DESIGN-BUILD SPECIFICATIONS.
(8-21-12) (11-12)

DIVISION I

GENERAL REQUIREMENTS AND COVENANTS

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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.

1-2 Abbreviations.

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

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association

ISO	International Organization for Standards
MSTCSD	Minimum Specifications for Traffic Control Signals and Devices
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
SI	International System of Units
SSPC	Steel Structures Painting Council
UL	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:

Adjusted Score-Design/Build.

A Design/Build Contract on which the Contract award is based on the lowest adjusted score.

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".

Architect.

The Architect as defined in Section481.203 (3) Florida Statutes.

Architect of Record.

The Architect or Architectural Firm registered in the State of Florida that performs services for the Design-Build Firm in connection with the design and construction of buildings.

Architecture.

The practice of architecture as defined in Section 481.203(6) Florida Statutes**.**

Article.

The numbered prime subdivision of a Section of these Specifications.

Bid Proposal.

Bid Proposal means a separate technical proposal and a sealed price proposal submitted by each Design-Build Firm.

Bidder.

An individual, firm, or corporation submitting a proposal for the proposed work. The word "Bidder" is also be deemed to include a Design-Build Firm 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.

Consultant.

The Professional Engineer or Engineering Firm, or the Architect or Architectural Firm, registered in the State of Florida and under Contract to the Department to perform professional services. The consultant may be the Engineer or Architect of Record or may provide services through and be subcontracted to the Engineer or Architect of Record.

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 Section 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 , Request for Proposal (RFP), the Design and Construction Criteria Package, the Technical and Price 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, Design Liability Insurance, Specifications, plans (including revisions thereto issued during construction), Addenda, written statements or transcripts or minutes of oral representation by Design-Build Firm made at oral presentations, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, work 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 work orders, and supplemental agreements. As used in Section 2 only, Contract Documents 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 sealed price proposal of 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. The word "Contractor" is also deemed to include a Design-Build Firm contracting with the Department for performance of work, including all engineering services and furnishing of materials.

Contractor's Engineer of Record.

A Professional Engineer registered in the State of Florida, who undertakes the design and drawing of components of the permanent structure 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 the Engineer of Record. 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.

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, material men, suppliers or other agents. This term does not include "extra work".

Department.

State of Florida Department of Transportation.

Design and Construction Criteria Package (DCC).

Criteria for Contractor Prepared Design, Project Concept Report, Scope of Work and Service, and all other documents attached thereto; and which, together set forth the criteria for work to be provided to complete this Contract.

Design-Build (D-B).

Design-Build means combining the project's design and construction phases, and in some cases construction engineering and inspection, into a single Contract.

Design-Build Firm.

Design-Build Firm means any company, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice engineering, architecture, and construction contracting, as appropriate, in the State of Florida.

Designer of Record.

The Architect of Record or the Engineer of Record.

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 (EOR).

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 Contract Documents. The Engineer of Record shall be a part of the Design Build Firm.

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 is 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.

Low Bid Design Build.

A Design/Build Contract on which the Contract award is based on the lowest responsive bid.

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 signed and sealed plans prepared by the EOR and accepted by the Department, including reproductions thereof, showing the location, character, dimensions, and details of the work. Upon review by the Department, the plans will be stamped "Released for Construction" dated and initialed by the reviewer.

Project.

Project means the project to be designed and constructed as described in the public advertisement.

Project Manager.

The Department's designee responsible for the administration of the Design-Build Contract.

Proposal.

Technical Proposal: The bidder's submittal in response to the technical requirements set forth in the Department's Request for Proposal.

Price Proposal: The bidder's submittal, on the prescribed form, in response to the price requirements set forth in the Department's Request for Proposal.

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.

Request for Proposal. (RFP)

The package to be provided to the short-listed design-build firms in the adjusted score design-build method and to those design-build firms requesting a RFP in the low bid design-build method. The RFP defines all functions and responsibilities by the firm.

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.

Shoulder.

The paved or unpaved portion of the roadbed outside the edges of the traveled way or back of curb, and extending to the top of front slopes.

Special Event.

Any event, including but not limited to, a festival, fair, run or race, motorcade, parade, civic activity, cultural activity, charity or fund drive, sporting event, or similar activity designated in the Contract Documents.

Special Provisions.

See definition for Specifications.

Specialty Engineer.

A Professional Engineer registered in the State of Florida, 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 Design Build Firm and responsible for the performance of the Contract and for payment of all legal debts pertaining thereto.

Technical Special Provisions Requirements.
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(12), Florida Statutes (2009), 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 executing and completing the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.

Work Order.

A written agreement between the Contractor and the Department modifying the Contract within the limitations set forth in these Specifications. Funds for this agreement are drawn against the Initial Contingency Pay Item or a Contingency Supplemental Agreement.

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.

Bidders shall prequalify in accordance Section 337-14, Florida Statutes and Rule 14-22, Florida Administrative Code.

Pursuant to Section 287.133, Florida Statutes, 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 crime 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.

2-2 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. Do not detach any papers bound with or attached to the proposal.

2-3 Interpretation of Estimated Quantities.

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.

2-3.1 Lump Sum Contracts: Not applicable.

2-3.2 Contracts other than Lump Sum: Not applicable.

2-4 Examination of Contract Documents 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.

Direct all questions to the Department by posting them to the Department's website at the following URL address: www2.dot.state.fl.us/construction/bidquestionmain.asp. Questions posted to this site before 5:00 P.M. (EST) on the day shown in the Schedule of Events in the Request for Proposal will be responded to by the Department. For questions posted after this time, an answer cannot be assured. For all questions posted before the deadline, the Department will provide and post responses at the same website before 8:00 A.M. (EST) on the second calendar day prior to bid opening. Take responsibility to review and be familiar with all questions and responses posted to this website make any necessary adjustments in the proposal accordingly. If the Department's web site cannot be accessed, contact _____ at _____.

When, in the sole judgment of the Department, responses to questions require plans revisions, specifications revisions and/or addenda, the Contracts Office will issue them as necessary.

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: A proposal is irregular or non-responsive if it does not meet the requirements of the Request for Proposal (RFP) and may be rejected by the Department.

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 indicate 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 and the firm name of the partnership, if any, and have two or more of the general partners sign the proposal. Also, indicate 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. Also, affix the corporate seal, and indicate the corporation's bidding office street address. If made by a limited liability company, execute the proposal by setting out the

company name and have the manager or authorized member sign the proposal. If made by a limited venture, execute the proposal by setting out the joint venture name and have the authorized parties sign the proposal.

If made by a joint venture, the individual so empowered by a properly executed Declaration of Joint Venture and Power of Attorney Form shall execute the proposal.

The bidder will be required to identify the Engineer of Record, who will be responsible for the engineering design portion on the Contract and CEI if required in the RFP.

Establish the number of Calendar Days necessary to complete the work in accordance with the Contract Documents and show this number of Calendar Days in the proposal. For purposes of this Contract, this number of Calendar Days will serve as the Original Contract Time. For this Contract, the Department will reject any bid in which the bidder submits proposed Contract Time in excess of the Department's established Contract Time.

2-5.2 Declaration of Noncollusion: File with the Department Form 375-020-12, 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.

Submit all price proposals in sealed envelopes, bearing on the outside the name of the bidder, the bidder's address, and the Financial Project Number 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 Request for Proposal. 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 Request for Proposal. The Department will return proposals received after the time set for opening bids to the bidder unopened.

2-9 Withdrawal or Revision of Proposals. (Bid Proposal Only)

A bidder may withdraw a proposal after submitting it, provided the Department receives a written request to withdraw 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) price proposal changes will be accepted if received in full at the fax number listed in the Bid Solicitation Notice by the time price proposals are due on the day of the bid opening 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 price 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 price 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 price proposal change will not be considered grounds for a bid protest.

2-10 Opening of Proposals.

The Department will open and publicly announced technical scores (if applicable) and price proposals at the time and place indicated in the Request for Proposal. 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.

(k) Design-Build Firms wherein the same Engineer of Record is identified in more than one proposal.

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.

(1) Technical and price proposals will be received from those firms deemed to be the most highly qualified by the Selection Committee and Proposal Evaluators and approved under Rule 14-91 F.A.C. A pre-proposal conference may be held shortly after the selection of the short listed firms. Proposals shall be segmented into two packages:

(A) Technical Proposal. A technical proposal shall include preliminary design plans, preliminary specifications and special requirements, technical reports, calculations, proposed contract time along with schedules, and other data requested in response to the Request for Proposal, which includes the Design and Construction Criteria Package.

(B) Price Proposal. Price proposals shall include one lump sum price for all design, geotechnical surveys, and construction of the proposed project, preliminary design submittal reports, services, and all other data requested in response to the Request for Proposal, which includes the Design and Construction Criteria Package. The price proposal shall also include the Design-Build Firm's proposed contract time, when required by the Request for Proposal.

(a) Low Bid: For the purpose of award, after opening and reading the proposals, the Department will consider the total Contract Lump Sum Price as the bid. 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. In the event of any discrepancy in the two entries of the Contract Lump Sum Price, the Department will evaluate the bid based on the lump sum price shown in words.

(b) Adjusted Score: For the purposes of this Contract, the Daily Value in the pre-established, per day monetary amount stated in the RFP to which the Design-Build Firm is responding. The proposed contract time in days included in the Design-Build Firm's Price Proposal shall be multiplied times the Daily Value and the product added to the Lump Sum Price Proposal to determine the Time-Adjusted Price. The lowest responsive bid will be determined by the Department as the lowest Time-Adjusted Price. The Time-Adjusted Price will be used for selection purposes only and shall not affect the Department's liquidated damages schedule or constitute an incentive/disincentive to the Contract.

(2) The Proposal Evaluators shall review the technical proposal submitted by each firm and shall establish a technical score for each firm based on the criteria identified in the RFP and any addenda. Scores are provided to Professional Services who use them in calculating the adjusted score, which is announced at the public opening. (For low-bid Design-Build projects the Review Committee will approve award to the lowest responsive bid).

3-1.1 Selection for Design-Build Contract:

(1) The Selection Committee shall be comprised of the District Secretary, the appropriate Director, the appropriate Office Head, or their designees.

(2) The RFP shall set a date for publicly announcing the technical scores and opening the price proposals. The Department shall notify all firms submitting technical and price proposals at least three days prior to the opening date. The notification shall include the date, time, and place of the opening of the bid proposals for the project.

(3) The Selection Committee shall publicly announce the technical scores (if applicable) and open the sealed price proposals at the time and place indicated in the Request for Proposal. The firm selected will be the firm that has the lowest adjusted score. Unless all proposals are rejected, the Final Selection Committee may approve an award to the firm with the lowest adjusted score and enter into a Contract for the price proposed. The Department reserves the right to reject all bid proposals. The Department invites bidders, their authorized agents, and other interested parties to attend.

(4) The Department shall provide written notification by mail to each firm submitting a proposal of the award of the project or rejection of all proposals within 30 days of the opening of the bid proposals.

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 extends 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.

The award of the Contract shall be as described in Article 3-1.

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 lowest bidders (short listed firms not selected) immediately following the opening and checking of the proposals. The Department will immediately release the proposal guaranties of the short listed

firms not selected 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 $250,000 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 as to Payment and Performance Claims or Suits: 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, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely do so. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which 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 employee.

3-6 Execution of Contract and Bond.

Within 10 calendar days, excluding Saturdays, Sundays and Holidays after receipt of the 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. 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 3-5.1.

The Department will execute the Contract within 5 calendar days, excluding Saturdays, Sundays and Holidays 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 10 calendar days, excluding Saturdays, Sundays and Holidays, of the receipt of the Contract award, the Department may annul the award, causing the bidder to forfeit the proposal guaranty to the Department and any rights of receiving a stipend; 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 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.

Retain all records pertaining to the Contract for a period of not less than three years from the date of the Engineer's final acceptance of the project, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the Department or its representative(s). For the purpose of this Article, records include but are not limited to all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract provisions.

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 engineering services, furnishing of materials, construction, and completion in every detail of the work described in this Contract. The Design-Build Firm shall furnish all engineering and all of its associated direct and indirect costs, construction labor, materials, equipment, supervision, tools, transportation, and supplies required to complete the work in accordance with the requirements of the Contract Documents. The terms and conditions of this Contract are fixed price and fixed time. The Contractor's submitted bid (time and cost) is to be a lump sum bid for completing the scope of work detailed in the Contract.

The Design-Build Firm shall have all liability and responsibility for all unknowns and/or differing site conditions; and including but not limited to any or all utilities, subsoil conditions, permits, etc. of any nature or kind, unless otherwise stated in the Contract. In the event that unforeseeable work is provided for in the Contract, such work shall be paid for in accordance with 4-3.2.

No substantial change, as determined at the sole discretion of the Engineer, in general plan or character of the work shall be made without written agreement by the Engineer. The plans shall be dated, stamped, and signed and sealed by the EOR and shall be transmitted to the Engineer for the project records. The Design-Build Firm shall schedule the transmittal so that the Engineer receives the plans and shop drawings at least 15 working days prior to commencement of any portion of work described in the plans.

Pay adjustments as shown in the Contract Documents, regardless of where those pay adjustments are referenced, shall not apply, except as provided in 9-2, Scope of Payments.

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, Special Provisions or Technical Specifications for the Contract and all requirements of such Supplemental Specifications, Special Provisions or Technical Specifications 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, alterations or changes, 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 alterations or changes 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 or changed, the same as if it had been a part of the original Contract.

The term "significant change" applies only when 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. The allowance due to the Contractor will be in accordance with 4-3.2, below.

In the instance of an alleged "significant change", the determination by the Engineer shall be conclusive. If the determination is challenged by the Contractor in any proceeding, the Contractor must establish by clear and convincing proof that the determination by the Engineer was without any reasonable 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 at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

(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.

(e) Engineering Services: For professional engineering services, the

Contractor will receive negotiated costs of such engineering services necessary to perform the work. Negotiated cost of such engineering services shall be prepared utilizing the current "Standard Scope and Staff Hour Estimation Handbook" developed jointly between the Florida Institute of Consulting Engineers (FICE) and the FDOT, and the Department's "Negotiation Handbook" for professional Services contracts. The Standard Scope and Staff Estimate Guidelines are available at the following link:
http://www.dot.state.fl.us/projectmanagementoffice/Scope/Design.shtm
The Negotiation Handbook can be accessed at the following link:
http://www.dot.state.fl.us/procurement/Negotiations.shtm . Should the Engineering Firm be a Joint Venture Partner of the Contractor, no markup will be allowed on engineering services.

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: A Supplemental Agreement will be used to settle documented Contract claims in accordance with the intent of the original Contract and subsequent amendments thereto.

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 of 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, or joint project agreements.

4-3.9 Cost Savings Initiative Proposal:

4-3.9.1 Intent and Objective:

(1) This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Proposal) that the Contractor initiates and develops, following the submission of technical and price proposals, for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. A mandatory Cost Savings Initiative Workshop for the Contractor and Department to discuss potential Proposals will be held within 30 calendar days following the issuance of the Notice to Proceed.

(2) The Department will consider Proposals that would result in net savings to the Department by providing a decrease in the cost of the Contract. Proposals 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 Proposals when the required functions and characteristics can be combined, reduced or eliminated because they are nonessential or excessive.

(3) The Department reserves the right to reject at its discretion any Proposal submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending the Department’s execution of a formal supplemental agreement implementing an approved Proposal, the Contractor shall remain obligated to perform

the work in accordance with the terms of the existing Contract. The Department may grant time extensions to allow for the time required to develop and review a Proposal.

(4) The Department reserves the right to reject at its discretion any Proposal submitted which is based on or related to a previously rejected Alternative Technical Concept proposal submitted during the procurement process.

(5) Prior to the development of a potential Proposal, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal.

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 Proposals from subcontractors. However, it is not mandatory to submit Proposals to the Department or to accept or transmit subcontractor proposed Proposals to the Department.

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

(1) a description of the difference between the existing Contract requirement, including any time extension request, 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. Identify additional proposed work not covered by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond costs within pay items.

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

(4) 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 Proposal 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 Proposal 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.

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

(6) a revised project schedule that would be followed upon approval of the Proposal. 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 Proposal to the Engineer or his duly authorized representative. The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The Department is not liable for any Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal.

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

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

4-3.9.5 Computations for Change in Contract Cost of Performance: If the Proposal is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the Proposal.

The Department will not include its costs to process and implement a Proposal 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 Proposal 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 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges: A Proposal 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 relating to the Proposal shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purposes of this article as the Independent Review Engineer pre-qualified by the Department in accordance with Rule 14-75 and who is not the originator of the Proposal design Florida Administrative Code. The independent peer review is intended to be a comprehensive, thorough verification of the original work, giving assurance that the design is in compliance with all Department requirements. The Independent Review Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The Independent Review Engineer shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the Independent Review Engineer shall specifically list all unresolved issues in the signed and sealed cover letter.

The Contractor shall designate a primary engineer responsible for the Proposal design and as such will be designated as the Contractors Engineer of Record for the Proposal design.

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

4-3.9.7 Sharing Arrangements: If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and the Department. The net reduction will be determined by subtracting from the savings of the construction costs the

reasonable documented engineering costs incurred by the contractor to design and develop a Proposal. Engineering costs will be based on the consultant's certified invoice and may include the costs of the Independent Review Engineer in 4-3.9.6. The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor. Engineering costs shall only be considered for Proposals initiated after plans have been stamped "Released for Construction" by the Department as described in the Request for Proposal.

4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a Proposal:

4-3.9.8.1 Notice of Intellectual Property Interests: The Contractor's Proposal 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 Proposal development, have or may have that are in whole or in part implicated in the Proposal. 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 Proposal 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.

4-3.9.8.2 Department's Future Rights to a Proposal: Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a Proposal, 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 Proposal 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 4-3.9.8.1, unless the Department has by express written exception in the Proposal 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. Such adjustment will be made by Work Order when the Contract Documents provide for Contingency Work. When the Contract Documents do not provide for Contingency Work or the available funds for Contingency Work are insufficient, such adjustment will be made by Supplemental Agreement. The cost of unforeseeable work will be a negotiated amount or, in lieu of negotiations or other agreement, an amount based on material invoices, equipment costs, labor payrolls, and markups provided in 4-3.2.

Contingency Work, as used in this Article, is defined as possible additional work required to satisfactorily complete the Contract within its intended scope.

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. The Contractor is responsible to determine if any existing materials are the property of others and so indicate it on the plans. Additionally it is the Contractor's responsibility to coordinate with the property owner for proper removal and storage to perform the work.

Disposal of the existing bridge components shall be the responsibility of the Design-Build Firm.

4-5.2 Ornamental Trees and Shrubs: Take ownership of all ornamental trees or shrubs existing in the right-of-way that is required to be removed for the construction operations Coordinate with adjacent property owners concerning disposition of ornamental trees and shrubs. Designate on the plans those 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. Restore these areas in accordance with 7-11.1 and 7-11.2. Grass these areas as necessary.

When working adjacent to or over travel lanes, ensure that dust, mud and other debris does not interfere with normal traffic operations or adjacent properties.

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. All reference to separate payment for individual items of work will not apply. The cost for various items of work will be included and paid for under the Contract Lump Sum Price.

5-1.2 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.

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. In addition to the work and materials specifically called for in the Contract Documents and any 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 will be included in the Contract Lump Sum Price.

5-1.3 Alterations in Plans: Not applicable.

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 but is not limited to bracing, falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, and special erection equipment.

(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) Bracing is a temporary structural member(s) placed between beams, girders, piles columns, etc. to provide stability during construction activities.

(l) 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 construction operations, and prior to the submission of any shop drawings.

Coordinate subsequent submittals with construction schedules to allow sufficient time for review 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 signature and embossed seal of the Specialty Engineer or Contractor's Engineer of Record. 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 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 signature and embossed seal of the Specialty Engineer or Contractor's Engineer of Record.

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.

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.

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, bracing, 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 Falsework Founded on Shallow Foundations: When vertical displacement limits are provided in the Plans for falsework founded on shallow foundations such as spread footings and mats, submit to the Engineer of Record shop drawings and applicable calculations of the falsework system including subsurface conditions and settlement estimates. 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 transmitted letters in accordance with the requirements of 5-1.4.5.1 through 5-1.4.5.3, as appropriate.

5-1.4.5.6 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.

5-1.4.5.7 Beam and Girder Temporary Bracing: The Contractor is solely responsible for ensuring stability of beams and girders during all handling, storage, shipping and erection. Adequately brace beams and girders to resist wind, weight of forms and other temporary loads, especially those eccentric to the vertical axis of the products, considering actual beam geometry and support conditions during all stages of erection and deck construction. At a minimum, provide temporary bracing at each end of each beam or girder. Develop the required bracing designs in accordance with the AASHTO LRFD Bridge Design Specifications (LRFD) using wind loads specified in the Structures Design Guidelines (SDG). For information not included in the SDG or LRFD, refer to the AASHTO Guide Design Specifications for Bridge Temporary Works and Construction Handbook for Bridge Temporary Works.

For Construction Affecting Public Safety, when temporary bracing requirements are shown in the plans, submit plans and calculations signed and sealed by a Specialty Engineer for the design of temporary bracing members and connections based on the forces shown in the plans. In addition, submit a written certification that construction loads do not exceed the assumed loads shown in the plans.

For Construction Affecting Public Safety, when temporary bracing requirements are not shown in the plans or an alternate temporary bracing system is proposed, submit plans and calculations signed and sealed by a Specialty Engineer including the stability analysis and design of temporary bracing members and connections.

5-1.4.5.8 Erection Plan: Submit, for the Engineer's review, an Erection Plan that meets the specific requirements of Sections 450, 452 and 460 and this section. Refer to Index 600 for construction activities not permitted over traffic.

5-1.4.5.9 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 valid 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.

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 in-depth 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 Cost Savings Initiative 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 such 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.

5-1.5.4 Erection: For Construction Affecting Public Safety, submit an erection plan signed and sealed by the Specialty Engineer to the Engineer at least four weeks prior to erection commencing. Include as part of this submittal signed and sealed calculations and details for any falsework, bracing or other connection(s) supporting the structural elements shown in the erection plan.

At least two weeks prior to beginning erection, conduct a Pre-erection meeting to review the details of the plan with the Specialty Engineer that signed and sealed the plan, any Specialty Engineers that may inspect the work, and the Engineer.

After erection of the elements, but prior to opening of the facility below the structure, ensure that a Specialty Engineer that is qualified to inspect temporary works has personally inspected the erected member(s) and certified to the Engineer that the structure has been erected in accordance with the signed and sealed erection plan.

Perform daily inspections of the erected structural systems. For structures without temporary supports but with temporary girder bracing systems, perform inspections until all the diaphragms and cross frames are in place. For structures with temporary supports, perform inspections until the temporary supports are no longer needed as indicated in the erection plans. Provide written documentation of the inspections to the Engineer within 24 hours of the inspection

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. In addition to the work and materials specifically called for in the Contract Documents and any 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 will be included in the Contract Lump Sum Price.

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

1. Request for Proposal (RFP) Packages
2. Special Provisions
3. Technical Special Provisions
4. Plans
5. Design Standards
6. Developmental Specification
7. Supplemental Specifications
8. Standard Specifications

Computed dimensions govern over scaled dimensions.

5-3 Conformity of Work with Contract Documents.

Perform all work and furnish all materials in 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.

Errors and omissions discovered in the plans or specifications are the total responsibility of the Design-Build Firm. The errors and omissions shall be brought to the attention of the Engineer of Record as well as the Engineer. Resolution of the question by the Engineer of Record is intended, and will be at no additional cost to the Department. All such modifications are subject to approval of the Engineer.

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.

Not Applicable.

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 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, 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.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written 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 certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written 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 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 and a request for Contract Time

extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the 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 and duly certified pursuant to 5-12.9. 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 and duly certified pursuant to 5-12.9, 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.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the 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, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the 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 and duly certified pursuant to 5-12.9.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

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 (a) and (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 certified 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 prejudgment 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, supplemental agreements, work orders, 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 be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(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 neither 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.

5-14 Value Added Project Features.

5-14.1 Description: Construct Value Added Project Features consisting of those features provided for in the Design and Construction Criteria and/or the Technical Proposal.

The Contractor shall assume responsibility for all the associated guaranteed work specified in this Article for a minimum period of five years, unless otherwise stated in the Contract, after final acceptance of the Contract in accordance with 5-11, including continued responsibility as to any deficiencies to which notice was provided to the Contractor within such guarantee period until all such pre-existing deficiencies are resolved.

5-14.2 Responsible Party: For the purpose of this Specification, the Contractor shall be the responsible party unless otherwise agreed to in writing by the Department.

Upon final acceptance of the Contract in accordance with 5-11, the Contractor's responsibility for maintenance of all the work or facilities within the project limits of the Contract will terminate in accordance with 5-11; with the sole exception that the obligations set forth in this Article for Value Added Project Features shall continue thereafter to be responsibility of the Contractor as otherwise provided in this Article.

5-14.3 Evaluation and Remedial Work: Identify in the Technical Proposal each guaranteed feature with its associated type of distress and threshold values defining the extent and magnitude of such distresses that will necessitate remedial work. The Contractor will

conduct a review of the Value Added Project Features during the guarantee period in accordance with the frequency established in the contract, but in any case, at least once annually. The Department may conduct a review at intermediate times as determined necessary by the Department. Conduct final review, no later than forty five calendar days before the end of guarantee period for each item.

All reviews by the Contractor will be conducted at no cost to the Department. The Department will be advised of the review schedule at least seven calendar days prior to the review-taking place. The results of the review, intermediate or final, shall be made available to the Department within fifteen calendar days after completion of the review.

If the review findings, intermediate or final, are not accepted by the Department, the Department will provide written notification to the Contractor within thirty calendar days of the date of receipt of the results of the review.

During the guarantee period, the Contractor may monitor the project using nondestructive procedures. The Contractor shall not conduct any coring, milling or other destructive procedures without prior approval by the Department.

If a measured distress value indicates remedial action is required per the contract, the Contractor shall begin remedial work within forty five calendar days of the Contractor's review or a ruling of the Statewide Disputes Review Board that the Contractor is responsible for the remedial action required to correct the measured distress, whichever is later. The Department will determine the allowable duration for the completion of the remedial work.

In the event remedial action is necessary and forensic information is required to determine the source of the distress, obtain approval of the Department prior to starting any forensic activities. All forensic activities shall be at no cost to the Department. The Department will not be responsible for damages to the Value Added Project Features as a result of any forensic activities conducted by the Contractor.

The Contractor has the first option to perform all remedial work that is determined by the Department to be the Contractor's responsibility. If, in the opinion of the Department, the feature showing distress poses an immediate danger to the traveling public and the Contractor cannot begin remedial work within the time frame established by the Department, the Department has the authority to have the remedial work performed by other forces. The Contractor is responsible for all incurred costs of the work performed by other forces should the problem (remedial work) be determined to be its responsibility. Remedial work performed by other forces does not alter any of the requirements, responsibilities or obligations of the Contractor.

The Contractor shall complete all remedial work to the satisfaction of the Department. Any disputes regarding the adequacy of the remedial work will be resolved by the Statewide Disputes Review Board in accordance with 5-14.4. Approval of remedial work does not relieve the Contractor from continuing responsibility under the provisions of this specification.

Notify the Department in writing prior to beginning any remedial work. Meet the requirements of the Contract when performing any remedial work.

Perform all remedial work at no cost to the Department. If remedial work necessitates a corrective action to the pavement markings, adjacent lane (s), roadway shoulders, or any other elements, perform these corrective actions using similar products at no additional cost to the Department.

5-14.4 Disputes Resolution: The Statewide Disputes Review Board in accordance with 8-3.8 will be utilized to resolve any and all disputes that may arise involving administration and enforcement of this Specification.

5-14.5 Value Added Work: During the guarantee period, the Contractor shall perform all necessary remedial work described in the Contract. Should an impasse develop in any regard as to the need for remedial work or the extent required, the Statewide Disputes Review Board would render a final decision.

The maintenance obligation for Value Added Project Features will not apply to deficiencies if any one of the following factors is found to be beyond the control of the Contractor:

a. Determination that the deficiency was due to the failure of the other features not a part of the contract.

b. Determination that the deficiency was the responsibility of a third party performing work not included in the contract.

5-14.6 Failure to Perform: Should the Contractor fail to timely submit any dispute to the Statewide Dispute Review Board, refuse to submit any dispute to the Statewide Dispute Review Board, fail to satisfactorily perform any remedial work within the duration allowed by the Department, or fail to compensate the Department for any remedial work performed by the Department, as determined by the Statewide Disputes Review Board to be the Contractor's responsibility, the Department shall suspend, revoke or deny the Contractor's certificate of qualification under the terms of Section 337.16(d)(2), Florida Statutes, until the remedial work has been satisfactorily performed or full and complete payment for the remedial work made to the Department.

In no case shall the period of suspension, revocation, or denial of the Contractor's certificate of qualification be less than six months. Should the Contractor choose to challenge the Department's notification of intent for suspension, revocation or denial of qualification and the Department's action is upheld, the Contractor shall have its qualification suspended for a minimum of six months or until the remedial action is satisfactorily performed, whichever is longer.

5-14.7 Traffic Control: During maintenance work operations, perform all signing and traffic control in accordance with the current edition of the Department's Roadway and Traffic Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System. Provide Maintenance of Traffic during remedial work at no additional cost to the Department. Lane closure restrictions listed in the original Contract will apply to remedial work. Notification of lane closure for remedial work must be made to the Department forty eight hours in advance. Obtain a Maintenance Permit prior to performing any guarantee work operations.

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 material, 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 the 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 Documents, 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: Provide complete certifications for materials as required. Furnish to the Engineer for approval, Producer Certifications for all products listed on the Qualified Products List and when required by the applicable material Specification(s). Do not incorporate any manufactured products or materials 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 and notarized.

6-1.3.1.1 Qualified Products List: The Product Evaluation Section in the State Specifications and Estimates Office publishes and maintains a Qualified Products List. This 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 Qualified Products List effective at the time of placement.

Manufacturers seeking evaluation in accordance with Departmental procedures of an item must submit a Product Evaluation Application, available on the Department's website http://www.dot.state.fl.us/specificationsoffice/ProductEvaluation/QPL/Default.shtm, with supporting documentation as defined and detailed by the applicable Specifications and Standards. This may include certified test reports from an independent test laboratory, certification that the material meets all applicable specifications, signed and sealed drawings and calculations, quality control plans, samples, infrared scans, or other technical data.

Manufacturers successfully completing the Department's evaluation are eligible for inclusion on the Qualified Products List. 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 Qualified Products List.

6-1.3.1.2 Approved Products List: The State Traffic Operations Office maintains the Approved Products List of Traffic Control Signal Devices. Traffic Monitoring Site Equipment and Materials are also included on the Approved Products List. 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 Approved Products List 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, http://www3.dot.state.fl.us/trafficcontrolproducts/ . Manufacturers seeking evaluation of a specific device must submit an application which can be obtained from the State Traffic Operations Office.

6-1.3.2 Contractor Installation Certification: Provide installation certifications as required by the Contract Documents.

6-1.3.3 Lump Sum Project General Requirements: Material is accepted by material sampling and testing requirements for the following work activities: Earthwork and Related Operations, Base Courses, Hot Bituminous Mixtures, Portland Cement Concrete, and Reinforcing Steel as stated in 9-11.1. Fabricated metal acceptance will be in accordance with 9-11.2. All other material acceptance will be in accordance with 6-1.

6-1.3.4 Certification on Qualified Products List (QPL) Products: Submit to the Engineer a notarized manufacturer's certification on each QPL product that will be incorporated in the project. Submit the certification prior to utilization of the material on the project. Each certification will have the manufacturer letterhead, product name, batch number, FPID, Contract Number, category, county, title of certification person and test results in each product listed in the Department Specification. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. This letter will be delivered to the jobsite prior to placement or utilization. Retain test results for a minimum of three years.

6-1.3.5 Certification on all Other Materials Not Specified: Submit to the Engineer a notarized manufacturer's certification on each product that will be incorporated in the project. Submit the certification prior to utilization on the project. Each certification will have the manufacturer letterhead, identification and type of material, FPID, Contract Number, county, test results of the material and notarized signature from the manufacturer. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. Retain test results for a minimum of three years.

6-2 Applicable Documented Authorities other than Specifications.

6-2.1 General: Details on individual materials are identified in various material specific Sections of the Specifications that may refer to other documented authorities for requirements. When specified, meet the requirements as defined in such references.

6-2.2 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.

6-2.3 Construction Aggregates: Aggregates used on Department projects must be in accordance with Rule 14-103, FAC.

6-3 Storage of Materials and Samples.

6-3.1 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.

6-3.2 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 Documents. Provide any additional space required at no expense to the Department.

6-3.3 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.

6-3.4 Storage Facilities For Samples: Provide facilities for storage of samples as described in the Contract Documents and warranted by the test methods and Specifications.

6-4 Defective Materials.

Materials not meeting the requirements of these Specifications will be considered defective. 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 has the authority to have the defective material removed and replaced by other forces and deduct the cost of removal and replacement from any moneys due or to become due the Contractor.

As an exception to the above, within 30 calendar days of the termination of the LOT or rejection of the material, the Contractor may submit a proposed scope of work to the Engineer for an engineering or independent laboratory (as approved by the Engineer) analysis to determine the disposition of the material. 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. Upon the Engineer's approval of the scope of work submitted by the Contractor, the engineering analysis must be completed and the report must be submitted to the Engineer within 45 calendar days, or other time frame as approved by the Engineer. The report must be signed and sealed by the Specialty Engineer. 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.

6-5 Products and Source of Supply.

6-5.1 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.

6-5.2 Source of Supply-Steel: 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. Prior to 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.

6-5.3 Contaminated, 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: http://www2.dot.state.fl.us/SpecificationsEstimates/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.

The FHWA-1273 Electronic version, dated May1, 2012 is posted on the Department's website at the following URL address http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/FHWA1273.pdf. Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Comply with the provisions contained in FHWA-1273.

In addition to the requirements of FHWA-1273, Section IV, No. 3(a), include gender and race of each employee in the weekly annotated payroll records.

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

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

3031 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 6C-52 and Rule 5B-57, of the Florida Administrative Code for the definition of prohibited aquatic plants, plant pests, and noxious weeds.

7-1.4 Compliance with Federal Endangered Species Act and other Wildlife Regulations: The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed on the plans or in permits as identified in 7-2.1.

In addition, in cases where certain protected, threatened or endangered species are found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address:
http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/endangeredwildlifeguidelines.pdf

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

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, disposal sites, field offices, 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, the name of the property owner, and a person to contact to arrange a site inspection. 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 the Department's investigation determines a potential impact to a

protected, threatened or endangered species and mitigation measures or permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities.

7-1.5 Occupational Safety and Health Requirements: 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.

Maintain all permits until work is accepted by the Department.

Complete daily herbicide reports on the forms provided by the Department for each location and submit to the Department weekly, when herbicide applications are occurring.

Adhere to all labeling instruction.

If damage to desirable vegetation occurs as a result of herbicide use, the Department will monitor the impacted vegetation to determine if damage is temporary or

permanent. If the damage is determined to be permanent, replace damaged vegetation at no expense to the Department.

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, 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.

Permits procured by the Department are posted on the Department's web site at the following URL address: ftp://ftp.dot.state.fl.us/permitsandorutilityworkschedules/.

Take responsibility to obtain this information and comply with all requirements posted on this web site up through five calendar days before the opening of bids.

Comply with the provisions contained in these permits. If the Department's web site cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

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 a permit.

Acquire any modifications or revisions to an original permit when such modifications or revisions are necessary to complete the construction operations specified in the Contract Documents 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.

The "State of Florida Department of Environmental Protection (DEP) Generic Permit for Stormwater Discharge from Large and Small Construction Activities" applies to this Contract. Obtain a copy of the permit through the Department's website and comply with the requirements of the permit. The URL for obtaining a copy of the permit is http://www.dot.state.fl.us/specificationsoffice/Implemented/URLinSpecs/Files/DEPPermit.pdf.

In accordance with the requirements of the DEP generic permit, accept responsibility for the following:

(a) Preparation, execution and submission of DEP Generic Permit Notice of Intent (NOI) and payment of associated fee(s)

(b) Preparation and submission of Erosion Control Plan as outlined in Section 104.

(c) Any Contractor initiated SWPPP modifications

(d) Performing inspections using a qualified inspector

(e) Completion of SWPPP construction inspection reports

(f) Executing associated certification forms provided by the Engineer

(g) Preparation, execution and submission of Notice of Termination (NOT) of the DEP Generic Permit coverage.

Use the SWPPP Construction Inspection Form provided by the Engineer to report all inspection findings and to document all corrective actions taken as a result of the inspection. Sign each inspection report and submit it weekly to the Engineer.

7-2.3 As-Built Drawings and Certified Surveys

7-2.3.1 Surface Water Management Systems for Water Management Districts:

As a condition precedent to final acceptance of the project, submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions for all installed and constructed surface water management systems. The as-built drawings and certified survey must satisfy all the requirements and special conditions listed in the Water Management District's Environmental Resource Permit (ERP) and any applicable local permit. The as-built drawings and certified survey must be signed and sealed by an appropriately licensed professional registered in the State of Florida.

If the ERP does not contain specific requirements, provide as-built drawings with the following information as a minimum:

1. Discharge structures: structure identification number, type, locations (latitude and longitude), dimensions and elevations of all, including weirs, bleeders, orifices, gates, pumps, pipes, and oil and grease skimmers.

2. Side bank and underdrain filters, or exfiltration trenches: locations, dimensions and elevations of all, including clean-outs, pipes, connections to control structures and points of discharge to receiving waters.

3. Storage areas for treatment and attenuation: storage area identification number, dimensions, elevations, contours or cross-sections of all, sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems.

4. System grading: dimensions, elevations, contours, final grades or cross-sections to determine contributing drainage areas, flow directions and conveyance of runoff to the system discharge points.

5. Conveyance: dimensions, elevations, contours, final grades or cross-sections of systems utilized to divert off-site runoff around or through the new system.

6. Water levels: existing water elevations and the date determined.

7. Benchmarks: location and description (minimum of one per major water control structure).

7-2.3.2 Bridge Clearances for Projects under the Authority of a U.S. Coast Guard Permit: As a condition precedent to final acceptance of the project, submit to the Engineer a certified survey verifying the as-built clearances described in the U.S. Coast Guard Owner's Certification of Bridge Completion. The certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

7-2.3.3 Projects Under the Authority of a U.S. Army Corps of Engineers Permit: As a condition precedent to final acceptance of the project, submit to the Engineer three copies of as-built drawings and a certified survey verifying the as-built conditions. The as-built drawings and certified survey must satisfy all of the requirements and special conditions listed in the U.S. Army Corps of Engineers permit. The as-built drawings and certified survey must be signed and sealed by a Professional Engineer or Professional Surveyor and Mapper registered in the State of Florida.

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 the Contract documents, the Department will furnish all rights-of-way necessary for the proper completion of the work at no expense to the Contractor.

7-4.1 Right-of-Way Furnished by the Department: 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.

7-4.2 Right-of-Way Furnished by the Contractor: Comply with the Department's Right of Way Manual for all right of way activities, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, with 23 CFR 710, and with 49 CFR 24.

7-4.2.1 Notice to Commence Right of Way Acquisition: If right of way services are included in the Contract, the Department must issue a Notice to Commence Right of Way Acquisition prior to any offer being made to acquire right of way. Environmental approval

(NEPA) and completion of right of way maps, title information and legal descriptions are required prior to the Notice to Commence being issued.

7-4.2.2 Notice to Commence Construction Activities: On Contracts that require additional right of way to be furnished by the Contractor, the Department must issue a Notice to Commence Construction Activities prior to the start of any construction activities on the project or any portion thereof. This requirement is applicable whether the right of way services are included in the Design Build Contract or will be handled separately. The notice to commence may not be issued until such time as the right of way necessary to support those construction activities is acquired and a right of way certification for construction is issued.

7-4.2.3 Hold Off Zones Around Occupied Properties: At the time that a portion of a project is to be certified for construction, a determination of the need for hold off zones must be made by the Department. When a notice to commence construction activities has been issued on a portion of the project, there must be a provision in the Contract that requires a hold off zone between the property on which construction activities are to take place and any occupied properties adjacent thereto for which a notice to commence construction has not yet been issued. The notice to commence construction activities must also contain the details of the hold off zone, including the location and limits established by the Department. The location and the limits of the hold off zone must consider that for all occupied properties the Contractor must: maintain reasonable access; maintain utility services; not cause any excessive vibration, dust or noise; or have any open burning within 1,000 feet. The Department's Project Manager will make a decision regarding the extent of the hold off zone on a case-by-case basis with input from the Right of Way Project Manager and the design build firm.

7-4.2.4 Quality Assurance/Quality Control Plan: Provide a Right of Way Quality Assurance/Quality Control Plan. This plan must provide details of the right of way consultant's plan to control, monitor, report on and assure the quality of the delivery of the right of way services.

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 4-3 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. The Contractor's equipment on Department right-of-way shall clearly and legibly identify the Design-Build Firm.

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 Contractor's Engineer of Record 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 Contractor's Engineer of Record 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 Contractor's Engineer of Record 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. 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.

Submit work platform construction plans to the appropriate Coast Guard District for approval. Obtain approval prior to beginning construction on the platform.

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 Contract Documents. 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 Contract Documents 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 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: Not applicable.

7-11.6.2 Cooperation with Utility Owners: Not applicable.

7-11.6.3 Utility Adjustments: Not applicable.

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.

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.

7-11.6.5 General Requirements: The Design-Build Firm shall be responsible for coordinating with all existing utility companies that have facilities within the job limits or which will be affected in any way by the Project and for coordinating all utility work with the Project schedule. The Design-Build Firm shall make every attempt to design around existing utilities, minimizing impacts. Plans shall be provided to the Department showing existing and proposed utility locations and their relationship to the proposed construction. All utility work shall be done in accordance with the criteria and standards contained in the Department's Utility Accommodation Manual.

Pursuant to Section 337.11(7)(a), Florida Statutes, construction activities may not begin on any portion of the Project for which utility agreements have not yet been executed. Design/Build Agreements referenced in 7-11.6.6 below are sufficient to meet this requirement. For utilities where no Design-Build Agreement has been executed, a separate agreement between the utility and the Design-Build Firm must be executed in order to comply with this statutory requirement.

7-11.6.6 Design-Build Agreements: The Department has entered into Design-Build Utility Agreements with certain utility companies that may have utility facilities located within the limits of the Project. Copies of those agreements are provided to the Design-Build Firm as part of the Contract Documents. Those agreements govern the coordination and performance of the utility work for the Project as to the utility entities that have entered into them. The Design-Build Firm shall fully comply with all obligations of the Firm under those agreements.

The Design-Build Firm acknowledges and agrees that the Utility Agency Owners under those agreements are hereby made intended third party beneficiaries of this provision and the provisions of 7-11.6.10 with full rights of enforcement under that status as if they were a party to this Contract as to these provisions. This provision is made a part of the Contract notwithstanding Section 337.11(1), Florida Statutes, it being agreed by the Design-Build Firm and the Department that said statutory provision prohibits a non-party hereto from claiming incidental third party beneficiary rights, but does not prohibit the express creation of an intended third party beneficiary.

7-11.6.7 Utilities Without Design-Build Utility Agreements: The Department makes no representation that Design-Build Agreements have been executed with all utilities that have facilities located with the limits of the Project. For any utility that has not entered into a Design-Build Utility Agreement, the Design-Build Firm shall be responsible for performing or arranging for the performance of all utility work. The Design-Build Firm's responsibilities shall include, but shall not be limited to the following:

1. Locate, by physical exposure and establishment of both vertical and horizontal limits, all existing facilities within right-of-way limits or impacted by the Project not within right-of-way.

2. Notify and keep informed all Utility Agency/Owner of all relevant information related to their facilities.

3. Determine what work is necessary for utilities that are impacted, including, but not limited to:

a. Design around if possible,
b. Protect,
c. Adjust,
d. Relocate,
e. Remove.

4. Make arrangements for any work necessary, including entering into the required utility agreement.

5. Obtain necessary Department permits from all other applicable agencies, and otherwise comply with other applicable laws, including, but not limited to, one call obligations under Chapter 556, Florida Statutes.

6. Coordinate the issuance of utility permits within the project limits for new utility work not necessarily related to the Project in order to assure consistency with the Project.

7-11.6.8 Cost of Utility Work and Conflict Resolution: The Design-Build Firm shall not impact any utility except those identified in the Request for Proposal as being a utility allowed to be impacted by the Project. However, if the Design-Build Firm desires to impact a utility not identified in the Request for Proposal as being an impacted utility, the Design-Build Firm may do so if the utility agrees and there is no additional cost to the Department or time added to the Project as a result thereof. If the project cannot be constructed without impacting additional utilities and the cost of the utility work is not legally the responsibility of the utility, or if the Department's determination as set forth in the Request for Proposal that utility work is to be done at the expense of the utility is in error, the Department will bear the expense of any such utility work.

If a utility is not being impacted by the Project, but the utility owner desires to have utility work performed in connection with the Project, the cost of the utility work will be the responsibility of the utility company. It will be the Design-Build Firm's responsibility to coordinate and resolve all utility impacts with each of the utility companies. In the event of a dispute with or lack of corporation from a utility that does not arise out of or relate to an agreement between the Design Build Firm and the utility, the matter shall be referred to the Department for resolution.

7-11.6.9 Utility Schedules: The utility work to be accomplished concurrently with the highway construction Contract will involve facilities owned by other agencies. Utility Schedules (Utility Relocation and/or Work Schedules) for these agencies may have already been developed. Any existing Utility Schedules are posted on the Department's web site at the following URL address: ftp://ftp.dot.state.f.us/permitsandorutilityworkschedules/ .

Take responsibility to obtain this information and comply with all requirements posted on this web site up through five calendar days before the opening of bids.

Where utility work must be coordinated with highway construction operations, the Department makes no guarantee that any portion of the anticipated utility work

will begin on the day highway construction commences nor does the Department guarantee that such work will be performed on consecutive days.

The anticipated scheduling of new work, adjustments and/or relocation work is included on the Utility Schedules. More precise scheduling to accomplish utility work in the most expeditious manner that is feasible will be established at the preconstruction conference as provided in 8-3.5. The Utility Schedules must be used in conjunction with the utility sheets included in the roadway plans. If the Department's web site cannot be accessed, contact the Department's Specifications office Web Coordinator at (850) 414-4101.

7-11.6.10 Claims Due to Utility Work: No payment, compensation or adjustment of any kind (other than extensions of time for completion as may be otherwise granted pursuant to other provisions of the Contract Documents) shall be made to the Contractor for damages because of hindrances or delays arising out of or connected with the performance of utility work for the project except as a third party beneficiary against a utility entity only as allowed pursuant to the terms and conditions of any Design-Build Utility Agreements that may exist for the project, regardless of the cause of such hindrance or delays and whether such hindrances or delays be avoidable or unavoidable, and the Contractor agrees that it will make no claim for compensation, damages or mitigation of liquidated damages for any such hindrances or delays and will accept any extension of time otherwise granted pursuant to other provisions of the Contract Documents as full satisfaction for such hindrances or delays, except as a third party beneficiary against a utility entity only as allowed pursuant to the terms and conditions of any Design-Build Utility Agreements that may exist for the project; provided that nothing herein shall obligate the Department to grant an extension of time not otherwise due and the failure of the Contractor to be granted an extension of time shall not create any entitlement to compensation, damages or mitigation of liquidated damages.

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 Damage 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 Insured, 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: Certificates of such insurance shall be filed at the time of Contract execution with the District Contracts Administrator. These certificates shall contain a provision that coverages afforded under the polices will not be canceled until at least thirty (30) days after the Department accepts the work.

7-13.7 Professional Liability: The Design-Build Firm shall have and maintain during the period of this Contract, professional liability insurance policy or policies with a company or companies authorized to do business in the State of Florida, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the following amounts:

Total D-B Contract Price	Minimum Coverage Limits
Up to $30 Million	$1 Million coverage
$30 to $75 Million	$2 Million coverage
More than $75 Million	$5 Million coverage

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 Contracts that include Federal Aid Participation, payment of predetermined minimum wages applies.

The U.S. Department of Labor (USDOL) Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) _____, as modified up through ten days prior to the opening of bids.

Obtain the applicable General Decision(s) (Wage Tables) through the Department's Office of Construction website and ensure that employees receive the minimum compensation applicable. Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Engineer's office when needed.

For guidance on the requirements for the payment of wages and benefits and the submittal of certified payrolls, and for general guidance and examples of multiple wage rates when assigned to a Contract, refer to the Department's Office of Construction website. Questions regarding wage rates and the applicability of wage tables should be submitted in accordance with 2-4.

Contact the Department's Wage Rate Coordinator at (850) 414-4492 if the Department's website cannot be accessed or there are questions.

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. 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 is 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.

7-24 Disadvantaged Business Enterprise Program.

7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan: Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three

years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

7-24.2 Required Contract and Subcontract DBE Assurance Language: In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate."

7-24.3 Plan Requirements: Include the following in the DBE Affirmative Action Program Plan:

(a) A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor's organization.

(b) The designation of a Liaison Officer within the Contractor's organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

(c) Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs to apply for certification with the Department.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

7-24.4 DBE Records and Reports: Submit the following through the Equal Opportunity Compliance System:

1. Anticipated DBE Participation Statement within 3 business days after the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Reporting System on the Department's Website, actual payments (including retainage) made to DBEs for work performed

with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

(a) the procedures adopted to comply with these Specifications;

(b) the number of subordinated Contracts on Department projects awarded to DBEs;

(c) the dollar value of the Contracts awarded to DBEs;

(d) the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;

(e) a description of the general categories of Contracts awarded to DBEs; and

(f) the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the Department for review.

Maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

7-24.5 Counting DBE Participation and Commercially Useful Functions: 49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE . DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. On the Anticipated DBE Participation Statement only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Submit a revised Anticipated DBE Participation Statement to reflect changes to the initial Anticipated DBE Participation Statement within 14 business days from the date of the change.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, for example:

(a) The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.

(b)The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

(c) When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(d) When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

(e) The Contractors shall ensure that only expenditures to DBEs that perform a commercially useful function in the work of a contract may be counted toward the voluntary DBE goal.

(f) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(g) To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(h) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

(i) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

7-24.6 Prompt Payments: Meet the requirements of 9-5 for payments to all DBE subcontractors.

7-25 On-The-Job Training Requirements.

As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training aimed at developing full journeymen in the type(s) of trade or job classification(s) involved in the work. In the event the Contractor subcontracts a portion of the Contract work, he/she shall determine how many, if any, of the trainees are to be trained by the subcontractor provided, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Special Provision. The Contractor shall apply the requirements of this Training Special Provision to such subcontract.

The number of trainees will be estimated on the number of calendar days of the Contract, the dollar value, and the scope of work to be performed. The trainee goal will be finalized at a Post-Preconstruction Trainee Evaluation Meeting and the goal will be distributed among the work classifications based on the following criteria:

1) Determine the number of trainees on Federal Aid Contract:

(a) No trainees will be required for Contracts with a Contract Time allowance of less than 225 calendar days.

(b) If the Contract Time allowance is 225 calendar days or more, the number of trainees shall be established in accordance with the following chart:

Estimated Contract Amount	Trainees Required

Estimated Contract Amount	Trainees Required
Under $1,000,000	0
Over $1,000,000 to $4,000,000	2
Over $4,000,000 to $6,000,000	3
Over $6,000,000 to $12,000,000	5
Over $12,000,000 to $18,000,000	7
Over $18,000,000 to $24,000,000	9
Over $24,000,000 to $31,000,000	12
Over $31,000,000 to $37,000,000	13
Over $37,000,000 to $43,000,000	14
Over $43,000,000 to $49,000,000	15
Over $49,000,000 to $55,000,000	16
Over $55,000,000 to $62,000,000	17
Over $62,000,000 to $68,000,000	18
Over $68,000,000 to $74,000,000	19
Over $74,000,000 to $81,000,000	20
Over $81,000,000 to $87,000,000	21
Over $87,000,000 to $93,000,000	22
Over $93,000,000 to $99,000,000	23
Over $99,000,000 to $105,000,000	24
Over $105,000,000 to $112,000,000	25
Over $112,000,000 to $118,000,000	26
Over $118,000,000 to $124,000,000	27
Over $124,000,000 to $130,000,000	28
Over $130,000,000 to *	
*One additional trainee per $6,000,000 of estimated Construction Contract amount over $130,000,000	

Further, if the Contractor or subcontractor requests to utilize banked trainees as discussed later in this Special Provision, a Banking Certificate will be validated at this meeting allowing credit to the Contractor for previously banked trainees. Banked credits of prime Contractors working as Subcontractors may be accepted for credit. The Contractor's Project Manager, the Construction Project Engineer and the Department's District Contract Compliance Manager will attend this meeting. Within ten days after the Post-Preconstruction Training Evaluation Meeting, the Contractor shall submit to the Department for approval an On-The-Job Training Schedule indicating the number of trainees to be trained in each selected classification and the portion of the Contract Time during which training of each trainee is to take place. This schedule may be subject to change if the following occur:

1. When a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
2. When there is a change(s) in previously approved classifications;
3. When replacement trainees are added due to voluntary or involuntary termination

The revised schedule will be resubmitted to and approved by the Department's District Contract Compliance Manager.

The following criteria will be used in determining whether or not the Contractor has complied with this Training Special Provision as it relates to the number of trainees to be trained:

1. Full credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on this Contract. Credit for trainees, over the established number for this Contract, will be carried in a "bank" for the Contractor and credit will be allowed for those surplus trainees in subsequent, applicable projects. A "banked" trainee is described as an employee who has been trained on a project, over and above the established goal, and for which the Contractor desires to preserve credit for utilization on a subsequent project.

2. Full credit will be allowed for each trainee that has been previously enrolled in the Department's approved training program on another Contract and continues training in the same job classification for a significant period and completes his/her training on this Contract.

3. Full credit will be allowed for each trainee who, due to the amount of work available in his/her classification, is given the greatest practical amount of training on the Contract regardless of whether or not the trainee completes training.

4. Full credit will be allowed for any training position indicated in the approved On-The-Job Training Schedule, if the Contractor can demonstrate that he/she has made his/her good faith effort to provide training in that classification.

5. No credit will be allowed for a trainee whose employment by the Contractor is involuntarily terminated unless the Contractor can clearly demonstrate good cause for this action.

The Contractor shall, as far as is practical, comply with the time frames established in the approved On-The-Job Training Schedule. When this proves to be impractical, a revised schedule shall be submitted and approved as provided above.

Training and upgrading of minorities, women and economically disadvantaged persons toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent such persons are available within a reasonable area of recruitment. If a non-minority male is enrolled into On-The-Job Training, the On-The-Job Training Notification of Personnel Action Form notifying the District Contract Compliance Manager of such action shall be accompanied by a disadvantaged certification or a justification for such action acceptable to the Department's District Contract Compliance Manager. The Contractor will be given an opportunity and will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training is not intended, and shall not be used, to discriminate against any applicant for training, whether a minority, woman or disadvantaged person.

No employee shall be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journeyman status, has been employed as a journeyman, or has had extensive experience in the classification being considered for training. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of a Proficiency Demonstration set up at the completion of training and established for the specific training

classification, completion of the minimum hours in a training classification range, and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Contract Compliance Office:

Trainee Enrollment and Personnel Action Form

Proficiency Demonstration Verification Form indicating completion of each standard established for the classification signed by representatives of both the Contractor and the Department; and

A letter stating that the trainee has sufficiently progressed in the craft and is being promoted to journeyman status.

The Department and the Contractor shall establish a program that is tied to the scope of the work in the project and the length of operations providing it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classifications concerned, by at least, the minimum hours prescribed for a training classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal Aid Highway Construction Contract. Approval or acceptance of a training schedule shall be obtained from the Department prior to commencing work on the classifications covered by the program.

A voluntary On-The-Job Training Program is available to a Contractor, which has been awarded a State funded project. Through this program, the Contractor will have the option to train employees on State funded projects for "banked credit" as discussed previously in this provision, to be utilized on subsequent Federal Aid Projects where training is required. Those Contractors availing themselves of this opportunity to train personnel on state funded projects and bank trainee hours for credit shall comply with all training criteria set forth in this Section for Federal Aid Projects; voluntary banking may be denied by the Department if staff is not available to monitor compliance with the training criteria.

It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial type positions. Training is permissible in positions such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the District Contract Compliance Office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not compromise a significant part of the overall training.

When approved in advance by the District Contract Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current Contract or a Contractor will be allowed to bank trainees who have successfully completed a training program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Contract Compliance Manager. This credit will be given even though the Contractor may receive training program funds from other sources, provided such other source do not specifically prohibit the Contractor from receiving other form of compensation. Credit for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees are concurrently employed on a

Federal Aid Project; contributes to the cost of the training, provides the instruction to the trainee and pays the trainee's wages during the offsite training period. No credit shall be given to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman for a period ample enough to allow the employee time to gain experience in the training classification or failure to continue training the employee time to gain experience in the training classifications is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Section.

The Contractor shall compensate the trainee at no less than the laborer rate established in the Contract at the onset of training. This compensation rate will be increased to the journeyman's wage for that classification upon graduation from the training program.

The Contractor shall furnish the trainee a copy of the program he will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed. The Contractor shall enroll a trainee in one training classification at a time to completion before the trainee can be enrolled in another classification on the same project.

The Contractor shall maintain records to document the actual hours each trainee is engaged in training on work being performed as a part of this Contract.

The Contractor shall submit to the District Contract Compliance Manager a copy of an On-The-Job Training Notification of Personnel Action form no later than seven days after the effective date of the action when the following occurs: a trainee is transferred on the project, transferred from the project to continue training on another Contract, completes training, is upgraded to journeyman status or voluntary terminates or is involuntary terminated from the project.

The Contractor shall furnish to the District Contract Compliance Manager a copy of a Monthly Time Report for each trainee. The Monthly Time Report for each month shall be submitted no later than the tenth day of the subsequent month. The Monthly Time Report shall indicate the phases and sub-phases of the number of hours devoted to each.

Highway or Bridge Carpenter Helper, Mechanic Helper, Rodman/Chainman, Timekeeper, trainees will not be approved for the On-The-Job Training Program.

Painters, Electricians, and Mechanics are identified as crafts under-utilized by minorities. All training classifications except Laborers are identified as under-utilized by women.

Priority selection should also include those crafts under-utilized and/or void of minorities and/or women by that particular company's workforce.

If the Contractor does not select a training classification that has been targeted as an underutilized craft, and those classifications can be used for the selection of training for this project, the On-The-Job Training Schedule will not be approved unless written justification for exceptions is attached.

7-26 Equal Employment Opportunity Requirements. (Non-Federal Aid Projects)

7-26.1 Equal Employment Opportunity Policy: Accept as the operating policy, the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, national origin, sex, or disability and to promote the full realization of equal employment opportunity through a positive continuing program: "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their age, race, religion, color, national origin, sex, or disability. Such action must include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

7-26.2 Equal Employment Opportunity Officer: Designate and make known to the Department's contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active Contractor program employment opportunity and who must be assigned adequate authority and responsibility to do so.

7-26.3 Dissemination of Policy: All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's equal employment opportunity policy and contractual responsibilities.

7-26.4 Recruitment: When advertising for employees, include in all advertisements for employees the notation "An Equal Opportunity Employer".

7-26.5 Personnel Actions: Establish and administer wages, working conditions, employee benefits, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination without regard to age, race, color, religion, national origin, sex, or disability. Follow the following procedures:

(1) Conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(2) Periodically evaluate the spread of wages paid with each classification to determine any evidence of discriminatory wage practices.

(3) Periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action must include all affected persons.

(4) Investigate all complaints of alleged discrimination made in connection with obligations under this Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action must include such other persons. Upon completion of each investigation inform every complainant of all of the avenues of appeal.

7-26.6 Subcontracting: Use the best efforts to ensure subcontractor compliance with their equal employment opportunity policy.

7-26.7 Records and Reports: Keep such records as are necessary to determine compliance with the equal employment opportunity obligations. The records kept will be designed to indicate the following:

(1) The number of minority and non-minority group members employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to Contractors who rely in whole or in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees as deemed appropriate to comply with their Equal Employment Opportunity Policy.

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among

their employees as deemed appropriate to comply with their Equal Employment Opportunity Policy. All such records must be retained for a period of three years following completion of the Contract work and be available at reasonable times and places for inspection by authorized representatives to the Department and the Federal Highway Administration. Upon request, submit to the Department a report of the number of minority and non-minority group employees currently engaged in each work classification required by the Contract work.

7-27 E-Verify.

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

7-28 Scrutinized Companies.

For Contracts $1,000,000 and greater, if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

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 accepted 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 General: For this Contract submit the following schedules and reports.

8-3.2.1 Contract Schedule: Submit to the Engineer for acceptance a Critical Path Method (CPM) Contract Schedule for the project within 30 calendar days after execution of the Contract or at the preconstruction conference, whichever is earlier.

The Contract Schedule shall include detailed schedule diagrams and schedule data as described below for the entire Contract Period. The Contract schedule shall be consistent with the Contract Maintenance of Traffic plan, showing activities for each discrete Contract activity to be accomplished within each Maintenance of Traffic phase. Include activities for deliverables and reviews in the schedule. Sufficient liaison shall be conducted and information provided to indicate coordination with utility owners having facilities within the project limits. The schedule must reflect the utility adjustment schedules included in the Contract

Documents, unless changed by mutual agreement of the utility company, the Contractor and the Department.

Failure to include any element of work or any activity relating to utility work will not relieve the Contractor from completing all work within the Contract Time at no additional time or cost to the Department, not withstanding the acceptance of the schedule by the Department.

Submit monthly updates of the Contract Schedule reflecting progress through the monthly estimate cut-off date within 7 calendar days after the monthly estimate cut-off date.

The Engineer will withhold monthly payments due for failure of the Contractor to submit an acceptable schedule or monthly updates within the time frame described herein.

8-3.2.2 Schedule Submissions: Develop the schedule in Precedence Diagram Method (PDM) format. All schedule submittals, shall have a copy of the schedule files on a Windows compatible CD or DVD attached. The files shall be in a Primavera formats. Make sure to use “Backup” menu selection and ensure that the option “Remove access list during backup” is checked.

Each schedule submission and monthly update shall include a minimum of 4 items:

1) a Critical Path Method (CPM) Network Diagram in time-scale logic diagram, by week starting on Monday, grouped (banded) by phase and location, and sorted by early start days. Prominently identify the critical path activities, defined as the longest continuous path of work activities. Submit the Network Diagram, printed in color on D size, 22 by 34 inch or E size, 34 by 44 inch paper. The network diagram shall contain, as a minimum, the following information for each schedule activity: identification, activity description, total duration, remaining duration, early start date, late finish date, and total float.

2) a report with the following schedule activity information for each construction activity: identification, description, original duration, remaining duration, early start, early finish, total float, percent complete, and budgeted cost. The bar chart diagram shall not be included in this report. It will be submitted on 8.5 by 11 inch paper.

3) a schedule narrative report describing current project schedule status and identifying potential delays. This report will include a description of the progress made since the previous schedule submission and objectives for the upcoming 30 calendar days. It will be submitted on 8.5 by 11 inch paper. This report shall at a minimum include the following information:

a) This report shall indicate if the project is on schedule, ahead of schedule or behind schedule. If the project is ahead of schedule or behind schedule, the report shall include the specific number of calendar days. If the project is behind schedule, the report shall include a detailed recovery plan that will put the project back on schedule or include a properly supported request for Time Extension.

b) The report will describe the current critical path of the project and indicate if this has changed in the last 30 calendar days. Discuss current successes or problems that have affected either the critical path’s length or have caused a shift in the critical path within the last 30 calendar days. Identify specific activities, progress, or events that may reasonably be anticipated to impact the critical path within the next 30 calendar days, either to affect its length or to shift it to an alternate path.

c) List all schedule logic or duration changes that have been made to the schedule since the previous submission. For each change, describe the basis for the change and specifically identify the affected activities by identification number.

d) Identify any and all activities, either in progress or scheduled to occur within the following 30 days that require Department participation, review, approval, etc.

4) a copy of the schedule files on a Windows compatible CD or DVD in Primavera.

The Engineer will have 30 days to accept the Contract Schedule or to schedule a meeting, if needed within that time, with the Contractor to resolve any problems that prevent acceptance of the schedule. Attend the meeting scheduled by the Engineer, and submit a corrected schedule to the Engineer within seven days after the meeting. The process will be continued until a Contract Schedule is accepted by the Engineer.

8-3.2.3 Schedule Content: All schedule submissions shall comply with the following content guidelines as appropriate to the specific submission:

Outline Schedule Diagrams and Data shall show the sequence, order, and interdependence of major construction milestones and activities. Include ordering and procurement of major materials and equipment, long-lead time items, and key milestones identified by the Contract. Identify planned work schedule(s) and include all non-workdays. Provide a description of each major construction activity or key milestone.

Detailed Schedule Diagrams shall include activity number, description, early dates, float, and all relationships (i.e. logic ties), resources and costs. Show the sequence, order, and interdependence of activities in which the work is to be accomplished. Include allowance for Department oversight, acceptance and return of submittals, samples and shop drawings where Department acceptance is specifically required (in accordance with 5-1.4.6 of the standard specifications). In addition to construction activities, detailed network activities shall include the submittals, procurement, and Department or Utility activities impacting progress:

a. Submittal activities shall include oversight and acceptance of submittals. If the Department's action on any submittal is “Not Accepted” or “Revise and Resubmit”, a new series of submittal preparation activities shall be inserted into the schedule. Predecessor for the new submittal preparation activity will be the original acceptance activity and the successor of the new acceptance activity will be the fabrication/delivery activity for the equipment or material.

b. Procurement activities shall include all materials and equipment, receipt of materials with estimated procurement costs of major items for which payment of stockpiled materials will be requested in advance of installation, fabrication of special material and equipment, and their installation and testing.

c. Show activities of the Department or Utilities that affect progress and contract-required dates for completion of all or parts of the work.

Detailed Schedule Data: shall conform to the following:

a. All activities shall be assigned to a specific calendar within the software. Specific calendars will be defined within the software to include planned work days and working hours. These calendars will include both Contractor and Contract defined Holidays, Special Events and suspension days as non-workdays.

b. Each schedule activity shall be cost loaded. Activity cost loading shall be consistent with the bid breakdown. The sum total of the activity cost loading shall be equal to the current contract value.

c. At a minimum, each schedule activity shall contain codes by:

1. Responsibility: including, but not be limited to, Department, Utility, Contractor/Subcontractor, Supplier/Vendor, Consultant, etc.

2. Phasing: identify the appropriate Maintenance of Traffic phase or subphase.

d. Key milestones as identified by contract. At a minimum, the start and finish of each Maintenance of Traffic phase or subphase shall be represented by a milestone activity.

e. All non-procurement activities must be less than or equal to 20 workdays unless approved by the Engineer to be greater by the Engineer.

f. Detailed description of each activity. In each activity, give quantity and unit of measure so that the amount of work the activity involves is clearly communicated.

g. Only two (2) open-ended activities (the first and the last) are allowed.

h. Constraints shall only be used for “Project Start,” and “Project Completion.” Constraints cannot override logic. The use of any other imposed constraints is not allowed without specific approval by the Engineer. Any other desired constraints must be submitted to the Engineer with the rationale for the use of each desired additional constraint. If allowed by the Engineer, the rationale should be recorded in the activity's log field. Mandatory constraints (start and finish) violate network logic and shall not be used.

i. Out of sequence progress, if applicable, shall be handled through Retained Logic. Use of the Progress Override option is not appropriate for this project and will not be allowed.

j. Progress shall be calculated based on percent complete.

k. All changes to activities shall be recorded with a note in the activity log field. The log shall include, as a minimum, the date and reason for the change, as well as reference to a document wherein the Engineer acknowledges and accepts the change.

l. The use of resource leveling, either manual or automatic, is prohibited.

8-3.2.4 Weekly Meetings: Attend weekly meetings scheduled by the Engineer to discuss Contract progress, near term scheduled activities, including utility relocations, problems and their proposed solutions. Submit a Two-Week “Look Ahead” Planning Schedule at each weekly meeting, showing the items of work planned for the next two weeks. Develop the schedule in Bar Chart format, identifying current and planned activities and related Contract Schedule work activities, including subcontractor work. Designate all activities that are controlling work items as determined by the currently accepted Contract Schedule. A report shall be submitted at each weekly meeting identifying schedule activity progress including actual start or finish dates achieved for any activities.

8-3.2.5 Float: Is also known as slack time or slide time; it is defined as the amount of time the finish of an activity can be delayed. Two kinds of float are possible: Total float is how much an activity can be delayed without affecting the finish date of the project or an intermediate deadline (constraint); it is the difference between the late finish date and the early

finish date. Free float is how much an activity can be delayed without affecting its earliest successor.

Float is not for the exclusive use or benefit of either the Department or the Contractor.

Use of float suppression techniques, such as preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), special lead/lag logic restraints, zero total or free float constraints, extended activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the project schedule or its updates. The use of Resource Leveling (or similar software features) used for the purpose of artificially adjusting activity durations to consume float and influence the critical path is expressly prohibited.

Negative float shall not be a basis for requesting time extensions. Any extension of time shall be addressed in accordance with 8-3.2.6 Time Extensions. Scheduled completion date(s) that extend beyond the contract completion date (evidenced by negative float) may be used in computations for assessment of payment withholdings. The use of this computation is not to be construed as a means of acceleration.

8-3.2.6 Time Extensions: The Contractor is responsible for submitting a request for Contract Time extension in accordance with 8-7.3.2 of the standard specifications. An extension of time for performance shall be considered only to the extent that a delay to an activity or activities exceeds the total float along the project critical paths.

As a minimum, time extension requests shall contain:

a. A descriptive summary of the changes
b. An analysis of project impact
c. A fragnet that shows the impacted activities before the change
d. A fragnet that shows the impacted activities after the change

Time extensions shall not be considered for proposals that do not include full documentation for the schedule change. Once a change has been approved by the Engineer, the specific activities and the overall schedule must be updated.

8-3.2.7 Performance of Work: By submitting a schedule the Contractor is making a positive assertion that the project will be constructed in the order indicated on the schedule. Prosecute the work in accordance with the latest accepted Working Schedule. Any costs associated with meeting milestones and completing the project within the authorized Contract Time will be borne solely by the Contractor.

8-3.2.8 As-Built Schedule: As a condition for the release of any retainage, submittal of an as-built schedule which describes the actual order and start and stop times for all activities by the Contractor is required.

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 20 calendar days, excluding Saturdays, Sundays and Holidays, 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: Before the Contractor begins actual construction; 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.

8-3.6 Not Used.

8-3.7 Disputes Review Board: For this Contract, a Disputes Review Board will be established to assist in the resolution of disputes and claims arising out of the work on the Contract.

8-3.7.1. Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and the Contractor in an effort to avoid construction delay and future claims.

It is not intended for the Department or the Contractor to default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes or claims without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Requests for equitable adjustment must be certified as required by 4-3.2. Claims that are referred to the Board must be in compliance with 5-12. It is a condition of this Contract that the parties shall use the Dispute Review Board. The completed DRB hearing of any unresolved disputes or claims is a condition precedent to the Department or the Contractor having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law, on such unresolved disputes or claims.

The recommendations of the Board will not be binding on either the Department or the Contractor unless otherwise stated in the Contract.

The Board will fairly and impartially consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

8-3.7.2. Continuance of Work: During the course of the Disputes Review Board process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will

permit the Engineer and Board access to these and any other records needed for evaluating the disputes and claims.

8-3.7.3. Membership: The Disputes Review Board will consist of one member selected by the Department and approved by the Contractor, and one member selected by the Contractor and approved by the Department. The first two members will mutually select and agree on the third member. Normally, the third member will act as Chairman for all Board activities.

8-3.7.4 Qualification: It is desirable that all Board members have at least ten years of experience with the type of construction involved in this project, in the interpretation of Contract Documents, and in Contract dispute resolution. Board members must have attended the Dispute Resolution Board Foundation's Administration and Practices Workshop and must be on the Department's Lists of Candidate Members as provided on the Department's web site. The goal in selecting the third member is to complement the construction experience of the first two members, to provide leadership for the Board's activities, and to provide expertise in the area of administering alternative Contract resolution proceedings. It is imperative that Board members not show or be perceived as showing partiality to either the Contractor or the Department. A Board member shall not have any conflict of interest, which could affect their ability to act in a disinterested and unbiased manner.

8-3.7.5 Conflict of Interest: A person selected to the Board shall submit to the party appointing him/her a resume covering his/her applicable education and experience, a list of all DRBs, with meeting frequencies, on which he/she currently serves, and a disclosure statement covering, but not limited to, any of the following categories of relationships or prior involvement in this project:

a. Any direct or indirect ownership or financial interest in the Contractor awarded the project, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member.

b. Current employment by the Department, the Contractor awarded the Contract, or the CEI consulting firm on the project. Service as a Dispute Review Board Member shall not be construed to be employment.

c. Current employment by any subcontractor or supplier on the project.

d. Current employment by a consulting engineering firm that will be seeking future Contracts for CEI services from the Department.

e. Within the two year period immediately prior to award of the Contract, employment by : the Central Office of the Department; the Department's District or Turnpike in which the project is located; the Department, as a consultant in the District or Turnpike in which the project is located; the Contractor awarded the Contract, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member. Service as a Dispute Review Board Member shall not be construed to be employment.

f. A close personal relationship with any key individual in any firm involved in the Contract.

g. A prior involvement in the project of a nature, which might be construed as compromising his/her ability to act impartially in carrying out the duties of the Board.

h. A Contract as a consultant to the Contractor awarded the Contract.

i. A Contract as a consultant with any subcontractor or supplier on the project.

j. Current full-time employment by a Department prequalified contractor or consultant.

8-3.7.6 Disqualification: Category a, b, c, e, and j relationships listed in 8-3.7.5 shall disqualify a person from serving on the Board for this project. The other categories of relationships or prior involvement in this project listed above will be considered by the Contractor and the Department in arriving at their decision as to whether or not to accept a person as a member of the Board.

If during the life of the Contract, a Board member is made aware that a firm of which he/she is an employee is involved in the Contract as a subcontractor or supplier, he/she shall immediately give notice to the Department and the Contractor. Upon receiving such notification, the Department or the Contractor may, within ten (10) days, give notice that this Board member is no longer acceptable and a new Board member shall be selected and approved as provided above. In no event, shall a Board member participate in a hearing by the Board of dispute involving a firm by which he is employed.

The Department may disqualify a person from serving on future Disputes Review Boards for Department projects who submits a disclosure statement which fails to provide accurate and complete disclosure of a relationship that prohibits him/her from serving on the Board for this project or one of the possible conflicts of interest listed above.

8-3.7.7 Selection of Members: Every attempt shall be made by the Department and the Contractor to complete the selection of Disputes Review Board members and execute the Three-Party Agreement prior to date of the preconstruction conference and, if applicable, the initial partnering workshop. The Department and the Contractor shall select their Board members and give the other party notice of the person they have selected to serve as a member of the Board. This notice shall be accompanied by the resume and disclosure statement submitted by that person.

Within ten (10) days of receiving the notice of selection of a Board member, the Department and the Contractor shall review the accompanying resume and disclosure statement, make such inquires as each deems necessary and notify the other party in writing as to whether or not the person selected is acceptable. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If a person selected is not acceptable to the other party, the party who selected that person shall within five (5) days select another person and provide to the other party to the Contract a notification accompanied by a resume and disclosure statement.

Once the Contractor and the Department have agreed upon the first two members of the Board they shall immediately notify those members of their approval. Within one week of this notification, the first two members of the Board shall select the third member and give written notice to the Contractor and the Department accompanied by that person's resume and disclosure statement.

Within ten (10) days of receiving the notice of selection of a third member of the Board, the Department and the Contractor shall review the accompanying resume and disclosure statement, make such inquires as each deems necessary and notify the first two members in writing as to whether or not the person selected is acceptable. If a person selected is

not acceptable to the Contractor or the Department the first two members of the Board shall immediately select another person and provide notification accompanied by a resume and disclosure statement. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If, (1) the Department or the Contractor fail to provide the other party notice of selection of a Board Member within the time specified, herein; (2) the first two members of the Board fail to provide notice to the parties of their selection of the third member of the Board within the times specified, herein; or (3) the parties are unable to agree on appointment of a Board member within 60 days after award of the Contract, that member shall be appointed by mutual consent of the Department's Director, Office of Construction, and the President of the Florida Transportation Builders Association.

Immediately after agreement is reached on all members of the Board the Contractor, the Department and the members of the Board shall proceed with execution of a Three Party Agreement as provided on the Department's web site. The execution of this agreement will not modify the requirements, terms or conditions of this Specification.

If during the life of the Contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the Contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Should the Department and the Contractor mutually agree to terminate a Disputes Review Board Three Party Agreement, the existing Disputes Review Board Three Party Agreement will remain in force until replaced by another a fully executed Disputes Review Board Three Party Agreement. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Disputes Review Board Three Party Agreement shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

8-3.7.8 Limitation for Referral of Disputes or Claims to the Board: Any disputes or claims that were not resolved prior to Final Acceptance of the project pursuant to 5-11 must be referred to the Board within 90 calendar days after Final Acceptance on projects with an original Contract amount of $3,000,000 or less, and within 180 calendar days after Final Acceptance on projects with an original Contract amount greater than $3,000,000. Only duly preserved disputes or claims will be eligible to be heard by the Board. Failure to submit all disputes or claims to the Board within aforementioned timeframe after Final Acceptance constitutes an irrevocable waiver of the Contractor's dispute or claim.

8-3.7.9. Basis of Payment: A per day cost of $3,300.00 has been established by the Department to reimburse the Contractor for providing compensation to the three members of the Disputes Review Board. This amount will be paid to the Contractor for each day the Disputes Review Board is convened for regular DRB project meetings. For each day of the meeting, the Contractor shall compensate each Disputes Review Board member a sum of $1,100.00. Such payment will be full compensation to the Board member for salary and all travel expenses (air fare, rental or personal automobile, motel room, meals, etc.) related to membership on the Board. Do not pay prior to the execution of the Three Party Agreement. Payment will be made by issuing a work order against contingency funds set aside for this Contract.

A per hearing cost of $8,000 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The Board chairman will receive $3,000 for participation in the hearing while the remaining two members will receive $2,500 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor $4,000 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at $3,300 per day, regular meeting rate, payment of which is equally split between the Department and the Contractor.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services.

If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

8-3.8 Statewide Disputes Review Board: For this Contract, a Statewide Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the administration and enforcement of a specification when such specification specifically refers disputes to this Board.

8-3.8.1 Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of the disputes and claims between the Contractor and the Department.

It is not intended that the Department or the Contractor default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes or claims without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Requests for equitable adjustment must be certified as required by 4-3.2. Claims that are referred to the Board must be in compliance with 5-12. It is a condition of this Contract that the parties shall use the Statewide Disputes Review Board.

The recommendations of the Board will be binding on both the Department and the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

8-3.8.2 Membership: The Statewide Disputes Review Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA), and posted on the Department's Website.

Members on the Board will be pre-qualified as experts of the type of work being referred to this Board.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

After the Department has made final acceptance of the project, if disputes arise, the Statewide Disputes Review Board shall be activated to hear and rule on the disputed issue.

8-3.8.3 Procedure and Schedules for Disputes Resolution: Disputes or claims will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.

a. If the Contractor objects to any decision, action or order of the Engineer resulting from the Engineer's evaluation of the guaranteed product or performance period, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.

b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.

c. The Engineer's decision will be final and conclusive on the subject, unless the Contractor files a written appeal to the Engineer within 15 days of receiving the decision. Upon the Engineer's receipt of the Contractor's written appeal containing specific protest of all or part of the Engineer's decision, either the Department or the Contractor can refer the matter to the Board.

d. Upon receipt by the Board of a written duly preserved protest of a dispute or claim, either from the Department or the Contractor, it will first be decided when to conduct the hearing.

e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute or claim. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.

f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may

present information at the hearing that was not previously distributed to both the Board and the other party.

g. The Board's recommendations for resolution of the dispute or claim will be given in writing to both the Department and the Contractor, within 15 days of completion of the hearings. The Board will focus its attention in the written report to matters of responsibility for repairs of guaranteed work or performance period as provided for by the Contract Documents.

8-3.8.4 Contractor Responsibility: The Contractor shall furnish to each Board member a set of all pertinent documents that are or may become necessary for the Board, except documents furnished by Department, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are used in the performance of the work or in justifying or substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Contractor will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

8-3.8.5 Department Responsibilities: Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

a. Contract Related Documents: The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.

b. Coordination and Services: The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

8-3.8.6 Basis of Payment: A per hearing cost of $8,000 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The Board chairman will receive $3,000 for participation in the hearing while the remaining two members will receive $2,500 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor $4,000 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at $3,300 per day, payment of which is equally split between the Department and the Contractor.

Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

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 acceptance 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 feet to 1 inch. Do not start night work prior to the Engineer's acceptance 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.

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 and other animals on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property. Secure the right-of-way on Limited Access Facilities at all times by a fence, either temporary or permanent, that meets the height of the existing fence or the height required in the Contract.

8-4.9 Contaminated Materials: When the construction operations encounter or expose any abnormal condition that may indicate the presence of a contaminated material, 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 or stained earth, metal, wood, ground water; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions that appear abnormal as possible indicators of the presence of contaminated materials. Treat these conditions with extraordinary caution.

Make every effort to minimize the spread of any contaminated materials into uncontaminated areas.

Do not resume the construction operations in the vicinity of the abnormal conditions until so directed by the Engineer.

Dispose of the contaminated material 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 contaminated material, and the Contract does not include pay items for disposal, the Department will pay for this work as provided in 4-4.

The Department agrees to hold harmless and indemnify the Contractor for damages when the Contractor discovers or encounters contaminated 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 agreement is only effective if the Contractor immediately stops work and notifies the Department of the contaminated material or pollutant problem.

Such indemnification agreement is not valid for damages resulting from the Contractor’s willful, wanton, or intentional conduct or the operations of Contaminated and 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.

The Design Build Firm is prohibited on the basis of conflict of interest from utilizing any Consultant to perform Quality Control services during the construction phase of this Project when the Consultant is under contract with the Department, or under a subcontract thereto, to perform services or work in any way pertaining to this Project. Prior to the Firm approving a Consultant for Quality Control services during the construction phase, the Firm shall submit to the Department a Certificate from the proposed Consultant certifying that no conflict of interest exists as prohibited hereunder.

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 and Special Events: Unless the Contractor submits a written request to work during one or more days of a Holiday or Special Event at least ten days in advance of the beginning date of the Holiday or Special event 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; Independence Day (Observed); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Veterans Day (Observed); the Wednesday immediately preceding Thanksgiving; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; December 24 through January 2, inclusive; and Special Events noted in the Request for Proposal. Contract Time will be charged during these Holiday and Special Event 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 and Special Event 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.

8-7.2 Date of Beginning of Contract Time: The date on which Contract Time begins is the date identified in the Notice to Proceed.

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 adding new work or providing 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 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 as defined in 8-6.4 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; 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 may 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.

Furthermore, 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 in accordance with 4-3 and 5-12. 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, 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.

In accordance with Section 337.18 of the Florida Statutes, an additional damage recovery/user cost will be assessed if the Contractor fails to complete a revenue project within the approved Contract Time. The Department intends to recover a portion of the projected revenues that will be lost due to failure to timely open the project to revenue producing traffic.

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	$642
Over $50,000 but less than $250,000	$758
$250,000 but less than $500,000	$966
$500,000 but less than $2,500,000	$1,532
$2,500,000 but less than $5,000,000	$2,374
$5,000,000 but less than $10,000,000	$3,226
$10,000,000 but less than $15,000,000	$4,624
$15,000,000 but less than $20,000,000	$4,276
$20,000,000 and over	$7,864 plus
	0.00005 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 8-10.1 and 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 8-10.1 and 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: Measure all work completed under the Contract in accordance with the United States Standard Measures.

9-1.2 Method of Measurements: Take all measurements horizontally or vertically.

9-1.3 Determination of Pay Areas: Not applicable.

9-1.4 Construction Outside Authorized Limits: Not applicable.

9-1.5 Truck Requirements: Not applicable.

9-1.6 Ladders and Instrument Stands for Bridge Projects: Not applicable.

9-1.7 Determination of Pay Reduction: In measurement of areas of work, where pay reductions are to be assessed, the Engineer will use the lengths and/or widths in the calculations based upon station to station dimensions in the Contracts Documents; the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the final surface of the completed work within the neat lines shown in the Contract Documents or designated by the Engineer. The Engineer will use the method or combination of methods of measurement, which will reflect with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

Failure on the part of the Contractor to construct any item of work to plan or authorized dimensions within the specification tolerances will result in: reconstruction to acceptable tolerances at no additional cost to the Department; acceptance at no pay; or, acceptance at reduced pay, all at the discretion of the Engineer.

9-2 Scope of Payments.

9-2.1 Items Included in Payment: Accept the compensation as provided in the Contract Documents 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.

The Contract Lump Sum Price will include overhead, profits, and direct and indirect costs required to complete the project except as described below.

9-2.1.1 Fuels: 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%.

The Contractor will certify the number of gallons of fuel (gasoline and/or diesel) used on this Contract during the period represented by each invoice.

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 fuel to projects in the State of Florida.

The API will be available on the State Construction Office website before the 15th of each month at the following URL:
http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.shtm .

Price adjustments will not be made for Items of work added by contingency supplemental agreement, supplemental agreement, or work orders.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for fuel 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.

Gallons will be derived only from the established Standard Fuel Factor list posted on the State Construction Office website at the following URL: http://www.dot.state.fl.us/construction/fuel&Bit/ Fuel&Bit.shtm .

The Department will provide a computer application that will calculate and print the gallons of gasoline and/or diesel for the items that these factors represent. The Contractor will attach this worksheet and record these gallons on the Certified Invoice as required in 9-11.

Payment will be based on the quantities shown on the Contractor's Invoice on all items for which established standard fuel factors are posted on the State Construction Office website at the following URL: http://www.dot.state.fl.us/construction/fuel&Bit/ Fuel&Bit.shtm .

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: Prepare a Contractor's Certification of Quantities, using the Department's current approved form for Superpave Asphalt Base, Turnout Construction (Asphalt), Asphalt Treated Permeable Base, Superpave Asphaltic Concrete, Miscellaneous Asphalt Pavement and Asphalt Rubber Membrane Interlayer items. 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 State Construction Office website before the 15th of each month at the following URL: http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.shtm .

The Department will provide a computer application that will calculate and print the number of gallons of bituminous material for the items that these factors represent. The Contractor will attach this worksheet and record these gallons on the Certified Invoice as required in 9-11.

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.

For all asphalt concrete, the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal.

For asphalt treated permeable base, the number of gallons will be determined assuming a mix design with 3% liquid asphalt weighing 8.58 lb/gal.

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.

Prepare a Contractor's Certification of Quantities, using the Department's current approved form for Superpave Asphalt Base, Turnout Construction (Asphalt), Asphalt Treated Permeable Base, Superpave Asphaltic Concrete, Miscellaneous Asphalt Pavement and Asphalt Rubber Membrane Interlayer pay items.

9-2.2 Non-Duplication of Payment: Not applicable.

9-2.3 General Basis of Adjusted Pay:

9-2.3.1 Deficiencies: When a deficiency occurs that results in the acceptance of a material at a reduced payment level as defined in these Specifications, the Engineer will apply a reduction in payment for the material in question based on the unit prices as determined using the six-month State wide pay item averages. The dates will be the six months prior to the letting date for this Contract.

9-2.3.2 Asphalt Design Thickness/Spread Rate: The average spread rate per sublot will be used to determine if the amount of asphalt placed on the project meets the minimum requirements specified in the Contract Documents. Before placing asphalt mix, propose a target spread rate for each layer, which when combined with other layers, will meet the design thickness or spread rate specified in the Contract Documents. The weight of the mixture will be determined as provided in 320-2 (including the provisions for automatic recordation system).

On projects specifying a thickness in the Contract Documents for asphalt, the conversion of design thickness to target spread rate will be established by multiplying the maximum specific gravity of the asphalt mix (as indicated on the verified mix design) by 43.3 lbs/sy for every inch of asphalt.

On projects specifying a total spread rate of mix in the Contract Documents for asphalt, calculate the average spread rate per sublot (as defined in Section 334) by the following formula:

Average spread rate per sublot = Total weight of asphalt mix (lbs) for the sublot/area covered by that sublot (sy)

During construction, monitor the mix spread rate of each sublot at frequent intervals in accordance with 330-2.2 in order to meet the target spread rate for each sublot. Document the actual spread rate of each sublot on the Roadway QC Form.

The Engineer will determine if the material of the roadway pavement is acceptable to remain in place at full pay, remain in place at reduced pay or corrected at no cost to the Department. Final disposition of the finished roadway pavement will be based upon the comparison between the design spread rate specified in the Contract Documents and the combined value of the average spread rate of each sublot at the same area (including FC-6, but excluding FC-5). The acceptable tolerance of the combined spread rate evaluation of the roadway pavement is ± 5%.

Reductions in pay will be determined per sublot by applying a proportional reduction in payment for the material in question, based on a ratio of the average spread rate for the sublot to the design spread rate, which will then be applied in accordance with 9-2.3.1. Any quantity over the designed spread rate specified in the Contract Documents shall not be paid.

9-2.3.3 Quality: Where an adjustment of payment for quality is called for in the Contract Documents, the Engineer will make such adjustments for the corresponding quantity of material based on the unit prices as determined using the six month State wide pay item averages. The dates will be the six months prior to the letting date for this Contract.

9-2.3.4 Adjustment to the Lump Sum Payment for Deleted Items of Work: When items of work are shown in the Contract Documents to be constructed or installed and due to actual field conditions, it is determined by the Engineer that the items are not needed, a negative adjustment to the Contract will be made. The negative adjustment will be based on the actual cost of the items being deleted less all costs incurred prior to the date the Engineer determined the items are not needed and the Contractor will retain ownership of the items. The negative adjustment will be processed in accordance with 4-3.2.

9-3 Compensation for Altered Quantities.

Not applicable.

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. The Department shall make an adjustment in payment to the Contractor of a fair and equitable amount covering the value of all cancelled work less all items of cost incurred prior to the date that the Engineer cancels or suspends the work.

In addition to having the right of canceling the portions of the Contract relating to the construction of any acceptable item therein, the Department shall have the right to cancel any portion of the engineering services. Said cancellation shall be in the same manner as contained herein.

9-5 Partial Payments.

9-5.1 General: The Engineer will make partial payments on monthly estimates based on the estimated amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below) based on a Contractor approved payout schedule (schedule of values). 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. Sections 255.05 and 337.16 of the Florida Statutes

9-5.2 Unsatisfactory Payment Record: In accordance with, 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.

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 report 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 equal employment opportunity for minorities and females hiring goals; 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: Any sums owed to the Department by the Contractor on any account may be deducted from such payment estimates. Where more than one project or job (Financial Project ID) is included in the Contract, the reduced retainage shall be distributed 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. Retainage will be released upon satisfactory completion of all work and the completion of any conditional acceptance waiting periods.

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.

(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 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.

The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department by third parties, pertaining to Contractor payment or performance issues 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 shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.

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, along with all fully executed supplemental agreements received after final acceptance.

If the Contractor fails to furnish all required Contract Documents as listed in (a) through (h) below 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 estoppels, 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 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.

(h) The Contractor has furnished and the Department has accepted the as-built drawings and certified survey in accordance with the requirements of Section 555, 556, 557 and 611.

9-8.2 Review of Engineer's Final Estimate: The Department may review the Engineer's final estimate and make changes as necessary. If changes are made, the Contractor will be so

notified in writing in the "Notification of Findings Due to Additional Review". This notification letter will detail the changes made as a result of the review, and will stipulate the actions to be taken by the Department and those required by the Contractor. The issuance of a "Notification of Findings Due to Additional Review" will not impact the requirements of 9-8.1, above.

Complete the required actions and return the signed "Notification of Findings Due to Additional Review" to the Department within the timeframe specified in 9-8.1. If the "Notification of Findings Due to Additional Review" is received after the time has expired in 9-8.1, return to the Department within 30 days signifying agreement or disagreement with the findings. For disagreement items, provide a full explanation including the item(s) and amount. For any claim or part of a claim that pertains solely to the "Notification of Findings Due to Additional Review" disputes, submit full and complete claim documentation as described in 5-12.3 as to such claim dispute issues within 90 days of receipt of the notification. Failure to return the signed notification or to furnish such claim documentation within the time frames specified may result in suspension of the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

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**.**

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

Contractors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes would be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a State Agency. The Vendor Ombudsman may be contacted by calling the Bureau of Accounting at (850) 413-5516.

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.

9-11 Submittals.

9-11.1 Submittal Instructions: The Contractor will prepare a progress invoice for each project in the Contract. Submit the progress invoice to the Engineer. The Engineer will not pay for any item of work until the progress invoice is approved.

9-11.2 Contractor's Invoice: The Contractor must make a request for payment by submitting an invoice, no later than Twelve O'clock noon, Monday, after the estimate cut-off date or as directed by the Engineer, based on the amount of work completed. The Contractor's invoice must consist of the following:

(a) Contract Number, Financial Project Identification Number, Invoice Number, Invoice Date and the period that the invoice represents.

(b) The basis for arriving at the amount of the progress invoice including approximate quantities of work completed, less payment previously made and less the amount previously retained or withheld.

(c) Contract Summary showing the percentage of dollar value of completed work based on the present Contract amount and the percentage of days used based on the present Contract days.

(d) Certify the number of gallons of gasoline, diesel and bituminous material during the invoice period.

9-11.3 Payment to the Contractor: Upon receipt of the progress invoice and approval by the Engineer, payment will be made, less the amount retained or withheld per provisions included in the Contract. The monthly payments will be approximate only and will be subject to reduction for overpayments or increase for underpayments on preceding payments to the Contractor and to correction in the subsequent estimates and the final estimate and payment process.