work declared by the State Construction Office to be “minor” or “non-structural”. The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant.

For items of work not specifically covered by the Rules of the Department of Transportation, a Specialty Engineer is qualified if he has the following qualifications:

- (1) Registration as a Professional Engineer in the State of Florida.
- (2) The education and experience necessary to perform the submitted design as required by the Florida Department of Business and Professional Regulation.

**Specifications.**

The directions, provisions, and requirements contained herein, together with all stipulations contained in the Contract Documents, setting out or relating to the method and manner of performing the work, or to the quantities and qualities of materials and labor to be furnished under the Contract.

A. Standard Specifications: “Standard Specifications for Road and Bridge Construction” a bound book, applicable to all Department Contracts containing adopted requirements, setting out or relating to the method or manner of performing work, or to the quantities and qualities of materials and labor.

B. Supplemental Specifications: Approved additions and revisions to the Standard Specifications, applicable to all Department Contracts.

C. Special Provisions: Specific clauses adopted by the Department that add to or revise the Standard Specifications or supplemental specifications,

setting forth conditions varying from or additional to the Standard Specifications applicable to a specific project.

D. Technical Special Provisions: Specifications, of a technical nature, prepared, signed, and sealed by an Engineer registered in the State of Florida other than the State Specifications Engineer or his designee, that are made part of the Contract as an attachment to the Contract Documents.

E. Developmental Specification: A specification developed around a new process, procedure, or material.

**Standard Specifications.**

See definition for Specifications.

**State.**

State of Florida.

**Subarticle.**

A headed and numbered subdivision of an Article of a Section of these Specifications.

**Subgrade.**

The portion of the roadbed immediately below the base course or pavement, including below the curb and gutter, valley gutter, shoulder and driveway pavement. The subgrade limits ordinarily include those portions of the roadbed shown in the plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the plans, the subgrade section extends to a depth of 12 inches below the bottom of the base or pavement and outward to 6 inches beyond the base, pavement, or curb and gutter.

**Substructure.**

All of that part of a bridge structure below the bridge seats, including the parapets, backwalls, and wingwalls of abutments.

**Superintendent.**

The Contractor's authorized representative in responsible charge of the work.

**Superstructure.**

The entire bridge structure above the substructure, including anchorage and anchor bolts, but excluding the parapets, backwalls, and wingwalls of abutments.

**Supplemental Agreement**

A written agreement between the Contractor and the Department, and signed by the surety, modifying the Contract within the limitations set forth in these Specifications.

**Supplemental Specifications**

See definition for Specifications.

**Surety.**

The corporate body that is bound by the Contract Bond with and for the Contractor and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.

**Technical Special Provisions.**

See definition for Specifications.

**Traveled Way.**

The portion of the roadway providing for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

**Unilateral Payment.**

A payment of money made to the Contractor by the Department pursuant to Section 337.11(11), Florida Statutes (1997), for sums the Department determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against the Department for payment of any additional sums the Contractor claims are due for the work.

**Work.**

All labor, materials and incidentals required to execute and complete the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.

**Working Day.**

Any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule.

**SECTION 2  
PROPOSAL REQUIREMENTS AND CONDITIONS**

**2-1 Prequalification of Bidders.**

Except as noted below, prequalify with the Department to be eligible to bid. The Department publishes regulations covering prequalification of bidders under separate cover.

The Department does not require the Contractor to be prequalified if bidding construction contracts of \$250,000 or less if constructing buildings.

For construction contracts exceeding \$250,000 in amount, file an application for qualification on forms furnished by the Department, giving detailed information with respect to financial resources, equipment, past record, personnel, and experience. For qualified applicants, the Department will issue a certificate fixing the types of work and the aggregate amount of work that the Department allows the prequalified bidder to have under contract at any one time.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following:

(a) A bid on a contract to provide any goods or services to a public entity.

(b) A bid on a contract with a public entity for the construction or repair of a public building or public work.

(c) Bids on leases of real property to a public entity.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

All prequalified Contractors bidding on any Contract must include with their bid proposal a copy of their Certification of Current Capacity (Form 375-020-22) and Status of Contracts On Hand (Form 375-020-21).

## **2-2 Proposals.**

**2-2.1 Obtaining Proposals:** Obtain a proposal under the conditions stipulated in the Advertisement. The proposal states the location and description of the work to be performed; the estimate of the various quantities (if applicable); the items of work to be performed (if applicable); the Contract Time; the amount of proposal guaranty; and the date, time, and place of the opening of proposals.

The plans, Specifications and other documents designated in the proposal are part of the proposal, whether attached or not.

Upon receipt of a proposal order, the Department will provide a computer diskette or CD-ROM for use on a personal computer that is suitable for preparing the bid. This diskette or CD-ROM contains the Expedite Proposal file to be used by the Contractor to prepare the bid and print a proposal form for submittal.

The Department is not responsible for loss of or damage to a diskette or CD-ROM after it has been mailed or delivered to the bidder. If loss or damage occurs, the bidder may order another diskette or CD-ROM.

If the bidder requests a replacement diskette or CD-ROM during a seven calendar day period prior to the letting, the request must be by Internet E-mail as specified in the Advertisement. The Department will attempt to replace the diskette or CD-ROM by sending another diskette or CD-ROM by overnight delivery or by electronic transmittal of the files. The Department will not be held responsible if the bidder cannot complete and submit a bid due to failure or incomplete delivery of the files.

Unless otherwise indicated in the Advertisement, the Contractor has the option to submit a bid either as an Internet Bid Submittal in accordance with 2-2.3 or as a Hard Copy Bid Submittal in accordance with 2-2.4. When an Internet bid submittal is used, the hard copy will not be considered.

**2-2.2 Department Modifications to Contract Documents:** Modifications to any Contract Documents will be posted on the Department's website at the following URL address: [www.dot.state.fl.us/cc-admin/addend.htm](http://www.dot.state.fl.us/cc-admin/addend.htm) .

The bidder shall take responsibility for checking and downloading the revised data from the Department's website upon notification from the Department. The bidder must provide an e-mail address to the Department for receipt of addenda notification. Contractors must follow the amendment access instructions provided on the website. If the Department's website cannot be accessed, contact the Department's Contracts Administration Office Web Coordinator at (850) 414-4000.

**2-2.3 Internet Bid Submittals:** Unless otherwise indicated in the Advertisement, the Contractor may use the Expedite Proposal file to prepare a bid for Internet submittal. The Department will accept, as the official bid, the set of proposal forms generated from the Expedite Proposal file along with a complete proposal package, submitted via the Internet in accordance with 2-5 and 2-8. A Digital ID is required to submit a bid via the Internet. Digital IDs may be obtained as outlined in the Advertisement.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or non-receipt of a proposal will not be considered grounds for a bid protest. The Department will not be held responsible if the bidder cannot complete and submit a bid due to failure or incomplete delivery of the files submitted via the Internet.

**2-2.4 Hard Copy Bid Submittals:** Unless otherwise indicated in the Advertisement, the Contractor may use the Expedite Proposal file to prepare a bid for hard copy submittal.

Print and submit bid item sheets generated from the Expedite Proposal file on letter size paper. Ensure that all computer generated sheets are legible. Do not submit computer generated sheets using a font size smaller than 9 point. The Department prefers 12 point font size and recommends a minimum of 20 pound paper.

The Department will accept, as the official bid, this set of proposal forms generated from the Expedite Proposal file along with a complete proposal package, delivered to the Department in hard copy in accordance with the instructions listed below and the requirements of 2-5 and 2-8.

Return the Expedite Proposal file used to generate the official bid with the proposal on the diskette furnished by the Department, or on another diskette labeled with the Contractor's Name, Vendor Number, Letting Date, Revision Date (if applicable) and the Proposal ID. Failure to follow proper diskette-handling and shipping procedures could result in the Department being unable to process the diskette and cause the bid to be declared irregular.

In case of a discrepancy between the unit or lump sum prices submitted on the program-printed proposal form and those contained on the diskette returned to the Department, the Department will use the unit or lump sum prices submitted on the program-printed proposal form.

## **2-3 Interpretation of Estimated Quantities.**

**2-3.1 Lump Sum Contracts:** The bidder is responsible for the determination of the quantities for those items constructed within the authorized plan limits or dimensions.

The Department does not assume any responsibility for any incidental information in bid documents that may be construed as a quantity of work and/or materials.

**2-3.2 Contracts other than Lump Sum:** For those items constructed within authorized plan limits or dimensions, use the quantities shown in the plans and in the proposal form as the basis of the bid. The Department will also use these quantities for final payment as limited by the provisions for the individual items. For those items having variable final pay quantities that are dependent on actual field conditions, use and measurement, the quantities shown in the plans and in the proposal form are approximate and provide only a basis for calculating the bid upon which the Department will award the Contract. Where items are listed for payment as lump sum units and the plans show estimates of component quantities, the Department is responsible for the accuracy of those quantities limited to the provisions of 9-3.3. Where items are listed for payment as lump sum units and the plans do not show estimates of component quantities, the Contractor is solely responsible for his own estimates of such quantities.

The Department may increase, decrease, or omit the estimated quantities of work to be done or materials to be furnished.

## **2-4 Examination of Plans, Specifications, Special Provisions and Site of Work.**

Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents.

The Department does not guarantee the details pertaining to borings, as shown on the plans, to be more than a general indication of the materials likely to be found adjacent to holes bored at the site of the work, approximately at the locations indicated. The Contractor shall examine boring data, where available, and make his own interpretation of the subsoil investigations and other preliminary data, and shall base his bid on his own opinion of the conditions likely to be encountered.

The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Article.

## **2-5 Preparation of Proposals.**

**2-5.1 General:** Submit proposals on the form described in 2-2. Any pay item that will be provided free or at no cost to the Department shall be indicated as "free" or "\$.00". If the pay item is left blank or n/a is used, the bid may be declared irregular. Show the total of the bid on the face of the proposal.

**2-5.2 Internet Bid Submittals:** The bidder shall execute the proposal under the bidders Digital ID and enter the firm's bidding office street address on the

Bidders Information Tab in the Expedite Bidding Program. This Digital ID represents the firm as an individual, partnership, corporation, limited liability company, or joint venture. By entering and submitting the Digital ID the authorized parties obligate the firm to the bid. Internet Bid Submittals must acknowledge, on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid, by indicating such in the Expedite Proposal File. The Department will not consider any bid unless such acknowledgement is included.

**2-5.3 Hard Copy Bid Submittals:** If the proposal is made by an individual, either in the bidder's own proper person or under a trade or firm name, the bidder shall execute the proposal under the bidder's signature and enter the firm's bidding office street address. If made by a partnership, execute the proposal by setting out in full the names of the partners, the firm name of the partnership, if any, have two or more of the general partners sign the proposal and enter the firm's bidding office street address. If made by a corporation, execute the proposal by setting out in full the corporate name and have the president or other legally authorized corporate officer or agent sign the proposal, affix the corporate seal and enter the corporation's bidding office street address. If made by a limited liability company, execute the proposal by setting out the company name, have the manager or authorized member sign the proposal and enter the company's bidding office address. If made by a joint venture, execute the proposal by setting out the joint venture name, have the authorized parties sign the proposal and enter the bidding office's street address. File with the Department Form 375-020-08, contained in the proposal, which includes an unsworn statement executed by, or on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. The Department will not consider any bid unless such form is properly completed in accordance with the requirements shown thereon.

## **2-6 Rejection of Irregular Proposals.**

A proposal is irregular and the Department may reject it if it shows omissions, alterations of form, additions not specified or required, conditional or unauthorized alternate bids, or irregularities of any kind; or if the unit prices are obviously unbalanced, or if the cost is in excess of or below the reasonable cost analysis values.

When the Department provides for alternate bids in the proposal form and the bidder submits non-computer-generated proposal form sheets, make only one entry in each design group. A proposal that provides for alternative bids is irregular and the Department may reject it if the bidder makes entries for more than one alternate.

## **2-7 Guaranty to Accompany Proposals.**

The Department will not consider any proposal unless it is accompanied by a proposal guaranty of the character and amount indicated in the Advertisement, and unless it is made payable to the Florida Department of Transportation. Submit proposals with the understanding that the successful bidder shall furnish a Contract Bond pursuant to the requirements of 3-5.

## **2-8 Delivery of Proposals.**

**2-8.1 Internet Bid Submittals:** Unless otherwise indicated in the Advertisement, bids may be submitted via the Internet. The Department will not accept responsibility for Internet bids not meeting the time requirement stipulated in the Advertisement.

**2-8.2 Hard Copy Bid Submittals:** Unless otherwise indicated in the Advertisement, bids may be submitted via hard copy. Submit all bids in sealed envelopes, bearing on the outside the name of the bidder, the bidder's address, and the Proposal ID of the project for which the bidder submitted the bid. For proposals that are submitted by mail, enclose the proposal in a sealed envelope, marked as directed above. Enclose the sealed envelope in a second outer envelope addressed to the Department, at the place designated in the Advertisement. For a proposal that is not submitted by mail, deliver it to the Contracts Office of the Department, or to the place as designated in the Advertisement. The Department will return proposals received after the time set for opening bids to the bidder unopened.

## **2-9 Withdrawal or Revision of Proposals.**

**2-9.1 Internet Bid Submittals:** A bidder may withdraw a proposal any time prior to the bid submittal deadline specified in the Advertisement. The resubmission of any proposal so withdrawn must be made as a complete proposal, subject to the provisions of 2-8.

A bidder may revise a proposal any time prior to the bid submittal deadline specified in the Advertisement. Revisions may be made via Internet in accordance with 2-8.1 or by fax in accordance with 2-9.2.

The Department will not be responsible for any communications or machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of revisions to proposals as required above either at the Bidder's transmitting location, at the Department's receiving location, or anywhere between these locations. Receipt or non-receipt of revisions to a proposal will not be considered grounds for a bid protest. The Department will not be held responsible if the bidder cannot complete and submit revisions to a bid due to failure or incomplete delivery of the files submitted via the Internet.

**2-9.2 Hard Copy Bid Submittals:** A bidder may withdraw or revise a proposal after submitting it, provided the Department receives a written request to withdraw or revise the proposal prior to the time set for opening of bids. The resubmission of any proposal withdrawn under this provision is subject to the provisions of 2-8.

Legible facsimile (FAX) proposal changes will be accepted if received in full at the fax number listed in the Bid Solicitation Notice by the time proposals

are due on the day of the letting and provided that all of the following conditions are met:

1. The Bidder's name is the same on the faxed proposal change as shown on the original proposal.

2. The proposal change includes the following:

The correct Proposal ID.

The correct bid item number being changed and the respective unit price change.

The correct revised total per item.

The revised total bid amount.

The signature of the President or Vice President of the Company.

Faxed proposal changes failing to meet all of these requirements will not be considered and will not change the original bid.

The Department will not be responsible for any communications or fax machine breakdowns, transmission interruptions, delays, or any other problems that interfere with the receipt of faxed proposal changes as required above either at the Bidder's fax location, at the Department's fax location, or anywhere between these locations. Receipt or non-receipt of a faxed proposal change will not be considered grounds for a bid protest.

## **2-10 Opening of Proposals.**

The Department will open and publicly announce proposals at the time and place indicated in the Advertisement. The Department invites bidders, their authorized agents, and other interested parties to attend.

## **2-11 Disqualification of Bidders.**

The Department may disqualify any bidder and reject the bidder's proposal or proposals for any of the following reasons:

(a) The submission of more than one proposal for the same work from an individual, firm, or corporation under the same or a different name.

(b) Evidence that one bidder has a financial interest in the firm of another bidder for the same work.

(c) Evidence of collusion among bidders. The Department will not recognize a participant in such collusion as a bidder for any future work of the Department until the Department reinstates such participant as a qualified bidder.

(d) Failure to qualify in accordance with 2-1.

(e) Uncompleted work on other projects that, in the judgment of the Department, could hinder or prevent the prompt completion of the proposed work.

(f) Failure to pay or satisfactorily settle all bills due for labor and material on other contracts in force at the time of advertisement for bids.

(g) Default under a previous contract.

(h) Employment of unauthorized aliens in violation of Section 274A (e) of the Immigration and Nationality Act.

(i) Falsification on any form required by the Department.

(j) The submission of a proposal that was not issued by the Department.

## **2-12 Material, Samples and Statement.**

The Department may require that the bidder furnish a statement of the origin, composition, and manufacture of any and all materials to be used in the construction of the work, together with samples that may be subjected to the tests provided for in these Specifications to determine the materials' quality and fitness for the work.

## **SECTION 3 AWARD AND EXECUTION OF CONTRACT**

### **3-1 Consideration of Bids.**

For the purpose of award, after opening and reading the proposals, the Department will consider as the bid the correct summation of each unit bid price multiplied by estimated quantities shown in the proposal. On this basis, the Department will compare the amounts of each bid and make the results of such comparison available to the public. Until the actual award of the Contract, however, the Department reserves the right to reject any or all proposals and to waive technical errors that the Department may deem best for the interest of the State.

The Department reserves the right to delete the bid portion of the utility relocation work from the Contract. When the Department deletes utility relocation work from the Contract, the Department will recalculate the Contract bid tabulations based on the remaining project quantities.

In the event that the Department deletes utility relocation work from the Contract, the utility owner will relocate such utilities in accordance with the utility Relocation Schedule attached to the Specifications Package.

### **3-2 Award of Contract.**

**3-2.1 General:** If the Department decides to award the Contract, the Department will award the Contract to the lowest responsible bidder whose proposal complies with all the Contract Document requirements. If awarded, the Department will award the Contract within 50 days after the opening of the proposals, unless the Special Provisions change this time limit or the bidder and the Department extend the time period by mutual consent.

Prior to award of the Contract by the Department, a contractor must provide proof of authorization to do business in the State of Florida.

**3-2.2 Bids Exceeding Contractor's Rating:** The Department will address bids exceeding a Contractor's rating, and the resulting impact on the Contractor's qualification to bid, in accordance with Florida Administrative Code Rules 14-22.003 and 14-22.009.

The bidder's proposal guaranties are binding for all projects awarded to the Contractor pursuant to the provisions of this Subarticle.

### **3-3 Cancellation of Award.**

The Department reserves the right to cancel the award of any contract at any time before the execution of the contract by all parties, with no compensation due any of the bidders.

### **3-4 Release of Proposal Guaranty.**

The Department will release all proposal guaranties except those of the two lowest bidders immediately following the opening and checking of the proposals. The Department will immediately release the proposal guaranties of the two lowest bidders after the successful bidder delivers the executed contract and a satisfactory bond to the Department, except that the Department will not retain the proposal guaranty of the next-to-lowest bidder longer than 50 days after the opening of the proposals unless the Department awards the contract to the next lowest bidder prior to the expiration of this time limit.

### **3-5 Contract Bond Required.**

**3-5.1 General Requirements of the Bond:** Upon award, furnish to the Department, and maintain in effect throughout the life of the Contract, an acceptable surety bond in a sum at least equal to the amount of the Contract. Execute such bond on the form furnished by the Department. Obtain a surety that has a resident agent in the State of Florida, meets all of the requirements of the laws of Florida and the regulations of the Department, and has the Department's approval. Ensure that the surety's resident agent's name, address, and telephone number is clearly stated on the face of the Contract Bond.

On contracts of \$150,000 or less, the Department may waive the requirement for all or a portion of a surety bond if it determines that the project is of a noncritical nature and nonperformance will not endanger the public health, safety, or property. The Department may require alternate means of security if it waives the requirement for a surety bond.

**3-5.2 Continued Acceptability of Surety:** Provide a surety bond that remains acceptable to the Department throughout the life of the Contract. In the event that the surety executing the bond, although acceptable to the Department at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after the Department's initial approval of the company, then the Department may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company that is reliable and acceptable to the Department. In such an event, the Department will bear all costs of the premium for the new bond, after deducting any amounts that are returned to the Contractor from his payment of premium on the original bond.

**3-5.3 Default by Contractor:** In case of default on the part of the Contractor, the Department will charge against the bond all expenses for services incidental to ascertaining and collecting losses under the bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

**3-5.4 Surety to Furnish Legal Defense:** The surety company shall indemnify and provide defense for the Department when called upon to do so for

all claims or suits against the Department arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which amount shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

**3-5.5 Liability for Wrongful or Criminal Act by Contractor:** The principal and surety executing the bond shall be liable to the State in any civil action that might be instituted by the Department or any officer of the State authorized in such cases, for double any amount in money or property the State might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, his agent or his employees.

### **3-6 Execution of Contract and Bond.**

Within 20 days after Contract award, execute the necessary agreements to enter into a contract with the Department and return the agreement along with a satisfactory surety bond and documentation evidencing all insurance required by 7-13 to the Department's Contracts Office that awarded the Contract. For each calendar day that the successful bidder is late in delivering to the Department's Contracts Office all required documents in properly executed form, the Department will deduct one day from the allowable Contract Time as specified in 8-7.1. The Department will not be bound by any proposal until it executes the associated Contract. The Department will execute the Contract and bond in the manner stipulated in 2-5.1.

The Department will execute the Contract within 15 days after receipt of the necessary agreements and bond from the Contractor.

### **3-7 Failure by Contractor to Execute Contract and Furnish Bond.**

In the event that the bidder fails to execute the awarded Contract and to file an acceptable bond, as prescribed in 3-5 and 3-6, within 20 days of Contract award, the Department may annul the award, causing the bidder to forfeit the proposal guaranty to the Department; not as a penalty but in liquidation of damages sustained. The Department may then award the Contract to the next lowest responsible bidder, re-advertise, or accomplish the work using day labor.

### **3-8 Audit of Contractor's Records.**

Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the prime contractor, the subcontractor, or both. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the project work.

If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department.

**3-9 Public Records.**

Allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with this Contract. Failure to grant such public access will be grounds for immediate termination of this Contract by the Department pursuant to 8-9.1.

**SECTION 4  
SCOPE OF THE WORK**

**4-1 Intent of Contract.**

The intent of the Contract is to provide for the construction and completion in every detail of the work described in the Contract. Furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract Documents.

**4-2 Work not covered by Standard Specifications.**

Proposed construction and any contractual requirements not covered by these Standard Specifications may be covered by Contract plan notes or by Supplemental Specifications or Special Provisions for the Contract, and all requirements of such Supplemental Specifications or Special Provisions shall be considered as a part of these Specifications.

**4-3 Alteration of Plans or of Character of Work.**

**4-3.1 General:** The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

The term "significant change" applies only when:

(A) The Engineer determines that 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) A major item of work, as defined in 1-3, is increased in excess of 125% or decreased below 75% of the original Contract quantity. The Department will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity, or in case of a decrease

below 75% to the actual amount of work performed, such allowance to be determined in accordance with 4-3.2, below.

In the instance of (A) above, the determination by the Engineer shall be conclusive and shall not subject to challenge by the Contractor in any forum, except upon the Contractor establishing by clear and convincing proof that the determination by the Engineer was without any reasonable and good-faith basis.

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely provided a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without

additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer’s sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

(a) Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager’s position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor’s actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida’s rate
Insurance*	Actual

\*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).

At the Pre-construction conference, certify to the Engineer the following:

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- (2) Actual Rate for items listed in Table 4-3.2.1,

(3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,

(4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

(b) Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

(c) Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

(1) Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.

(2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.

(3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.

(4) Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals

eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

(d) Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (1) or (2) below:

(1) Solely a mark-up of 17.5% on the payments in (a) through (c), above.

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work; provided, however, that such payment for additional bond will only be paid upon presentment to the Department of clear and convincing proof that the Contractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

(ii) The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

(2) Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days granted for performing additional work.

**4-3.2.2 Subcontracted Work:** For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in 4-3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the instance of subcontractor performed work only, the subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

The Contractor shall require the subcontractor to provide a certification, in accordance with 4-3.2.1(a), as part of the cost proposal and provide such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

**4-3.3 No Waiver of Contract:** Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

**4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:** A Supplemental Agreement or Unilateral Payment will be used to clarify the plans and specifications of the Contract; to document quantity

overruns that exceed 5% of the original Contract amount; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

**4-3.5 Extra Work:** Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in 4-3.2 for additional work.

**4-3.6 Connections to Existing Pavement, Drives and Walks:** Generally adhere to the limits of construction at the beginning and end of the project as detailed in the plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated on the plans, the Engineer will provide direction regarding the proper connections in accordance with the Design Standards.

**4-3.7 Differing Site Conditions:** 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 Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, 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 will be made, excluding loss of anticipated profits, and the Contract

will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has provided the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

**4-3.8 Changes Affecting Utilities:** The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, joint project agreements or utility relocation schedules.

**4-3.9 Value Engineering Incentive:**

**4-3.9.1 Intent and Objective:**

(1) This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Value Engineering Change Proposal or VECP) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

(2) The Department will consider VECPs that would result in net savings to the Department by providing either:

a. a decrease in the cost of performance of the Contract; or

b. a reduction in cost of ownership (hereinafter referred to as collateral costs) of the work provided by this Contract, regardless of acquisition costs. VECPs must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. However, nothing herein prohibits the Contractor from submitting VECPs when the required functions and characteristics can be combined, reduced or eliminated because they are nonessential or excessive. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a VECP.

(3) The Department reserves the right to reject at its discretion any VECP submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. The Department will not allow the substitution of another design alternate, on which the Contractor could have bid, that is detailed in the plans for the one on which the Contractor has bid, under this Subarticle. Pending the Department's execution of a formal supplemental

agreement implementing an approved VECP, the Contractor shall remain obligated to perform the work in accordance with the terms of the existing Contract. The Department will not grant any time extensions to allow for the time required to review a VECP.

**4-3.9.2 Subcontractors:** The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of VECPs from subcontractors. However, it is not mandatory to submit VECPs to the Department or to accept or transmit subcontractor proposed VECPs to the Department.

**4-3.9.3 Data Requirements:** As a minimum, submit the following information with each VECP:

(1) a description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages.

(2) separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers on the Master Pay Item list. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

(3) an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the VECP if the Department adopts it. Provide preliminary plan drawings sufficient to describe the proposed changes.

(4) an estimate of the effects the VECP would have on collateral costs to the Department.

(5) Engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the VECP with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the VECP with prints of drawings and computations signed and sealed by the Contractor's Engineer of Record. Written documentation or drawings will be provided clearly delineating the responsibility of the Contractor's Engineer of Record.

(6) the date by which the Department must approve the VECP to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

(7) a revised project schedule that would be followed upon approval of the VECP. This schedule would include submittal dates and review time for the Department and Peer reviews.

**4-3.9.4 Processing Procedures:** Submit two copies of each VECP to the Engineer or his duly authorized representative. The Department will process VECPs expeditiously; however, the Department is not liable for any delay in acting upon a VECP submitted pursuant to this Subarticle. The Contractor may

withdraw, in whole or in part, a VECP not accepted by the Department within the period specified in the VECP. The Department is not liable for any VECP development cost in the case where the Department rejects or the Contractor withdraws a VECP.

The Engineer is the sole judge of the acceptability of a VECP and of the estimated net savings in construction and collateral costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a VECP, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the VECP, the Department will determine the Contractor's fair share upon the basis of the VECP as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the VECP from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the VECP that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the VECP design.

**4-3.9.5 Computations for Change in Contract Cost of Performance:**

The Department will not pay for the Contractor's VECP development and implementation costs. If the VECP is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the VECP.

The Department will not include its costs to process and implement a VECP in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a VECP as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

**4-3.9.6 Computations for Collateral Costs:** To determine any collateral cost savings, prepare separate estimates for collateral costs of both the existing Contract requirement and the proposed change. Provide estimates that consist of an itemized breakdown of all costs and the basis for the data used in the estimate. Cost benefits to the Department include, but are not limited to, reduced costs of operation, maintenance or repair, and extended useful service life. Increased collateral costs include the converse of such factors.

Compute collateral costs as follows:

(1) Calculate costs over a 20-year period on a uniform basis for each estimate.

(2) If the difference in the estimates as approved by the Department indicates a savings, divide the resultant amount by 20 to arrive at the average annual net collateral savings. The Department will share the average annual net collateral savings as stipulated in 4-3.9.8.

**4-3.9.7 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges:** A VECP that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge plans shall be reviewed by a single independent engineering firm (the independent Engineer) not involved in the VECP design, pre-qualified in accordance with Chapter 14-75, to assure that the design is in compliance with all Department requirements. The independent Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The independent Engineer shall sign and seal a cover letter stating that all of the independent Engineer's comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the independent Engineer shall specifically list all unresolved issues in the signed and sealed cover letter. Peer review will be funded by the Contractor.

Contractor shall designate a primary engineer responsible for the VECP design and as such will be designated as the Contractor's Engineer of Record for the VECP design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for the entire structure.

The Contractor shall have all permanent engineering work affected by the VECP, peer reviewed by an independent engineer other than the engineer initially performing the work. Engineering work includes but is not limited to: requests for acceptance for noncompliant work, repair procedures, shop drawing review, or design and review of activities affecting public safety. If the Specialty Engineer and Contractor's Engineer of Record are separate entities, either party may initiate the action; the other shall check and certify the work as being complete and correct prior to submittal to the Engineer. If the Specialty Engineer and Contractor's Engineer of Record are the same entity, the Specialty Engineer/Contractor's Engineer of Record will initiate the action of the independent firm contracted to prepare these requests and the Specialty Engineer/Contractor's Engineer of Record will check and certify the work of the independent firm as being complete and correct prior to submittal to the Engineer.

New designs shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

**4-3.9.8 Sharing Arrangements:** If the Department approves a VECP, the Contractor may be entitled to share in both construction savings and collateral savings to the full extent provided for in this Subarticle. The Contractor shall receive up to 50% of the net reduction in the cost of performance of the Contract due to an approved VECP, except for innovative ideas. Upon review and approval of the VECP, the savings shall be based on a final negotiated agreement between the Contractor and the Department. The final negotiated agreement shall include a minimum guaranteed savings, which shall be the Department's share of the savings.

For sharing purposes, the Department will not consider an idea as innovative if the idea is identical or similar to a previously submitted VECP or an idea previously used by the Department. For innovative ideas, as determined by

the Engineer, the Contractor and the Department shall share the reduction in the cost of performance as follows:

Accrued Net Savings	Contractor's Share %	Department's Share %
Less than \$25,000	100	0
\$25,000 to \$50,000	75	25
Over \$50,000	50	50

When collateral savings occur, the Department will provide the Contractor with 20% of the average annual net collateral savings.

**4-3.9.9 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:**

**4-3.9.9.1 Notice of Intellectual Property Interests:** The Contractor's VECP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's VECP development, have or may have that are in whole or in part implicated in the VECP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the VECP that are already on the Department's QPL or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

**4-3.9.9.2 Department's Future Rights to a VECP:** Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a VECP, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such VECP on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the

Contractor pursuant to 4-3.9.9.1, unless the Department has by express written exception in the VECF acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

#### **4-4 Unforeseeable Work.**

When the Department requires work that is not covered by a price in the Contract and such work does not constitute a “Significant Change” as defined in 4-3.1, and the Department finds that such work is essential to the satisfactory completion of the Contract within its intended scope, the Department will make an adjustment to the Contract. The Engineer will determine the basis of payment for such an adjustment in a fair and equitable amount.

#### **4-5 Rights in and Use of Materials Found on the Site of the Work.**

**4-5.1 Ownership and Disposal of Existing Materials:** Take ownership and dispose of all materials that are not designated as the property of other parties, in both roadway and structures, found on the right-of-way, and all material in structures designated for removal. Such materials do not include earth or other excavated material required for the construction of the project. During construction, the Contractor may use materials from existing structures that are required to be removed and that are designated to remain the property of the Department. Do not cut or otherwise damage such material during removal unless the Engineer gives permission to do so. Store material in an accessible location as the Engineer directs. The Department is not responsible for the quality or quantity of any material salvaged.

**4-5.2 Ornamental Trees and Shrubs:** Take ownership of all ornamental trees or shrubs existing in the right-of-way that are required to be removed for the construction operations and which are not specifically designated on the plans to be reset, or to be removed by others prior to the construction operations.

#### **4-6 Final Cleaning Up of Right-of-Way.**

Upon completion of the work, and before the Department accepts the work and makes final payment, remove from the right-of-way and adjacent property all falsework, equipment, surplus and discarded materials, rubbish and temporary structures; restore in an acceptable manner all property, both public and private, that has been damaged during the prosecution of the work; and leave the waterways unobstructed and the roadway in a neat and presentable condition throughout the entire length of the work under Contract. Do not dispose of materials of any character, rubbish or equipment, on abutting property, with or without the consent of the property owners. The Engineer will allow the Contractor to temporarily store equipment, surplus materials, usable forms, etc., on a well-kept site owned or leased by the Contractor, adjacent to the project. However, do not place or store discarded equipment, materials, or rubbish on such a site.

Shape and dress areas adjacent to the project right-of-way that were used as plant sites, materials storage areas or equipment yards when they are no longer needed for such purposes. Grass these areas when the Engineer directs. The

Department will pay for directed grassing work under the appropriate Contract items.

## **SECTION 5 CONTROL OF THE WORK**

### **5-1 Plans and Working Drawings.**

**5-1.1 Contract Documents:** The Contractor may purchase copies of the Standard Specifications and Design Standards from the Department or access them from the Department's website. Have available on the worksite, at all times, one copy of the Contract Documents.

**5-1.2 Department's Plans:** Plans consist of general drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated. In general, roadway plans will show alignment, profile grades, typical cross-sections and general cross-sections. In general, structure plans will show in detail all dimensions of the work contemplated. When the structure plans do not show the dimensions in detail, they will show general features and such details as are necessary to give a comprehensive idea of the structure.

Grades shown are finished grades, and B.M. Datum is North American Vertical Datum 1988 (NAVD-1988) National Geodetic Vertical Datum of 1929 (NGVD-1929) or other datum as noted in the plans.

**5-1.3 Alterations in Plans:** The Department will issue, in writing, all authorized alterations affecting the requirements and information given on the approved plans.

#### **5-1.4 Shop Drawings:**

##### **5-1.4.1. Definitions:**

(a) Shop Drawings: All working, shop and erection drawings, associated trade literature, calculations, schedules, manuals and similar documents submitted by the Contractor to define some portion of the project work. The type of work includes both permanent and temporary works as appropriate to the project.

(b) Permanent Works: All the permanent structures and parts thereof required of the completed Contract.

(c) Temporary Works: Any temporary construction work necessary for the construction of the permanent works. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.

(d) Construction Affecting Public Safety: Construction that may jeopardize public safety such as structures spanning functioning vehicular roadways, pedestrian walkways, railroads, navigation channels of navigable waterways and walls or other structure foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the site under the Contractor's control and outside the limits of normal public access.

(e) Major and Unusual Structures: Bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

1. Bridges with an individual span longer than 300 feet.
2. Structurally continuous superstructures with spans over 150 feet.
3. Steel box and plate girder bridges.
4. Steel truss bridges.
5. Concrete segmental and longitudinally post-tensioned continuous girder bridges.
6. Cable stayed or suspension bridges.
7. Arch bridges.
8. Tunnels.
9. Movable bridges (specifically electrical and mechanical components).
10. Rehabilitation, widening, or lengthening of any of the above.

(f) Special Erection Equipment includes launching gantries, beam and winch equipment, form travelers, stability towers, strong-backs, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction equipment such as cranes.

(g) Falsework includes any temporary construction work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations, and any proprietary equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

(h) Formwork includes any structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets. Formwork may be either permanent formwork requiring a shop drawing submittal such as stay-in-place metal or concrete forms, or may be temporary formwork which requires certification by the Specialty Engineer for Construction Affecting Public Safety and for Major and Unusual Structures.

(i) Scaffolding is an elevated work platform used to support workmen, materials and equipment, but not intended to support the structure.

(j) Shoring is a component of falsework such as horizontal, vertical or inclined support members. In this Section, this term is interchangeable with falsework.

(k) Contractor Originated Designs: Items which the Contract Documents require the Contractor to design, detail and incorporate into the permanent works.

**5-1.4.2 Work Items Requiring Shop Drawings:** In general, the Department requires shop drawings for items of work not fully detailed in the plans which require additional drawings and coordination prior to constructing the item, including but not limited to:

- (a) Bridge components not fully detailed in the plans, i.e. segments, steel girder details, post-tensioning details, handrails, etc.
- (b) Retaining Wall Systems
- (c) Precast Box Culverts
- (d) Non-standard lighting, signalization and signing structures and components
- (e) Building structures
- (f) Drainage structures, attenuators, and other nonstructural items
- (g) Design and structural details furnished by the Contractor in compliance with the Contract
- (h) Temporary Works affecting public safety

Additional clarification for certain types of bridge structures is provided in 5-1.4.7. Other provisions of the Contract Documents may waive the requirement for submittals for certain items; i.e., items constructed from standard drawings or those complying with alternate details for prestressed members under Section 450. Review the Contract Documents to determine the submittals required.

**5-1.4.3 Schedule of Submittals:** Prepare and submit a schedule of submittals that identifies the work for which shop drawings apply. For each planned submittal, define the type, and approximate number of drawings or other documents that are included and the planned submittal date, considering the processing requirements herein. Submit the schedule of submittals to the Department's Shop Drawing Review Office and the Engineer of Record within 60 days of the start of the Contract, and prior to the submission of any shop drawings.

Coordinate subsequent submittals with construction schedules to allow sufficient time for review, approval, and re-submittal as necessary.

**5-1.4.4 Style, Numbering, and Material of Submittals:**

**5-1.4.4.1 Drawings:** Furnish two clearly legible photographic or xerographic copies of all shop drawings that are necessary to complete the structure in compliance with the design shown on the plans. Prepare all shop drawings using the same units of measure as those used in the Department's plans. Use sheets no larger than 11 by 17 inches. Consecutively number each sheet in the submittal series, and indicate the total number in the series (i.e., 1 of 12, 2 of 12, . . . , 12 of 12). Include on each sheet the following items as a minimum requirement: the complete Financial Project Identification Number, Bridge Number(s), drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the project, the Contractor's approval stamp with date and initials, and, when applicable, the documents shall be signed and sealed by the Specialty Engineer or Contractor's Engineer of Record, as appropriate. A re-submittal will be requested when any of the required information is not included.

**5-1.4.4.2 Other Documents:** Provide four sets of original documents or clearly legible photographic or xerographic copies of documents other than drawings, such as trade literature, catalogue information, calculations, and

manuals. Provide sheets no larger than 11 by 17 inches. Clearly label and number each sheet in the submittal to indicate the total number of sheets in the series (i.e., 1 of 12, 2 of 12, . . . , 12 of 12). Provide an additional three sets of documentation for items involved with precast prestressed components. Provide an additional two sets of documentation for items involving structural steel components.

Prepare all documents using the same units of measure as those used in the Department's plans. Bind and submit all documents with a Table of Contents cover sheet. List on the cover sheet the total number of pages and appendices, and include the complete Financial Project Identification Number, a title referencing the submittal item(s), the name of the firm and person(s) responsible for the preparation of the document, the Contractor's approval stamp with date and initials, and, when applicable, the documents shall be signed and sealed by the Specialty Engineer or Contractor's Engineer of Record, as appropriate.

Submit appropriately prepared and checked calculations and manuals that clearly outline the design criteria. Include on the internal sheets the complete Financial Project Identification Number and the initials of the person(s) responsible for preparing and checking the document.

Clearly label trade literature and catalogue information on the front cover with the title, Financial Project Identification Number, date and name of the firm and person(s) responsible for that document.

#### **5-1.4.5 Submittal Paths and Copies:**

**5-1.4.5.1 General:** Shop drawings are not required for prequalified items. For non-prequalified items, determine the submittal path to be followed based upon the identity of the Engineer of Record as shown adjacent to the title block on the structural plan sheets, and on the key sheets of roadway plans, signing, and pavement marking plans, and/or lighting plans. At the preconstruction conference, the Department will notify the Contractor of any changes in the submittal path and whether the Department's or the Consultant's red-ink review stamp will signify an officially reviewed shop drawing.

(a) When the Florida Department of Transportation is the Engineer of Record, submit shop drawings to the appropriate Department Shop Drawing Review Office with a copy of the letter of transmittal sent to the Resident Engineer. For work requiring other information (e.g., catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating procedures), submit the required number of copies to the appropriate Department Shop Drawing Review Office. If not shown on the plans, the Department will furnish the mailing address of the appropriate Department Shop Drawing Review Office. Provide copies of material certifications and material tests to the Resident Engineer.

(b) When the Engineer of Record is a consultant hired by the Department, submit shop drawings to the consultant with a copy of the letter of transmittal sent to the Resident Engineer and, when requested, to the appropriate Department Shop Drawing Review Office. For work requiring other documentation (e.g., catalog data, procedure manuals, fabrication/welding procedures, and maintenance and operating manuals), submit the required number of copies with the prints. If not shown on the plans, the Department will

furnish the mailing address of the Consulting Engineer of Record. Provide copies of material certifications and material tests to the Resident Engineer.

**5-1.4.5.2 Building Structures:** Submit working, shop and erection drawings, and all correspondence related to building structures, such as Rest Area Pavilions, Office Buildings, and Maintenance Warehouses, to the Architect of Record for review and approval. Send a copy of the transmittal to the Resident Engineer.

**5-1.4.5.3 Contractor-Originated Design:** Submit shop drawings and applicable calculations to the Engineer of Record for review. Ensure that each sheet of the shop drawings and the cover sheet of the calculations are signed and sealed by the Specialty Engineer or the Contractor's Engineer of Record. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of 5-1.4.5.1 through 5-1.4.5.3, as appropriate.

**5-1.4.5.4 Temporary Works:** For Construction Affecting Public Safety, submit to the Engineer of Record shop drawings and the applicable calculations for the design of special erection equipment, falsework, scaffolding, etc. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of 5-1.4.5.1 through 5-1.4.5.3, as appropriate.

**5-1.4.5.5 Formwork and Scaffolding:** The Contractor is solely responsible for the safe installation and use of all formwork and scaffolding. The Department does not require any formwork or scaffolding submittals unless such work would be classified as Construction Affecting Public Safety.

**5-1.4.5.6 Other Miscellaneous Design and Structural Details Furnished by the Contractor in Compliance with the Contract:** Submit to the Engineer of Record shop drawings and the applicable calculations. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer. Transmit the submittal and copies of the transmittal letters in accordance with the requirements of 5-1.4.5.1 through 5-1.4.5.3, as appropriate.

**5-1.4.6 Processing of Shop Drawings:**

**5-1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings:** Coordinate, schedule, and control all submittals, with a regard for the required priority, including those of the various subcontractors, suppliers, and engineers, to provide for an orderly and balanced distribution of the work.

Coordinate, review, date, stamp, approve and sign all shop drawings prepared by the Contractor or agents (subcontractor, fabricator, supplier, etc.) prior to submitting them to the Engineer of Record for review. Submittal of the drawings confirms verification of the work requirements, units of measurement, field measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers, and other similar data. Indicate on each series of drawings the specification section and page or drawing number of the Contract plans to which the submission applies. Indicate on the shop drawings all deviations from the Contract drawings and itemize all

deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, clearly state so in the transmittal letter.

Schedule the submission of shop drawings to allow for a 45 day review period. The review period commences upon the Engineer of Record's receipt of the valid submittal or re-submittal and terminates upon the transmittal of the submittal back to the Contractor. A valid submittal includes all the minimum requirements outlined in 5-1.4.4. Allow 30 day review time for resubmittals.

Submit shop drawings to facilitate expeditious review. The Contractor is discouraged from transmitting voluminous submittals of shop drawings at one time. For submittals transmitted in this manner, allow for the additional review time that may result.

Only shop drawings distributed with the "red ink" stamps are valid and all work that the Contractor performs in advance of approval will be at the Contractor's risk.

**5-1.4.6.2 Scope of Review by Engineer:** The Engineer of Record's review of the shop drawings is for conformity to the requirements of the Contract Documents and to the intent of the design. The Engineer of Record's review of shop drawings which include means, methods, techniques, sequences, and construction procedures are limited to the effects on the permanent works. The Engineer of Record's review of submittals which include means, methods, techniques, sequences, and construction procedures does not include an indepth check for the ability to perform the work in a safe or efficient manner. Review by the Engineer of Record does not relieve the Contractor of responsibility for dimensional accuracy to ensure field fit and for conformity of the various components and details.

**5-1.4.6.3 Special Review by Engineer of Shop Drawings for Construction Affecting Public Safety:** For Construction Affecting Public Safety, the Engineer of Record, or other Engineer as the Department appoints for this purpose, will make an independent review of all relevant shop drawings and similar documents. Do not proceed with construction of the permanent works until receiving the Engineer of Record's approval. The review of these shop drawings is for overall structural adequacy of the item to support the imposed loads and does not include a check for economy, efficiency or ease of construction.

**5-1.4.7 Other Requirements for Shop Drawings for Bridges:**

**5-1.4.7.1 Shop Drawings for Structural Steel and Miscellaneous Metals:** Furnish shop drawings for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop, and erection drawings, welding procedures, and other working plans, showing details, dimensions, sizes of material, and other information necessary for the complete fabrication and erection of the metal work.

**5-1.4.7.2 Shop Drawings for Concrete Structures:** Furnish shop drawings for concrete components that are not cast-in-place and are not otherwise exempted from submittal requirements. Also, furnish shop drawings for all details that are required for the effective prosecution of the concrete work and are not included in the Contract Documents such as: special erection

equipment, masonry layout diagrams, and diagrams for bending reinforcing steel, in addition to any details required for concrete components for the permanent work.

**5-1.4.7.3 Shop Drawings for Major and Unusual Structures:** In addition to any other requirements, within 60 days from the Notice to Proceed, submit information to the Engineer outlining the integration of the Major and Unusual Structure into the overall approach to the project. Where applicable to the project, include, but do not limit this information to:

(1) The overall construction program for the duration of the Contract. Clearly show the Milestone dates. (For example, the need to open a structure by a certain time for traffic operations.)

(2) The overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected, and the sequence in which spans are to be made continuous.

(3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction, and an outline of how to deal with such obstacles while building the structure(s). (For example, obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property, and the Contractor's own temporary works, such as haul roads, cofferdams, plant clearances and the like.)

(4) The approximate location of any special lifting equipment in relation to the structure, including clearances required for the operation of the equipment. (For example, crane positions, operating radii and the like.)

(5) The approximate location of any temporary falsework, and the conceptual outline of any special erection equipment. Provide the precise locations and details of attachments, fixing devices, loads, etc. in later detailed submittals.

(6) An outline of the handling, transportation, and storage of fabricated components, such as girders or concrete segments. Provide the precise details in later detailed submittals.

(7) Any other information pertinent to the proposed scheme or intended approach.

Clearly and concisely present the above information on as few drawings as possible in order to provide an overall, integrated summary of the intended approach to the project. The Department will use these drawings for information, review planning, and to assess the Contractor's approach in relation to the intent of the original design. The delivery to and receipt by the Engineer does not constitute any Department acceptance or approval of the proposals shown thereon. Include the details of such proposals on subsequent detailed shop drawing submittals. Submit timely revisions and re-submittals for all variations from these overall scheme proposals.

**5-1.4.8 Modifications for Construction:** Where the Engineer allows the Contractor to make modifications to the permanent works for the purposes of expediting the Contractor's chosen construction methods, the Contractor shall submit proposals to the Engineer of Record for review and approval prior to modifying the works. Submit proposals for minor modifications under the shop

drawing process. Indicate on all drawings the deviations from the Contract Documents and itemize all deviations in the letter of transmittal. The Department will require additional submittals and/or submittal under a Value Engineering Change Proposal for major modifications.

Minor modifications are those items that, in the opinion of the Engineer, do not significantly affect the quantity of measured work, or the integrity or maintainability of the structure or its components. (For example, adjusting concrete dimensions, substituting steel plate sizes, changing reinforcing bar size and spacing, etc., all within the acceptable limits of the design.)

Major modifications are any modifications that, in the opinion of the Engineer, significantly affect the quantity of measured work, or the integrity or maintainability of the structure or its' components. (For example, substituting alternative beam sizes and spacings, changing material strength or type, and the like.)

Provide signed and sealed revised sheets to the Engineer for any required revisions to the Contract plans prior to submitting shop drawings.

The Engineer's decision on the delineation between a minor and a major modification and the disposition of a proposal is final.

**5-1.4.9 Cost of Shop Drawings:** Include the cost of furnishing shop and working drawings in the Contract prices for the work requiring the shop and working drawings. The Department will not pay the Contractor additional compensation for such drawings.

#### **5-1.5 Certifications:**

**5-1.5.1 Special Erection Equipment:** Prior to its use, ensure that the Specialty Engineer personally inspects the special erection equipment and certifies to the Engineer in writing that the equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, ensure that the Specialty Engineer observes the equipment in use and certifies to the Engineer in writing that it is being used as intended and in accordance with the submitted drawings and calculations. In each case, ensure that the Specialty Engineer also signs and seals the letter of certification.

**5-1.5.2 Falsework and Shoring Requiring Shop Drawings:** After its erection or installation but prior to the application of any superimposed load, ensure that the Specialty Engineer personally inspects the falsework and certifies to the Engineer in writing that the falsework has been constructed in accordance with the materials and details shown on the submitted drawings and calculations. Ensure that the Specialty Engineer also signs and seals the letter of certification.

**5-1.5.3 Temporary Formwork:** For Construction Affecting Public Safety and for Major and Unusual Structures, prior to the placement of any concrete, ensure that the Specialty Engineer inspects the formwork and certifies to the Engineer in writing that the formwork has been constructed to safely withstand the superimposed loads to which it will be subjected. Ensure that the Specialty Engineer signs and seals the letter of certification.

**5-1.6 Corrections for Construction Errors:** For work that the Contractor constructs incorrectly or does not meet the requirements of the Contract Documents, the Contractor has the prerogative to submit an acceptance proposal to the Engineer for review and disposition. The acceptance proposal shall

describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the effect on Contract Time. The Department will judge any such proposal for its effect on these criteria and also for its effect on Contract Administration.

When the Engineer judges that a proposal infringes on the structural integrity or maintainability of the structure, the Contractor's Engineer of Record will perform a technical assessment and submit it to the Engineer for approval. Do not take any corrective action without the Engineer's approval.

Carry out all approved corrective construction measures at no expense to the Department.

Notwithstanding any disposition of the compensation aspects of the defective work, the Engineer's decision on the technical merits of a proposal is final.

### **5-2 Coordination of Contract Documents.**

These Specifications, the plans, Special Provisions, and all supplementary documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. All parts of the Contract are complementary and describe and provide for a complete work. In addition to the work and materials specified in the Specifications as being included in any specific pay item, include in such pay items additional, incidental work, not specifically mentioned, when so shown in the plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the work under such pay item and not stipulated as being covered under other pay items.

In cases of discrepancy, the governing order of the documents is as follows:

1. Special Provisions.
  2. Technical Special Provisions.
  3. Plans.
  4. Road Design, Structures, and Traffic Operations Standards.
  5. Developmental Specifications.
  6. Supplemental Specifications.
  7. Standard Specifications.
- Computed dimensions govern over scaled dimensions.

### **5-3 Conformity of Work with Contract Documents.**

Perform all work and furnish all materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, as specified in the Contract Documents.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, but that the Contractor has produced reasonably acceptable work, the Engineer will determine if the Department will accept the work in place. In this event, the Engineer will document the basis of acceptance by Contract modification, which provides for an appropriate reduction in the Contract price for such work or materials included in the accepted work as

deemed necessary to conform to the determination based on engineering judgment.

In the event that the Engineer finds that the Contractor has used material or produced a finished product that is not in reasonably close conformity with the Contract Documents, and that the Contractor has produced an inferior or unsatisfactory product, the Contractor shall remove and replace or otherwise correct the work or materials at no expense to the Department.

For base and surface courses, the Department will allow the finished grade to vary as much as 0.1 foot from the grade shown in the plans, provided that the Contractor's work meets all templates and straightedge requirements and contains suitable transitions.

#### **5-4 Errors or Omissions in Contract Documents.**

Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

#### **5-5 Authority of the Engineer.**

Perform all work to the satisfaction of the Engineer.

The Director, Office of Construction will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

#### **5-6 Authority and Duties of Engineer's Assistants.**

The Director, Office of Construction may appoint such assistants and representatives as he desires. These assistants and representatives are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of these Specifications. Rather, they are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents, and have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately notify the Contractor in writing of any such suspension of the work, stating in detail the reasons for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

#### **5-7 Engineering and Layout.**

**5-7.1 Control Points Furnished by the Department:** The Engineer will provide centerline control points (Begin Project, End Project, PIs, PTs, etc.) and bench marks at appropriate intervals along the line of the project to facilitate the proper layout of the work. Normally, the Engineer will furnish only one bench mark for water crossings. Preserve all reference points and bench marks that the Department furnishes.

As an exception to the above, for projects where the plans do not show a centerline or other survey control line for construction of the work (e.g., resurfacing, safety modifications, etc.) the Engineer will provide only points marking the beginning and ending of the project, and all exceptions.

**5-7.2 Furnishing of Stake Materials:** Furnish all stakes, templates, and other materials necessary for establishing and maintaining the lines and grades necessary for control and construction of the work.

**5-7.3 Layout of Work:** Utilizing the control points furnished by the Department in accordance with 5-7.1, establish all horizontal and vertical controls necessary to construct the work in conformity to the Contract Documents. Perform all calculations required, and set all stakes needed such as grade stakes, offset stakes, reference point stakes, slope stakes, and other reference marks or points necessary to provide lines and grades for construction of all roadway, bridge, and miscellaneous items.

When performing utility construction as part of the project, establish all horizontal and vertical controls necessary to carry out such work.

**5-7.4 Specific Staking Requirements:** When performing new base construction as part of the project, set stakes to establish lines and grades for subgrade, base, curb, and related items at intervals along the line of the work no greater than 50 feet on tangents and 25 feet on curves. Set grade stakes at locations that the Engineer directs to facilitate checking of subgrade, base, and pavement elevations in crossovers, intersections, and irregular shaped areas.

For bridge construction stakes and other control, set references at sufficiently frequent intervals to ensure construction of all components of a structure in accordance with the lines and grades shown in the plans.

For projects where the plans do not show a centerline or other survey control line for construction of the work (resurfacing, safety modifications, etc.), provide only such stakes as necessary for horizontal and vertical control of work items.

For resurfacing and resurfacing-widening type projects, establish horizontal controls adequate to ensure that the asphalt mix added matches with the existing pavement. In tangent sections, set horizontal control points at 100 foot intervals by an instrument survey. In curve sections, set horizontal control points at 25 foot intervals by locating and referencing the centerline of the existing pavement.

Establish by an instrument survey, and mark on the surface of the finished pavement at 25 foot intervals, the points necessary for striping of the finished roadway. As an exception, for resurfacing and resurfacing/widening projects, establish these points in the same manner as used for horizontal control of paving operations. Mark the pavement with white paint. If performing striping, the Engineer may approve an alternate method for layout of striping provided that the Contractor achieves an alignment equal to or better than the alignment that would be achieved using an instrument survey.

For projects that include temporary or permanent striping of “no passing zones”, provide the location and length of these zones as shown in the plans, except projects where the vertical or horizontal alignment is new or altered from preconstruction alignment. For projects that consist of new or altered vertical or

horizontal alignment, the Department will provide the location and length of the "no passing zones" during construction. For these projects, notify the Engineer not less than 21 calendar days prior to beginning striping.

For all projects, set a station identification stake at each right-of-way line at 100 foot intervals and at all locations where a change in right-of-way width occurs. Mark each of these stakes with painted numerals, of a size readable from the roadway, corresponding to the project station at which it is located. As an exception to the above, for projects where plans do not show right-of-way lines, set station identification stakes at locations and intervals appropriate to the type of work being done. For resurfacing and resurfacing/widening projects, set station identification stakes at 200 foot intervals.

**5-7.5 Personnel, Equipment, and Record Requirements:** Employ only competent personnel and use only suitable equipment in performing layout work. Do not engage the services of any person or persons in the employ of the Department for performance of layout work.

Keep adequate field notes and records while performing as layout work. Make these field notes and records available for the Engineer's review as the work progresses, and furnish copies to the Engineer at the time of completion of the project. The Engineer's inspection, checking, or acceptance of the Contractor's field notes or layout work does not relieve the Contractor of his responsibility to achieve the lines, grades, and dimensions shown in the Contract Documents.

Prior to final acceptance of the project, mark, in a permanent manner on the surface of the completed work, all horizontal control points originally furnished by the Department.

**5-7.6 Payment:** Include the cost of performing layout work as described above in the Contract unit prices for the various items of work that require layout.

## **5-8 Contractor's Supervision.**

**5-8.1 Prosecution of Work:** Give the work the constant attention necessary to ensure the scheduled progress, and cooperate fully with the Engineer and with other contractors at work in the vicinity.

**5-8.2 Contractor's Superintendent:** Maintain a competent superintendent at the site at all times while work is in progress to act as the Contractor's agent. Provide a superintendent who is a competent superintendent capable of properly interpreting the Contract Documents and is thoroughly experienced in the type of work being performed. Provide a superintendent with the full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. Furnish such superintendence regardless of the amount of work sublet.

Provide a superintendent who speaks and understands English, and maintain at least one other responsible person who speaks and understands English, on the project during all working hours.

**5-8.3 Supervision for Emergencies:** Provide a responsible person, who speaks and understands English, and who is available at or reasonably near the

worksite on a 24 hour basis, seven days a week. Designate this person as the point of contact for emergencies and in cases that require immediate action to maintain traffic or to resolve any other problem that might arise. Submit, by certified mail, the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the project location, to the Florida Highway Patrol and all other local law enforcement agencies.

## **5-9 General Inspection Requirements.**

**5-9.1 Cooperation by Contractor:** Do not perform work or furnish materials without obtaining inspection by the Engineer or his representative. Furnish the Engineer with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If the Engineer so requests at any time before final acceptance of the work, remove or uncover such portions of the finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. If the Engineer determines that the work so exposed or examined is unacceptable, perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the Department. However, if the Engineer determines that the work thus exposed or examined is acceptable, the Department will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed in accordance with Section 4-4.

**5-9.2 Failure of Engineer to Reject Work During Construction:** If, during or prior to construction operations, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Department to final acceptance. The Department is not responsible for losses suffered due to any necessary removals or repairs of such defects.

**5-9.3 Failure to Remove and Renew Defective Materials and Work:** If the Contractor fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the Contractor's expense. The Department will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Contractor fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.

**5-9.4 Inspection by Federal Government:** When the United States Government pays a portion of the cost of construction, its representatives may inspect the construction work as they deem necessary. However, such inspection will in no way make the Federal Government a party to the Contract.

## **5-10 Final Inspection.**

**5-10.1 Maintenance until Acceptance:** Maintain all Work until the Engineer has given final acceptance in accordance with 5-11.

**5-10.2 Inspection for Acceptance:** Upon notification that all Contract Work, or all Contract Work on the portion of the Contract scheduled for acceptance, has been completed, the Engineer will make an inspection for acceptance. The inspection will be made within seven days of the notification. If the Engineer finds that all work has been satisfactorily completed, the Department will consider such inspection as the final inspection. If any or all of the Work is found to be unsatisfactory, the Engineer will detail the remedial work required to achieve acceptance. Immediately perform such remedial work. Subsequent inspections will be made on the remedial work until the Engineer accepts all Work.

Upon satisfactory completion of the Work, the Department will provide written notice of acceptance, either partial or final, to the Contractor.

Until final acceptance in accordance with 5-11, replace or repair any damage to the accepted Work. Payment of such work will be as provided in 7-14.

**5-10.3 Partial Acceptance:** At the Engineer's sole discretion, the Engineer may accept any portion of the Work under the provisions of 5-10.2.

**5-10.4 Conditional Acceptance:** The Engineer will not make, or consider requests for conditional acceptance of a project.

## **5-11 Final Acceptance.**

When, upon completion of the final construction inspection of the entire project, the Engineer determines that the Contractor has satisfactorily completed the work, the Engineer will give the Contractor written notice of final acceptance.

## **5-12 Claims by Contractor.**

**5-12.1 General:** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

### **5-12.2 Notice of Claim:**

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed

as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete claim documentation as described in 5-12.3. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's written claim, and the failure to provide such notice of intent, preliminary time extension request, time extension request, claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

**5-12.2.2 Claims For Delay:** Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay. The timely providing of a written notice of intent or preliminary time extension request to the Engineer are each a condition precedent to any right on behalf of the Contractor to request additional compensation or an extension of Contract Time for that delay, and the failure of the Contractor to provide such written notice of intent or preliminary time extension request within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for that delay. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in

5-12.3. There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(c), and then only to the extent the Contractor could not reasonably mitigate such idleness.

**5-12.3 Content of Written Claim:** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a written claim to the Department which will include for each individual claim, at a minimum, the following information:

(a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;

(b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;

(c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;

(d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

(e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:

(1) documented additional job site labor expenses;

(2) documented additional cost of materials and supplies;

(3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;

(4) any other additional direct costs or damages and the documents in support thereof;

(5) any additional indirect costs or damages and all documentation in support thereof.

(f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any

compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

**5-12.4 Action on Claim:** The Engineer will respond on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per 5-11 of all Contract work by the Department or denial hereunder, whichever occurs last.

**5-12.5 Pre-Settlement and Pre-Judgment Interest:** Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

**5-12.6 Compensation for Extra Work or Delay:**

**5-12.6.1 Compensation for Extra Work:** Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

**5-12.6.2 Compensation for Delay:** Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it

functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

**5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay:** For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

**5-12.7 Mandatory Claim Records:** After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

**5-12.8 Claims For Acceleration:** The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

**5-12.9 Certificate of Claim:** When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

**5-12.10 Non-Recoverable Items:** The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;
- b. Any claim for other than extra work or delay;
- c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing “to accelerate at the Department’s expense”; nor
- e. Attorney fees, claims preparation expenses and costs of litigation.

**5-12.11 Exclusive Remedies:** Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department’s liability will be limited to those items which are specifically identified as payable in 5-12.

**5-12.12 Settlement Discussions:** The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

**5-12.13 Personal Liability of Public Officials:** In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

**5-12.14 Auditing of Claims:** All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department’s sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department’s auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the

Department, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request for copies provide copies at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. 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;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

### **5-13 Recovery Rights, Subsequent to Final Payment.**

The Department reserves the right, if it discovers an error in the partial or final estimates, or if it discovers that the Contractor performed defective work or used defective materials, after the final payment has been made, to claim and

recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

Retain all records pertaining to the project for a period of three years from the date of the Engineer's final acceptance of the project. Upon request, make all such records available to the Department or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract provisions.

## **SECTION 6 CONTROL OF MATERIALS**

### **6-1 Acceptance Criteria.**

**6-1.1 General:** Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. Use only materials in the work that meet the requirements of these Specifications. The Engineer may inspect and test any materials, at points of production, distribution and use.

**6-1.2 Sampling and Testing:** Use the Department's current sample identification and tracking system to provide related information and attach such information to each sample. Restore immediately any site from which material has been removed for sampling purposes to the pre-sampled condition with materials and construction methods used in the initial construction, at no additional cost to the Department.

Ensure when a material is delivered to the location as described in the Contract, there is enough material delivered to take samples, at no expense to the Department.

**6-1.2.1 Pretest by Manufacturers:** Submit certified manufacturer's test results to the Engineer for qualification and use on Department projects. Testing will be as specified in the Contract Documents. The Department may require that manufacturers submit samples of materials for independent verification purposes.

**6-1.2.2 Point of Production Test:** Test the material during production as specified in the Contract Documents.

**6-1.2.3 Point of Distribution Test:** Test the material at Distribution facilities as specified in the Contract Documents.

**6-1.2.4 Point of Use Test:** Test the material immediately following placement as specified in the Specifications. After delivery to the project, the Department may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by producer certification. The Department may reject all materials that, when retested, do not meet the requirements of these Specifications.

### **6-1.3 Certification:**

**6-1.3.1 Producer Certification:** Ensure completeness and correlate certification(s) of materials provided. Furnish to the Engineer for approval, certification from the producer for all products listed on the Department's

Qualified Products List (QPL) and when required by the applicable material Specification(s). Do not incorporate any manufactured product(s) or material(s) into the project without approval from the Engineer. Materials will not be considered for payment when not accompanied by Producer Certification. Producers may obtain sample certification forms through the Department's website. Ensure that the certification is provided on the producer's letterhead and is signed by a legally responsible person from the producer.

**6-1.3.1.1 Qualified Products List:** The Product Evaluation Section in the State Specifications Office publishes and maintains a Qualified Products List (QPL). The list provides assurance to Contractors, consultants, designers, and Department personnel that specific products and materials are approved for use on Department facilities. The Department will limit the Contractor's use of products and materials that require pre-approval to items listed on the QPL effective at the time of placement. Manufacturers seeking evaluation in accordance with Departmental procedures of an item must submit a Product Evaluation Application with a certified test report from an independent test laboratory that shows that the material meets all applicable specifications, to the Product Evaluation Section in Tallahassee. Manufacturers successfully completing the Department's evaluation are eligible for inclusion on the QPL. The Department will consider any marked variations from original test values for a material or any evidence of inadequate field performance of a material as sufficient evidence that the properties of the material have changed, and the Department will remove the material from the QPL.

**6-1.3.1.2 Approved Products List:** The State Traffic Operations Office maintains the Approved Products List (APL) of Traffic Control Signal Devices. Traffic Monitoring Site Equipment and Materials are also included on the APL. This list provides assurance to Maintaining Agencies, Contractors, consultants, designers, and Department personnel that the specific items listed are approved for use on Department facilities. The Department will limit the Contractor's procurement and use of Traffic Control Signal Devices, and Traffic Monitoring Site equipment and materials to only those items listed on the APL that is effective at the time of procurement, except as provided in Section 603.

The approval process is described in detail on the State Traffic Operation website, [www.dot.state.fl.us/trafficoperations/terl/apl2.htm](http://www.dot.state.fl.us/trafficoperations/terl/apl2.htm).

Manufacturers seeking evaluation of a specific device must submit an application on form number 750-010-12, which can be obtained from the Department's State Traffic Operations Office.

**6-1.3.2 Contractor Installation Certification:** Provide installation certifications as required by the Specifications.

## **6-2. Designation of a Specific Product as a Criterion ("Or Equal" Clause).**

Reference in the Contract Documents to any proprietary article, device, product, material or fixture, or any form or type of construction, by name, make, or catalog number, with or without the words "or equal", establishes a standard of quality and is not intended to limit competition. The Contractor may use any

article, device, product, material or fixture, or any form or type of construction, that, in the judgment of the Engineer (expressed in writing), is equal, for the purpose intended, to that named.

### **6-3 Applicable Documented Authorities other than Specifications.**

**6-3.1 General:** Details on individual materials are identified in various material specific Sections of the Specifications. These Specifications may refer to other documented authorities for requirements. When specified, meet the requirements as defined in such references.

**6-3.2 Test Methods:** Methods of sampling and testing materials are in accordance with the Florida Methods (FM). If a Florida Method does not exist for a particular test, perform the testing in accordance with the method specified in the Specification. When test methods or other standards are referenced in the Specifications without identification of the specific time of issuance, use the most current issuance, including interims or addendums thereto, at the time of bid opening.

**6-3.3 Construction Aggregates:** Aggregates used on Department projects must be in accordance with Rule 14-103, FAC.

### **6-4 Documentation.**

**6-4.1 Submission of Materials Certification and Reporting Test Results:** Provide certifications prior to placement of materials. Report test results at completion of the test and meet the requirements of the applicable Specifications.

**6-4.2 Database(s):** Obtain access to the Department's database(s) prior to testing and/or material placement. Database access information is available through the Department's website. Enter all required and specified documentation and test results in the Department database(s).

**6-4.3 Worksheets:** Make available to the Department, when requested, worksheets used for collecting test information. Ensure the worksheets as a minimum contain the following:

- a. Project Identification Number,
- b. Time and Date,
- c. Laboratory Identification and Name,
- d. Training Identification Numbers (TIN) and initials,
- e. Record details as specified within the test method.

**6-4.4 Retention:** Meet the requirements of Section-105.

### **6-5 Inspections to Assure Compliance with Acceptance Criteria.**

**6-5.1 General:** The Department is not obligated to make an inspection of materials at the source of supply, manufacture, or fabrication. Provide the Engineer with unrestricted entry at all times to such parts of the facilities that concern the manufacture, fabrication, or production of the ordered materials. Bear all costs incurred in determining whether the material meets the requirements of these Specifications.

**6-5.2 Quality Control (QC) Inspection:** Provide all necessary inspection to assure effective QC of the operations related to materials acceptance. This includes but is not limited to sampling and testing, production, storage, delivery,

construction and placement. Ensure that the equipment used in the production and testing of the materials provides accurate and precise measurements in accordance with the applicable Specifications. Maintain a record of all inspections, including but not limited to, date of inspection, results of inspection, and any subsequent corrective actions taken.

**6-5.3 Notification of Placing Order:** Order materials sufficiently in advance of their incorporation in the work to allow time for sampling, testing and inspection. Provide notification, to the Engineer prior to placing orders for materials.

Submit to the Engineer a fabrication schedule for all items requiring commercial inspection, before or at the pre-construction meeting. These items include, but is not limited to steel bridge components, overhead cantilevered sign supports with cantilevered arms exceeding 41 feet, moveable bridge components or any other item identified as an item requiring commercial inspection in the Contract Documents.

Notify the Engineer at least 30 days before beginning any production and include a production schedule.

### **6-6 Additional Requirements for Lump Sum Projects.**

Prepare and submit to the Engineer a project-specific list of material items and quantities to be used on the project as a Job Guide Schedule (JGS) in the same format as the Department's current Sampling, Testing, and Reporting Guide (STRG), 21 calendar days prior to commencement of Construction. Provide an up-to-date Job Guide Schedule to the Engineer with each monthly progress estimate. The Department may not authorize payment of any progress estimate not accompanied by an up-to-date Job Guide Schedule. Maintain the Job Guide Schedule throughout the project including the quantity placed since the previous submittal, and total to date quantity and any additional materials placed. Do not commence work activities that require testing until the Job Guide Schedule has been reviewed and accepted by the Engineer. At final acceptance, submit final Job Guide Schedule that includes all materials used on the project in the same format as the monthly reports.

### **6-7 Personnel Qualification Programs.**

Meet the requirements of Section 105 and ensure that qualifications are maintained during the course of sampling, testing and inspection. Continued personnel qualifications are subject to satisfactory results from the Department's Independent Assurance evaluations.

### **6-8 Quality Control Program.**

**6-8.1 General:** Meet the requirements of the Department's approved Quality Control Program for the production and construction of Asphalt Mix, Portland Cement Concrete (Structural), Earthwork, Cementitious Materials, Timber, Steel and Miscellaneous Metals, Galvanized Metal Products, Prestressed and/or Precast Concrete Products and Drainage Products. Also include transportation, storage, placement and other related construction operations required by the Contract.

When accreditation or certification is required, make supporting documents from the two previous inspections performed by the accrediting or certifying agency available to the Department upon request.

Obtain Department approval prior to beginning production. Meet and maintain the approved QC Program requirements at all times. Production and construction of these products without the Department's prior approval of a Quality Control Program may result in rejection of the products. Continued approval will be subject to satisfactory results from Department evaluations, including the Independent Assurance program. In cases of non-compliance with the approved Quality Control Program, identify all affected material and do not incorporate or supply to the Department projects. The following conditions may result in suspension of a QC Program:

- a. Failure to timely supply information required.
- b. Repeated failure of material to meet Standard Specification requirements.
- c. Failure to take immediate corrective action relative to deficiencies in the performance of the QC program.
- d. Certifying materials that are not produced under an approved QC program for use on Department projects.
- e. Failure to correct any deficiencies related to any requirement of the QC program, having received notice from the Department, within the amount of time defined in the notice.

**6-8.2. Producers of Asphalt Mixes, Portland Cement Concrete (Structural), Earthwork, Cementitious Materials, Timber, Steel and Miscellaneous Metals, Galvanized Metal Products, Prestressed and/or Precast Concrete Products and Drainage Products:** Have an approved Quality Control Program, developed in accordance with the guidelines in Section 105, during the production of materials to be used on Department projects. In addition to meeting the requirements of Section 105, the producers of Portland Cement Concrete will meet the requirements Chapter 9.2, Concrete Production Facility Guidelines, of the Department's Materials Manual.

**6-8.3 Prestressed Concrete Plants:** Ensure that prestressed concrete plants participating in the Department's Acceptance Program are qualified. Obtaining qualification will require a current Precast/Prestressed Concrete Institute (PCI) certification and an approved Quality Control Plan, developed in accordance with the guidelines specified in Section 105.

**6-8.4 Quality Control Program Approval:** Producers of cementitious materials and aggregates must submit their proposed Quality Control Program to the State Materials Office for approval.

Producers of Asphalt Mixes, Portland Cement Concrete (Structural), Earthwork, Timber, Steel and Miscellaneous Metals, Galvanized Metal Products, Prestressed and/or Precast Concrete Products and Drainage Products must submit their proposed Quality Control Program to the local District Materials Office for acceptance. Producers located outside the State must contact the State Materials Office for address information of the District Materials Office responsible for the review of the proposed Quality Control Program.

Steel and Miscellaneous Metal products are steel bridge components, movable bridge components, overhead cantilevered sign supports, ladders and platforms, bearings, end wall grates, roadway gratings, metal drainage components, steel expansion joint and components, shear connectors, pipe handrails, galvanized steel woven wire farm fence, and guardrail.

The Department will respond to the producer within 21 calendar days of receipt of the proposed Quality Control Program. The Department may perform evaluation activities to verify compliance with submitted documents prior to acceptance.

If the Quality Control Program must be revised for any reason, including non-compliance, submit the revision to the Department. The Department will respond to the producer within 7 calendar days of receipt of the revised Quality Control Program.

**6-8.5 Contractor's Quality Control Plan.** Have an approved Quality Control Plan meeting the requirements of Section 105 for the transportation, storage, placement, and other related construction operations required by the Contract.

## **6-9 Lab Qualification Program.**

Testing Laboratories participating in the Department's Acceptance Program must meet one of the following requirements. In addition to the following they must have current Department qualification when testing materials that are used on Department projects:

- a. Current AASHTO (AAP) accreditation.
- b. Inspected on a regular basis per ASTM D 3740 for earthwork, ASTM D 3666 for asphalt and ASTM C 1077 for concrete for test methods used in the Acceptance Program, with all deficiencies corrected, and under the supervision of a Specialty Engineer.
- c. Current Construction Materials Engineering Council (CMEC) program accreditation or other independent inspection program accreditation acceptable to the Engineer and equivalent to a. or b. above.

After meeting the criteria described above, submit a Laboratory Qualification Application to the Department. The application is available from the Department's website. Obtain the Department's qualification prior to beginning testing. The Department may inspect the laboratory for compliance with the accreditation requirements prior to issuing qualification.

Meet and maintain the qualification requirements at all times. Testing without Department's qualification may result in a rejection of the test results. Continued qualifications are subject to satisfactory results from Department evaluations, including Independent Assurance evaluations. In case of suspension or disqualification, prior to resumption of testing, resolve the issues to the Department's satisfaction and obtain reinstatement of qualification. The following conditions may result in suspension of a laboratory's qualified status:

- a. Failure to timely supply required information.
- b. Loss of accredited status.
- c. Failure to correct deficiencies in a timely manner.
- d. Unsatisfactory performance.

- e. Changing the laboratory's physical location.
- f. Delays in reporting the test data in the Department's database.
- g. Incomplete or inaccurate reporting.
- h. Using unqualified technicians performing testing.

It is prohibited for a non-Department laboratory to perform Contractor Quality Control testing and any other Acceptance Program testing on the same contract.

## **6-10 Storage of Materials and Samples.**

**6-10.1 Method of Storage:** Store materials in such a manner as to preserve their quality and fitness for the work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific materials are prescribed under the applicable Specifications. The Department may reject improperly stored materials.

**6-10.2 Use of Right-of-Way for Storage:** If the Engineer allows, the Contractor may use a portion of the right-of-way for storage purposes and for placing the Contractor's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. When used, restore the right-of-way to pre-construction condition at no additional cost to the Department or as specified in the contract. Provide any additional space required at no expense to the Department.

**6-10.3 Responsibility for Stored Materials:** Accept responsibility for the protection of stored materials. The Department is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored materials.

**6-10.4 Storage Facilities For Samples:** Provide facilities for storage of samples as described in the contract and warranted by the test methods and Specifications.

## **6-11 Defective Materials.**

All materials not meeting the requirements of these Specifications; segregated materials, even though previously tested and approved; materials that are or have been improperly stored; and materials that are mixed with an excess of clay, coal, sticks, burlap, hay, straw, loam or earth, or other debris will be considered defective. Do not use defective materials. The Engineer will reject all such materials, whether in place or not. Remove all rejected material immediately from the site of the work and from storage areas, at no expense to the Department.

Do not use material that has been rejected and the defects corrected, until the Engineer has approved the material's use. Upon failure to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer will remove and replace defective material and deduct the cost of removal and replacement from any moneys due or to become due the Contractor.

As an exception to the above, the Contractor may submit, upon approval of the Engineer, an engineering and/or laboratory analysis to evaluate the effect of defective in place materials. A Specialty Engineer, who is an independent consultant or the Contractor's Engineer of Record as stated within each

individual Section shall perform any such analysis. The Engineer will determine the final disposition of the material after review of the information submitted by the Contractor. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review.

## **6-12 Products and Source of Supply.**

### **6-12.1 Source of Supply – Convict Labor (Federal-Aid Contracts Only):**

Do not use materials that were produced after July 1, 1991, by convict labor for Federal-aid highway construction projects unless the prison facility has been producing convict-made materials for Federal-aid highway construction projects before July 1, 1987.

Use materials that were produced prior to July 2, 1991, by convicts on Federal-aid highway construction projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114. The Department will limit the use of materials produced by convict labor for use in Federal-aid highway construction projects to:

- 1 materials produced by convicts on parole, supervised release, or probation from a prison or,
- 2 materials produced in a qualified prison facility.

The amount of such materials produced for Federal-aid highway construction during any 12-month period shall not exceed the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

**6-12.2 Source of Supply-Steel (Federal-Aid Contracts Only):** For Federal-aid Contracts, only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a

statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

**6-12.3 Unfit, Hazardous, and Dangerous Materials:** Do not use any material that, after approval and/or placement, has in any way become unfit for use. Do not use materials containing any substance that has been determined to be hazardous by the State of Florida Department of Environmental Protection or the U.S. Department of Environmental Protection. Provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards, as determined by the U.S. Department of Labor Occupational Safety and Health Administration.

## **SECTION 7 LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC**

### **7-1 Laws to be Observed.**

**7-1.1 General:** Become familiar with and comply with all Federal, State, county, and city laws, by-laws, ordinances, and regulations that control the action or operation of those engaged or employed in the work or that affect materials used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 17-5 of the Rules and Regulations, pertaining to open burning in land clearing operations. Where work or structures included in the Contract are in "Navigable Waters of the U.S.," (reference 33 of the Code of Federal Regulations, Part 329); "Waters of the U.S.," (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or "Waters of the State," (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, of the Florida Statutes regarding land reclamation. Direct special attention to Chapters 62c-36 and 62c-39 of the Florida Administrative Code. Submit the Notice of Intent to Mine to:

Department of Environmental Protection  
Collins Building  
2051 East Dirac Drive  
Tallahassee, Florida 32310-3760

with a copy to the Engineer. The Engineer will determine consistency with the environmental documents prior to commencement of mining.

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, of the Florida Statutes, regardless of exemptions allowed by Section 489.103, prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

Prior to building construction or renovation, provide copies of current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Chapter 489, for the appropriate category of construction.

Corporations must be registered with the State of Florida, Department of State, Division of Corporations, and hold a current State Corporate Charter Number in accordance with Chapter 607, Florida Statutes.

The Contractor or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, order, or decrees; whether by himself or his employees.

The Contractor shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES) Stormwater Pollution Prevention Plan and Sediment and Erosion Control Plan for the work.

The Contractor shall exert every reasonable and diligent effort to ensure that all labor employed by the Contractor and his subcontractors for work on the project work harmoniously and compatibly with all labor used by other building and construction contractors now or hereafter on the site of the work covered by this Contract. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others. However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

The Executive Order 11246 Electronic version, dated September 24, 1965 is posted on the Department's website at the following URL address: [www.dot.state.fl.us/specificationsoffice/federal/deo11246.pdf](http://www.dot.state.fl.us/specificationsoffice/federal/deo11246.pdf) . Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4113.

**7-1.2 Plant Quarantine Regulations:** The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule 5B-44, Florida Administrative Code, and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the construction period.

These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of materials containing plant pests across quarantine lines.

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service  
U.S. Department of Agriculture  
3029 Lake Alfred Road  
Winter Haven, Florida 33881

Director, Division of Plant Industry  
Florida Department of Agriculture and Consumer Services  
Post Office Box 147100  
Gainesville, Florida 32614-7100

**7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds:** Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the project limits or to locations outside of the project limits without the Engineer's permission. Maintain all borrow material brought onto the project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 16C-52 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

Furnish the Engineer, prior to incorporation into the project, with a certification from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stating that the sod, hay, straw, and mulch materials are free of noxious weeds, including Tropical Soda Apple.

**7-1.4 Compliance with Federal Endangered Species Act:** The Federal Endangered Species Act requires that the Department investigate the potential impact to an endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation identifies that there is a potential impact on an endangered species,

the Department will make a biological assessment to determine what measures are necessary to mitigate such impact.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, and the name of the property owner. Provide this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable period of time for the Engineer to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event that the Department's biological assessment indicates that mitigation measures are necessary, cooperate as necessary to comply with such measures.

**7-1.5 Occupational Safety and Health Requirements:** The Contractor shall take all precautions necessary for the protection of life, health, and general occupational welfare of all persons, including employees of both the Contractor and the Department, until the Contractor has completed the work required under the Contract as provided in 5-10 and 5-11.

Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including 29 CFR 1926, including all subsequent revisions and updates.

**7-1.6 Discovery of an Unmarked Human Burial:** When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. Do not resume activity until specifically authorized by the Engineer.

**7-1.7 Insecticides and Herbicides:** Contact the Local County Extension Office for a list of approved Insecticides or Herbicides. Only use products registered with the Florida Department of Agriculture for use in the State of Florida. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed.

Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work.

Ensure that all employees applying insecticides and herbicides possess a current Florida Department of Agriculture Commercial Applicator license with the categories of licensure in Right-of-Way Pest Control and Aquatic Pest Control. Provide a copy of current certificates upon request, to the Engineer.

Comply with all regulations and permits issued by any regulatory agency within whose jurisdiction work is being performed. Post all permit placards in a protected, conspicuous location at the work site.

Acquire any permits required for work performed on the rights-of-way within the jurisdiction of National Forests in Florida. Contact the Local National Forest Ranger District, or the United States Department of Agriculture (USDA) office for the proper permits and subsequent approval.

Acquire all permits required for aquatic plant control as outlined in Chapter 62C-20, Florida Administrative Code, Rules of the Florida Department of Environmental Protection. Contact the Regional Field Office of Bureau of Invasive Plant Management of the Florida Department of Environmental Protection for proper permits and subsequent approval. If application of synthetic organo-auxin herbicides is necessary, meet the requirements of Chapter 5E-2, Florida Administrative Code.

**7-1.8 Compliance with Section 4(f) of the USDOT Act:** Section 4(f) of the USDOT Act prohibits the U. S. Secretary of Transportation from approving a project which requires the use of publicly owned land of a public park, recreation area or a wildlife and waterfowl refuge, or of any historic site of national, state, or local significance unless there is no prudent or feasible alternative to using that land and the program or project includes all possible planning to minimize the harm to the site resulting from the use.

Before undertaking any off-project activity associated with any federally assisted undertaking, ensure that the proposed site does not represent a public park, recreation area, wildlife or waterfowl refuge, or a historic site (according to the results of the Cultural Resources Survey discussed in 120-6.2). If such a site is proposed, notify the Engineer and provide a description of the proposed off-site activity, the Financial Project ID, the location of the site by township, range, section, a county or city map showing the site location and including the access route and the name of the property. It is the Contractor's responsibility to provide justification for use of Section 4(f) property that is sufficient for the Florida Department of Transportation and the Federal Highway Administration to make a Section 4(f) determination. Provide this notification sufficiently in advance of planned commencement of the off-site activity to allow a reasonable time for the Engineer to conduct an investigation without delaying job progress. Do not begin any off-project activity without obtaining written clearance from the Engineer.

**7-1.9 Florida Minority Business Loan Mobilization Program:**

The Loan Mobilization Program is established by Section 288.706 of the Florida Statutes, and has as its goal to assist minority business enterprises by facilitating working capital loans to those eligible businesses that are Contractors or subcontractors on Department contracts.

The limits of such advances under this program shall be as specified in Section 288.706 of the Florida Statutes. In the case of a subcontractor, the amount of the advance will be based on the subcontract unit prices, not the contract unit prices.

All prime Contractor vendors shall be required to incorporate the designated loan mobilization payment procedures in subcontract agreements with minority business enterprise vendors participating in this program and to cooperate in the release of designated loan mobilization payments to achieve the objective of providing working capital for minority business enterprise subcontract vendors.

When the Contract has been awarded or, in the case of a subcontractor, a subcontract has been signed with the prime Contractor, application for participation in this program will be made in writing to the Engineer. Such application must be made prior to commencement of the work. If the application

is made on behalf of a subcontractor, it shall be considered incomplete if not accompanied by a copy of the subcontract with the unit prices of the work clearly delineated.

When all applicable conditions have been met, approval for participation will be made by the Office of the Comptroller and the applicant will be notified of the approval action taken.

Once approval has been obtained and the Notice to Proceed has been issued, disbursement of the monies will be made at the request of the applicant. The designated loan mobilization payment may be paid prior to the commencement of work on the Contract. However, if the work on the Contract has not commenced and the payment has not been made, then the Contract Time may not commence until the payment is made. All designated loan mobilization payments will be made payable jointly to the prime Contractor and the participating financial institution. When a subcontractor is the participant in the program, such payments shall be paid to the participant within 10 business days after receipt of the funds from the Department.

Repayment of monies advanced through this program will be made after the value of the work accomplished by the participant reaches 50 percent. Contractors are encouraged to make weekly or bi-weekly payments to subcontractors participating in this program.

## **7-2 Permits and Licenses.**

**7-2.1 General:** Except for permits procured by the Department, as incorporated by Special Provision expanding this Subarticle, if any, procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

The Department will also acquire any modifications or revisions to an original permit incorporated by Special Provision to this Subarticle when the Contractor requires such modifications or revisions to complete the construction operations specified in the plans or Special Provisions and within the right-of-way limits.

Acquire all permits for work performed outside the right-of-way or easements for the project.

In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and other Contract Documents, the more stringent condition shall prevail.

**7-2.2 Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State:** In general, one or more governmental agencies will exercise regulatory authority over work or structures, including related construction operations, in all tidal areas (Channelward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary

high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and in all tributaries of navigable waters up to their headwaters.

Whenever the work under or incidental to the Contract requires structures or dredge/fill/construction activities in “Navigable Waters of the U.S.,” “Waters of the U.S.,” and “Waters of the State,” the Federal, State, county, and local regulatory agencies may require the Department to obtain a permit. For such dredge/fill /construction specified in the plans to be accomplished within the limits of the project, or for any dredge/fill/construction within the limits of Department-furnished borrow areas, the Department will procure the necessary permits prior to advertising for bids.

### **7-3 Patented Devices, Materials and Processes.**

Include all royalties and costs arising from patents, trademarks, and copyrights, in any way involved in the work in the Contract price. Whenever using any design, device, material, or process covered by letters patent or copyright, obtain the right for such use by suitable legal agreement with the patentee or owner of the copyright. File a copy of such agreement with the Engineer. However, whether or not such agreement is made or filed as noted, the Contractor and the surety in all cases shall indemnify, defend, and save harmless, the Department from all claims for infringement by reason of the use of any such patented design, device, material, or process on work under the Contract, and shall indemnify the Department for all costs, expenses, and damages that it may be obliged to pay by reason of any such infringement, at any time during the prosecution or after the completion of the work.

### **7-4 Right-of-Way Furnished by the Department.**

Except as otherwise stipulated in these Specifications or as shown in the plans, the Department will furnish all rights-of-way necessary for the proper completion of the work at no expense to the Contractor.

Should Department-furnished areas for obtaining borrow material, contain limerock material, do not remove such material from the pit unless the Engineer gives specific approval.

### **7-5 Restoration of Surfaces Opened by Permit.**

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair work will be paid for by the party holding such permit, the Engineer may authorize the Contractor to allow parties bearing such permits to make openings in the highway. Upon the Engineer’s written order, perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary work that the Engineer orders, subject to the same conditions as the original work performed. The Department will pay the Contractor for such work either under applicable Contract items or in accordance with 4-4 when Contract items are not applicable.

## **7-6 Sanitary Provisions.**

The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of his employees as are necessary to comply with the requirements and regulations of the State and local boards of health. Commit no public nuisance.

## **7-7 Control of the Contractor's Equipment.**

**7-7.1 Traffic Interference:** Do not allow equipment, while it is on or traversing a road or street, to unreasonably interfere with traffic.

**7-7.2 Overloaded Equipment:** Do not operate on any road or street any hauling unit or equipment loaded in excess of (1) the maximum weights specified in the Florida Uniform Traffic Control Law, or (2) lower weights legally established for any section of road or bridge by the Department or local authorities. The governmental unit having jurisdiction over a particular road or bridge may provide exceptions by special permit under the provisions of 7-7.3. This restriction applies to all roads and bridges inside and outside the Contract limits as long as these roads and bridges are open for public use. The Contractor may overload roads and bridges which are to be demolished after they are permanently closed to the public. The Contractor is responsible for all loss or damages resulting from equipment operated on a structure permanently closed to the public.

**7-7.3 Crossings:** Where it is necessary to cross an existing road or street, including specifically the existing traveled lanes of a divided highway within the limits of the project, obtain permits from the Department, for crossing overloaded or oversized equipment. Cross existing roads or streets only at Engineer-designated points. The Engineer may require the Contractor to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. Provide flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

**7-7.4 Protection from Damage by Tractor-Type Equipment:** Take positive measures to ensure that tractor-type equipment does not damage the road. If any such damage should occur, repair it without delay, at no expense to the Department and subject to the Engineer's approval.

**7-7.5 Contractor's Equipment on Bridge Structures:** The Specialty Engineer shall analyze the effect of imposed loads on bridge structures, within the limits of a construction contract, resulting from the following operations:

- (1) Overloaded Equipment as defined in 7-7.2:
  - (a) Operating on or crossing over completed bridge structures.
  - (b) Operating on or crossing over partially completed bridge structures.
- (2) Equipment within legal load limits:
  - (a) Operating on or crossing over partially completed bridge structures.
- (3) Construction cranes:
  - (a) Operating on completed bridge structures.
  - (b) Operating on partially completed bridge structures.

Any pipe culvert(s) or box culvert(s) qualifying as a bridge under 1-3 is excluded from the requirements above.

A completed bridge structure is a bridge structure in which all elemental components comprising the load carrying assembly have been completed, assembled, and connected in their final position. The components to be considered shall also include any related members transferring load to any bridge structure.

The Specialty Engineer shall determine the effect that equipment loads have on the bridge structure and develop the procedures for using the loaded equipment without exceeding the structure's design load capacity.

Submit to the Department for approval eight copies of design calculations, layout drawings, and erection drawings showing how the equipment is to be used so that the bridge structure will not be overstressed. The Specialty Engineer shall sign and seal one set of the eight copies of the drawings and the cover sheet of one of the eight copies of the calculations for the Department's Record Set.

**7-7.6 Posting of the Legal Gross Vehicular Weight:** Display the maximum legal gross weight, as specified in the Florida Uniform Traffic Code, in a permanent manner on each side of any dump truck or dump type tractor-trailer unit hauling embankment material, construction aggregates, road base material, or hot bituminous mixture to the project over any public road or street. Display the weight in a location clearly visible to the scale operator, in numbers that contrast in color with the background and that are readily visible and readable from a distance of 50 feet.

## **7-8 Structures over Navigable Waters.**

**7-8.1 Compliance with Federal and Other Regulations:** Where erecting structures in, adjacent to, or over, navigable waters, observe all regulations and instructions of Federal and other authorities having control over such waters. Do not obstruct navigation channels without permission from the proper authority, and provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, of false work, and of navigation.

In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

When work platforms are indicated in the permit for construction, submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

**7-8.2 Maintenance of Channel:** Where the work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment until final acceptance of the project.

## **7-9 Use of Explosives.**

When using explosives for the prosecution of the work, exercise the utmost care not to endanger life or property, including new work. The Contractor is responsible for all damage resulting from the use of explosives.

Store all explosives in a secure manner in compliance with all laws and ordinances, and clearly mark all such storage places with the words: "DANGEROUS - EXPLOSIVES". Place such storage in the care of a competent watchman. Where no local laws or ordinances apply, provide storage satisfactory to the Engineer and, in general, not closer than 1,000 feet from the road or from any building, camping area, or place of human occupancy.

Notify each public utility company having structures in proximity to the site of the work of the intention to use explosives. Give such notice sufficiently in advance to enable the companies to take precautionary steps to protect their property from injury.

### **7-10 Forest Protection.**

**7-10.1 Compliance with State and Federal Regulations:** In carrying out work within or adjacent to State or National forests or parks, comply with all of the regulations of the State or Federal authority having jurisdiction, governing the protection of and the carrying out of work in forests or parks, and observe all sanitary laws and regulations with respect to the performance of work in these areas. Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction, installation, and maintenance of any construction camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the forest or park official.

**7-10.2 Prevention and Suppression of Forest Fires:** Take all reasonable precautions to prevent and suppress forest fires. Require employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress forest fires. Assist in preventing and suppressing forest fires, and make every possible effort to notify a forest official at the earliest possible moment of the location and extent of all fires. Extinguish the fire if practicable.

### **7-11 Preservation of Property.**

**7-11.1 General:** Preserve from damage all property which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not specified in the plans. This applies to public and private property, public and private utilities (except as modified by the provisions of 7-11.6), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor), etc., Whenever the Contractor's activities damage or injure such property, immediately restore it to a condition similar or equal to that existing before such damage occurred, at no expense to the Department.

Protect existing bridges during the entire construction period from damage caused by the construction operations or equipment. The Department will not require the Contractor to provide routine repairs or maintenance for such structures. However, immediately repair, at no expense to the Department, all damage occasioned by the construction operations. In the event that the Contractor's construction operations result in damage to a bridge requiring

repairs, the Contractor shall make such repairs with any equipment, materials, or labor at the Contractor's disposal prior to continuing Contract work.

Direct special attention to the protection of all geodetic monuments, horizontal or vertical, located within the limits of construction.

**7-11.2 Failure to Restore Damaged Property:** In case of failure on the part of the Contractor to restore such property, bridge, road or street, or to make good such damage or injury, the Engineer may, upon 48 hours notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any monies due or which may become due the Contractor under the Contract. Nothing in this clause prevents the Contractor from receiving proper compensation for the removal, damage, or replacement of any public or private property, not shown on the plans, that is made necessary by alteration of grade or alignment. The Engineer will authorize such work, provided that the Contractor, or his employees or agents, have not, through their own fault, damaged such property.

**7-11.3 Contractor's Use of Streets and Roads:**

**7-11.3.1 On Systems Other than the State Highway System:** When hauling materials or equipment to the project over roads and bridges on the State park road system, county road system, or city street system, and such use causes damage, immediately, at no expense to the Department, repair such road or bridge to as good a condition as before the hauling began.

The Department may modify the above requirement in accordance with any agreement the Contractor might make with the governmental unit having jurisdiction over a particular road or bridge, provided that the Contractor submits written evidence of such agreement to the Engineer.

**7-11.3.2 On the State Highway System:** The Department is responsible for the repair of any damage that hauling materials to the site causes to roads outside the limits of the project, that are either on the State highway system (roads under the jurisdiction of the Department) or specifically designated in the plans as haul roads from Department-furnished material pits, except in the event damage is due to failure to comply with 7-7.2. The Contractor is responsible for all damages to any road or bridge caused by the Contractor's failure to comply with 7-7.2.

**7-11.3.3 Within the Limits of a Construction Project:** The Department will not allow the operation of equipment or hauling units of such weight as to cause damage to previously constructed elements of the project, including but not necessarily limited to bridges, drainage structures, base course, and pavement. Do not operate hauling units or equipment loaded in excess of the maximum weights specified in 7-7.2 on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement, and bridges. The Engineer may allow exceptions to these weight restrictions for movement of necessary equipment to and from its worksite, for hauling of offsite fabricated components to be incorporated into the project, and for crossings as specified in 7-7.3.

**7-11.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardrail:** Protect all existing roadside signs, signal equipment, highway

lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department.

Payment for repairs will be in accordance with 4-3.4.

#### **7-11.5 Operations Within Railroad Right-of-Way:**

**7-11.5.1 Notification to the Railroad Company:** Notify the superintendent of the railroad company, as shown on the plans, and the Engineer at least 72 hours before beginning any operation within the limits of the railroad right-of-way; any operation requiring movement of employees, trucks, or other equipment across the tracks of the railroad company at other than an established public crossing; and any other work that may affect railroad operations or property.

**7-11.5.2 Contractor's Responsibilities:** Comply with whatever requirements an authorized representative of the railroad company deems necessary in order to safeguard the railroad's property and operations. The Contractor is responsible for all damages, delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Contractor's operations within or adjacent to railroad company right-of-way.

**7-11.5.3 Watchman or Flagging Services:** The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the project. The Department will reimburse the railroad company for the cost thereof. Schedule work that affects railroad operations so as to minimize the need for protective services by the railroad company.

#### **7-11.6 Utilities:**

**7-11.6.1 Arrangements for Protection or Adjustment:** Do not commence work at points where the construction operations are adjacent to utility facilities or other property, until making arrangements with the utility facilities to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Contractor is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Contractor's operations.

The Department will make the necessary arrangements with utility owners for removal or adjustment of utilities where the Engineer determines that such removal or adjustment is essential to the performance of the required construction. The Department will not consider relocation or adjustment requests

based on the Contractor's proposed use of a particular method of construction or a particular type of equipment as essential to the construction of the project if the Contractor could use other common methods and equipment without relocating or adjusting the utility. The Engineer will determine the responsibility for any such required adjustments of utilities. The Contractor shall make all requested relocations or adjustments because of delivery to the job site of Contractor-furnished materials, at no expense to the Department.

The Department considers relocations and adjustments (or other protection) under the following circumstances as essential to the construction of the project:

(1) Utilities lying within the vertical and horizontal construction limits, plus the reasonably required working room necessary for operation of equipment normally used for the particular type of construction, all as determined by the Engineer (and except as provided in paragraph (4) below). (In the case of overhead electrical conductors that carry more than 400 V, a minimum of 10 feet clearance between the conductor and the nearest possible approach of any part of the equipment is required, except where the utility owner effects safeguards approved by OSHA.)

(2) Utilities lying within the horizontal limits of the project and within 12 inches below the ground surface or the excavation surface on which the Contractor operates construction equipment, or within 12 inches below the bottom of any stabilizing course specified in the plans.

(3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in paragraph (4) below). Such normal limits shall extend to side slopes along the angle of repose, as established by sound engineering practice, unless the Contract Documents require support of the excavation sides by sheeting or the Contractor elects to sheet such excavation for his own convenience.

(4) Where utilities cross pipe trenches transversely within the excavation area, but not within positions from which relocation or removal is necessary, the utility owner is responsible for providing and effecting all reasonable measures for their support and protection during construction operations. Cooperate with the utility owner in the owner's effecting of such support and protective measures. The Contractor is responsible for all damage to the utility that is caused by the Contractor's neglect or failure to cooperate or to use proper precaution in performing his work.

In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, the Engineer will direct such relocation so as to cause the least impediment to the overall construction operations. The Department is not responsible for utility adjustments or temporary relocation work, or for the conditions resulting therefrom, where such adjustments are (1) not necessitated by the construction of the project, (2) done solely for the benefit or convenience of the utility owner or its contractor, or the highway contractor where the Department considers his construction procedures to be other than normal, or (3) not shown on the approved plans for the utility relocation or the construction of the project.

**7-11.6.2 Cooperation with Utility Owners:** Cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support, promptly notify the proper authority and cooperate with the authority in the prompt restoration of service. If water service is interrupted and the Contractor is performing the repair work, the Contractor shall work continuously until the service is restored. Do not begin work around fire hydrants until the local fire authority has approved provisions for continued service.

**7-11.6.3 Utility Adjustments:** Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Cooperate with the various utility construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Contractor shall repair all damage to the relocated utilities resulting from his operations at no expense to the Department. The requirements of 7-11.1 and 7-11.6.2 outline the Contractor's responsibility for protecting utility facilities. The Department will include in the Contract the utility authorities who are scheduled to perform utility work on the project.

**7-11.6.4 Weekly Meetings:** Conduct weekly meetings on the job site with all the affected utility companies and the Engineer in attendance to coordinate project construction and utility relocation. Submit a list of all attendees one week in advance to the Engineer for approval.

Provide the approved Work Progress Schedule and Work Plan for the project, as specified in 8-3.2, to document the schedule and plan for road construction and utility adjustments.

When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the Engineer's approval.

## **7-12 Responsibility for Damages, Claims, etc.**

**7-12.1 Contractor to Provide Indemnification:** The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction Contract.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

**7-12.2 Guaranty of Payment for Claims:** The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The

Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

### **7-13 Insurance.**

**7-13.1 Workers' Compensation Insurance:** Provide Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law for all employees. If subletting any of the work, ensure that the employees of the subcontractors are covered by similar insurance. Ensure that any equipment rental agreements that include operators who are employees of independent Contractors, sole proprietorships or partners are covered by similar insurance. The Engineer will accept equivalent approved protection in lieu of insurance.

**7-13.2 Contractors' Public Liability and Property Damages Liability Insurance:** Furnish evidence to the Department that, with respect to the operations performed, regular Contractors' Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Cause the Department to be an additional insured party on the Contractor's Public Liability and Property Damages Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

**7-13.3 Contractors' Protective Public Liability and Property Damage Liability Insurance:** Furnish evidence to the Department that, with respect to the operations performed by subcontractors, regular Contractors' Protective Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Cause the Department to be an additional insured party on the Contractor's Protective Public Liability and Property Damage Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

### **7-13.4 Insurance Required for Construction at Railroads:**

**7-13.4.1 General:** In addition to any other forms of insurance or bonds required under the terms of the Contract, when the Contract includes the construction of a railroad grade crossing, overpass, or underpass structure, or a railroad crossing signal installation, or any other work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, provide insurance of the types set forth below and in amounts not less than specified herein.

**7-13.4.2 Railroads' Protective Public Liability and Property Damage Liability Insurance:** Furnish the Department with an original insurance policy that, with respect to the operations performed, will provide for and in behalf of the railroad company regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy.

**7-13.5 Insurance for Protection of Utility Owners:** When the work under the Contract involves work on or in the vicinity of utility-owned property or facilities, furnish the Department with evidence that, with respect to the operations performed, General Comprehensive Liability Insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence is carried. The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. Do not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.

**7-13.6 Submission and Approval of Policies; Termination:** Furnish two copies of each required policy to the Engineer at the Preconstruction Conference.

Provide all insurance policies in such form and with insurers that are acceptable to the Department, and to the railroad company or the utility owner. Keep insurance in behalf of a railroad company in force until the Department accepts that the Contractor has satisfactorily completed all work required under the Contract. Keep insurance in behalf of a utility owner in force, in the full amount specified herein, until 30 days after the Department accepts the work.

#### **7-14 Contractor's Responsibility for Work.**

Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good, without additional expense to the Department, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damage, the Department may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

### **7-15 Opening Sections of Highway to Traffic.**

Whenever any bridge or section of roadway is in acceptable condition for travel, the Engineer may direct the Contractor to open it to traffic. The Department's direction to open a bridge or roadway does not constitute an acceptance of the bridge or roadway, or any part thereof, or waive any Contract provisions. Perform all necessary repairs or renewals, on any section of the roadway or bridge thus opened to traffic under instructions from the Engineer, due to defective material or work or to any cause other than ordinary wear and tear, pending completion and the Engineer's acceptance of the roadway or bridge, or other work, at no expense to the Department.

### **7-16 Wage Rates for Federal-Aid Projects.**

For all projects that include Federal-aid participation, the Special Provisions contain requirements with regard to payment of predetermined minimum wages. Predetermined Wage Rate Decisions (U.S. Department of Labor provided Wage Rate Tables) exist for Heavy, Highway, and Building Construction Projects.

### **7-17 Supplemental Agreements.**

Section 337.11 of the Florida Statutes as amended, which prescribe certain limitations on the use of supplemental agreements, are a part of the Contract.

### **7-18 Scales for Weighing Materials.**

**7-18.1 Applicable Regulations:** When determining the weight of material for payment, use scales meeting the requirements of Chapter 531 of Florida Statutes, pertaining to specifications, tolerances, and regulations, as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture.

**7-18.2 Base for Scales:** Place such scales on a substantial horizontal base to provide adequate support and rigidity and to maintain the level of the scales.

**7-18.3 Protection and Maintenance:** Maintain all scale parts in proper condition as to level and vertical alignment, and fully protect them against contamination by dust, dirt, and other matter that might affect their operation.

### **7-19 Source of Forest Products.**

As required by Section 255.20 of the Florida Statutes, where price and quality are equal, and when available, use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida. This provision does not apply to Federal-aid projects.

### **7-20 Regulations of Air Pollution from Asphalt Plants.**

**7-20.1 General:** Perform all work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 17-2 and 17-5 of the Rules and Regulations of the Department of Environmental Protection, and to any part of the State Implementation Plan applicable to the project. See also 110-9.2 regarding burning of debris.

**7-20.2 Dust Control:** Ensure that excessive dust is not transported beyond the limits of construction in populated areas. The Contractor may control dust for

embankments or other cleared or unsurfaced areas by applying water or calcium chloride, as directed by the Engineer. Use calcium chloride in accordance with 102-5. When included in the plans, install mulch, seed, sod, or temporary paving as early as practical. Control dust during the storage and handling of dusty materials by wetting, covering, or other means as approved by the Engineer.

**7-20.3 Asphalt Material:** Use only emulsified asphalt, unless otherwise stated in the plans and allowed by Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

**7-20.4 Asphalt Plants:** Operate and maintain asphalt plants in accordance with Chapter 17-2 of the Rules and Regulations of the Department of Environmental Protection. Provide the plant site with a valid permit as required under Chapter 17-2 prior to start of work.

### **7-21 Dredging and Filling.**

Section 370.033 of the Florida Statutes, requires that all persons, who engage in certain dredge or fill activities in the State of Florida, obtain a certificate of registration from the Florida Department of Environmental Protection, Tallahassee, Florida 32301, and that they keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection.

### **7-22 Available Funds.**

For Contracts in excess of \$25,000 or a term for more than one year, comply with the following provisions of Chapter 339 of the Florida Statutes:

The Department will not, during any fiscal year, expend money, incur any liability, or enter into any Contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If the Department enters into such a Contract, verbal or written, in violation of this subsection, such Contract is null and void, and the Department will not make any payments thereon. The Department will require a statement from the Department's comptroller that funds are available prior to entering into any such Contract or other binding commitment of funds. Nothing herein contained prevents the Department from executing Contracts for a period exceeding one year, but the Department will make such Contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. The Department will incorporate this paragraph verbatim in all Contracts in excess of \$25,000 or having a term for more than one year.

### **7-23 Contractor's Motor Vehicle Registration.**

The Contractor shall provide the Department with proof that all motor vehicles operated or caused to be operated by such Contractor are registered in compliance with Chapter 320 of the Florida Statutes. Submit such proof of registration in the form of a notarized affidavit to the Department.

The Department will not make payment to the Contractor until the required proof of registration is on file with the Department.

If the Contractor fails to register any motor vehicle that he operates in Florida, pursuant to Chapter 320 of the Florida Statutes, the Department may disqualify the Contractor from bidding, or the Department may suspend and revoke the Contractor's certificates of qualification.

## **SECTION 8 PROSECUTION AND PROGRESS**

### **8-1 Subletting or Assigning of Contracts.**

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with his own organization work amounting to not less than 40% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Department with a copy of the subcontract. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract.

The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor, and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

### **8-2 Work Performed by Equipment-Rental Agreement.**

The limitations set forth in 8-1, concerning the amount of work that may be sublet, do not apply to work performed by equipment-rental agreement. However, for any work proposed to be performed by equipment-rental agreement, notify the Engineer in writing of such intention before using the rented equipment, and indicate whether the equipment will be rented on an operated or non-operated basis. Include with the written notice a listing and

description of the equipment and a description of the particular work to be performed with such equipment. As an exception to the above requirements, the Department will not require written notice for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

The operators of all rented equipment, whether rented on an operated or a non-operated basis, are subject to all wage rate requirements applicable to the project. When renting equipment without operators, the Contractor shall carry the operators on his own payroll. For equipment that is rented on an operated basis, and when required by the Contract or requested by the Engineer, furnish payrolls from the lessor with the names of the operators shown thereon.

When a lessor provides rentals of equipment on an operated basis that exceed \$10,000, such lessor is subject to any Equal Employment Opportunity requirements that are applicable to the project.

### **8-3 Prosecution of Work.**

**8-3.1 Compliance with Time Requirements:** Commence work in accordance with the approved working schedule and provide sufficient labor, materials and equipment to complete the work within the time limit(s) set forth in the proposal. Should the Contractor fail to furnish sufficient and suitable equipment, forces, and materials, as necessary to prosecute the work in accordance with the required schedule, the Engineer may withhold all estimates that are, or may become due, or suspend the work until the Contractor corrects such deficiencies.

**8-3.2 Submission of Working Schedule:** Within 21 calendar days after Contract award or at the preconstruction conference, whichever is earlier, submit to the Engineer a work progress schedule for the project. The Engineer will review and respond to the Contractor within 15 calendar days of receipt.

Provide a schedule that shows the various activities of work in sufficient detail to demonstrate a reasonable and workable plan to complete the project within the Contract Time. Show the order and interdependence of activities and the sequence for accomplishing the work. Describe all activities in sufficient detail so that the Engineer can readily identify the work and measure the progress on of each activity. Show each activity with a beginning work date, a duration, and a monetary value. Include activities for procurement fabrication, and deliver of materials, plant, and equipment, and review time for shop drawings and submittals. Include milestone activities when milestones are required by the Contract Documents. In a project with more than one phase, adequately identify each phase and its completion date, and do not allow activities to span more than one phase.

Conduct sufficient liaison and provide sufficient information to indicate coordination activities with utility owners that have facilities within the limits of construction have been resolved. Incorporate in the schedule any utility adjustment schedules included in the Contract Documents unless the utility company and the Department mutually agree to changes to the utility schedules shown in the Contract.

Submit a working plan with the schedule, consisting of a concise written description of the construction plan.

The Engineer will return inadequate schedules to the Contractor for corrections. Resubmit a corrected schedule within 15 calendar days from the date of the Engineer's return transmittal.

Submit an updated Work Progress Schedule, for Engineer's acceptance, if there is a significant change in the planned order or duration of an activity. The Engineer will review the corrected schedule and respond within 7 calendar days of receipt.

By acceptance of the schedule, the Engineer does not endorse or otherwise certify the validity or accuracy of the activity durations or sequencing of activities. The Engineer will use the accepted schedule as the baseline against which to measure the progress.

If the Contractor fails to finalize either the initial or a revised schedule in the time specified, the Engineer will withhold all Contract payments until the Engineer accepts the schedule.

**8-3.3 Beginning Work:** Notify the Engineer not less than five days in advance of the planned start day of work. Upon the receipt of such notice, the Engineer may give the Contractor Notice to Proceed and may designate the point or points to start the work. In the Notice to Proceed, the Engineer may waive the five day advance notice and authorize the Contractor to begin immediately. Notify the Engineer in writing at least two days in advance of the starting date of important features of the work. Do not commence work under the Contract until after the Department has issued the Notice to Proceed. The Department will issue the Notice to Proceed within 30 days after execution of the Contract.

**8-3.4 Provisions for Convenience of Public:** Schedule construction operations so as to minimize any inconvenience to adjacent businesses or residences. Where necessary, the Engineer may require the Contractor to first construct the work in any areas along the project where inconveniences caused by construction operations would present a more serious handicap. In such critical locations, where there is no assurance of continuous effective prosecution of the work once the construction operations are begun, the Engineer may require the Contractor to delay removal of the existing (usable) facilities.

**8-3.5 Preconstruction Conference:** Immediately after awarding the Contract but before the Contractor begins work, the Engineer will call a preconstruction conference at a place the Engineer designates to go over the construction aspects of the project. Attend this meeting, along with the Department and the various utility companies that will be involved with the road construction.

#### **8-4 Limitations of Operations.**

**8-4.1 Night Work:** During active nighttime operations, furnish, place and maintain lighting sufficient to permit proper workmanship and inspection. Use lighting with 5 ft-cd minimum intensity. Arrange the lighting to prevent interference with traffic or produce undue glare to property owners. Operate such lighting only during active nighttime construction activities. Provide a light meter to demonstrate that the minimum light intensity is being maintained.

Lighting may be accomplished by the use of portable floodlights, standard equipment lights, existing street lights, temporary street lights, or other lighting methods approved by the Engineer.

Submit a lighting plan at the Preconstruction Conference for review and approval by the Engineer. Submit the plan on standard size plan sheets (not larger than 24 by 36 inch), and on a scale of either 100 or 50 foot to 1 inch. Do not start night work prior to the Engineer's approval of the lighting plan.

During active nighttime operations, furnish, place and maintain variable message signs to alert approaching motorists of lighted construction zones ahead. Operate the variable message signs only during active construction activities.

Equip all pickups and automobiles used on the project with either amber flashing lights or flashing white lights. Equip all other equipment with a minimum of 4 ft<sup>2</sup> of reflective sheeting, or flashing lights. To avoid distraction to motorists, do not operate the lights on the vehicles or equipment when the vehicles are outside the clear zone or behind traffic control devices.

Ensure that all personnel shall wear reflective vests at all times while in the work area.

Comply with all applicable regulations governing noise abatement.

Have a Certified Worksite Supervisor on site during all nighttime operations to ensure proper Maintenance of Traffic.

Include compensation for lighting for night work in the Contract prices for the various items of the Contract. Take ownership of all lighting equipment for night work.

**8-4.2 Sequence of Operations:** Do not open up work to the prejudice of work already started. The Engineer may require the Contractor to finish a section on which work is in progress before starting work on any additional section.

**8-4.3 Interference with Traffic:** At all times conduct the work in such manner and in such sequence as to ensure the least practicable interference with traffic. Operate all vehicles and other equipment safely and without hindrance to the traveling public. Park all private vehicles outside the clear zone. Place materials stored along the roadway so as to cause no obstruction to the traveling public as possible.

Where existing pavement is to be widened and stabilizing is not required, prevent any open trench from remaining after working hours by scheduling operations to place the full thickness of widened base by the end of each day. Do not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least 1/4 mile along the road and where either the work of excavation has not been started or the base has been completed.

**8-4.4 Coordination with other Contractors:** Sequence the work and dispose of materials so as not to interfere with the operations of other Contractors engaged upon adjacent work; join the work to that of others in a proper manner, in accordance with the spirit of the Contract Documents; and perform the work in the proper sequence in relation to that of other contractors; all as may be directed by the Engineer.

Each contractor is responsible for any damage done by him or his agents to the work performed by another contractor.

**8-4.5 Drainage:** Conduct the operations and maintain the work in such condition to provide adequate drainage at all times. Do not obstruct existing functioning storm sewers, gutters, ditches, and other run-off facilities.

**8-4.6 Fire Hydrants:** Keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times, and do not place any material or obstruction within 15 feet of any fire hydrant.

**8-4.7 Protection of Structures:** Do not operate heavy equipment close enough to pipe headwalls or other structures to cause their displacement.

**8-4.8 Fencing:** Erect permanent fence as a first order of business on all projects that include fencing where the Engineer determines that the fencing is necessary to maintain the security of livestock on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property.

**8-4.9 Hazardous or Toxic Waste:** When the construction operations encounter or expose any abnormal condition that may indicate the presence of a hazardous or toxic waste, discontinue such operations in the vicinity of the abnormal condition and notify the Engineer immediately. Be alert for the presence of tanks or barrels; discolored earth, metal, wood, ground water, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of hazardous or toxic wastes and treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any hazardous or toxic waste into uncontaminated areas.

Do not resume the construction operations until so directed by the Engineer.

Dispose of the hazardous or toxic waste in accordance with the requirements and regulations of any Local, State, or Federal agency having jurisdiction. Where the Contractor performs work necessary to dispose of hazardous or toxic waste, and the Contract does not include pay items for disposal, the Department will pay for this work as provided in 4-4.

The Department may agree to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters hazardous materials or pollutants during the performance of services for the Department when the presence of such materials or pollutants were unknown or not reasonably discoverable. Such indemnification agreements are only effective if the Contractor immediately stops work and notifies the Department of the hazardous material or pollutant problem.

Such indemnification agreement are not valid for damages resulting from the Contractor's willful, wanton, or intentional conduct or the operations of Hazardous Material Contractors.

## **8-5 Qualifications of Contractor's Personnel.**

Provide competent, careful, and reliable superintendents, foremen, and workmen. Provide workmen with sufficient skill and experience to properly perform the work assigned to them. Provide workmen engaged on special work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such work

to perform it properly and satisfactorily and to operate the equipment involved. Provide workmen that shall make due and proper effort to execute the work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.

It is prohibited as a conflict of interest for a Contractor to subcontract with a Consultant to perform Contractor Quality Control when the Consultant is under contract with the Department to perform work on any project described in the Contractor's Contract with the Department. Prior to approving a Consultant for Contractor Quality Control, the Contractor shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists.

Whenever the Engineer determines that any person employed by the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate, the Engineer will provide written notice and the Contractor shall discharge the person from the work. Do not employ any discharged person on the project without the written consent of the Engineer. If the Contractor fails to remove such person or persons, the Engineer may withhold all estimates that are or may become due, or suspend the work until the Contractor complies with such orders. Protect, defend, indemnify, and hold the Department, its agents, officials, and employees harmless from all claims, actions, or suite arising from such removal, discharge, or suspension of employees.

## **8-6 Temporary Suspension of Contractor's Operations.**

**8-6.1 Authority to Suspend Contractor's Operations:** The Engineer has the authority to suspend the Contractor's operations, wholly or in part. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department may grant an extension of Contract time in accordance with 8-7.3.2 when determined appropriate in the Department's sole judgment.

No additional compensation or time extension will be paid or granted to the Contractor when the operations are suspended for the following reasons:

- a. The Contractor fails to comply with the Contract Documents.
- b. The Contractor fails to carry out orders given by the Engineer.
- c. The Contractor causes conditions considered unfavorable for continuing the Work.

Immediately comply with any suspension order. Do not resume operations until authorized to do so by the Engineer in writing. Any operations performed by the Contractor, and otherwise constructed in conformance with the provisions of the Contract, after the issuance of the suspension order and prior to the Engineer's authorization to resume operations will be at no cost to the Department. Further, failure to immediately comply with any suspension order will also constitute an act of default by the Contractor and is deemed sufficient basis in and of itself for the Department to declare the Contractor in default, in accordance with 8-9, with the exception that the Contractor will not have ten calendar days to correct the conditions for which the suspension was ordered.

**8-6.1.1 State of Emergency:** The Engineer has the authority to suspend the Contractor's operations, wholly or in part, pursuant to a Governor's Declaration of a State of Emergency. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor's operations. The Department, at its sole discretion, may grant an extension of Contract Time and reimburse the Contractor for specific costs associated with such suspension. Further, in such instances, the Department's determination as to entitlement to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis

**8-6.2 Prolonged Suspensions:** If the Engineer suspends the Contractor's operations for an indefinite period, store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way. Take every reasonable precaution to prevent damage to or deterioration of the work performed. Provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and provide any temporary structures necessary for public travel through the project.

**8-6.3 Permission to Suspend Contractor's Operations:** Do not suspend operations or remove equipment or materials necessary for completing the work without obtaining the Engineer's written permission. Submit all requests for suspension of operations in writing to the Engineer, and identify specific dates to begin and end the suspension. The Contractor is not entitled to any additional compensation for suspension of operations during such periods.

**8-6.4 Suspension of Contractor's Operations-Holidays:** Unless the Contractor submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the Engineer, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. Contract time will be adjusted in accordance with 8-7.3.2. The Contractor is not entitled to any additional compensation beyond any allowed contract time adjustment for suspension of operations during such holiday periods.

During such suspensions, remove all equipment and materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104. The Contractor is not entitled to any additional compensation for removal of equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

## **8-7 Computation of Contract Time.**

**8-7.1 General:** Perform the contracted work fully, entirely, and in accordance with the Contract Documents within the Contract Time specified in the proposal, or as may be extended in accordance with the provisions herein below.

The Department considers in the computation of the allowable Contract Time the effect that utility relocation and adjustments have on job progress and the scheduling of construction operations required in order to adequately maintain traffic, as detailed in the plans or as scheduled in the Special Provisions.

**8-7.2 Date of Beginning of Contract Time:** The date on which Contract Time begins is either (1) the date on which the Contractor actually begins work, or (2) the date for beginning the charging of Contract Time as set forth in the proposal; whichever is earlier.

### **8-7.3 Adjusting Contract Time:**

**8-7.3.1 Increased Work:** The Department may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new work items, or provides for unforeseen work. The Department will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the additional designated work delays the Contract completion schedule.

**8-7.3.2 Contract Time Extensions:** The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations due to holidays as defined in 8-6.4, in establishing Contract Time. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations due to holidays that prevent the Contractor from productively performing controlling items of work resulting in:

(1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions, holiday suspension; or

(2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather.

The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the affect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

(1) Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.

(2) Utility work actually affected progress toward completion of controlling work items.

(3) The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

A preliminary request for an extension of Contract Time must be made in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay. In the case of a continuing delay

only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay; and

Further, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), as stated in 8-3.2, is a condition precedent to the Contractor having any right to the granting of an extension of contract time or any monetary compensation arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the Department's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the Department's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

## **8-8 Failure of Contractor to Maintain Satisfactory Progress.**

**8-8.1 General: Pursue the work to completion:** Section 337.16 of the Florida Statutes establishes certain requirements pertaining to the suspension or revocation of a Contractor's Certificate of Qualification because of delinquency on a previously awarded Contract.

### **8-8.2 Regulations Governing Suspension for Delinquency:**

(a) A Contractor is delinquent when the allowed Contract Time for performing the work has expired, and the Contractor has not completed the Contract work.

(b) Once the Department determines that the Contractor is delinquent, the Department will give the Contractor written notice of intent to suspend the Contractor's Certificate of Qualification. If the Contractor disagrees with the delinquency, the Contractor shall file a request for an administrative hearing with the Clerk of Agency Proceedings within ten days of receipt of the notice of intent to suspend. If the Contractor does not file a request, the Department will make the suspension conclusive and final. The request for hearing is filed when the Contractor delivers it to, and it is received by, the Clerk of Agency Proceedings, Mail Station 58, Room 562, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450.

(c) If the Contractor files a request for a hearing, the Department will schedule the hearing within 30 days of the hearing officer's receipt of the request.

(d) The Department will continue the period of suspension of the Contractor's Certificate of Qualification until the Contractor is no longer delinquent. If the Contractor requests an administrative hearing, the Department's final order, depending on the outcome of the hearing, will set forth the time period of suspension for the number of days the Department determines that the Contractor was delinquent, even if the Contractor cures the delinquency during the pendency of the administrative proceedings.

(e) During the period of suspension of the Contractor's Certificate of Qualification, the Department will not allow the Contractor and its affiliates to bid on any Department Contract, regardless of dollar amount, and will not approve the Contractor as a subcontractor on any Department contract.

(f) The Department may grant extensions of time during the prosecution of the work as allowed under these Specifications regardless of the Contractor's delinquency status.

## **8-9 Default and Termination of Contract.**

**8-9.1 Determination of Default:** The following acts or omissions constitute acts of default and, except as to subparagraphs (i and k), the Department will give notice, in writing, to the Contractor and his surety for any delay, neglect or default, if the Contractor:

(a) fails to begin the work under the Contract within the time specified in the Notice to Proceed;

(b) fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure prompt completion of the Contract;

(c) performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work that the Engineer rejects as unacceptable and unsuitable;

(d) discontinues the prosecution of the work, or fails to resume discontinued work within a reasonable time after the Engineer notifies the Contractor to do so;

(e) becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;

(f) allows any final judgment to stand against him unsatisfied for a period of ten calendar days;

(g) makes an assignment for the benefit of creditors;

(h) fails to comply with Contract requirements regarding minimum wage payments or EEO requirements;

(i) fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order; or

(j) for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the Department.

(k) fails to comply with 3-9.

For a notice based upon reasons stated in subparagraphs (a) through (h) and (j): if the Contractor, within a period of ten calendar days after receiving the notice described above, fails to correct the conditions of which complaint is made, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

If the Contractor, after having received a prior notice described above for any reason stated in subparagraph (b), (c), (d), (e), (f) or (h), commits a second or subsequent act of default for any reason covered by the same subparagraph (b), (c), (d), (e), (f) or (h) as stated in the prior notice, and regardless whether the specific reason is the same, then, regardless of whether the Contractor has cured the deficiency stated in that prior notice, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without any prior written notice to the Contractor and without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (i), if the Contractor fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order, the Department will, upon written certificate from the Engineer of the fact of such delay and the Contractor's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of

the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph (k), if the Contractor fails to comply with 3-9, the Department will have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

The Department has no liability for anticipated profits for unfinished work on a Contract that the Department has determined to be in default.

Notwithstanding the above, the Department shall have the right to declare the Contractor (or its "affiliate") in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. The Department's right to default the Contractor (or its "affiliate") for "conviction" of a "contract crime" shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its "affiliate") that resulted in the "conviction." In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

**8-9.2 Termination of Contract for Convenience:** The Department may terminate the entire Contract or any portion thereof, if the Secretary determines that a termination is in the Department's interest. The Secretary will deliver to the Contractor a Written Notice of Termination specifying the extent of termination and the effective date.

When the Department terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the Department will make payment for the actual number of units or items of work that the Contractor has completed, at the Contract unit price, and according to the formulas and provisions set forth in 4-3.2 for items of work partially completed, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started. The Department will not consider any claim for loss of anticipated profits, or overhead of any kind (including home office and jobsite overhead or other indirect impacts) except as provided in 4-3.2 for partially completed work.

The Department will consider reimbursing the Contractor for actual cost of mobilization (when not otherwise included in the Contract) including moving equipment to the job where the volume of the work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

The Department may purchase at actual cost acceptable materials and supplies procured for the work, that the Department has inspected, tested, and approved and that the Contractor has not incorporated in the work. Submit the proof of actual cost, as shown by receipted bills and actual cost records, at such points of delivery as the Engineer may designate.

Termination of a contract or a portion thereof, under the provisions of this Subarticle, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the Contract or its obligations for and concerning any just claims arising out of the work performed.

All Contractor claims for additional payment, due to the Department's termination of the entire Contract or any portion thereof, must meet the requirements of 5-12.

**8-9.3 Completion of Work by Department:** Upon declaration of default, the Department will have full power to appropriate or use any or all suitable and acceptable materials and equipment on the site and may enter into an agreement with others to complete the work under the Contract, or may use other methods to complete the work in an acceptable manner. The Department will charge all costs that the Department incurs because of the Contractor's default, including the costs of completing the work under the Contract, against the Contractor. If the Department incurs such costs in an amount that is less than the sum that would have been payable under the Contract had the defaulting Contractor completed the work then the Department will pay the difference to the defaulting Contractor. If the Department incurs such costs in an amount that exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay the State the amount of the excess.

If, after the ten day notice period and prior to any action by the Department to otherwise complete the work under the Contract, the Contractor establishes his intent to prosecute the work in accordance with the Department's requirements, then the Department may allow the Contractor to resume the work, in which case the Department will deduct from any monies due or that may become due under the Contract, any costs to the Department incurred by the delay, or from any reason attributable to the delay.

**8-10 Liquidated Damages for Failure to Complete the Work.**

**8-10.1 Highway Code Requirements Pertaining to Liquidated Damages:** Section 337.18, paragraph (2) of the Florida Statutes, requires that the Department adopt regulations for the determination of default and provides that the Contractor pay liquidated damages to the Department for any failure of the Contractor to complete the Contract work within the Contract Time. These Code requirements govern, and are herewith made a part of the Contract.

**8-10.2 Amount of Liquidated Damages:** Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount.....	Daily Charge Per Calendar Day
\$50,000 and under .....	\$313
Over \$50,000 but less than \$250,000 .....	\$580
\$250,000 but less than \$500,000 .....	\$715

\$500,000 but less than \$2,500,000 .....	\$1,423
\$2,500,000 but less than \$5,000,000 .....	\$2,121
\$5,000,000 but less than \$10,000,000 .....	\$3,057
\$10,000,000 but less than \$15,000,000 .....	\$3,598
\$15,000,000 but less than \$20,000,000 .....	\$4,544
\$20,000,000 and over .....	\$8,537 plus
.....	0.00027 of any amount over \$20 million

**8-10.3 Determination of Number of Days of Default:** For all contracts, regardless of whether the Contract Time is stipulated in calendar days or working days, the Engineer will count default days in calendar days.

**8-10.4 Conditions under which Liquidated Damages are Imposed:** If the Contractor or, in case of his default, the surety fails to complete the work within the time stipulated in the Contract, or within such extra time that the Department may have granted then the Contractor or, in case of his default, the surety shall pay to the Department, not as a penalty, but as liquidated damages, the amount so due as determined by the Code requirements, as provided in 8-10.2.

**8-10.5 Right of Collection:** The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the Contractor.

**8-10.6 Allowing Contractor to Finish Work:** The Department does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and to finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.

**8-10.7 Completion of Work by Department:** In the case of a default of the Contract and the completion of the work by the Department, the Contractor and his surety are liable for the liquidated damages under the Contract, but the Department will not charge liquidated damages for any delay in the final completion of the Department's performance of the work due to any unreasonable action or delay on the part of the Department.

**8-11 Release of Contractor's Responsibility.**

The Department considers the Contract complete when the Contractor has completed all work and the Department has accepted the work. The Department will then release the Contractor from further obligation except as set forth in his bond, and except as provided in 5-13.

**8-12 Recovery of Damages Suffered by Third Parties.**

In addition to the damages provided for in 8-10.2 and pursuant to Section 337.18 of the Florida Statutes, when the Contractor fails to complete the work within the Contract Time or within such additional time that the Department may grant the Department may recover from the Contractor amounts that the Department pays for damages suffered by third parties unless the failure to timely complete the work was caused by the Department's act or omission.

## SECTION 9 MEASUREMENT AND PAYMENT

### **9-1 Measurement of Quantities.**

**9-1.1 Measurement Standards:** The Engineer will measure all work completed under the Contract in accordance with the United States Standard Measures.

**9-1.2 Method of Measurements:** The Engineer will take all measurements horizontally or vertically.

#### **9-1.3 Determination of Pay Areas:**

**9-1.3.1 Final Calculation:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be determined by calculation, the Engineer will use lengths and widths in the calculations based on the station to station dimensions shown on the plans; the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the surface of the completed work within the neat lines shown on the plans or designated by the Engineer. The Engineer will use the method or combination of methods of measurement that reflect, with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

**9-1.3.2 Plan Quantity:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be the plan quantity, the Engineer will determine the final pay quantity based on the plan quantity subject to the provisions of 9-3.2. Generally, the Engineer will calculate the plan quantity using lengths based on station to station dimensions and widths based on neat lines shown in the plans.

**9-1.4 Construction Outside Authorized Limits:** The Engineer will not pay for surfaces constructed over a greater area than authorized, or for material that the Contractor has moved from outside of slope stakes and lines shown on the plans, except where the Engineer provides written instruction for the Contractor to perform such work.

**9-1.5 Truck Requirements:** Provide all trucks with numbers and certify that all trucks used have a manufacturer's certification or permanent decal showing the truck capacity rounded to the nearest tenth of a cubic yard placed on both sides of the truck. This capacity will include the truck body only and any side boards added will not be included in the certified truck body capacity. Ensure the lettering and numbers are legible for identification purposes at all times.

**9-1.6 Ladders and Instrument Stands for Bridge Projects:** On bridge projects, in order to facilitate necessary measurements, provide substantial ladders to the tops of piers and bents, and place and move such ladders as the Engineer directs.

For bridge projects crossing water or marshy areas, supply fixed stands for instrument mounting and measurements, in accordance with the details stipulated in the Specifications for the project.

## **9-2 Scope of Payments.**

**9-2.1 Items Included in Payment:** Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its final acceptance; also for all other costs incurred under the provisions of Division I.

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

**9-2.1.1 Fuels:** The Department will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by the Department as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the Department's standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, the Department will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price prevailing in the month when bids were received (BFP), and then only on the portion that exceeds 5%.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the Department. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the Construction Office website before the 15<sup>th</sup> of each month, at the following URL:

[www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm) .

Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors are on a file maintained by the Department.

Price adjustments will not be made for Items of work added by contingency supplemental agreement, supplemental agreement, field supplemental agreement, or work orders.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - .95 P_b)$  during a period of decreasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract.

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "i."

$F_i$  = Total gallons calculated as being used during the month.

$P_i$  = Average price for fuel prevailing during month "i."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

Adjustments will be paid or charged to the Prime Contractor only. Any Contractor receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

**9-2.1.2 Bituminous Material:** On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, the Department will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing in the month when bids were received (BAPI), and then only on the portion that exceeds 5%.

The Department will determine the API for each month by averaging quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

The API will be available on the Construction Office website before the 15<sup>th</sup> of each month at the following URL:

[www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm) .

Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

\$ Adjustment = (ID)(Gallons)

Where ID = Index Difference =

[CAPI - 0.95(BAPI)] when the API has decreased between the month of bid and month of this progress estimate.

Where ID = Index Difference =

[CAPI - 1.05(BAPI)] when the API has increased between the month of bid and month of this progress estimate.

Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

For asphalt concrete items payable by the ton, the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal.

Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>2</sup> per inch.

**9-2.2 Non-Duplication of Payment:** In cases where the basis of payment clause in these Specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or material essential to the item, the Department will not measure or pay for this same work or material under any other pay item that may appear elsewhere in these Specifications.

### **9-3 Compensation for Altered Quantities.**

**9-3.1 General:** When alteration in plans or quantities of work not requiring a supplemental agreement as hereinbefore provided for are offered and performed, the Contractor shall accept payment in full at Contract unit bid prices for the actual quantities of work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefore, or from any other cause.

Compensation for alterations in plans or quantities of work requiring supplemental agreements shall be stipulated in such agreement, except when the Contractor proceeds with the work without change of price being agreed upon, the Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.

#### **9-3.2 Payment Based on Plan Quantity:**

**9-3.2.1 Error in Plan Quantity:** As used in this Article, the term “substantial error” is defined as the smaller of (a) or (b) below:

(a) a difference between the original plan quantity and final quantity of more than 5%,

(b) a change in quantity which causes a change in the amount payable of more than \$5,000.

On multiple job Contracts, changes made to an individual pay item due to substantial errors will be based on the entire Contract quantity for that pay item.

Where the pay quantity for any item is designated to be the original plan quantity, the Department will revise such quantity only in the event that the Department determines it is in substantial error. In general, the Department will determine such revisions by final measurement, plan calculations, or both, as additions to or deductions from plan quantities.

In the event that either the Department or the Contractor contends that the plan quantity for any item is in error and additional or less compensation is thereby due, the claimant shall submit, at their own expense, evidence of such in the form of acceptable and verifiable measurements or calculations. The Department will not revise the plan quantity solely on the basis of a particular method of construction that the Contractor selects. For earthwork items, the claimant must note any differences in the original ground surfaces from that shown in the original plan cross-sections that would result in a substantial error to the plan quantity, and must be properly documented by appropriate verifiable level notes, acceptable to both the Contractor and the Department, prior to disturbance of the original ground surface by construction operations. The claimant shall support any claim based upon a substantial error for differences in the original ground surface by documentation as provided above.

**9-3.2.2 Authorized Changes in Limits of Work:** Where the Department designates the pay quantity for any item to be the original plan quantity and authorizes a plan change which results in an increase or decrease in the quantity of that item, the Department will revise the plan quantity accordingly. In general, the Department will determine such revisions by final measurement, plan calculations or both.

**9-3.2.3 Specified Adjustments to Pay Quantities:** Do not apply the limitations specified in 9-3.2.1 and 9-3.2.2 to the following:

(1) Where these Specifications or Special Provisions provide that the Department determines the pay quantity for an item on the basis of area of finished work adjusted in accordance with the ratio of measured thickness to nominal thickness.

(2) Where these Specifications provide for a deduction due to test results falling outside of the allowable specified tolerances.

(3) To payment for extra length fence posts, as specified in 550-6.3.

### **9-3.3 Lump Sum Quantities:**

**9-3.3.1 Error in Lump Sum Quantity:** Where the Department designates the pay quantity for an item to be a lump sum and the plans show an estimated quantity, the Department will adjust the lump sum compensation only in the event that either the Contractor submits satisfactory evidence or the Department determines and furnishes satisfactory evidence that the lump sum quantity shown is in substantial error as defined in 9-3.2.1.

**9-3.3.2 Authorized Changes in Work:** Where the Department designates the pay quantity for an item to be a lump sum and the plans show an estimated quantity, the Department will adjust compensation for that item proportionately when an authorized plan change is made which results in an increase or decrease in the quantity of that item. When the plans do not show an estimated plan quantity or the applicable specifications do not provide adjustments for contingencies, the Department will compensate for any

authorized plan change resulting in an increase or decrease in the cost of acceptably completing the item by establishing a new unit price through a supplemental agreement as provided in 4-3.2.

**9-3.4 Deviation from Plan Dimensions:** If the Contractor fails to construct any item to plan or to authorized dimensions within the specified tolerances, the Engineer, at his discretion will: require the Contractor to reconstruct the work to acceptable tolerances at no additional cost to the Department; accept the work and provide the Contractor no pay; or accept the work and provide the Contractor a reduced final pay quantity or reduced unit price. The Department will not make reductions to final pay quantities for those items designated to be paid on the basis of original plan quantity or a lump sum quantity under the provisions of this Article unless such reduction results in an aggregate monetary change per item of more than \$100, except that for earthwork items, the aggregate change must exceed \$5,000 or 5% of the original plan quantity, whichever is smaller. If, in the opinion of the Engineer, the Contractor has made a deliberate attempt to take advantage of the construction tolerances as defined in 120-12.1 to increase borrow excavation in fill sections or to decrease the required volume of roadway or lateral ditch excavation or embankment, the Department will take appropriate measurements and will apply reductions in pay quantities. The Department will not use the construction tolerance, as defined in 120-12.1, as a pay tolerance. The construction tolerance is not to be construed as defining a revised authorized template.

#### **9-4 Deleted Work.**

The Department will have the right to cancel the portions of the Contract relating to the construction of any acceptable item therein, by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date that the Engineer cancels the work.

#### **9-5 Partial Payments.**

**9-5.1 General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.

Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.

**9-5.2 Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory. The Department may also disqualify the surety from issuing bonds for future Department contracts if they similarly fail to perform under the terms of their bond.

**9-5.3 Withholding Payment:**

**9-5.3.1 Withholding Payment for Defective Work:** If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**9-5.3.2 Withholding Payment for Failure to Comply:** The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

(a) comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-The-Job Training, and Affirmative Action;

(b) comply with the requirement to all necessary information, including actual payments to DBEs, all other subcontractors and major suppliers, through the Internet based Equal Opportunity Reporting System;

(c) comply with or make a good faith effort to ensure employment opportunity for minorities and females in accordance with the required contract provisions for Federal Aid Construction Contracts, and

(d) comply with or make a good faith effort to meet On-The-Job Training goals.

The Department will withhold progress payments until the Contractor has satisfied the above conditions.

**9-5.4 Release of Retainage After Acceptance:** When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, Federal Highway Administration Form FHWA-47 (formerly known as PR-47), EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due and Form 21-A release) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in 9-5.3.

The Department will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the

project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days.

The Department may deduct from payment estimates any sums that the Contractor owes to the Department on any account. Where more than one project or job (separate job number) is included in the Contract, the Department will distribute the reduced retainage as provided in the first paragraph of this Subarticle to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

**9-5.5 Partial Payments for Delivery of Certain Materials:**

**9-5.5.1 General:** The Department will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

(1) There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.

(2) The stockpiled material must be approved as meeting applicable specifications.

(3) The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.

(4) The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.

(5) Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.

(6) Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**9-5.5.2 Partial Payment Amounts:** The following partial payment restrictions apply:

(1) Partial payments less than \$5,000 for any one month will not be processed.

(2) Partial payments for structural steel and precast prestressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid price of the item in which the material is to be used.

(3) Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Department requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

**9-5.5.3 Off Site Storage:** If the conditions of 9-5.5.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations.

Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of 9-5.5.1 and the following conditions are met:

(1) Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.

(2) The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials:

“Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement.”

“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor’s obligation to furnish the materials described in this agreement to the Florida Department of Transportation.”

(3) The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

**9-5.6 Certification of Payment to Subcontractors:** The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor’s work. Provide this certification in the form designated by the Department.

Within 30 days of the Contractor’s receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period.

## **9-6 Record of Construction Materials.**

**9-6.1 General:** For all construction materials used in the construction of the project, (except materials exempted by 9-6.2), preserve for the Department’s

inspection the invoices and records of the materials for a period of three years from the date of completion of the project. Apply this requirement when subcontractors purchase materials, and obtain the invoices and other materials records from the subcontractors. By providing the materials, the Contractor certifies that all invoices will be maintained for the required period.

**9-6.2 Non-Commercial Materials:** The provisions of 9-6.1 do not apply to materials generally classed as non-commercial, such as fill materials, local sand, sand-clay, or local materials used as stabilizer.

### **9-7 Disputed Amounts Due the Contractor.**

The Department reserves the right to withhold from the final estimate any disputed amounts between the Contractor and the Department. The Department will release all other amounts due, as provided in 9-8.

### **9-8 Acceptance and Final Payment.**

Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance (as provided in 5-10 and 5-11), and subject to the terms of 8-11, the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The Department will pay the estimate, less any sums that the Department may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work, provided the Contractor has met the requirements of (a) through (h) below.

If the Contractor fails to furnish all required Contract Documents within 90 days of the Department's offer of final payment or request for refund of overpayment, the Department may suspend the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

(a) The Contractor has agreed in writing to accept the balance due or refund the overpayment, as determined by the Department, as full settlement of his account under the Contract and of all claims in connection therewith, or the Contractor, has through the use of the Qualified Acceptance Letter, accepted the balance due or refunded the overpayment, as determined by the Department, with the stipulation that his acceptance of such payment or the making of such refund does not constitute any bar, admission, or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and the Department. To receive payment based on a Qualified Acceptance Letter, define in writing the dispute or pending claim with full particular of all items of all issues in dispute, including itemized amounts claimed for all particulars of all items, and submit it as part of the Qualified Acceptance Letter. The Contractor further agrees, by submitting a Qualified Acceptance Letter that any pending or future arbitration claim or suit is limited to those particulars, including the itemized amounts, defined in the original Qualified Acceptance Letter, and that he will commence with any such arbitration claim or suit within 820 calendar days from and after the time of final acceptance of the work and that his failure to file a formal claim within this period constitutes his full acceptance of the

Engineer's final estimate and payment. The overpayment refund check from the Contractor, if required, will be considered a part of any Acceptance Letter executed.

(b) The Contractor has properly maintained the project, as specified hereinbefore.

(c) The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7-13.

(d) The surety on the Contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of his portion, to final payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.

(e) The Contractor has complied with and settled all requirements pertaining to any wage-rate provisions.

(f) The Contractor has furnished all required mill tests and analysis reports to the Engineer.

(g) The Contractor has submitted the Form FHWA-47 (formerly known as PR-47) Record of Materials and Labor on Federal-aid Projects, to the Engineer for transmittal to the FHWA. This submittal is required on all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000.

(h) The Contractor has furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final certification of compliance with the requirements of Section 105 to accompany the final estimate. Certification must be on a form provided by the Engineer.

### **9-9 Interest Due on Delayed Payments.**

The Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.

### **9-10 Offsetting Payments.**

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is hereby made a part of this Contract:

(1) After settlement, arbitration, or final adjudication of any claim of the Department for work done pursuant to a construction contract with any party, the Department may offset such amount from payments due for work done on any construction contract, excluding amounts owed to subcontractors, suppliers, and

laborers, which it has with the party owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department.

(2) Offsetting any amount pursuant to (1) above shall not be considered a breach of Contract by the Department.