

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

REQUEST FOR PROPOSALS

**PART 2 – SECTION 100
CONTRACT DOCUMENTS**



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RFP PART 2
DB SECTION 101

ACRONYMS, ABBREVIATIONS AND DEFINITION



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DB SECTION 101
ACRONYMS AND ABBREVIATIONS AND DEFINITIONS

DB 101-1 REFERENCES

Section, subsection, and subpart Titles and heading provide reference only, not interpretation.

Cited publications refer to the most recent issue, including interim publications, in effect on the Proposal due date, unless otherwise specified.

Wherever in these Plans, Specifications, or other Contract Documents the following terms, abbreviations, or symbols are used, the intent and meaning shall be interpreted as follows in this Section 101.

DB 101-2 ACRONYMS AND ABBREVIATIONS

Wherever the following abbreviations or acronyms are used in these Contract Documents, they are to be interpreted as follows.

AA	Aluminum Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AED	Associated Equipment Distributors
ACOE	Army Corps of Engineers
AED	Associated Equipment Distributors
AGC	Associated General Contractors of America
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
API	American Petroleum Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ARML	AASHTO Reference Materials Laboratory
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
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
BDM	Delaware Department of Transportation Bridge Design Manual
CCRL	Cement and Concrete Reference Laboratory
CD-ROM	Compact Disc – Read Only Memory
CE	Construction Engineering
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CPM	Critical Path Method
CRSI	Concrete Reinforcing Steel institute



CSL	Contract Submittal List
CFR	Code of Federal Regulations
DB	Design-Build
DU	Design Unit
DeIDOT	Delaware Department of Transportation
DNREC	Division of Natural Resources and Environmental Control (State of Delaware) DVD-
ROM	Digital Video (or “Versatile”) Disc – Read Only Memory
EOR	Engineer of Record
EASA	Electrical Apparatus Service Association
EPA	Environmental Protection Agency of the United States Government
FAA	Federal Aviation Administration, United States Department of Transportation
FHWA	Federal Highway Administration, United States Department of Transportation
FONSI	Finding Of No Significant Impact
FSS	Federal Specifications and Standards, General Services Administration
FTA	Federal Transit Authority
IA	Independent Assurance
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
ISO	International Standards Organization
ITE	Institute of Transportation Engineers
ITMS	Intelligent Transportation Management System
ITP	Instructions to Proposers
JV	Joint Venture
LLC	Limited Liability Company LPI Lightning Protection Institute
LOI	Letter of Interest
MIL	Military Specifications
MS	Milestones
MUTCD	Manual of Uniform Traffic Control Devices
N/A	Not Applicable
NAAMM	National Association of Architectural Metal Manufacturers
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NIST	National Institute of Standards and Technology
NFPA	National Fire Protection Association
NOAA	National Oceanic and Atmospheric Administration
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration, United States Department of Labor
PC	Project Component
PCA	Portland Cement Association
PCD	Project Component Description
PCI	Prestressed Concrete Institute
PCP	Progress Check Point
PCV	Project Component Value
PE	Preliminary Engineering
PPS-C	Contract Periodic Payment Schedule
PPS-P	Proposed Periodic Payment Schedule
PTI	Post Tensioning Institute
QA	Quality Assurance



QC	Quality Control
RFI	Request For Information
RFQ	Request for Qualifications
RFP	Request for Proposals
RMA	Rubber Manufacturers Association
ROW	Right Of Way
SAE	Society of Automotive Engineers
SHPO	State Historic Preservation Office
SHA	State Highway Administration
SI	Systeme Internationale - International System of Units
SV	Schedule of Values
SOQ	Statement of Qualifications
SSPC	Steel Structures Painting Council
TBD	To Be Determined
UL	Underwriters Laboratories, Inc.
US	United States
USACE	United States Army Corps of Engineers
USC	United States Code
USDOL	United States Department Of Labor
US DOT	United States Department Of Transportation
VE	Value Engineering
WBS	Work Breakdown Structure

DB 101-3 DEFINITIONS

When the following words or expressions are used in the Plans, Specifications, other Contract Documents, they are to be defined as follows:

Acceptance Program - All factors that comprise the Delaware Department of Transportation’s (DelDOT) determination of the quality of the product as specified in the Contract Documents. These factors include Verification Sampling and Testing and Department Oversight and auditing of the Design-Builder’s activities and may include the Design-Builder’s Quality Control (QC).

Addenda - Additions, deletions, and modifications to the provisions of the Scope of Services Package after the Advertisement date and prior to the Proposal acceptance date.

Administrative Plans - Those Plans that contain general Project or Plan information such as cover sheets, index sheets, and similar non-technical information.

Advertisement - A public announcement stating the Department’s Notice of Intent (NOI) for the procurement of a particular project and inviting prospective Proposers to obtain a Request for Qualifications (RFQ) or Scope of Services Package and submit a Statement of Qualifications (SOQ) or a Proposal, as applicable.

Affiliate - Any Person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:

- A) The Design-Builder; or
- B) Any Principal Participant.

An Affiliate may also be any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by the following:



- 1) The Design-Builder;
- 2) Any Principal Participant; or
- 3) Any Affiliate of the Design-Builder under part (A) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

Amendment - A formal alteration by addition, deletion, or modification of the terms of the executed Contract. Amendment is an umbrella term and includes Change Orders and supplemental agreements.

Approval - The Department’s written statement indicating that the subject Work complies with Contract requirements. Approvals will only be given for those submittals, activities, or Work specifically identified for “Approval” or “approval” in the Contract Documents. *See also* DB Section 105-11.

As-Built Conditions - The Work as actually performed under the Contract and as recorded on the Record Drawings.

Award - The decision of the Department to accept a responsive Proposal from a responsible Proposer for the Work identified in the Scope of Services Package, subject to the execution and approval of a satisfactory Contract, provision of Payment and Performance Bonds to secure the payment and performance thereof, provision of such insurance as is required under the Contract, and the satisfaction of such other conditions as may be specified or otherwise required by law.

Baseline Progress Schedule – *See* Part 4 Special Provision SP 108-A1.1

Basic Project Configuration - The salient characteristics of the Project as defined and/or illustrated in the RFP, Part 1, Project Scope, Section 4 including any permitted deviations thereto contained in the Design- Builder’s Proposal.

Basic Project Configuration Plan - The Plan designated as such in the Contract Documents that depicts the Basic Project Configuration within the limits specified in the Contract. In general, the Basic Project Configuration Plan describes fundamental elements of the Project that must be included as part of the final design and construction to be furnished by the Design-Builder.

Bridge – A Bridge is a Structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway; having a track or passageway for carrying traffic or other moving loads; and having an opening over 20 sq. ft.

Bridge Roadway Width – The clear width of structure measured at right angles to the center of the Roadway between the bottom of curbs or, if curbs are not used, between the inner faces of parapet or railing.

Calendar Day – Every Day on the calendar, beginning and ending at midnight, local time.

Change Order – A written order expressly identified as a Change Order issued by the Project Manager to the Design-Builder for a change to the Contract. Changes to the Contract are Extra Work, increases or decreases in Contract item quantities, or alterations to the Contract, and are within the scope of the Contract. A Change Order also establishes the basis and amount of payment for the change to the Contract and provides for any time extension necessitated by the change to the Contract.



Conditional Notice to Proceed – Written notice to the Design-Builder to proceed with portions of the Contract Work, including, but not limited to, preparatory Work for Material fabrications, such as, test piles or other activities which hinder progress in the beginning stages of construction.

Construction Subcontractor - A Subcontractor (or Affiliate) retained by the Design-Builder that is involved in the actual construction of the Project.

Constructor - A Principal Participant, Subcontractor or Affiliate retained by the Design-Builder and licensed by the State of Delaware that is involved in the actual construction of the Project. (Del. Code Title 30 §§ 2501.)

Consultation and Written Comment - The Department's reviews, observations, and/or inspections based solely on information submitted by the Design-Builder (not based on any independent investigation or inquiry by the Department) and the Department's written responses resulting from such Department actions. *See also* DB Section 105-11.

Consultant – A Professional Engineer, Registered Architect, Architectural Firm, or Engineering Firm, registered in the State of Delaware and under contract or subcontract to the Department to perform professional services.

Contract - The written agreement between the Department and the Design-Builder setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the prescribed Work. The Contract includes the Advertisement; Contract Documents identified in the Scope of Services Package; the Design-Builder's Proposal Information; the Design-Builder's Lump Sum Price Proposal (with the exception of the Proposal Bond); the Notice to Proceed (NTP); Payment, Performance, and Retainage Bonds; Specifications; Supplemental Specifications; Special Provisions; Plans; and any Supplemental Agreements, Amendments, and Change Orders that are required to complete the Work in an acceptable manner and Contract time, including authorized extensions thereof, all of which constitute one instrument. The Contract shall not be modified, altered, or otherwise changed by any oral promise, statement, or representation made either by the Department or Design-Builder, unless such modification, alteration, or change is reduced to writing in accordance with the Contract. The executed written agreement constitutes the entire Contract.

Contractor – *See* Design-Builder.

Contract Bond – The security furnished by the Design-Builder and the Surety as a guaranty that the Design-Builder shall fulfill the terms of the Contract and pay all legal debts pertaining to the design and construction of the project.

Contract Claim (Claim) – A written demand or assertion by the Design-Builder or the Department seeking, as a legal or equitable right: payment of money, Adjustment or interpretation of Contract terms, or other relief.

Contract Documents – The Contract Documents shall include the Agreement, DB Section 100, Design Requirements and Performance Specifications, DB Special Provisions, the Utility Requirements, the Scope of Services Package Plans, the Engineering Data, the Design-Builder's Proposal, and all provisions required by law to be inserted in the Contract whether actually inserted or not. Whenever separate publications and the Department's Standard Specifications are referenced in the Contract Documents, it is understood to mean the publications and Specifications, as amended, current as of the Proposal due date, unless otherwise noted.

Contract Item – A specific portion of Work for which a price is provided in the Contract.



Contract Payment and Performance Bond. The security furnished by the Design-Builder and the Design-Builder's Surety or sureties to guarantee payment and performance of all obligations incurred by the Design-Builder on any Contract.

Contract Price – See Lump Sum Contract Price.

Contract Time – The number of Calendar Days allowed for completion of the Contract, including authorized time extensions. Calendar day contracts shall be completed on or before the day indicated even when that date is Saturday, Sunday, or holiday.

Control of Access – The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is controlled by public authority.

Controlled Access Highway – Any highway to or from which access is denied or controlled from or to abutting land or intersecting Streets, roads, highways, alleys, or other public or private ways.

Critical Path - Each path shown on the Baseline Progress Schedule or subsequent schedule updates for which there is zero Total Float.

Cultural Resource - Any prehistoric or historic period artifact, site, building, structure, material remain, or traditional use area resulting from, or associated with, human cultural activity. Historically important Cultural Resources are those eligible for inclusion on the National Register of Historic Places.

Culvert – Any structure that provides an opening under any Roadway, but is not classified as a Bridge.

Day - A Calendar Day, unless otherwise defined or modified.

Dedicated Stockpile – A stockpile assembled for a specific project.

Definitive Design - The point in the design process at which the design concepts are defined and the Basic Project Configuration is finalized.

Delaware Department of Transportation Plans - Those Scope of Services Package Plans included in the Contract Documents that were created by the Department.

Department - The Delaware Department of Transportation.

Department-Directed Changes - Any changes in the Work as described in the Contract (including changes in the standards applicable to the Work) that the Department has directed the Design-Builder to perform as described in the Contract.

Department's Project Manager - The engineer representing the Department and having direct supervision of the administration and execution of the Contract.

Design Acceptance - Written confirmation by the Department after submittal and review of the Record Drawings that the design conforms to the Contract Documents and reflects the As-Built Conditions. Design Acceptance is required as part of Final Acceptance.

Design-Build - The Project's delivery methodology under which the Department contracts with a single legal entity that has responsibility for the design and construction of the Project under a single contract with the Department.



Design-Build Team - *See* Design-Builder.

Design-Builder - The single legal entity selected pursuant to the Scope of Services package that enters into the Contract with the Department to design and construct the Project (also referred to as the “Design-Build Team”).

Design-Builder’s Project Manager - The Design-Builder’s designated competent representative and single point of contact capable of reading and understanding the Contract and experienced in all aspects the type of Work being performed.

Design Manager - A Principal Participant, Specialty Subcontractor, or in-house designer that leads the team furnishing or performing the civil/site design of the Project.

Design Plan - The Plan prepared by the Designer during the design development to represent the Project.

Design Review - A comprehensive and systematic examination of the design as specified in the Contract to verify that it is in conformance with the requirements of the Contract, as performed by the Design-Builder for all stages of the design including Record Drawings. During all stages of the design, the Department will contribute to the review through Oversight, including, participation, auditing, and spot-checking.

Design Unit - A distinct portion of the Project of which the design is performed as a contiguous, integrated unit. *See* [DB Section 111-3](#).

Designer - A Principal Participant, specialized Subcontractor, or in-house Design-Build designer authorized to perform work in the State of Delaware that leads the team furnishing or performing the design of the Project. (Del Code Title 24, §§2801.)

Differing Site Condition - Differing Site Conditions are subsurface or latent physical conditions encountered at the site that, 1) differ materially from those indicated in the Contract, or are 2) unknown physical conditions of an unusual nature, differing materially from those conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract. If the Contract contains a definition of Differing Site Conditions in the General Notices, the definition in this Section does not apply and is replaced by the definition found in the General Notices.

Directive Plans - Those Plans that depict required elements and components of the Project within specifically defined parameters. The Design-Builder has limited or no latitude to adjust components or details shown on Directive Plans. Examples of Directive Plans include the following:

- A) Basic Project Configuration Plans that depict the Basic Project Configuration within the limits defined in the Contract;
- B) Delaware Department of Transportation Plans; and
- C) Right-of-Way Plans.

Dispute - A matter of Contract performance or Contract compensation, including granting of extensions of time, in which there is or may be disagreement between the Design-Builder and the Department and which may involve adjustment of Contract Items or the addition of new items to the Contract, extension of time for performance, and/or adjustments in compensation necessitated by the resolution of such disagreement.



Engineer – The Chief Engineer of the Department, acting directly or through an assistant or other authorized representative, such as the Department’s Project Manager, responsible for engineering and administration supervision of the Contract.

Engineer of Record (EOR) – Designer who is in responsible charge of and seals the Plans and Specifications.

Equipment - All machinery, equipment, tools, and apparatus necessary for acceptable completion of the Work.

Extra Work – Work not provided for in the Contract as awarded but found essential and subsequently added to the Contract by the Department for satisfactory completion of the Contract within its intended scope.

Falsework – Temporary construction Work on which main Work is wholly or partly built and supported until it is strong enough to support itself; a temporary framework used to support part or all of a structure during demolition.

Formwork – A temporary structure or mold used to retain the plastic or fluid concrete in its designated shape until it hardens. Formwork must have enough strength to resist the fluid pressure exerted by plastic concrete and any additional fluid pressure effects generated by vibration.

Final Acceptance – See [DB Section 109-10](#).

Force Account - Payment for the directed performance of design and/or construction Work based on the actual cost of labor, Equipment, and Materials furnished, overhead, and profit as calculated in Section 109.04 of the Department’s Standard Specifications.

General Notices – Federal and State regulations contained in the Contract Documents that govern Contract operations.

Hazardous Materials - The term Hazardous Materials shall mean any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 United States Code (USC) 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC 5101, et seq.; the Resource Conservation and Recovery Act, 42 USC 6901, et seq.; the Toxic Substances Control Act, 15 USC 2601, et seq.; the Clean Water Act of 1977, 33 USC 1251, et seq.; the Clean Air Act, 42 USC 7401, et seq.; or any other federal, State, or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.

Headings – The Titles or Headings of Parts, Sections, and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their content or interpretation.

Highway, Street, or Road – A general term indicating a public way used by vehicles and pedestrians.

Holidays – The following days shall be considered legal holidays in the State of Delaware.

- A. New Years Day
- B. Martin Luther King’s Birthday
- C. Good Friday
- D. Memorial Day



- E. Independence Day
- F. Labor Day
- G. General Election Day (biennial)
- H. Return Day (Sussex County only after 12:00 Noon)
- I. Thanksgiving Day
- J. Friday after Thanksgiving
- K. Christmas Day

If any holiday falls on Sunday, the Monday following shall be the holiday. If any holiday falls on a Saturday, the Friday preceding shall be the holiday.

Independent Assurance - Review, analysis, checking, and/or testing performed by an independent firm or firms as contracted by the Department.

Independent Checker– Engineer under Designer-Builder’s team to perform independent calculations and check of Designer’s Plans and Specifications.

Independent Check Certificate – Issued by Independent Checker certifying that calculations, Plans and Specifications have been prepared in accordance with Contract requirements.

Indicative Plans - Plans that represent the nature and type of Work to be designed and constructed as part of the Project and reflect items for which the Department has no particular view on the specific configuration or Material used in the final product, such as the following:

- A) Structure type;
- B) Pavement type (concrete or asphalt);
- C) Drainage Material or size; or
- D) Stormwater Management.

Indicative Plans do not necessarily reflect the final locations, quantities, or all elements required to complete the design.

Inspector - A Department and/or Design-Builder representative authorized to inspect methods and Materials, Equipment, and Work both on and off the Site of the Project.

Instructions to Proposers - Those documents contained within the Scope of Services Package that provide directions for the preparation and submittal of information by the Proposers in response to the Scope of Services Package.

Key Personnel – Members of the Design-Build Team meeting minimum requirements as set forth in [Contract Documents Part 4 – Special Provisions](#), Special Provision 108C.

Laboratory – The Department’s testing laboratory or any other testing laboratory approved by the Department.

Lead Engineer – See Design Manager

Lead Principal Participant - The Principal Participant that is designated by the Proposer as having the lead responsibility for managing the Design-Builder’s organization.

Liquidated Damages – An amount due as agreed to in the contract documents and payable to the Department by the Design-Builder for additional costs incurred by the Department resulting from the Design-Builder’s failure to complete the work within the Contract time.



Local Road – A Street or road not in the State maintained system.

Local Traffic – That traffic which has either its origin or destination, or both, within the limits of the Project.

Lump Sum Contract Price - The total lump sum amount paid for the Work to be performed under the Contract, including adjustments to account for Change Orders. The Lump Sum Contract Price may also be known as the Contract Price.

Lump Sum Price Proposal - The portion of the Proposal that addresses the Project’s cost, Project Components, Project Component prices, payment schedule, and Proposal Bond. With the exception of the Proposal Bond, the Price Proposal is included in the Contract Documents at Award. The Lump Sum Price Proposal may also be known as the Price Proposal.

Lump Sum Price Proposal Form - The approved form on which the Department requires a Lump Sum Price Proposal to be prepared and submitted as part of the Proposal for the Work. The Lump Sum Price Proposal Form may also be known as the Price Proposal Form.

Material - Any substances used in the Work.

Materials and Research Manual – The manual used to establish and standardize construction and maintenance sampling and Material acceptance requirements for the Department.

Median – The portion of a Highway separating Traveled Ways for traffic in opposite directions.

Necessary Basic Project Configuration Change - Material changes in the Basic Project Configuration by either party that are necessary to correct an error, omission, or defect in the Basic Project Configuration Plans as shown or described in the Contract (with the understanding that a change shall be deemed “necessary” only if the error, omission, or defect creates a problem which cannot reasonably be corrected without a material change in the Basic Project Configuration).

Notice to Proceed - Written notice from the Project Manager to the Design-Builder to proceed with Contract Work, including the date of beginning of Contract Time.

Oversight - Actions by the Department to satisfy itself that the Design-Builder is designing, constructing, and managing the Work in accordance with the Contract Documents. It includes actions identified in the Contract Documents by the terms Quality Acceptance (QA), accept/acceptance, assurance, inspect/inspection, audit, ensure, certify, confirm, review, verify, or terms of similar import. Delaware Department of Transportation comments as a result of Oversight are conveyed to the Design-Builder through Consultation and Written Comment. Neither the activity of Oversight nor the lack of Consultation and Written Comment on the part of the Department shall be construed to relieve the Design-Builder and its organization from the responsibility and costs for meeting all Contract and regulatory requirements.

Part - A major subdivision of the Contract Documents.

Partnering - Those actions taken to include all parties with an appropriate and vested interest in the Project in the management of the Project, such that the Project is completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of all concerned. These actions include, but are not limited to, communication, organization, establishing goals, continuous improvement, problem identification, conflict resolution, and managing change. Interested parties may include, but are not limited to, the Department; the Design-Builder; Subcontractors; Suppliers of goods and services to the



Project; the community within which the Project is constructed; the community served by the Project; federal, State, and local governments or other public agencies; and utilities.

Pavement Structure – The combination of base course and Surface Course placed on a Subgrade across the Roadbed.

Payment/Performance Bond - The approved form of security, executed by the Design-Builder and Surety, guaranteeing complete execution of the Contract and Supplemental Agreements thereto, and payment of all legal debts, including liens and monies due the Department, pertaining to the Contract.

Performance Specification - A specification that establishes Contract requirements in terms of design parameters and performance parameters to be met. Performance Specifications also may include parameters for determining performance and corrective action to be taken.

Person - Any individual, firm, corporation, company, Limited Liability Company (LLC), Joint Venture (JV), voluntary association, partnership, trust, or unincorporated organization, or combination thereof.

Plans - The Contract drawings that show location, type, dimensions, and other details of the prescribed Work.

Price Proposal – See Lump Sum Price Proposal.

Price Proposal Form – See Lump Sum Price Proposal Form.

Principal Participant - Any of the following entities:

- A) The Design-Builder (or Proposer);
- B) An individual firm, all general partners, or LLC or JV members of the Design-Builder (or Proposer); and/or
- C) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Design-Builder (or Proposer).

Profile Grade – The trace of a vertical plane intersecting the top surface of the proposed wearing surface or other designed course usually along the longitudinal centerline of the Roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Progress Check Point - A defined step towards the completion of Work identified in the Schedule of Progress Check Points.

Project - The improvements to be designed and constructed by the Design-Builder and all other Work product to be provided by the Design-Builder in accordance with the Contract Documents.

Project Manager – The Department’s Project Manager. Throughout the Contract Documents references to “Project Manager” shall mean the Department’s Project Manager. The Design-Builder’s Project Manager will be referred to as such.

Project Number – A number used to identify the Project.

Project Specifications - Those Specifications developed by the Design-Builder to define and control the specific requirements, conditions, means, and methods to be used on the Project. Project Specifications will be based on the Contract requirements and shall provide finished products that meet or exceed the quality requirements of the Contract. Project Specifications are subject to the review and Consultation and Written Comment of the Department’s Project Manager during Design Reviews.



Proposal - The offer of the Proposer for the Work when executed and submitted in response to the Scope of Services Package in the prescribed format and on the prescribed forms. The Proposal includes the Technical Proposal and the Price Proposal.

Proposal Documentation - All writings, working papers, computer printouts, charts, and data compilations that contain or reflect information, data, or calculations used by the proposer to prepare the Proposal submitted, including but not limited to material relating to the determination and application of:

- A. Equipment rates
- B. Overhead rates and related time schedules
- C. Labor rates
- D. Efficiency or productivity factors
- E. Arithmetic extensions
- F. Subcontractor and Material supplier quotations

Any manuals standard to the industry used by the Proposer in determining the Proposal are also considered Proposal Documentation. These manuals may be included in the Proposal Documentation by reference and shall show the name and date of the publication and the publisher.

The term “Proposal Documentation” does not include documents provided by the Department for the Proposer’s use in the preparation of the Proposal.

Proposal Information - The documents so designated in the ITP and submitted to the Department by the Proposer/Design-Builder in accordance with the ITP that will be included in the Contract Documents at Award.

Proposer - A Person/Firm submitting an SOQ for the Project in response to an RFQ, and if selected for the Short-List, an entity submitting a Proposal.

Quality Acceptance - All planned and systematic Oversight actions by the Department necessary to provide confidence that the Design-Builder is performing QC in accordance with the Quality Plan; that all Work complies with the Contract; and that all Materials incorporated in the Work, all Equipment, and all elements of the Work will perform satisfactorily for the purpose intended. Oversight actions include, but are not limited to, monitoring and verification of design through auditing; spot-checking and participation in the review of the design; and monitoring and verification of construction through auditing, spot inspections, and Verification Sampling and testing at production sites and the Project Site. Quality Acceptance also includes IA, the Department’s Consultation and Written Comment, documentation of QA activities, final inspection, and Final Acceptance.

Quality Acceptance Inspector - Inspector representing the Department to perform IA and QA inspection at the site.

Quality Acceptance Program - The overall quality program and associated activities including Department QA, Design-Builder QC, the Contract’s quality requirements, and the Design-Builder’s Quality Plan.

Quality Control - The total of all activities performed by the, Design-Builder, Designer, Subcontractor, producer, or Manufacture to ensure that the Work meets Contract requirements. For design this includes, but is not limited to, procedures for design quality; checking; Design Review, including reviews for constructability; and review and Approval of Working Drawings. For construction this includes, but is not limited to, procedures for Materials handling and construction quality. Inspection, sampling, and testing of Materials, plants, production, and construction; Material certifications;



calibration and maintenance of Equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

Quality Control Manager – The individual who is responsible for the QC program for the Project design, including efforts of sub-consultants.

Quality Plan - The plan that sets out the Design-Builder's means of complying with its obligations in relation to QC, which plan shall be provided and maintained in accordance with the Contract following Consultation and Written Comment thereof by the Department's Project Manager.

Record Drawings – Final plan documents reflecting the Work as actually performed under the Contract. Record Drawings are to be prepared by the Design-Builder and submitted to the Department for final review and Approval.

Reference Documents - The documents provided with and so designated in the Scope of Services Package. The Reference Documents, including Plans contained therein and/or so designated, are not Contract Documents and were provided to Design-Builder for informational purposes only and are relied upon at the Design-Builder's own risk.

Request for Information - A written request from Design-Builder for clarification on Plans and Specifications during construction. If the response by Designer requires changes to Plans and/or specifications, the revised Plans and/or Specifications shall be subjected to the same Design Review process required for design.

Request for Proposals – *See* Scope of Services Package.

Request for Qualifications - The written solicitation issued by the Department seeking SOQs to be used to identify and Short-List the Proposers to receive the Scope of Services Package for the Project.

Right-of-Way – Land, property, or interest therein, acquired for or devoted to transportation purposes.

Right-of-Way Acquisition Schedule - The schedule for acquisition of Right-of-Way (ROW) permits or easements by the Department set forth in the Contract and/or ITP.

Roadbed - The graded portions of a Highway within top and side slopes, prepared as a foundation for the Pavement Structure including the shoulders.

Roadside – The areas between the outside edges of the shoulders and the right-of-way boundaries. Unpaved Median areas between inside shoulders of divided highways and infield areas of interchange are included.

Roadside Development – Those items necessary to the complete Highway which provide for preservation of landscape Materials and features; rehabilitation and protection against erosion of areas disturbed by construction through seeding, sodding, mulching, and placing of other ground covers; and suitable planting or other improvements to increase the effectiveness and enhance the appearance of the Highway.

Roadway - The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

Scope of Services Package - The document identifying the location and the requirements of the Project, Work to be performed, and Materials to be furnished in response to which a Proposal may be submitted



by a Proposer/Design-Builder. The Scope of Services Package includes the ITP, Contract Documents, and Reference Documents. The Scope of Services Package is issued only to Persons who are on the Short-List. The Scope of Services Package may also be referred to as the RFP.

Scope of Services Package Plans - Plans prepared by the Department during its PE to the extent they are identified in the Contract Documents.

Scope of the Project - The brief description of the Work to be performed to design and construct the Project as contained in the Contract.

Secretary – The Secretary of Transportation for the State of Delaware.

Secretary of Transportation – As used in [DB Section 102](#), General Notices, Requirements and Conditions, means the Secretary of Transportation for the United States Department of Transportation.

Section - A subdivision of the Project or a subdivision of a Part of the Contract Documents.

Specialty Item - Work not usually performed by highway contractors and so designated in the Contract. Work that requires specialized knowledge, skill, or Equipment not ordinarily available in construction organizations and in general limited to minor components of the overall Contract. For purposes of this Contract, all engineering and design Work are considered Specialty Items.

Specifications – The compilation of provisions and requirements for the performance of the prescribed Work.

Specified – Set forth or stipulated in the Plans or Specifications or elsewhere in the Contract, such as, Materials, Equipment, or methods.

Standard Construction Details – Delaware Department of Transportation drawings approved for repetitive use, showing the details to be used where appropriate. The Standard Construction Details are a Reference Document for the purposes of this Project, unless otherwise indicated in the contract documents.

Standard Plans – *See* Standard Construction Details.

Standard Specifications – A book of Specifications entitled “Delaware Standard Specifications, for Road and Bridge Construction, August 2016” for general application and repetitive use. The Standard Specifications are a Reference Document for the purposes of this Project.

State - The State of Delaware, acting through its authorized representative.

Street – *See* Highway.

Structures - Buildings, Culverts, catch basins, junction boxes, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other similar features encountered in the Work.

Subcontractor – A n individual or legal entity contracting with the Proposer to perform any part of the design or construction of an item of work as part of the Proposer’s contract with the Department.

Subgrade – The surface upon which the Pavement Structure for on-grade Roadways, including shoulders, are constructed.



Substantial Completion – See [DB Section 109-10](#).

Substantial Completion Date - The Calendar Day on which the Design-Builder achieves Substantial Completion, as per the Contract Documents. The Substantial Completion Date shall be the last chargeable day for the Contract.

Substructure - That part of the structure below the bearings of simple and continuous spans, skewbacks, or arches and tops of footings of rigid frames, including, backwalls, wingwalls, and wing protection railings.

Superstructure – The entire Structure except Substructure.

Supplemental Agreement – A written agreement between the Design-Builder and the Department covering work not otherwise provided for, or revisions in or amendments to terms of the Contract, or conditions specifically prescribed in the Specifications as requiring Supplemental Agreements. Such Supplemental Agreement becomes part of the Contract when approved and executed.

Supplemental Selection Information - The Supplemental Selection Information will not be made a Part of the Contract Documents at Award. The Supplemental Selection Information is Part of the Technical Proposal and includes an executive summary, summary statement, and other requested forms and information.

Surety - The corporation, partnership, or individual, other than the Design-Builder, executing a bond furnished by the Design-Builder.

Surface Course – The top course of the Pavement Structure.

Technical Proposal – The portion of the Proposal consisting of the Proposal Information and the Supplemental Selection Information.

Through Traffic – That traffic which has neither its origin nor destination within the limits of the Project.

Titles – See Headings.

Total Float – The time differential between any activities late finish and early start, less the activity duration.

Total Lump Sum Proposal Price - The total proposed amount that will be considered to be the correct lump sum of all proposed Project Component Values (PCVs). The Total Lump Sum Proposal Price may also be known as the Total Proposal Price.

Total Proposal Price – See Total Lump Sum Proposal Price.

Traffic/Travel Lane – The portion of Traveled Way for movement of a single lane of vehicles.

Traveled Way - The portion of Roadway for movement of vehicles, exclusive of shoulders and auxiliary lanes.

Unit – A quantity adopted as a standard for measurement of Work.



Utility Relocation Plans - The Design Plans for relocation of a utility impacted by the Project, to be prepared by the Design-Builder or the utility owner, as designated in any applicable utility agreements.

Value Engineering Proposal - A proposal developed and documented by the Design-Builder which (A) produces a net savings to the Department without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all governmental approvals); and (B) would modify or require a change in any of the requirements of or constraints set forth in the Contract Documents in order to be implemented. A Value Engineering (VE) Proposal cannot be based solely upon a change in quantities.

Verification Sampling and Testing - Sampling and testing performed to validate the quality of the product. The Department, or a firm retained by the Department, will perform Verification Sampling and Testing.

Warranty – Assurance by the Design-Builder that specified elements or components of the Work will be repaired or replaced, as required by the Contract, during the time period(s) stipulated.

Work – The furnishing of labor, Materials, services, Equipment, and incidentals necessary for successful completion of the Project and the carrying out of all obligations imposed by the Contract.

Working Drawings - Those Plans prepared and reviewed by the Design-Builder to supplement Design Plans provided by the Design-Builder to specify additional details and procedures for construction of the Project, including, but not limited to, the following:

- A) Framework Plans;
- B) Cofferdam Plans;
- C) Construction details;
- D) Erection Plans;
- E) Fabrication Plans;
- F) Field design change Plans;
- G) Stress sheets;
- H) Shop drawings;
- I) Lift Plans;
- J) Bending diagrams for reinforcing steel;
- K) Falsework Plans; and
- L) Similar data required for the successful completion of the Work.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

DESIGN-BUILD STATEWIDE PIPE REPLACEMENTS

State Contract # T201607002
Federal Contract # EBROS-2016(26)

RFP PART 2
DB SECTION 102

GENERAL NOTICES, REQUIREMENTS AND CONDITIONS



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DB SECTION 102



GENERAL NOTICES, REQUIREMENTS AND CONDITIONS

DB 102-1 PROJECTS WITH FEDERAL FUNDS

DB 102-1.1 FUNDING

The work performed under this contract is funded, in whole or in part, with federal aid. Funding is dependent on meeting the requirements of the FHWA, and any additional contract requirements of the FHWA will apply to this contract, and the Contractor will be notified of such requirements by the Department.

DB 102-1.2 NOTICE TO PROCEED

"Notice to Proceed" for this contract will be conditioned upon the availability of the federal funds and State funds. The Department may terminate this Contract prior to issuance of the "Notice to Proceed". If the Contract is so terminated, all costs incurred by the contractor shall be borne by the contractor. If the Contract is terminated for reasons beyond the intent of this paragraph, the provisions of Section 108.11 of the Standard Specifications will apply. In any case, no work shall be started prior to receipt of "Notice to Proceed."

DB 102-1.3 BUY AMERICA

See [DB Section 106-2.2](#).

DB 102-1.4 PREVAILING WAGE REQUIREMENTS, STATEMENTS, AND PAYROLLS

See [DB Sections 102-4, 102-23, 102-24](#).

DB 102-2 NO MISUNDERSTANDING

The Proposer certifies that it has examined the Contract Documents and the Site of the Work and has fully informed itself from its personal examination of the same regarding the quantities, character, location, and other conditions affecting the Work to be performed including the existence of poles, wires, pipes, ducts, conduits, and other facilities and Structures of municipal and other public service corporations on, over, or under the Site.

The Proposer agrees that its proposed Lump Sum Contract Price includes all costs arising from existing conditions shown or specified in the Contract Documents and/or readily observable from a Site inspection prior to the Proposal due date and/or generally recognized as inherent in the nature of the Work.

The Department in no way warrants or guarantees that the information made available by the Department or found in the Contract Documents covers all conditions at the Site or that said information and Contract Documents should act as a substitute for personal investigation, interpretation, and judgment by the Proposer. The proposer shall make their own interpretation of all geotechnical information provided by the Department. The Department does not warrant the geotechnical information as being representative of conditions throughout the site.

The intent of the Contract Documents is to include all items/aspects of the Work that are necessary for the proper initiation, execution, and completion of the Work to the sole satisfaction of the Department. A requirement occurring in any component of the Contract Documents is as binding as though occurring in all.



The components of the Contract Documents are intended to be complementary and to describe and provide for a complete Project. The following components of the Contract Documents complement one another in the following order of precedence: this DB Section 100 (Part 2), the Special Provisions (Part 4), the Design Requirements and Performance Specifications (Part 3), and the Design-Builder's Proposal (Part 5). In the event there is any discrepancy between any of these contract documents, the order of precedence set above governs so that the former prevails over the latter.

Dimensions given on the Plans or which can be calculated will govern over scale dimensions.

When it appears that there is an apparent error or omission in the Contract or there is an apparent conflict or contradiction between any of the various documents mentioned above, or between the Contract documents and the actual Work Site, the Design-Builder has a duty to immediately notify the Department's Project Manager of the discrepancy. The Department's Project Manager shall resolve the discrepancy in writing before the Design-Builder proceeds further. The Department's Project Manager may require the Design-Builder to modify Plans and other documents to correct the error or omission. This Work shall be paid for by the Department pursuant to [DB Section 109-8](#), except under conditions related to Hazardous Materials, covered by [DB Section 104-8.3](#).

Failure of the Design-Builder to notify the Department's Project Manager of an apparent discrepancy may be deemed a waiver of the Design-Builder's right to claim any adjustment in the Lump Sum Contract Price for Extra Work. In addition, the Design-Builder may be fully liable for damages suffered by the Department resulting from this failure to timely notify the Department's Project Manager of a discrepancy.

DB 102-3 ATTESTING TO NON-COLLUSION

The Department requires as a condition precedent to acceptance of bids (Price Proposals) a sworn statement executed by, or on behalf of, the Person, firm, association, or corporation to whom such contract is to be awarded, 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 such contract. The form for this sworn statement is included in [ITP Appendix C](#) Proposal Forms and must be properly executed and submitted in order to have the Proposal considered responsive.

DB 102-4 REQUIREMENT BY DEPARTMENT OF LABOR FOR SWORN PAYROLL INFORMATION

Delaware Code, Title 29, Chapter 69, Section 6960, Paragraph (c) states:

"(c) Every contract based upon these specifications shall contain a stipulation that certified sworn payroll reports be maintained by every contractor and subcontractor performing work upon the site of construction. The contractor and subcontractor shall keep and maintain the sworn payroll information for a period of two (2) years from the last day of the work week covered by the payroll. A certified copy of these payroll reports shall be made available:

1. For inspection or furnished upon request to a representative of the Department of Labor;
2. Upon request by the public or for copies thereof. However, a request by the public must be made through the Department of Labor. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Department of Labor in accordance with the Department's copying fee policy. The public shall not be given access to the records at the principal office of the contractor or subcontractor; and



3. The certified payroll records shall be on a form provided by the Department of Labor or shall contain the same information as the form provided by the Department and shall be provided within ten (10) days from receipt of notice requesting the records from the Department of Labor."

Contractor may contact:

Department of Labor
Division of Industrial Affairs
4425 No. Market Street
Wilmington, DE 19802
Telephone (302) 761-8200

DB 102-5 PREFERENCE FOR DELAWARE LABOR

Delaware Code, Title 29, Chapter 69, Section 6962, Paragraph (d), Subsection (4)b states:

"In the construction of all public works for the State or any political subdivision thereof, or by firms contracting with the State or any political subdivision thereof, preference in employment of laborers workmen or mechanics shall be given to bona fide legal citizens of the State who have established citizenship by residence of at least 90 day in the State. Each public works contract for the construction of public works for the State or any political subdivision thereof shall contain a stipulation that any person, company or corporation who violates this section shall pay a penalty to the Secretary of Finance equal to the amount of compensation paid to any person in violation of this section."

DB 102-6 CONFLICT WITH FEDERAL STATUTES OR REGULATIONS

Delaware Code, Title 29, Chapter 69, Section 6904, Paragraph (a) states:

"If any provision of this subchapter conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity."

For all contracts which are identified as Federal-aid projects by having a Federal-aid number inserted in the appropriate space on the cover sheet of the proposal, if there is a conflict between the above Section 6962 and Federal law and the requirements of the above Section 6962 shall not apply.

DB 102-7 FEDERAL LABOR AND EMPLOYMENT REQUIREMENTS

Federal Regulation 23 CFR § 635.117(b) Labor and employment, states:

"No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project."

DB 102-8 EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

Delaware Code, Title 29, Chapter 69, Section 6962, Paragraph (d), Subsection (7) states:

"a. As a condition of the awarding of any contract for public works financed in whole or in part by State appropriation, such contracts shall include the following provisions:

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



- i. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or natural origin. The contractor will take positive steps to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.
- ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.'

DB 102-9 TAX CLEARANCE

As payments to each vendor or contractor aggregate \$2,000, the Division of Accounting will report such vendor or contractor to the Division of Revenue, who will then check the vendor or contractor's compliance with tax requirements and take such further action as may be necessary to insure compliance.

DB 102-10 LICENSE

A person desiring to engage in business in this State as a contractor shall obtain a license upon making application to the Division of Revenue. Proof of said license compliance to be made upon execution of a contract to which he has been named.

DB 102-11 SUBCONTRACTOR LICENSE: 29 DEL. C. §6967

(c) Any contractor that enters a public works contract must provide to the agency to which it is contracting, within 30 days of entering such public works contract, copies of all occupational and business licenses of subcontractors and/or independent contractors that will perform work for such public works contract. However, if a subcontractor or independent contractor is hired or contracted more than 20 days after the contractor entered the public works contract the occupational or business license of such subcontractor or independent contractor shall be provided to the agency within 10 days of being contracted or hired.

DB 102-12 DIFFERING SITE CONDITIONS

SUSPENSIONS OF WORK and SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:

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 they are disturbed and before the affected Work is performed.

Upon written notification, the Department's Project Manager will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Project Manager will notify the Design-Builder of his/her determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Design-Builder will be allowed unless the Design- Builder has provided the required written notice.



No Contract adjustment will be allowed under this clause for any effects caused on unchanged Work.

Suspensions of Work ordered by the Department: If the performance of all or any portion of the Work is suspended or delayed by the Department in writing for an unreasonable period of time (not originally anticipated, customary or inherent to the construction industry) and the Design-Builder believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the Design-Builder shall submit to the Department's Project Manager in writing a request for adjustment within 7 Calendar Days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Project Manager will evaluate the Design-Builder's request. If the Project Manager agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Design-Builder, its suppliers, or Subcontractors at any approved tier, and not caused by weather, the Project Manager will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Project Manager will notify the Design-Builder of his/her determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment will be allowed unless the Design-Builder has submitted the request for adjustment within the time prescribed.

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

Significant changes in the character of work: The Project Manager reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Design-Builder agrees to perform the Work as altered.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Design-Builder in such amount as the Project Manager may determine to be fair and equitable.

The term "significant change" shall be construed to apply only to the following circumstances:

- (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
- (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

DB 102-13 TO REPORT BID RIGGING ACTIVITIES



The U. S. Department of Transportation (DOT) operates the below toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

TO REPORT BID RIGGING ACTIVITIES CALL 1-800-424-9071.

DB 102-14 CONVICT PRODUCED MATERIALS

Convict produced materials are defined as:

- (a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:
 - (1) Produced by convicts who are on parole, supervised release, or probation from a prison or
 - (2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.
- (b) Qualified prison facility means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

DB 102-15 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

- 1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- 2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation In <u>Each Trade</u>	Goals for Female Participation In <u>Each Trade</u>
12.3% (New Castle County)	6.9% (Entire State)
14.5% (Kent & Sussex Counties)	

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training



must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the State of Delaware.

**DB 102-16 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions



of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Program Office or from the Federal procurement contracting offices. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented



in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.



- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participating, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Order of Federal Contract Compliance Programs. Any Contractor



who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

DB 102-17 TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities", (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

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 journeyman in the type of trade or job classification involved. The number of trainees to be trained under the special provision will be **ZERO (0)**. In the event the contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this Training Special Provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year apprenticeship or training.

The number of trainees shall be distributed among the work classification on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the Department of Highways and Transportation for Approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work that is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.



Training and upgrading of minorities and women 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 that such persons are available within a reasonable area of recruitment. The contractor 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 commitment is not intended, and not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should 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 in the training program selected by the contractor and approved by the Department of Highways and Transportation and the Federal Highway Administration. The Department of Highways and Transportation and the Federal Highway Administration shall approve a program if 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 classification concerned by the end of the training period. 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 contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work the classification covered by the program. It is the intention of these provisions that the training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, 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 division office. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this Contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other sources does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for off-site 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 of the trainee; or pays the trainee's wages during the off-site training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainees as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the Contract. A contractor will have fulfilled his responsibilities under this



Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid a least 60 percent of the appropriate minimum journeymen's rate specified in the Contract for the first half of the of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In fact case, the appropriate rates approved by the Department of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provisions.

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 will provide for the maintenance of records and will furnish periodic reports documenting his performance under this Training Special Provision.

DB 102-18 INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT & TRANSPORTATION EQUITY ACT

Recipients of Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21) are required to comply with the regulations of 49 Code of Federal Regulations (CFR) Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

DB 102-19 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM SPECIFICATION

The U.S. Department of Transportation (DOT) requires that the Delaware Department of Transportation continue the established Disadvantaged Business Enterprise (DBE) Program for participation in U.S. DOT programs and that the program follows the final rules as stated in 49 CFR Part 26 and the Department's approved DBE Program plan.

The following definitions apply to this subpart:

Disadvantaged Business Enterprise or DBE means a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and, (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a Contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good Faith Efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.



Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender neutrality.

Small Business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR §26.65(b).

Socially and economically disadvantaged individuals means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is - (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) Black Americans which includes persons having origins in any of the Black racial groups of Africa;
- (ii) Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) Native Americans which includes persons who are American Indians, Eskimos, Aluets, or Native Hawaiians;
- (iv) Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

The Department will establish specific goals for each particular DOT-assisted project that will be expressed as a percentage the respective portion of the total dollar amount of contract bid.

The specific contract goals for this contract are:

Disadvantaged Business Enterprise **ELEVEN (11)** Percent of the total dollar amount of the Lump Sum Cost Proposal. The Design-Builder is expected to make every effort to involve both DBE professional service and construction firms in the prosecution of the Work.

The Department continues to reserve the right to approve DBE Subcontractors and all substitutions of DBE Subcontractors prior to award and during the time of the contract.

Proposers are required to submit with their Proposals the completed DBE Program Assurance portion of the Certification document which will state the Proposers' intent of meeting the goals established for this Contract; or in the instance where a Design-Builder cannot meet the assigned DBE Goals for this



contract, he/she shall at the time of Proposal submission submit documentation required to verify that he/she has made a Good Faith Effort to meet the DBE Goals. Guidance for submitting a Good Faith Effort is identified in the next section and in the DBE Program Plan. Further, the apparent successful Proposer must submit to the Department within seven (7) Calendar Days after the Price Proposal opening, executed originals of each and every DBE subcontract to satisfy contract goals consistent with the DBE Program Assurance submitted as part of the bid package.

No contract work shall be performed by a DBE Subcontractor until the executed DBE subcontract is approved in writing by the Department and the Department has issued the required Notice to Proceed. Any DBE subcontract relating to work to be performed pursuant to this Contract, which is submitted to the Department for Approval, must contain all DBE Subcontractor information, the requirements contained in this contract, and must be fully executed by the contractor and DBE Subcontractor.

Each contract between the Proposer and each DBE Subcontractor shall at the minimum include the following:

1. All pertinent provisions and requirements of the prime contract.
2. Description of the work to be performed by the DBE Subcontractor.
3. The dollar value of each item of work to be completed by the DBE Subcontractor and the proposed price of each item of work to be completed by the DBE Subcontractor.

DB 102-20 CRITICAL DBE REQUIREMENTS

A Proposal may be held to be non-responsive and not considered if the required DBE information is not provided. In addition, the Proposer may lose its submitting capability on Department projects and such other sanctions as the Department may impose. It is critical that the Proposer understands:

1. In the event that the Proposer cannot meet the DBE goal as set forth in this specification, he/she shall at the time of Price Proposal submission provide to the Department that percentage of the DBE Goal that will be met, if any, on the written and notarized assurance made a part of this contract. The Proposer shall also at the time of Price Proposal Submission provide all documentation that the Proposer wishes to have the Department consider in determining that the Proposer made a Good Faith Effort to meet contract DBE Goals. The Department will not accept Good Faith Effort documentation other than on the scheduled date and time of the Price Proposal opening. However, the Department may ask for clarification of information submitted should the need arise.
2. A Proposal which does not contain either a completely executed DBE Program Assurance and/or Good Faith Effort documentation, where appropriate, shall be declared non-responsive and shall not be considered by the Department.
3. Failure of the apparent winning Proposer to present originals of all DBE subcontracts to substantiate the volume of work to be performed by DBE's as indicated in the bid within seven (7) Calendar Days after the Price Proposal opening shall create a rebuttable presumption that the bid is not responsive.
4. Proposers are advised that failure to meet DBE Goals during the term of the contract may subject them to Department sanctions as identified in the DBE Program Plan.
5. In the execution of this contract, the successful Proposer agrees to comply with the following contract clauses:

Prompt Payment: The Design-Builder receiving payments shall, within 30 days of receipt of any payment, file a statement with the Department on a form to be determined by the Department that all Subcontractors furnishing labor or material have been paid the full sum due them at the stage of



the Contract, except any funds withheld under the terms of the Contract as required by Chapter 8, Title 17 of the Delaware Code, annotated and as amended. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written Approval of the Department. This clause applies to both DBE and non-DBE Subcontractors.

Retainage: The Design-Builder agrees to return retainage to each Subcontractor within 30 Calendar Days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written Approval of the Department. This clause covers both DBE and non- DBE Subcontractors. As guidance, once a Subcontractor has satisfactorily completed the physical work, and has given to the Design-Builder a certified statement that all laborers, lower tier contractors, and materialmen who have furnished labor and materials to the Subcontractor have been paid all monies due them, the Design-Builder shall return retainage to the Subcontractor within 30 Calendar Days.

6. In the execution of this Contract, the successful Proposer agrees to comply with the following Contract assurance and will include this same language in each Subcontractor contract:
"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award 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 remedy as the recipient deems appropriate." 49 CFR Section 26.13
7. In addition to this specification, Proposers must comply with all provisions of the rules and regulations adopted by the U.S. Department of Transportation for DBE participation in U.S. DOT and DelDOT Programs (49 CFR Part 26) and the Delaware Department of Transportation Disadvantaged Business Enterprise Program Plan; each of which is hereby incorporated and made part of this specification. Proposers are also reminded that they must be responsible and responsive Proposers in all other aspects aside from the DBE Program in order to be awarded the contract.
8. In accordance with 49 CFR 26.53(f)(1), the DelDOT requires that a Contractor not terminate a DBE Subcontractor without prior written consent from the DelDOT Civil Rights Office. This includes, but is not limited to, instances in which a Contractor seeks to perform Work originally designated for a DBE Subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

DB 102-21 GUIDANCE FOR GOOD FAITH EFFORT

When the DBE Goals established for a contract by DelDOT are not met, the Contractor shall demonstrate good faith efforts to meet the DBE Contract goals. The Contractor shall demonstrate that the efforts made were those that a Contractor actively and aggressively seeking to meet the goals established by DelDOT would make, given all relevant circumstances. Evidence of this good faith effort will be submitted with the Price Proposal at the time of the Price Proposal opening.

The Contractor is expected to demonstrate good faith efforts by actively and aggressively seeking out DBE participation in the project to the maximum extent, given all relevant circumstances. Following are the kinds of efforts that may be taken but are not deemed to be exclusive or exhaustive and DelDOT will consider other factors and types of efforts that may be relevant:

1. Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal. Selections of portions of work are required to at least equal the goal for DBE utilization specified in this contract.



2. Written notification at least ten (10) Calendar Days prior to the opening of a bid soliciting DBE interest in participating in the Contract as a Subcontractor or supplier and for specific items of work.
3. Efforts made to obtain and negotiate with DBE firms for specific items of work:
 - a. Description of the means by which firms were solicited (i.e. by telephone, e-mail, written notice, advertisement).
 - b. The names, addresses, telephone numbers of DBE's contacted, the dates of initial contact; and whether initial solicitations of interest were followed-up by contacting the DBEs to determine with certainty whether the DBEs were interested.
 - c. A description of the information provided to DBE firms regarding the plans, specifications and estimated quantities for portions of the work to be performed.
 - d. A statement of why additional agreements with DBE's were not reached in order to meet the projected goal.
 - e. Listing of each DBE contacted but not contracted and the reasons for not entering a contract.
4. Efforts made to assist DBEs that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.
5. Reasons why certified DBEs are not available or not interested.
6. Efforts to effectively use the services of available disadvantaged community organizations; disadvantaged contractor's groups; local, state and federal DBE assistance offices; and other organizations that provide assistance in recruitment and placement of DBEs.

The following are examples of actions that may not be used as justification by the Contractor for failure to meet DBE Contract goals:

1. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
2. Rejection of a DBE bid or quotation based on price alone.
3. Rejection of a DBE because of its union or non-union status.
4. Failure to contract with a DBE because the Contractor normally would perform all or most of the work in the Contract.

Administrative reconsideration:

Within five (5) days of being informed by the Department that it is not responsive because it has not documented sufficient good faith efforts, a Proposer may request administrative reconsideration. Proposers should make this request in writing to the following reconsideration official: Delaware Department of Transportation, Director of Administration, P. O. Box 778, Dover, Delaware 19903. The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the reconsideration official, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The final decision made by the reconsideration official will be communicated to the bidder in writing. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.



**DB 102-22 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION
CONTRACTS (EXCLUSIVE OF APPALACHIAN CONTRACTS)**

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order

11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.



The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are 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 EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.



b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will



take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.



8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award 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 contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

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

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.



III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis- Bacon poster



(WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject



to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;



(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the



provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.



6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which



such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.



3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:



18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this



transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.



2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

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

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier



Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:



a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

APPENDICES TO THE TITLE VI ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (Federal Highway Administration (FHWA), or Federal Transit Authority (FTA)), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor will provide all information and reports required by the Acts and the Regulations, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration (FHWA), or Federal Transit Authority (FTA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the



Federal Highway Administration (FHWA), or Federal Transit Authority (FTA), as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration (FHWA), or Federal Transit Authority (FTA) may determine to be appropriate, including, but not limited to: withholding payments to the contractor under the contract until the contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through five in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts and the Regulations. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration (FHWA), or Federal Transit Authority (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor or consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,(42 U.S.C. § 460 I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982,(49 USC §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987,(PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964,The Age Discrimination Act of 1975and Section 504 of the Rehabilitation Act of 1973,by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);



Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. S 41123) prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs; policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

DB 102-23 PREVAILING WAGES

Included in [Appendix 102A](#) of this Scope of Services Package are the minimum wages to be paid various classes of laborers and mechanics as determined by the Department of Labor of the State of Delaware in accordance with Title 29 Del.C. §6960, relating to wages and the regulations implementing that Section.

Title 29 Del.C. §6960 relating to wages stipulates:

(b) Every contract based upon these specifications shall contain a stipulation that the employer pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics. The specification shall further stipulate that the scale of wages to be paid shall be posted by the employer in a prominent and easily accessible place at the site of the work, and that there may be withheld from the employer so much of accrued payments as may be considered necessary by the Department of Labor to pay to laborers and mechanics employed by the employer the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and rates of wages received by such laborers and mechanics to be remitted to the Department of Labor for distribution upon resolution of any claims.

(c) Every contract based upon these specifications shall contain a stipulation that sworn payroll information, as required by the Department of Labor, be furnished weekly. The Department of Labor shall keep and maintain the sworn payroll information for a period of 6 months from the last day of the work week covered by the payroll.

Proposers (bidders) are specifically directed to note the Department of Labor's prevailing wage regulations implementing §6960 relating to the effective date of the wage rates, at Part VI., Section C., which in relevant part states:



"Public agencies (covered by the provisions of 29 Del.C. §6960) are required to use the rates which are in effect on the date of the publication of specifications for a given project. In the event that a contract is not executed within one hundred twenty (120) days from the date the specifications were published, the rates in effect at the time of the execution of the contract shall be the applicable rates for the project."

DB 102-24 PREVAILING WAGE REQUIREMENTS

It is the Department's understanding that the Davis-Bacon Act is not a preemptive statute in the broad sense, and does not preempt or displace State of Delaware prevailing wage requirements.

When a contract for a project contains both Federal Davis-Bacon and State of Delaware prevailing wage standards because of concurrent Federal and State coverage, the employer's minimum wage obligations are determined by whichever standards are higher.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

DESIGN-BUILD STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

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BONDS AND NOTICE TO PROCEED**



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BONDS AND NOTICE TO PROCEED**

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DB SECTION 103

BONDS AND NOTICE TO PROCEED

DB 103-1 PAYMENT/ PERFORMANCE BOND

At the time of execution of the Contract, the Design-Builder shall furnish a Payment/ Performance Bond in a sum equal to 100 % of the Contract Price on the form provided by the Department. The bonds shall be written by a Surety or insurance company that is in good standing and currently licensed to write surety bonds in the State of Delaware by the Delaware Department of Insurance and is currently on the United States (US) Department of Treasury's Financial Management list of approved bonding companies which is published annually in the Federal Register. The bond amount shall be within the underwriting limits as listed for that Surety and all signatures on the Bond Form shall be original signatures, in ink, and shall not be mechanical reproductions or facsimiles of any kind.

DB 103-2 NOTICE TO PROCEED

The Department will issue the Design-Builder Notice to Proceed (NTP) or a Conditional NTP as soon as practicable after Contract execution.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 104
SCOPE OF WORK**



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DB SECTION 104

SCOPE OF WORK

DB 104-1 WORK REQUIRED

The Design-Builder shall be required to perform all Work included in Part 1, Project Scope as well as any other Work outlined in the Contract. The Design-Builder shall be required to protect all properties, utilities, and existing Highway facilities within or adjacent to the Right of Way (ROW) and to repair or replace any such properties, utilities and facilities damaged or destroyed by construction operations by the Design-Builder or any employee or Subcontractor.

The Design-Builder shall be responsible for the Work of its various Subcontractors and for the coordination of all construction activities. Their respective operations shall be arranged and conducted so as to avoid delays. The Design-Builder shall closely coordinate Subcontractor Work, Material deliveries and construction operations when the Work of the Design-Builder overlaps or ties into Work of another Contractor.

Any modification, removal, and/or replacement of Work already in place due to delays or oversights by the Design-Builder or its Subcontractors shall be performed at the Design-Builder's expense. Such modification, replacement or repair work shall not be the basis for a claim for extra compensation.

The Design-Builder shall provide preventive and corrective maintenance of all Work until Final Acceptance by the Department.

DB 104-2 INTENT OF CONTRACT

The intent of the Contract is to provide for performance and completion of the Work described. The Design-Builder shall furnish all labor, Materials, Equipment, tools, transportation, and supplies required to complete the Work in accordance with the Plans, Project Specifications, and terms of the Contract.

When an item in the Contract requires the Design-Builder to make a choice between more than one Material, standard, procedure, etc., the Design-Builder shall indicate the choice to the Department's Project Manager in writing.

When the Project Specifications reference or require the use of "manufacturer's recommendations or specifications," the Design-Builder shall provide the Department's Project Manager with a current copy of these recommendations or Specifications prior to initiating Work that incorporates such information.

DB 104-3 ALTERATION OF THE CONTRACT

The Department reserves the right to order Work not provided for in the Contract whenever such Work is found essential or desirable to satisfactorily complete the Contract within its intended scope. Such Work shall be performed in accordance with the Specifications and as directed. Payment for such Work will be made as provided in [DB Section 109](#).

The Department reserves the right to order changes in details, including changes in Materials, processes, and sequences, whenever such changes are in the best interests of the public or are necessary or desirable to satisfactorily complete the Work. Such changes in details shall be performed in accordance with the Specifications and as directed. Payment will be made as provided in [DB Section 109](#).



Alterations to the Contract as provided for by this [DB Section 104-3](#) shall not invalidate the Contract nor release the Surety. The Design-Builder agrees to accept the Work as altered as if it had been part of the original Contract. The Design-Builder shall notify the Surety of any alterations to the Contract.

Alterations of the Contract shall not involve Work beyond the physical limits of the proposed Work, except as necessary to satisfactorily complete the Project or as addressed by [DB Section 104-7](#).

DB 104-4 MAINTAINING TRAFFIC

The Design-Builder shall keep all roads open to all traffic during the construction, when practicable. Where approved by the Department, traffic may be bypassed over an approved detour route. The Design-Builder shall keep the section of the Project being used by public traffic in a condition that safely and adequately accommodates traffic. The Design-Builder shall furnish, erect, and maintain barricades, suitable lights, drums, warning signs, delineators, striping, and flaggers, in accordance with the Department's Manual on Uniform Traffic Control Devices (MUTCD).

The Design-Builder shall bear all expense of maintaining the section of road undergoing improvement including all temporary approaches or crossings and intersections with trails, roads, Streets, businesses, parking lots, residences, garages, farms, and other features as may be necessary. The Design-Builder shall also bear all expense for repairing pavement on approved detour routes when diverting traffic onto a roadway with a lower functional classification and for all roadways that are damaged by the Design-Builder during site construction. Repairs may include, but are not limited to, pavement patching, pavement overlay or pavement reconstruction. Detour routes shall be reviewed with the Design-Builder prior to implementation to agree upon the condition. Snow removal along routes open to traffic will not be required of the Design-Builder.

If the Design-Builder does not complete the Work within the Contract completion time (including approved extension time), the cost of all traffic control items to maintain traffic as required in accordance with the MUTCD (including all subsequent revisions up to the date of the Advertisement of the Project), the Plans, and Specifications shall be borne by the Design-Builder to complete the remaining work beyond the Contract time. Traffic control items shall include but not be limited to warning lights, warning signs, barricades, plastic drums, Portland Cement Concrete safety barrier, flaggers, police officers, arrow panel, message board, and portable impact attenuator.

See [Contract Documents Part 3 – Appendix C](#), Traffic Management Plan (TMP), and [Contract Documents Part 4 - Special Provisions](#) for additional requirements.

DB 104-5 FINAL CLEANING OF PROJECT SITE

Before final inspection of the Project, the Project, publicly owned borrow sources, and all areas occupied or affected by the Design-Builder in connection with the Work within the right-of-way shall be cleaned of all rubbish, excess Materials, temporary Structures, and equipment. All surfaces and slopes, whether old or new, shall be trimmed to the cross-section, all grass and weeds, which are taller than 6" shall be cut and all parts of the work shall be left in an acceptable condition. The acceptability of the final cleanup shall be at the sole determination of the Department. The cost of the final cleanup shall be incidental to the Contract and no separate payment will be made.

DB 104-6 GUARANTEES

The Design-Builder guarantees, by signing the Contract, electrical equipment, apparatus, Materials, and workmanship provided under the Contract for a minimum period of one year after Final Acceptance. See [Contract Documents Part 3 – Appendix A](#), Performance Specifications.



Instruction sheets are required and shall be furnished by the manufacturer for all Materials, equipment, apparatus, supplies, and operation. The information shall be delivered by the Design-Builder to the Department's Project Manager prior to Final Acceptance of the Project, with the following written warranties and guarantees:

- A) The manufacturer's standard warranty for each piece of mechanical and electrical Equipment or apparatus furnished under the Contract;
- B) The Design-Builder's guarantee that, during the guarantee period, necessary repair or replacement of the warranted Equipment, apparatus, and other items included in the Design-Builder's Warranty proposal shall be made by the Design-Builder; and
- C) The Design-Builder's guarantee for satisfactory operation of the mechanical and electrical systems furnished and constructed under the Contract for the guarantee period.

DB 104-7 DIFFERING SITE CONDITIONS, SUSPENSIONS OF WORK, AND SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK

DB 104-7.1 Differing Site Conditions

Additional compensation via Change Order shall be made for time related costs, if any, pursuant to DB Section 109-8. For any increased costs of the Work resulting from the Differing Site Condition, payment shall be made pursuant to [DB Sections 109-8](#), but the Equipment compensation shall be governed and controlled by the provisions of [DB Section 109-8.2.2\(4\)](#).

DB 104-7.2 Suspensions of Work Ordered by the Department's Project Manager

See [DB Section 102-12](#) and [DB Section 109-12.2](#).

DB 104-7.3 Significant Changes in the Character of Work

See [DB Section 102-12](#) and [DB Section 109-12](#).

DB 104-7.4 Notification of Differing Site Conditions and Extra Work

The Design-Builder shall immediately notify the Project Manager of alleged changes to the Contract due to Differing Site Conditions, Extra Work, altered work beyond the scope of the Contract, or action(s) or lack of action(s) taken by the Department that have allegedly changed the Contract terms and conditions.

- A) No further work is to be performed or Contract costs incurred on the change after the date the change occurs unless directed otherwise by the Project Manager.
- B) Within seven days of the initial notification, the Design-Builder shall provide the following applicable information to the Project Manager in writing:
 - 1) The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change.
 - 2) Name, title, and responsibility of each Department representative knowledgeable of the alleged change.
 - 3) Identify any documents and the substance of any oral communications involved in the alleged change.



- 4) Basis for an allegation of accelerated schedule performance, if applicable.
- 5) Basis for an allegation that the work is not required by the Contract, if applicable.
- 6) Particular elements of Contract performance for which additional compensation may be sought under this Section including:
 - a. Project Component(s) that have been or may be affected by the alleged change.
 - b. Labor or Materials, or both, that will be added, deleted, or wasted by the alleged change and what equipment will be idled or required.
 - c. Delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change.
 - d. Estimated adjustments to Project Component Value(s), delivery schedule(s), staging, and Contract time necessary due to the alleged change.
 - e. Estimate of the time within which the Department must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of the Design-Builder to provide required notice in accordance with this Subsection shall constitute a waiver of any and all entitlement to adjustments in the Contract Price or time as a result of the alleged change.

- C) Within ten days after the receipt of notice, the Project Manager will respond in writing to the Design-Builder to:
- 1) Confirm that a change occurred and, when necessary, direct the method and manner of further performance.
 - 2) Deny that a change occurred and, when necessary, direct the method and manner of further performance.
 - 3) Advise the Design-Builder that additional time is required to evaluate the allegation or adequate information has not been submitted to decide whether 1) or 2) above applies, and indicate the needed information and date it is to be received by the Project Manager for further review.

Any adjustments made to the Contract shall not include increased costs or time extensions for delays resulting from the Design-Builder's failure to provide requested additional information in accordance with this clause.

See also [DB Section 102.12](#).

DB 104-8 CHANGES IN BASIC PROJECT CONFIGURATION; UTILITY RELOCATIONS; HAZARDOUS MATERIALS; ENVIRONMENTAL MITIGATION

DB 104-8.1 Changes in Basic Project Configuration

The Department acknowledges and agrees that the Design-Builder's Proposal was based on certain basic information presented by the Department regarding the nature of the Project to be constructed. This basic information is considered the Basic Project Configuration. The Design-Builder shall not make any material change in Basic Project Configuration except as/or unless authorized by a Change Order. Non-material Department-directed changes will be covered by a Change Order whether they are within the parameters of the Basic Project Configuration or not. Department-directed changes within the Basic Project Configuration specified in this Section may be ordered without any change in the Lump Sum Contract Price or extension of the Contract Time, provided the change is ordered prior to completion of the Preliminary Design Review for the affected Design Unit(s).



DB 104-8.1.1 Standard for Determining Materiality of Change in Basic Project Configuration

See [Contract Documents Part 1 – Project Scope](#).

DB 104-8.1.2 Necessary Basic Project Configuration Change

This Contract generally obligates the Design-Builder to undertake all Work necessary to complete the Project without changes in the Lump Sum Contract Price. This Section provides for changes to the Lump Sum Contract Price due to Necessary Basic Project Configuration Changes. If any Necessary Basic Project Configuration Change increases or decreases the cost of performing the Work, then the Department will issue a Change Order to adjust the Lump Sum Contract Price accordingly. If a Necessary Basic Project Configuration Change changes the time required for performance of the Work, the time adjustment will be covered by a Change Order. Furthermore, if the Design-Builder commences any construction Work affected by the change prior to delivery of appropriate notice of the change to the Department under this Section, the Change Order shall allow the Department a credit for the cost of any unnecessary Work performed and/or shall exclude any additional costs associated with re-doing the Work already performed. The Change Order shall also account for any offsets from Change Orders previously issued.

In the event that the Department approves a Necessary Basic Project Configuration Change that reduces the Design-Builder's costs, the Change Order shall note the amount of cost decrease available for future offsets.

DB 104-8.1.3 Relationship to Value Engineering Proposals

This section has been removed from the contract.

DB 104-8.1.4 Inaccuracies in Design-Builder's Preliminary Design

Any cost increases and/or delays resulting from changes to the Basic Project Configuration due to inaccuracies in the Preliminary Design shall be borne by the Design-Builder. In such event, no change in the Work shall be deemed to have occurred and no Change Order will be issued for any such cost increases and/or delays. Accordingly, any non-material changes in the Basic Project Configuration (other than non-material Department-directed changes following the Preliminary Design Review) shall be the responsibility of the Design-Builder.

DB 104-8.1.5 Applicability of Change Orders

In general, the Design-Builder may implement non-material changes in the Basic Project Configuration, if approved by the Department, without a Change Order, unless the change involves a circumstance for which a Change Order is specifically required hereunder. The Design-Builder acknowledges and agrees that constraints set forth in the environmental approvals and other Contract Documents, as well as the site conditions and the planned ROW limits, will impact the Design-Builder's ability to make non-material changes in the Basic Project Configuration.

DB 104-8.2 Changes Applicable to Utility Relocations

The following provisions govern entitlement to Change Orders with respect to relocation and outages of utilities.



DB 104-8.2.1 Change in Design

In as much as the Design-Builder is both furnishing the design of and constructing the Project, the Design-Builder may have significant opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering such opportunities, the Design-Builder shall at all times consider the impact of design changes on relocations and outages of utilities and related facilities with the overall goal of minimizing the necessity for relocations of such utilities and related facilities to the extent practicable. Accordingly, if, as a result of a change made by the Design-Builder to the Design-Builder's design, either new relocations or outages are required, or costs of the Work are otherwise increased, then the following shall apply to any resulting cost increases or decreases affecting the Design-Builder and/or the Department:

- A) The Design-Builder shall not be entitled to a Change Order for any such additional costs it incurs, including the costs of any additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or reduction of utility relocation and outages;
- B) The Design-Builder shall reimburse the Department for any mutually agreed upon additional expenses incurred by the Department. If the Department and the Design-Builder cannot mutually agree to the additional expenses, the Project Manager will determine the cost as per [DB 109-8.2.1](#); and
- C) The Design-Builder shall not be obligated to provide a credit to the Department on account of reductions in the cost of the Work due to any such avoided or reduced relocation or outages.

DB 104-8.2.2 Additional Restrictions on Utility-Related Change Orders

- A) Coordination Costs

In no event will the Design-Builder be awarded any increase in the Lump Sum Contract Price for any increased costs of coordinating with the affected utility owner on account of any utility relocation or outage.

- B) No Change Orders for Utility Service Lines or Temporary Relocations of Utilities

The Design-Builder shall not be entitled to a Change Order for increased costs of the Work or any time extension for delays associated with the following:

- 1) Relocation of any utility service lines; and/or
- 2) Any temporary relocations or outages of utilities implemented for the convenience of the Design-Builder's own construction operations.

DB 104-8.3 Hazardous Materials Change Order

If unforeseen Hazardous Materials are found to exist within the limits of disturbance for the Project, the Department will provide for any necessary remediation. The Design-Builder shall immediately notify the Project Manager if any unforeseen hazardous and contaminated substance is encountered within the limits of Work. The Project Manager will coordinate remediation of the Hazardous Materials through a specialized hazardous waste remediation firm currently under contract with the Department in accordance with [Contract Documents Part 4 – Special Provisions](#), 202560 – Contaminated Material. The Department may issue a change order as provided for in [DB 104.8.1.2](#) and shall be responsible for any delay costs and expenses due to it or the Design-Builder making a new discovery of Hazardous Materials that are not identified in the Scope of Services Package or the Contract Documents.

The Design-Builder is hereby notified that there is a potential for encountering the partial remains of creosote coated timber bridge structures at several of the sites in this contract. If encountered, the Design-Builder shall proceed in accordance with [Contract Documents Part 4 – Special Provisions](#),



202560 – Contaminated Material. The Design-Builder shall take this potential into account in developing pricing for each site. The Department will not consider a change order or time extension for removal of unknown creosoted timber bridge structures.

DB 104-8.4 Changes in Environmental Mitigation Requirements

Changes in environmental mitigation requirements may occur as the result of changes in governmental rules, as the result of changes in the Work directed by the Department, or as the result of design decisions made by the Design-Builder or its construction methodologies. The Department shall issue a Change Order for changes in the scope of environmental mitigation requirements to be performed by the Design- Builder to the extent that they are directly attributable to changes in governmental rules or changes in the Work directed by the Department (including any assignment of mitigation requirements to the Design- Builder that were originally contemplated to be performed by the Department or others). The Design- Builder shall bear full responsibility for performance of any mitigation measures required as the result of its design decisions or construction methodologies. The Design-Builder shall also bear full responsibility for obtaining modifications to existing permits to accommodate its design decisions or construction methodologies. No additional compensation or extensions of time will be granted because of delays in obtaining approvals from the appropriate permitting agencies. Work that is proposed outside of the requirements or limits of the existing permits will not be allowed until the appropriate permitting agency approves the modification. Furthermore, the Design-Builder shall be entitled to compensation only for the costs associated with compliance with the new requirements that are beyond the original scope of the Contract and shall not be entitled to additional compensation for Work relating to such compliance that was included in its original scope, including any commitments made in the Design-Builder’s Proposal.

DB 104-8.5 General

Changes under this [DB Section 104-8](#) shall be governed by the notice, record keeping, and other requirements of [DB Sections 104 and 109](#). For any increased costs of the Work resulting from a significant change in the character of the Work, payment shall be made pursuant to [DB Section 109-8.2](#), but the Equipment compensation shall be governed and controlled by the provisions of [DB Section 109-8.2.2\(4\)](#).

Adjustments in Contract Time shall be included in the Change Order to reflect changes in the Critical Path for the Project.

The Design-Builder or the Department must make written notification to the other party of the existence of the apparent “significant change” if that party wishes to adjust the Lump Sum Contract Price or the Contract Time. Such notice shall be given within ten Calendar Days of the time at which the party had, or should have had, knowledge of an event, matter, or occurrence that results in a significant change in the character of the Work. Work that is substantially completed prior to the issuance of notice may not be considered for Contract adjustment.

Timely issuance of notice shall be a necessary requirement for consideration of Contract adjustment as provided in this Section.

DB 104-9 RETENTION OF RECORDS

The Design-Builder shall retain all records for six years after final payment is made under the Contract. Required records shall include all accounts, papers, maps, Plans, drawings, engineering calculations, reports, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Design-Builder in connection with the Contract. Legible electronic copies are



acceptable, provided they are so arranged, identified, and indexed that any individual document, or component of the records, can be located with reasonable facility.

The Design-Builder shall maintain records of all required payrolls and of the details that comprise the total Lump Sum Contract Price. These records shall be available at any time within six years following the date of final payment of the Project at the request of the Department for review and audit, if it is so deemed necessary by the Secretary. In case all or part of such records are not made so available, the Design-Builder understands and agrees that any items not supported by reason of such unavailability of the records shall be disallowed, or if payment has already been made, the Design-Builder shall, upon demand in writing by the Secretary, refund to the Department the amount so disallowed.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 105
CONTROL OF WORK**



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DB SECTION 105

CONTROL OF WORK

DB 105-1 DEPARTMENT'S PROJECT ORGANIZATION AND AUTHORITY OF DEPARTMENT'S PROJECT MANAGER

As designee of the Secretary, the Department's Project Manager has immediate charge of the Project. The Department's Project Manager is responsible for the administration and satisfactory completion of the Project. The Department's Project Manager will be delegated authority commensurate with that responsibility, including the authority to reject defective Material and construction and disapprove and reject design documents that do not comply with Contract requirements. The Department's Project Manager may further delegate authority commensurate with responsibility for certain decisions assigned to other Department personnel. Such delegations will be provided to the Design-Builder in writing.

The Design-Builder is required to submit all issues related to the Project through the Department's Project Manager. The Department's Project Manager will decide all questions that may arise, including, but not limited to, the following topics:

- A) Acceptability of design documents;
- B) The quality and acceptability of Material furnished;
- C) Work performed;
- D) The rate of progress of the Work;
- E) Interpretation of the Contract;
- F) Acceptable performance of the Contract requirements; and
- G) Administration of monthly progress payments.

The decision of the Department's Project Manager of the aforementioned shall be in writing and shall be delivered to the Design-Builder's Project Manager as quickly as practicable.

In addition to the authority to administer the Contract, modify the Contract by Change Order, and oversee and terminate the Contract as expressly provided in other Sections of the Contract, the Department's Project Manager will have the authority to suspend the Work, wholly or in part, or withhold progress payments due to the following:

- A) Conditions such that unsatisfactory Work might result, regardless of responsibility;
- B) Improper Material or procedures being used;
- C) Unsafe conditions for the workers or the general public as a result of the failure of the Design- Builder to correct those conditions;
- D) The Design-Builder's failure to carry out provisions of the Contract;
- E) The Design-Builder's failure to carry out directions of the Department's Project Manager;
- F) The Design-Builder's failure to comply with State or federal law or regulation;
- G) The Design-Builder's non-conformance with the Maintenance of Traffic provisions of the Contract, causing serious disruptions to traffic operations; or
- H) The Department's Project Manager's determination that suspension is necessary because of unsuitable weather.

The Design-Builder or the Department's Project Manager may suspend Work if conditions exist that are potentially injurious to the Project, including Work performed in the absence of Department accepted Design Plans and Project Specifications. No additional compensation will be paid to the Design-Builder because of such suspension. The Design-Builder shall not suspend Work without written authority from the Department's Project Manager. See [DB Sections 102-12 and 109-12.2](#) for more information on the Department Project Manager's authority to suspend Work.



The Department's Project Manager may also suspend the Work wholly or in part for other conditions or reasons beyond the control of the Design-Builder or not connected with the construction of the Project when deemed necessary in the public interest. Additional Work caused by such suspensions will be paid for by the Department pursuant to [DB Section 104 and DB Section 109](#).

Adjustment of Contract Time for suspension of Work shall be made as provided in [DB Section 108-5](#).

DB 105-2 CONFORMITY WITH DESIGN PLANS AND PROJECT SPECIFICATIONS

All Work performed and all Material furnished shall conform to the requirements of the Contract and the Design-Builder's approved design.

When the Department's Project Manager finds the Materials furnished, Work performed, or the finished product not within reasonably close conformity with the Contract but that reasonably acceptable Work has been produced, the Department's Project Manager will determine to what extent the Work will be accepted and remain in place. If accepted, the Department's Project Manager will document the basis of determination by Contract modification that will provide for an appropriate adjustment in the Lump Sum Contract Price for such Work or Material as he/she deems necessary to conform to his/her determination based on engineering judgment.

In the event the Department's Project Manager determines the Materials, the Work performed, or finished product have resulted in an inferior or unsatisfactory product, the Work or Materials shall be removed and replaced or otherwise corrected by and at the expense of the Design-Builder.

DB 105-3 COOPERATION BY THE DESIGN-BUILDER

The Design-Builder shall give the Work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Department's Project Manager, and other contractors.

The Design-Builder shall have on the Work site at all times, as the Design-Builder's agent, a competent superintendent capable of reading and understanding the Plans and Project Specifications and experienced in the type of Work to be performed.

At the pre-construction meeting, the Design-Builder shall furnish the Department's Project Manager written notice of the superintendent's home, office, and mobile telephone numbers. The superintendent shall have authority to execute orders or directions of the Department's Project Manager without delay and to promptly supply such Materials, Equipment, tools, labor, and incidentals as required. The superintendent shall be furnished regardless of the amount of Work sublet.

DB 105-4 COOPERATION WITH UTILITIES

The Design-Builder is responsible for the coordination of Work with Utility companies that have facilities located within the limits of each project site. The Design-Builder shall comply with the Utility Coordination Performance Specification contained in [Contract Documents Part 3 – Appendix A](#).

Upon Award of the Contract, the Department will notify all utility companies with known facilities located within the limits of each project site of the name and address of the Design-Builder, approximate date Work will begin, and other pertinent information.

Except as hereinafter provided, and regardless of whether the utility is shown on the Plans or referred to in the Project Specifications, all water lines, sanitary sewer lines (force main and gravity lines), gas lines, electric lines, fiber optic cables, telephone lines, cable television lines, service connections, water and gas



valve boxes, light standards, cableways, signals, and other utility appurtenances within construction limits which prevent completion of the Design-Builder's Work will be relocated or adjusted by the owners at no expense to the Design-Builder with the exception of DelDOT, DNREC, New Castle County, Kent County, Sussex County, Town of Bridgeville, Town of Georgetown and City of Dover facilities. If these facilities require relocation as part of the Work, the Design-Builder is responsible for coordinating with the owner for the design and construction of the relocation in accordance with owner's Standards.

It is agreed that the Design-Builder has considered in its Proposal all permanent and temporary utility appurtenances in their present or proposed relocated positions and that no additional compensation will be allowed for delays, inconvenience, or damage sustained due to interference from the said utility appurtenances or the operation of moving them.

When the Design-Builder's Work involves excavating or underground demolition activity, the Design-Builder is required to reach Miss Utility of Delmarva a minimum of two but not more than ten working days prior to starting any Work, by calling (800) 282-8555 in Delaware or toll-free (800) 441-8355 in order to comply with Delaware Code, Chapter 8, Title 26. See DelDOT Standard Specifications Section 105.09 for further details concerning utilities.

DB 105-5 COOPERATION BETWEEN THE DESIGN-BUILDER AND OTHER CONTRACTORS

The Department reserves the right to contract for and perform additional work on or near the Work covered by this Contract.

When separate contracts are let within, adjoining, or adjacent to the limits of this Project, the Design-Builder and each other contractor shall conduct the work not to hinder the progress of work by other contractors and shall cooperate with each other as directed.

The Design-Builder shall arrange the Work and shall place and dispose of Materials, equipment, temporary works, and other construction-related items so as not to interfere with the operation of other contractors within, adjoining, or adjacent to the limits of the Project. The Design-Builder shall acceptably join the Work with that of other contractors and shall perform the Work in proper sequence to that of the others and without causing disruption or delay to the schedule of Project completion.

The Design-Builder shall assume all liability, financial or otherwise, in connection with the Contract and shall hold the Department harmless and indemnify the Department from all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Design-Builder or caused to other contractors due to the presence and operations of other contractors working within, adjoining, or adjacent to the limits of the Project.

DB 105-6 INSPECTION

The Design-Builder shall have the primary responsibility for Inspection of all Project Work through its respective Quality Control staff for design and construction. See [DB Section 112](#) of the Contract Documents for the specific Design-Builder QC responsibilities.

The Department shall have the primary responsibility for Quality Acceptance of all Project Work through its Project Manager and respective staff.



DB 105-6.1 Delaware Department of Transportation's Inspection

The Department's designated representative(s) shall be authorized to inspect any Work done and Material furnished, including all or any part of the Work and the preparation, fabrication, or manufacture of the Material to be used. The Department's inspection shall include, but not be limited to, the Design-Builder's compliance with applicable safety requirements set forth in [DB Section 107](#). The Department's designated representative(s) is not authorized to either alter or waive the provisions of these Specifications or the Contract or to issue instructions contrary to the Department accepted Design Plans and Project Specifications without written Approval of the Department's Project Manager or to act as foreman for the Design-Builder. However, he/she shall have the authority to reject unacceptable Work or Material. The Department's Inspections and tests are for the sole benefit of the Department and do not constitute any of the following:

- A) Relief of the Design-Builder's responsibility for providing adequate Quality Control measures;
- B) Relief of the Design-Builder's responsibility for damage to or loss of the Material before Final Acceptance;
- C) Implication of Final Acceptance; or
- D) Affectation of the continuing rights of the Department after Final Acceptance of the completed Work.

DB 105-6.1.1 Delaware Department of Transportation's Inspection of Work

All Material and each part or detail of the Work will be subject to Inspection by the Department's Project Manager and/or designated representative(s). The Department's Project Manager and staff shall be allowed full Work access and shall be furnished with necessary information and assistance by the Design-Builder to make a complete and detailed inspection, as deemed appropriate by the Department's Project Manager or designated representative.

If the Department's Project Manager requests it, the Design-Builder, at any time before Final Acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Design-Builder shall restore said portions of the Work to the standard required by the Project Specifications. If the Work thus exposed or examined proves acceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed may be paid for as Extra Work under [DB Section 109-8](#). But, if the Work so exposed or examined proves unacceptable, or if the Design-Builder failed to document its Work or complete and/or document its QC activities related to the Work, the uncovering or removing and the replacing of the covering or making good of the parts removed will be at the Design-Builder's expense.

Work done or Material used without Inspection by an authorized Department representative may be ordered removed and replaced at the Design-Builder's expense if the Department was not given the required notice that the Work was to be performed. When a utility, unit of government, political subdivision, or railroad is to pay a portion of the cost of the Work covered by this Contract, its representative(s) shall have the right to inspect the Work. Such Inspection shall in no sense make the utility, unit of government, political subdivision, or railroad a party to this Contract and shall in no way interfere with the rights of either party hereunder.

DB 105-6.1.2 Removal of Unacceptable and Unauthorized Work

All Work that does not conform to the requirements of the Contract shall be considered unacceptable unless otherwise determined acceptable under the provisions in [DB Section 105](#).

Unacceptable Work, whether caused by poor Work, defective Material, damage through carelessness, or any other cause found to exist prior to the Final Acceptance of the Work shall be removed immediately



and replaced in an acceptable manner irrespective of the presence of, or lack of, a Department designated representative at the time the Work was originally completed. This clause shall have full effect regardless of the fact that the defective Work may have been done or the defective Material used with the full knowledge of the Department's representative. The fact that the Department's Project Manager or designated representative may have previously overlooked such defective Work shall not constitute an Approval or Final Acceptance of any part of it.

DB 105-7 LOAD RESTRICTIONS

The Design-Builder shall comply with all legal and contractual load restrictions in the hauling of Materials or equipment on public roads. A hauling permit or other special permit will not relieve the Design- Builder of liability for damage to public or private property which may result from the movement of such loads or equipment.

Vehicles transporting construction Materials to Department projects shall not exceed the gross vehicle weight (GVW) or licensed weight, if less, as specified in the Delaware Code. Materials inspection weigh tickets will not be issued by Department personnel for GVWs in excess of the allowable maximum.

Payment for Materials delivered to the Project shall not exceed the allowable GVW minus the truck tare weight. An average tare weight may be established on a basis approved by the Department's Project Manager so that empty weighing is not necessary before every load. No payment will be made for any excess Material weight.

It shall be the responsibility of the Design-Builder to notify its Subcontractors, vendors, and suppliers of this requirement.

The maximum GVW for different vehicle axle configurations is as follows; provided that in the case of three-axle vehicles the extra weight fee has been paid and is so noted on the registration card:

<i>Customary Values</i>	
<i>Single Unit Values</i>	<i>GVW, Maximum</i>
2-axle vehicle (e.g., 2-axle dump truck)	40,000 lbs.
3-axle vehicle (e.g., 3-axle dump truck)	65,000 lbs. *70,000 lbs.
4-axle vehicle (e.g., 4-axle dump truck)	73,280 lbs.

<i>Customary Values</i>	
<i>Tractor-Semi-Trailer Combinations</i>	
3-axle combination unit	60,000 lbs.
4-axle combination unit	70,000 lbs.
5-axle combination unit	80,000 lbs.

* When extra weight fee has been paid and is so noted on registration card.



The Design-Builder shall be responsible for all damages done by hauling equipment. Operating Equipment or hauling loads that may damage Structures, Roadway, utilities, and or any construction is prohibited unless protective measures are taken by the Design-Builder.

DB 105-8 MAINTENANCE DURING CONSTRUCTION

The Design-Builder shall satisfactorily maintain the areas designated for construction (staging areas, construction accesses, etc.) within the ROW limits at all sites, from the effective date of the Notice to Proceed (NTP) at a site until the date of Final Acceptance at that site. Adjacent and parallel Roadways within the Project limits utilized to access staging areas or work areas shall be the maintenance responsibility of the Design- Builder. This maintenance responsibility includes, but is not necessarily limited to, maintaining drainage (sediment from construction shall be removed so as not to block drainage outside of the ROW), removing of debris to the satisfaction of the Department's Project Manager, as well as such striping, patching, and shoulder maintenance which will provide safe and convenient conditions at all times for the public and mowing all grass and weeds within the Limits of Construction, as directed by the Project Manager, to maintain a 6" maximum height. The Design-Builder shall continuously and effectively satisfy its maintenance responsibilities with such Equipment and forces as may be necessary to maintain a safe and satisfactory condition for the duration of the Project.

DB 105-9 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE

If the Design-Builder fails to comply with [DB Section 105-8](#), the Department's Project Manager will immediately notify the Design-Builder in writing of such noncompliance. If the Design-Builder fails to remedy the condition within 24 hours after receipt of the written notice, the Department's Project Manager may immediately remedy the condition, and the cost thereof will be deducted from future payments to the Design-Builder. If the Design-Builder fails to respond to such requests repeatedly it may be grounds for termination.

When the condition requires more immediate remedy due to hazard to life, health, and property, the Department's Project Manager may immediately remedy the condition and the costs thereof will be deducted from payments for the Work.

DB 105-10 DESIGN-BUILDER'S RESPONSIBILITY FOR WORK

The Design-Builder is responsible for carrying out the provisions of the Contract at all times, regardless of whether an authorized Department designated representative is present or not. Any Work or item that is, at any time, found to be out of Specification or not in compliance with the Design Plans shall remain the responsibility of the Design-Builder and shall be subject to such corrective measures that are approved in writing by the Design-Builder's Designer and accepted in writing by the Department's Project Manager.

DB 105-11 DELDOT'S CONSULTATION AND WRITTEN COMMENT, APPROVALS, AND NON-CONFORMANCE REPORTS

Except for items specifically designated for "Approval" or "approval" in the Contract Documents, The Department's Consultation and Written Comment regarding reviews, observations, and/or inspections of design documents, Working Drawings, other required submittals, and construction means and methods shall be considered and addressed by the Design-Builder. While the Design-Builder is not required to revise its Work in response to such comments, the Design-Builder shall provide a timely written response to the Department's Project Manager regarding its disposition of each of the Department's individual comments. Any issues arising during Consultation and Written Comment by the Department if not properly addressed by the Design-Builder, could affect the Department's Final Acceptance of the Project.



Deficiencies, non-compliance, errors, and/or omissions will be documented by the Department in written Non-Conformance Reports (NCRs). The Design-Builder shall respond to and address issues covered by NCRs and shall bring the Work into compliance with Contract requirements. In such cases, the Design-Builder's corrective actions will be subjected to further Consultation and Written Comment by the Department.

Approvals will only be given by the Department for those submittals or Work specifically identified in the Contract Documents as for "Approval" or "approval."

Consultation and Written Comments or Approval by the Department of design documents, Working Plans, other required submittals, activities/actions, construction means and methods, and/or the Design-Builder's construction detail does not relieve the Design-Builder of the full responsibility for providing adequate QC measures and does not relieve the Design-Builder of providing proper and sufficient Material, Equipment, and labor to complete the Work in accordance with the Contract, Design Plans, and Project Specifications.

DB 105-12 MEETINGS

The Design-Builder shall participate in meetings as indicated in this Section. The party leading the meeting shall record minutes of all meetings and distribute them within five working days of the meeting. Meeting minutes shall clearly identify the following:

- A) Date and attendees;
- B) Preparer and contact information;
- C) Action items and issues;
- D) The party responsible for the action item;
- E) The status of issues;
- F) Due dates for identified action items; and
- G) Distribution.

Action items and issues shall be retained in the minutes of subsequent meetings until the required action is completed and/or the issue is resolved.

DB 105-12.1 Design Mobilization and Workshop Meeting

Within 15 Calendar Days of NTP, the Design-Builder's Project Manager will consult with the Department's Project Manager and will arrange and lead a meeting prior to the Design-Builder initiating additional design Work. The purpose of the meeting will be to identify the design team, key Department personnel, establish submittal and review protocols, and discuss design concepts for replacement culvert type, maintenance of stream flow, erosion and sediment control, stormwater management and temporary traffic control. The intent is to make the subsequent Design Reviews more effective and efficient for all parties. The agenda shall be developed and prepared by the Design-Builder in consultation with the Department's Project Manager and shall include the following:

- A) The organization for design including all sub-consultants, Subcontractors, or similar entities;
- B) Submittal and Approval procedures;
- C) The design schedule and time allocations for Design Reviews; and
- D) Design Quality Control and Quality Assurance.

DB 105-12.2 Preconstruction Meeting

The Design-Builder will contact the Department's Project Manager to schedule a Preconstruction Meeting prior to the start of any construction work at each construction site. Agenda items shall include, but are not limited to the following:

- A) Construction Schedule;
- B) Staging Areas;



- C) Personnel, including Subcontractors;
- D) Required drawings;
- E) Material Approvals and testing;
- F) Erosion and Sediment control measures (a separate meeting may be held if more beneficial);
- G) Environmental impacts and concerns;
- H) Utilities;
- H) Coordination with other contractors; and
- I) Progress Payments.

The Department's Project Manager or the Design-Builder may add agenda topics that are consistent with the meeting goals, meeting schedule, and the general purpose for the meeting.

DB 105-12.3 Progress Meetings

Progress meetings shall be held at least monthly throughout the progress of the Project. The Design-Builder shall prepare the agenda in consultation with the Department's Project Manager and distribute copies together with draft minutes of the previous meeting to all planned participants at least two Calendar Days prior to the meeting. The Design-Builder shall lead the meetings.

The Design-Builder's Key Personnel shall attend the progress meetings. See [DB Section 108-3](#) for more information on the Design-Builder's Key Personnel.

A typical agenda shall include the following items:

- A) A confirmation of minutes of the previous meeting and status of action items arising at previous meetings;
- B) A review of Work progress;
- C) Design problems and decisions;
- D) Field observations, problems, and decisions;
- E) Identification of issues affecting planned progress;
- F) Planned activities (design and construction) for the coming month period;
- G) Maintenance of quality and Work standards;
- H) Safety;
- I) Environmental issues;
- J) Coordination with other Contracts;
- K) Utilities;
- L) Schedule updates (monthly);
- M) Public Outreach items/issues;
- N) Maintenance of Traffic; and
- O) The status of Change Orders, if any.

DB 105-12.4 Special Meetings

The Department's Project Manager may require special meetings at any time and that all or specified Design-Builder Key Personnel attend. These meetings may include discussions with the Public concerning aesthetic issues, construction and/or design schedule updates, etc. in accordance with the Design-Builder's Proposal and Part 5 of the Contract Documents. See [DB Section 108-3](#) for more information on Design-Builder's Key Personnel.

DB 105-13 VALUE ENGINEERING PROPOSALS

Value Engineering Proposals will not be accepted for this contract.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 106
CONTROL OF MATERIALS**



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**DB SECTION 106
CONTROL OF MATERIALS**

DB 106-1 MATERIAL REQUIREMENTS

Materials used on the Project must, at a minimum, be certified or tested prior to use. The certification process, which is administered by the DelDOT Materials & Research's Materials (M&R) Administration Unit, is described in [DB Section 106-2](#) below. The various units within M&R will test Materials used on the Project that are not accepted based on certification. Minimum testing requirements on Project Materials and the assorted types of tests performed are described in [DB Section 106-3](#).

DB 106-2 MATERIALS CERTIFICATION

DB 106-2.1 Product Approval / Vendors & Suppliers

The Department does not maintain an "approved products list", except for certain items associated with erosion and sediment control, through which a vendor can submit prospective Materials to the Department for testing and Approval. The Department evaluates Materials on a project basis.

If a vendor, or supplier, wishes to have their Materials used on the Project, they must have the Design-Builder submit each proposed Material for review. Each Material will then be verified for conformance to Specifications by certification or sampling. A complete description of the submittal and Approval process is located in the Materials Administration Unit in Part G of the DelDOT Materials and Research Manual. Source of Supply requests should be sent to SourceLetters@state.de.us.

When M&R has completed its review and evaluation of a submitted Material, and finds the Material to meet the requirements, both the Design-Builder and the vendor are notified in writing as to what steps are required for incorporation of that Material into the Project. If, upon evaluation, the Material does not meet Specification requirements, both the Design-Builder and the vendor are notified in writing as to why the Material cannot be incorporated into the Project. Although Materials may be accepted through this procedure for use on the Project, Final Acceptance of all Materials depends on acceptable field performance, testing, and sampling.

DB 106-2.2 Buy America Contract Requirement

In accordance with 23 U.S.C, 313 and 23 CFR 635.410, all iron and steel materials permanently incorporated into this project shall be produced in the United States, and all manufacturing processes involving these materials will occur in the U.S, except that a minimal amount of foreign steel or iron materials may be used, provided the cost of the foreign materials does not exceed 0.1 percent of the total Contract cost or \$2,500.00, whichever is greater. If such minimal amount of foreign steel is used, the Contractor shall maintain a record of the costs to ensure that the allowable limit is not exceeded. This documentation shall be presented to the Department upon request.

At the Department's request, the Design-Builder shall provide manufacturer's/supplier's documentation verifying domestic origin as defined in the Specifications. All Materials accepted on the basis of such Certificate of Compliance may be sampled by the Department and tested at any time. Use of Material on the basis of Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating Material in the Project conforming to the requirements of the Contract. Any Material not conforming to such requirements will be subject to rejection whether in place or not. The Department reserves the right to refuse to permit the use of Material on the basis of Certificate of Compliance.



A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this procurement be investigated, the successful Proposer has the burden of proof to establish that it is in compliance.

A waiver of Buy America requirements may be sought by the Department if grounds for the waiver exist; however, the Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available.

DB 106-2.3 Certificates of Compliance

The Contract or the Department's Material and Research Manual, will designate the Materials that can be incorporated in the Work if accompanied by certificates of compliance from the manufacturer. The certificates of compliance shall state that the Materials or assemblies provided by the Design-Builder fully comply with the specification requirements for this Contract. The manufacturer shall sign all certificates of compliance. Each lot of certified Materials or assemblies delivered to the Project must be accompanied by a certificate of compliance clearly identifying the Materials delivered and that the Contract requirements are specifically satisfied for this Project. Generic material certifications will not be accepted by the Department.

The Department may sample and test any Materials used by the Design-Builder on the basis of certification of compliance. If the Department determines that Materials or assemblies are not in conformance with Contract requirements, the Materials, or assemblies will be rejected in accordance with [DB Section 105-6.1.2](#).

DB 106-3 SAMPLING AND TESTING

DB 106-3.1 General

Sampling and testing performed on the Project will follow the American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), or DelDOT standards. When a reference is made to any of the aforementioned test procedures, it is understood that the reference is to the most current revision at the time of Proposal Submission. It is also understood that the Specifications and procedures applicable to the Project shall include all modifications current on the Proposal due date for the Project. Sampling and testing procedures are referred to using the following designations:

M – AASHTO Materials Specification

T – AASHTO Test Procedure

ASTM – ASTM Materials Specification or Test Procedure

DOH – Standard Test Procedure used by the department for which no corresponding ASTM or AASHTO procedure exists or modification of the ASTM or AASHTO procedures have been deemed appropriate.

DB 106-3.2 Sampling and Testing Procedures

All Materials used at each site will be sampled and tested at consistent rates, based on estimated plan quantities to be developed and furnished by the Design-Builder. Table B-1 of the DelDOT Materials and Research Manual lists the minimum testing frequencies for Materials used on Department projects. In addition to the testing frequency of the Materials, test procedures performed are also listed.



The Department reserves the right to increase the sampling rates from the minimums when conditions warrant. Sampling and testing is performed throughout the Project on a random basis to assure all Materials are tested.

DB 106-3.3 Rounding Requirements of Sampling and Testing Results

All measurements and calculations for Materials sampling and testing will adhere to the rounding and accuracy requirements of the applicable AASHTO, ASTM, or DOH Specifications. If there are no specific requirements included in the applicable specification, all items are to be measured in the field to two decimal places, and then calculated to three decimal places when calculations are required.

DB 106-4 QUALITY CONTROL AND QUALITY ACCEPTANCE TESTING PROGRAMS

DB 106-4.1 Quality Control (QC) Requirements

All Materials and products proposed to be used in construction will be inspected, sampled, and tested by the Design-Builder, as described in [DB Section 112](#) and as indicated by the Contract Documents. The Design-Builder may choose to perform tests required by the Contract and other tests the Design-Builder determines are necessary to verify the quality and suitability of all Materials used on the Project. In the event the Design-Builder chooses to perform tests, the Design-Builder shall submit test results or samples as requested by the Department.

The implementation and fulfillment of the Design-Builder's QC/QA plan will be reviewed by the Department for conformance to the program proposed by the Design-Builder.

DB 106-4.2 Quality Acceptance (QA) Requirements

The purpose of the Quality Acceptance Program is to prescribe policies, procedures, and guidelines to assure that quality Materials are used on the Project. The Department will perform all Quality Acceptance Sampling/Testing for the Work.

The Quality Acceptance Program assures that Materials, products, and workmanship incorporated into the project are in conformity with the requirements of the approved Plans and Specifications, including all approved changes.

DB 106-4.3 Quality Acceptance Program

The Quality Acceptance Program follows the minimum sampling requirements described under [DB Section 106-3](#). Using these guidelines, the Department's Quality Acceptance supervisor will determine the Materials to be tested on the Project. The number and type of tests are to be documented.

Sampling and testing of Materials used on the Project, as described under [DB Section 106-3](#), is the responsibility of the Department's Quality Acceptance technicians (Field Control). All samples used for acceptance sampling and testing are random samples. In addition to the minimum sampling, more samples may be taken at any point in the production for verification of quality. (Where more than one sampling location is permitted, the Department reserves the right to further designate the sampling location). The results of these tests can be used in the acceptance decision as specified in the Contract requirements and all approved changes.

All sampling and testing is performed in close cooperation with Project Manager or an authorized representative. The Project Manager, or an authorized representative, should be aware of all sampling and testing on the Project and must be informed of all test results as soon as possible to ensure sufficient time for corrective action, if necessary. Results of testing are documented on various forms, which are



provided in Part E of the Department's Materials and Research Manual, and are described in Part C of that manual for each Material.

The ultimate responsibility for providing direction to the Design-Builder regarding the Work rests with the Department's Project Manager or an authorized representative. M&R is responsible only for testing project Materials; the administration and results of the testing are the responsibility of the Department's Project Manager or an authorized representative. Quality Acceptance technicians are only to direct the Design-Builder with the mutual consent of the Department's Project Manager and the Design-Builder's Project Manager.

DB 106-5 TEST DOCUMENTATION AND RECORD KEEPING

All Material forms must have the appropriate Contract Number and Project Component/Description. All document and reporting forms must be dated and signed by the appropriate technicians.

All originating Materials records for projects are to be kept in the Project file. Copies of product and Material reports for acceptance decisions will be retained for all Department projects in the Central Laboratory. Copies of records cited above will be retained for the period specified by the most current Department policy.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # T201607002
Federal Contract # EBROS-2016(26)

RFP PART 2

**DB SECTION 107
LEGAL RELATIONS AND
RESPONSIBILITY TO PUBLIC**



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**DB SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

DB 107-1 LAWS TO BE OBSERVED

The Design-Builder is required to investigate and shall strictly comply with, all Federal, State, or county laws and regulations, and city or town ordinances and regulations. The Design-Builder shall indemnify and save harmless the State of Delaware, the Department of Transportation, its Secretary and all officers, agents, and servants against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees by itself and its employees.

If the Design-Builder should discover any provisions in the Contract that are contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the Design-Builder shall immediately report it to the Department's Project Manager in writing.

DB 107-2 PERMITS AND LICENSES, TAXES AND INSURANCE

DB 107-2.1 Permits and Licenses

The Design-Builder shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work.

Prior to the execution of any Contract, the successful bidder shall be required to show that it has satisfied the requirements of Sections 2502 and 2503, Chapter 25, Title 30 of the Delaware Code, and if the bidder is a non-resident corporation, that the bidder has complied with the requirements of Subchapter XIV, Title 8 of the Delaware Code, Annotated Revised 1974, and as amended.

DB 107-2.2 Insurance

The Design-Builder shall maintain, at a minimum, the following project-specific insurance coverages:

A) Professional liability coverage:

- 1) From the period starting on the date of Notice to Proceed (NTP) and ending on the Final Acceptance date. The policy(ies) shall have a retroactive date no later than the date on which the Scope of Services Package was issued and shall have a five year extended reporting period with respect to events that occurred but were not reported during the term of the policy. The policy(ies) shall protect against any negligent act, error, or omission arising out of the professional services that includes coverage for acts by others for whom the Design-Builder is legally responsible.

- i. For the Designer of Record: coverage with combined single limits of One Million Dollars (\$1,000,000.00) per claim and Three Million Dollars (\$3,000,000) aggregate.

- ii. For all other design, engineering, and construction management professionals assigned to the Project: coverage with combined single limits of One Million Dollars (\$1,000,000.00) per claim and Three Million Dollars (\$3,000,000) aggregate;

- B) Workers' compensation insurance in compliance with state law. For the coverage provided in this DB Section 107-2.2 B), the Design-Builder's insurer will have no right of recovery or subrogation against the State of Delaware or DelDOT;



- C) Commercial General Liability (CGL) insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include coverage for bodily injury; fire; legal liability; premises-operation; broad form contractual liability; products and completed operation; use of contractors and Subcontractors; personal injury; broad form property damage; and explosion, collapse, and underground (XCU) coverage. The required limits shall be not less than One Million Dollars (\$1,000,000.00) per occurrence, with annual aggregates of Three Million Dollars (\$3,000,000.00). The policy shall include products and completed operations extended coverage for a minimum of five years following Final Acceptance. If the Design-Builder's CGL insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the annual aggregate limits shall apply separately to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder. Any such excess insurance shall be at least as broad as the Design- Builder's primary insurance;
- D) Umbrella excess coverage in excess of commercial general liability, with a required combined single limit amount of insurance of Two Million Dollars (\$2,000,000.00). This limit of liability shall apply "collectively" and not "separately" for the Design-Builder and Subcontractors on the Project.
- E) A blanket builder's risk insurance policy on an "all risk" basis for the entire Project including (1) coverage for any ensuing loss from faulty workmanship, nonconforming Work Materials, omission, or deficiency in design or Specifications; (2) coverage against damage or loss caused by wind, earth movement, flood, fire, theft, vandalism and malicious mischief, and machinery accidents and operational testing; (3) coverage for removal of debris and insuring the buildings, Structures, machinery, equipment, facilities, fixtures, and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the Department and shall have a limit equal to Three Million Dollars (\$3,000,000.00) including "soft cost expense cover" (including advertising, design fees, professional fees, financing, lease administration, realty taxes, general administration, lease expenses, permit fees, insurance premiums and other costs associated with such damage or loss and with any governmental approvals) with a One Million Dollar minimum (\$1,000,000.00) annual aggregate limit and shall include earthquake insurance with a Three Million Dollar (\$3,000,000.00) minimum annual aggregate limit and flood insurance with a Three Million Dollars (\$3,000,000.00) minimum annual aggregate limit. There shall be no coinsurance penalty provision in any such policy.
- F) Environmental liability insurance during the period starting on the date of issuance of the NTP to design the improvements and ending on the date of Final Acceptance, with a five year extended reporting period with respect to events that occurred but were not reported during the term of the policy. The policy shall cover Work related to environmental remediation and environmental losses resulting from, the Design-Builder or its Subcontractors and any Persons for whom the Design-Builder is legally or contractually responsible. The required combined single environmental liability limit amount shall be Two Million Dollars (\$2,000,000.00). The Design-Builder shall be the named insured, its Subcontractors, and any Persons for whom the Design-Builder is legally or contractually responsible, whether occurring on or off the Site; and
- G) The Design-Builder and all named Subcontractors shall maintain Business Automobile Liability insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include bodily injury and property damage coverage arising from the ownership,



maintenance, or use of all for owned/leased automobiles, hired automobiles, and non-owned automobiles used in the performance of the of the Work, including loading and unloading. The required combined single limit amount of insurance shall be One Million Dollars (\$1,000,000.00). Subcontractors shall provide the Design-Builder and the Department evidence of insurance for Automobile Insurance as Specified in Section DB 107-2.2.1.

The following shall be included as provisions in each policy:

- 1) The insurance company(ies) issuing the policy(ies) shall have no recourse against the State of Delaware and DelDOT for payment of any premiums or for assessments under any form of the policy;
- 2) Any and all deductibles and self-insured retentions in the above described insurance policy(ies) shall be assumed by and be at the sole risk of the Design- Builder.

Insurance is to be placed with insurance companies authorized in the State of Delaware with an A. M. Best's rating of A-: VI or higher. This rating requirement may be waived for Workers' Compensation coverage only.

Should any policies be canceled, the Design-Builder shall immediately notify the Department.

Upon failure of the Design-Builder to furnish, deliver, and maintain such insurance as required or provide proof of insurance on a yearly basis or as requested by the Department, this Contract, at the election of the Department, may be immediately declared suspended, discontinued, or terminated or payment on Project Component (PC) 1 may be suspended. Failure of the Design-Builder to maintain any required insurance shall not relieve the Design-Builder from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Design-Builder concerning indemnification under this [DB Section 107-2.2](#).

The Design-Builder is responsible for requiring and verifying that all Subcontractors working on the Project maintains appropriate types and levels of insurance coverage.

DB 107-2.2.1 Verification of Coverage

A) Policies

Concurrently with the Design-Builder's execution hereof, the Design-Builder shall deliver to the Department the following items:

- 1) A certificate of insurance with respect to each policy required to be provided by the Design-Builder under this [DB Section 107-2.2](#); and
- 2) Each certificate of insurance with respect to each policy required to be provided by the Design-Builder under this [DB Section 107-2.2](#) shall clearly identify the Department as a certificate holder; and
- 3) Copies of all endorsements to the policies that set forth the required additional insureds and other amendments to the policy forms.

The required certificates must include original signatures by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits,



and termination provisions shown thereon. The Department shall have no duty to pay or perform under this Contract until such certificate(s) and endorsements, in compliance with all requirements of this [DB Section 107-2.2](#) have been provided. Upon the Department's request, certified, true, and exact copies of each of the insurance policies (including renewal policies) required under this [DB Section 107-2.2](#) shall be provided to the Department.

B) Renewal Policies

The Design-Builder shall promptly deliver to the Department a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms Specified herein. Such certificate shall be delivered not less than 30 Calendar Days prior to the expiration date of any policy, and notification evidencing payment of the premium not more than 30 Calendar Days after renewal. If requested by the Department from time to time, certified duplicate copies of the renewal policy shall also be provided.

DB 107-2.2.2 Endorsements and Waivers

All insurance policies required to be provided by the Design-Builder hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only the following clauses (D) and (F) shall be applicable:

A) For claims covered by the insurance Specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and Consultants and shall specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that Specified in this Contract that is maintained by an insured or additional insured shall be excess of such insurance and shall not contribute with it;

B) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of Warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents, and Consultants);

C) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability;

D) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified, or reduced in coverage or in limits except after 60 Calendar Days' prior written notice by certified mail, return receipt requested, has been given to the Department. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;

E) All endorsements adding additional insureds to required policies shall be on a form providing additional insureds with coverage for "completed operations";

F) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and pollution insurance policies);

G) The commercial general liability insurance policy shall be endorsed to state that coverage for Subcontractor employees shall not be excluded; and



H) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

DB 107-2.2.3 Commercial Unavailability of Required Coverages

If, through no fault of the Design-Builder, any of the coverages required in this [DB Section 107-2.2](#) (or any of the required terms of such coverages, including policy limits) become commercially unavailable or are commercially available, however only with unreasonable premiums, the Department will work with the Design-Builder to find commercially reasonable alternatives to the required coverages that are acceptable to the Department. The Design-Builder shall not be entitled to any increase in the Lump Sum Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The Department shall be entitled to a reduction in the Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents (or based on other evidence of insurance premiums as of the Proposal due date if the Escrowed Proposal Documents do not provide adequate information). The Department's right to a reduction in the Lump Sum Contract Price as set forth in the preceding sentence shall be without regard to the insurance costs expended by the Design-Builder for the less than equivalent coverage or on other insurance required under this [DB Section 107-2.2](#).

DB 107-2.2.4 Prosecution of Claims

Unless otherwise directed by the Department in writing, the Design-Builder shall be responsible for reporting and processing all potential claims by the Department or Design-Builder against the insurance required to be provided under this [DB Section 107-2.2](#). The Design-Builder agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the Department, whether for defense or indemnity or both. The Department agrees to promptly notify the Design-Builder of the Department's incidents, potential claims, and matters which may give rise to an insurance claim by the Department, to tender its defense or the claim to the Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

DB 107-2.2.5 Commencement of Work

The Design-Builder shall not commence Work under this Contract until it has obtained the insurance required under this [DB Section 107-2.2](#), has furnished original certificates of insurance evidencing the required coverage as required under [DB Section 107-2.2](#) and such insurance has been approved in writing by the Department, nor shall the Design-Builder allow any Subcontractor (or shall such Subcontractor be entitled) to commence Work under it Subcontract until the insurance required of the Subcontractor has been obtained and approved by the Design-Builder.

DB 107-2.2.6 Delaware Department of Transportation's Right to Remedy Breach by the Design-Builder

If the Design-Builder or any Subcontractor fails to provide insurance as required herein, the Department shall have the right, but not the obligation, to purchase such insurance or to suspend the Design-Builder's right to proceed until proper evidence of insurance is provided. Any amounts paid by the Department shall, at the Department's sole option, be deducted from amounts payable to the Design-Builder or reimbursed by the Design-Builder upon demand, with interest thereon from the date of payment by the Department to the reimbursement date, at the maximum rate allowable under applicable law. Nothing herein shall preclude the Department from exercising its rights and remedies under [DB Section 108-9](#) as a



result of the failure of the Design-Builder or any Subcontractor to satisfy the obligations of this [DB Section 107-2.2](#).

DB 107-2.2.7 Disclaimer

The Design-Builder and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for a secure any insurance coverage which they deem advisable, whether or not specified herein.

DB 107-3 PATENTED DEVICES, MATERIALS, AND PROCESSES

The Design-Builder and the Surety shall hold and save harmless the State, the Department, their officers or agents, in accordance with the terms of these Specifications, from any and all claims because of the use of any patented design, device, Material, or process in connection with the work agreed to be performed under this Contract. Any patent agreement between patentee and the Design-Builder shall be furnished to the Department.

DB 107-4 RESTORATION OF SURFACES OPENED BY PERMIT

The right to construct or reconstruct any utility service in the Highway or Street or to grant permits to construct or reconstruct is, at any time during construction, hereby expressly reserved by the Department. The Design-Builder shall not be entitled to any damages for unauthorized digging or any delay occasioned thereby.

Any individual, firm, or corporation wishing to make an opening in the highway outside of the project limits must secure a permit from the Department. The Design-Builder shall allow parties bearing such permits and only those parties, to make openings in the highway. When ordered, the Design-Builder shall make all necessary repairs due to such openings and such necessary work will be paid for as Extra Work or as provided in the Contract and will be subject to the same Contract conditions as the original work performed.

DB 107-5 SANITARY CODE AND SAFETY PLAN

It is a condition of all Contracts, and shall be made a condition of each subcontract entered into pursuant to the prime Contract, that the Design-Builder, and any Subcontractor, shall not require any Person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to such Person's health or safety.

The Design-Builder shall provide and maintain in a neat and sanitary condition, such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction.

DB 107-5.1 Design-Builder's Safety Obligations

The Design-Builder shall perform all actions necessary for safety and be solely and completely responsible for conditions on the site, including safety of all Persons and property on the site during the Contract. This requirement shall apply continuously for the duration of the Contract, applies to Work performed by Subcontractors, and shall not be limited to normal business hours or other time constraints or be reduced or diminished in any way because the Design-Builder is not given sole possession of the site.



The Design-Builder is fully responsible for the safety of workers engaged upon the Project and all other Persons working at or visiting the site and the protection of the public in the vicinity.

The Design-Builder shall give authority to the Construction Project Manager to issue stop orders that instruct employees of the Design-Builder and its Subcontractors of any tier, including labor-only Subcontractors, to cease operations and take urgent and appropriate action to make the site safe and prevent unsafe working practices or breach of any governmental rules.

Conduct prejudicial to safety may be cause for the Department's Project Manager to require the removal of any employee, including the Design-Builder's Construction Project Manager from the site.

The Design-Builder shall make provisions for local emergency service to respond to any emergencies or problems at the Project site and shall provide adequate emergency medical care to personnel working on the site.

DB 107-5.2 Safety Considerations in Design

The Design-Builder shall identify and analyze the hazards and risks associated with the Work, including during construction and its ultimate use, and shall design the Work so as to eliminate, mitigate, or control such hazards.

DB 107-6 SITE SECURITY

DB 107-6.1 Requirements

The Design-Builder shall be responsible for the security of each site and the Work, including the facilities provided by the Design-Builder for the Department, from the date the Project is released to the Design-Builder until Final Acceptance. This shall include the protection of offices, workshops, Equipment, Material, and the Work from damage by vandalism, flood, storm, fire, and theft.

The site shall be adequately protected at all times to prevent unauthorized access onto the site, particularly to areas of high safety risk. This protection shall include security fencing at areas of high safety risk to the public as well as areas with high risk of vandalism and other areas where necessary for the Design-Builder to fulfill obligations under the Contract. All necessary access for the public through the site shall be adequately protected.

The Design-Builder shall provide adequate lighting at main security areas, such as, offices, facilities for the Department provided by the Design-Builder, Work areas, and storage yards.

The Design-Builder shall establish and maintain a system and people to control and guide visitors to and around the site.

DB 107-6.2 Reports

The Design-Builder shall submit any security-related incidents with the monthly progress report.

DB 107-7 PUBLIC CONVENIENCE AND SAFETY

In performing the work, the Design-Builder shall interfere as little as possible with traffic. The Design-Builder shall provide and maintain ingress and egress for all residences and places of business located along the construction route. So far as practicable, Materials stored upon the highway shall be placed so as to cause as little obstruction to the traveling public as possible. If, as determined by the Project



Manager, it is necessary to keep the road or any portion of it open to travel during the construction thereof, the Design-Builder shall so perform the work and provide such means that travel will not be obstructed or endangered. The Design-Builder shall provide and maintain in an acceptable condition such temporary Roadways and Bridges as may be necessary to accommodate the traffic using or diverted from the Roadway under construction, and shall provide and maintain in a safe condition temporary approaches to and crossing of intersecting highways. All sidewalks, gutters, sewers, inlets, and portions of the highway adjoining the Roadways under construction shall not be obstructed more than is absolutely necessary.

DB 107-8 NAVIGABLE WATERS AND WETLANDS

All Work in, over, or adjacent to navigable waters or wetlands shall be conducted in accordance with rules and regulations of the United States Army Corps of Engineers (ACOE) and the Delaware Department of Natural Resources (DNREC).

The Design-Builder shall not deposit excavated material into wetlands without a permit from the appropriate agency.

All operations in connection with the Work shall be in accordance with permits, rules, and regulations of the ACOE and DNREC. Deviations therefrom shall be only by special permission or special permit which shall be the responsibility of the Design-Builder to obtain. Failure of the Design-Builder to become familiar with the terms, conditions, and provisions of the permits, rules, and regulations applicable to the Work shall not relieve the Design-Builder of responsibility under this Contract.

Copies of all permits obtained by the Design-Builder shall be submitted immediately to the Department's Project Manager.

DB 107-9 BARRICADES AND WARNING SIGNS

The Design-Builder shall furnish, erect, operate and maintain necessary barricades, suitable lights, danger signals, signs, traffic control set-ups, and other traffic control devices that comply with the Delaware MUTCD, including flaggers and traffic officers, and shall take all necessary precautions for protection of the Work and safety of the public. Highways closed to traffic shall be protected by effective barricades. Suitable warning signs shall be provided to direct traffic.

The Design-Builder shall erect and maintain warning signs in advance of any place on the Project where operations may interfere with vehicular and/or pedestrian traffic and at intermediate points where new Work crosses or coincides with an existing Road, sidewalk, or pathway.

See Contract Documents Part 4 – Special Provisions for additional information.

DB 107-10 USE OF EXPLOSIVES

Explosives shall not be used without prior written Approval by the Department's Project Manager. When the use of explosives is necessary for the prosecution of the work, the Design-Builder shall exercise the utmost care not to endanger life or property, including new work. The Design-Builder shall be responsible for all damage resulting from the use of explosives.

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Project Manager and not closer than 1000 feet from the road or from any building or camping area or place of human occupancy.



The Design-Builder shall notify each public utility company having Structures in proximity to the site of the work of its intention to use explosives. Such notice shall be given sufficiently in advance to enable the companies to take such steps as they may deem necessary to protect their property from damage.

The use of explosives will not be permitted within 200 feet of any existing, newly finished, or partly finished structure on a Project unless authorized in writing by the Project Manager. No explosives shall be stored overnight on the Project.

DB 107-11 PROTECTION AND RESTORATION OF PROPERTY

The Design-Builder shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the Roadway not designated on the Plans for repair, removal, or construction. The Design-Builder shall take the precautions necessary to prevent damage to pipes, conduits, and other underground Structures, and shall protect from disturbance or damage all land monuments and property markers until authorized by the Project Manager. Any land monument or property markers damaged or disturbed shall be located and reset by Land Surveyors or a Professional Engineer registered in the State of Delaware. The Design-Builder shall not injure or destroy trees or shrubs outside the limits of the graded Roadway section, nor remove or cut them without proper authority. Where any direct or indirect damage is done to public or private property on account of any act, omission, neglect, or misconduct in the execution or non-execution of the work on the part of the Design-Builder, such property shall be restored at the Design-Builder's expense to a condition similar or equal to that existing before such damage.

In case of the failure on the part of the Design-Builder to restore such property or make good such damage, the Department's Project Manager may upon giving 48 hours' notice proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any monies due to the Design-Builder under the Contract. This responsibility will not end until Final Acceptance.

DB 107-12 EROSION, SEDIMENT AND STORMWATER MANAGEMENT

See [Contract Documents Part 3 – Design Requirements and Performance Specifications](#), [Contract Documents Part 3 – Appendices A and B](#), Performance Specifications, and Standard Specifications Division 900 - Erosion, Sediment and Stormwater Management.

DB 107-13 AIR NAVIGATION

If required, the Design-Builder shall complete an FAA Notice of Proposed Construction or Alteration (*see* <http://forms.faa.gov/forms/faa7460-1.pdf>) for both the permanent structure and any temporary Structures. The Design-Builder shall receive any appropriate approvals or clearances from the FAA pursuant to the Notice of Proposed Construction or Alteration prior to commencing with any construction on the Project in accordance with the notice. The FAA Notice of Proposed Construction or Alteration may be applied for electronically at the FAA's Web site, <http://oeaaa.faa.gov>, and using the E-filing area.

The Notice of Proposed Construction or Alteration shall be submitted for review and approval to the FAA, with a copy to the Department's Project Manager. Construction and operations in connection with the Work for protection of aerial navigation shall be in accordance with the approved permit or Notice of Proposed Construction or Alteration and applicable federal regulations. Failure of the Design-Builder to be familiar with applicable rules and regulations of the FAA shall not relieve the Design-Builder of responsibility under this Contract.



DB 107-14 RESPONSIBILITY FOR DAMAGE CLAIMS

The Design-Builder shall assume the responsibility and liability for, and shall indemnify and save harmless the Department, its officers, and employees, from and against all suits, actions, claims, and all damages, direct or indirect, of whatever nature, caused to any person(s) or property or resulting to the work from any act, work, or plan performed or submitted by the Design-Builder or upon its behalf; including but not limited to responsibility of the Design-Builder to provide for the protection and safety of all persons and property. This indemnification and save harmless requirement shall apply, but not be limited to, all suits, actions, claims brought, and all damages resulting from any death, injury, or damage received or sustained by any person(s), third person(s), or property based upon:

- A) Operations of the Design-Builder, including but not limited to work performed; neglect in safeguarding the work; use of unacceptable materials; any act, work, or plan performed or submitted by the Design-Builder on its behalf or resulting from performance, nonperformance of the work, or any omission, neglect, or misconduct occurring during the course of the Contract.
- B) Any claim(s) or amount(s) recovered from any infringement(s) of patent, trademark, or copyright.
- C) Any claim(s) or amount(s) arising or recovered under the “Workers Compensation Act”, for any violation or alleged violation of any law, ordinance, rule, regulation, order, or decree.

The Department may withhold as retainage for the use of the State to pay any amount claimed or anticipated, as determined by the Department’s Project Manager, except that such money shall not be withheld when the Design-Builder produces satisfactory evidence that it is adequately protected by public liability and property damage insurance. In any event, the Surety shall be liable to pay any amount recovered as a result of any suit, action, claim, injuries, or damages sustained and until such time as the matter has been settled or otherwise legally resolved.

DB 107-15 OPENING SECTIONS OF THE PROJECT TO TRAFFIC

The Department’s Project Manager may order certain sections of Work to be opened to traffic or other use prior to completion or acceptance of the Work. Opening these sections shall not constitute acceptance of work or waiver of any Contract provisions.

On those sections opened, the cost of establishing maintenance and protection of traffic, maintaining the Roadway or other work to accommodate traffic or other use, and repairing damage to the work that occurs after opening will be determined as follows:

- A) If the Contract provided for a total road closure, the opening is not part of a phased or staged construction, and the opening is not due to the fault or inactivity of the Design-Builder, the added costs will be at the Department’s expense. Compensation for these added costs will be in accordance with [DB Section 109-8](#).
- B) If the opening was designated as part of the Contract such as phased or staged construction, then the added costs are incidental to the Contract and the Work will be performed at no additional expense to the Department.
- C) If the opening was due to the fault or inactivity of the Design-Builder, then the Work will be performed at no additional expense to the Department. If the Design-Builder is dilatory in completing features of the work according to the Contract or progress schedule, the Project Manager will give written notification establishing a time period for completing these features. If the Design-Builder fails to complete or make a reasonable effort to complete the work according to the written notification, the



Department's Project Manager may order all or a portion of the Project opened to traffic. The Design-Builder shall not be relieved of liability or responsibility for maintaining the work and shall conduct the remaining construction operations with minimum interference to traffic at no additional expense to the Department for any added cost of the Work.

DB 107-16 HAZARDOUS MATERIAL REPORTING AND CLEAN-UP OF SPILLS

The Design-Builder shall be responsible for reporting and cleaning up spills associated with construction of the Project, and shall report and respond to spills of Hazardous Materials such as gasoline, diesel fuel, motor oils, solvents, chemicals, toxic and corrosive substances, and other Material that are a threat to public health or the environment. The Design-Builder shall be responsible for reporting past spills encountered during construction and current spills not associated with construction. Reports shall be made immediately to the Department's Project Manager if on State ROW or to the property owner if outside of State ROW. Unreported spills identified after construction and associated with construction of the Project shall be cleaned up by the Design-Builder. Failure to report or respond to a spill shall result in the Design-Builder bearing the full cost of remediation of clean-up of such unreported spills.

The Department shall be responsible for any delay costs and expenses due to it or the Design-Builder making a new discovery of Hazardous Materials that are not identified in the Scope of Services Package or the Contract Documents. The Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the Scope of Services Package or the Contract Documents or that are caused by the Design-Builder or any of its Subcontractors, employees, or agents.

DB 107-17 DESIGN-BUILDER'S RESPONSIBILITY FOR THE WORK

The Design-Builder is responsible for carrying out the provisions of the Contract at all times, regardless of whether an authorized Department-designated representative is present or not. Any Work or item that is, at any time, found to be out of Specification or not in compliance with the Design Plans shall remain the responsibility of the Design-Builder and shall be subject to such corrective measures that are approved in writing by the Design-Builder's Designer and accepted in writing by the Department's Project Manager.

Until the Design-Builder has achieved Final Acceptance, the Design-Builder shall have the sole and absolute responsibility for the work and to provide for the protection and safety of employees of the Department, Design-Builder, Subcontractors, suppliers, and members of the general public. In no case, including but not limited to, supervisory acts or administration of the Contract by the Project Manager, will the Design-Builder be relieved of the responsibility to indemnify the Department pursuant to the provisions of the Contract.

The Design-Builder shall rebuild, repair, restore, and make good all losses, injuries, or damages to any portion of the work under the control of the Design-Builder or due to his/her fault or inactivity, at no cost to the Department. The Design-Builder shall rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the work not under the control of the Design-Builder under agreed Unit prices or as Extra Work under [DB Section 109-8](#). "Items not under the control of the Design-Builder" shall be defined for purposes of this Subsection as Acts of God such as earthquakes, tidal waves, tornadoes, or hurricanes; catastrophic conditions, such as hazardous waste materials spills, explosions, etc., or act of the public enemy or of governmental authorities.

In case of the suspension of work the Design-Builder shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Project, provide for normal drainage and normal traffic operations, and to erect any necessary temporary Structures, signs, or other facilities.



During such period of suspension of work, the Design-Builder shall properly and continuously maintain in an acceptable growing condition all living Material in newly established plantings, and seeded or sodded areas furnished under the Contract, and shall take adequate precautions to protect new tree growth and other vegetative growth against injury.

DB 107-18 DESIGN-BUILDER'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

At points where the Design-Builder's operations are adjacent to properties of railway, telegraph, telephone, power companies, or other utilities, or are adjacent to other properties, facilities, or appurtenances, damage to which might result in considerable expense, loss, or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made.

In the event of interruption to utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority. The Design-Builder shall cooperate with said authority in the restoration of service as promptly as possible. No work shall be undertaken around fire hydrants until appropriate Plans for continued service have been approved by the local fire authority.

Fire hydrants on or adjacent to the highway shall be kept accessible to fire apparatus at all times and no Material or obstruction shall be placed within 15 feet (4.5 m) of any such hydrant. Work shall be left entirely accessible at all points to fire apparatus at all times.

DB 107-19 ACQUISITION AND CONVEYANCE OF REAL PROPERTY

ROW required due to design requirements originated by the Design-Builder and deemed necessary by the Department will be acquired by the Design-Builder. The Design-Builder shall comply with the Right-of-Way Performance Specification contained in [Contract Documents Part 3 – Appendix A](#).

The Design-Builder shall cooperate with the Department in the completion of Project design and identification of final ROW requirements and construction impacts. It is expected that the Design-Builder will identify any ROW needs no later than the Preliminary Design Review for any affected Project component.

The Design-Builder shall coordinate with the Department regarding any design features that may impact properties, even though no property acquisition is contemplated. The intent is to avoid damages to properties not previously identified and addressed.

DB 107-19.1 Coordination

The Design-Builder will meet monthly with the Department for the following reasons:

- A) Identification and evaluation of the status of all required ROW parcels as being any of the following:
 - 1) Already acquired with all impacts identified (status code A);
 - 2) Not yet acquired, but with all impacts identified (status code B);
 - 3) Not yet acquired and without all impacts identified (status code C); and
 - 4) Not yet acquired with probable need for condemnation (status code D); and



- B) Confirmation of the Design-Builder's preferred priorities for acquisition of ROW and development of a mutually agreed ROW Acquisition Schedule that is consistent with the current Baseline Progress Schedule. See [Contract Documents Part 2 – Appendix 107A](#).

The Design-Builder shall not enter onto parcels until the Delaware Department of Transportation has obtained the legal right to do so.

DB 107-19.2 Right-of-Way Acquisition

The Design-Builder shall identify parcels to be acquired and/or modifications to the ROW limits (fee takings, easements, or other property rights). The Department will review the request, determine whether the proposed acquisition is appropriate and necessary, and notify the Design-Builder. If the Design-Builder and Department agree to the acquisition, the Design-Builder shall proceed with the acquisition as noted in Right-of-Way Services Performance Specification provided in [Contract Documents Part 3 – Appendix A](#).

DB 107-19.3 Delay in Acquisition

The Design-Builder shall meet with the Department to review ROW acquisition status at progress meetings. In the event that the Design-Builder determines that the Critical Path may be affected, the Design-Builder shall notify the Department immediately to determine the best course of action to avoid such delay through alternative design or construction methods or revisions to the Design-Builder's Baseline Progress Schedule or ROW Acquisition Schedule.

If properties are not available by the dates shown in the ROW Acquisition Schedule, the Design-Builder shall exercise good faith efforts to work around any delay and to minimize any time or cost impacts associated with changes in the ROW Acquisition Schedule.

DB 107-19.4 Precedence of Right-of-Way Acquisition Schedule

The Baseline Progress Schedule and the design of the Project furnished by the Design-Builder shall not require the Department to acquire any real property except in accordance with the ROW Acquisition Schedule or as agreed by the Department and the Design-Builder.

DB 107-19.5 Right-Of-Way within Federal or State Lands

Deviations from planned ROW may be allowed within federal government land boundaries. However, acquisition of additional ROW from federal agencies generally requires considerably more time than a private property acquisition.

DB 107-19.6 Encroachments

The Department will aggressively pursue removal of encroachments located within the existing ROW on or before Contract Award.

The Design-Builder shall notify the Department of any encroachments that are in the way of construction upon their discovery.

Upon written notification by the Department, the Design-Builder will remove any encroachments that are in the way of construction in accordance with the Department's rules, regulations, and procedures.



If the Design-Builder is required to remove encroachments that are not identified in the Contract Documents, such Work will be considered Extra Work under DB Section 104, and the Design-Builder may be entitled to additional compensation and/or time.

DB 107-19.7 Temporary Construction Easements

The Design-Builder shall be responsible to identify, prepare, and submit to the Department new or revised surveys, legal descriptions, ROW maps, and justification of the need for the acquisition of all temporary construction easements. The Design-Builder shall acquire Temporary Construction Easements in accordance with the Right-of-Way Services Performance Specification provided in [Contract Documents Part 3 – Appendix A](#).

DB 107-20 PERSONAL LIABILITY OF PUBLIC OFFICIALS

The Department, Project Manager, or their authorized agents will incur no personal liability as a result of carrying out any of the provisions of the Contract, as the result of exercising any power or authority granted to them thereby, or as the result of any act by the Design-Builder. In such matters, they act as the agents and representatives of the State.

DB 107-21 NO WAIVER OF LEGAL RIGHTS

Upon completion of the work, the Department will expeditiously make final inspection and notify the Design-Builder of acceptance. Such Final Acceptance, however, shall not preclude or stop the Department from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Department be precluded or stopped from recovering from the Design-Builder or its surety, or both, such overpayment as it may sustain, or recovering the cost of the failure on the part of the Design-Builder to fulfill its obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Design-Builder, without prejudice to the terms of the Contract, shall continue to be liable to the Department for latent defects, fraud, gross mistakes that amount to fraud, and as regards the Department's rights under any Warranty or guaranty.

DB 107-22 THIRD PARTY LIABILITY

It is agreed between the parties executing the Contract that it is not intended by any provisions of the Contract to create in the public nor any member thereof a third-party beneficiary hereunder, nor to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the Contract.

DB 107-23 ANTI-TRUST VIOLATIONS

By execution of the Contract, the Design-Builder conveys to the Department all rights, title, and interest in and to all causes of action it may acquire under federal and State anti-trust laws relating to the goods or services purchased by the Department pursuant to the Contract.

DB 107-24 THE DESIGN-BUILDER'S RESPONSIBILITY FOR THE TRAVELING PUBLIC

The Design-Builder shall conduct Work within the construction zone so that there will be minimal hazard to anyone transiting the Work Site on the open lanes of travel. To keep hazards to a minimum, the Design-Builder shall, as far as practical, keep Equipment, Material, and workers from intruding into the travel lanes; remove any hazardous construction debris deposited on those lanes on a continuous and



regular basis; inspect and repair the travel lanes; and remove obstacles deposited by the public as they transit the Work site.

Notification that a hazard to the public exists may be received through the Design-Builder's inspections, from the Department's employees, or the public. In any case, corrective action shall be taken to remedy the hazard within a reasonable time after notification is received. The Design-Builder shall have a contact number answerable on a 24 hour basis so that action can be initiated quickly when hazards are identified.

All claims from the public for losses that are alleged to have occurred within the construction zone shall be handled by the Design-Builder, even though a Subcontractor may have introduced the hazard that caused the damage. The Design-Builder shall designate, before the Work commences, the individuals who will be responsible for response to third party claims. The individuals shall provide claimants with a written outline of the Design-Builder's claims procedure, along with a written copy of the Design-Builder's name, address, and telephone number and the name and title of the Design-Builder's individual assigned to damage claim response. The Design-Builder shall maintain a status report of all claims filed and the status of such claims. This report shall contain, at a minimum, the name, address, and telephone number of the claimant; the nature of the claim; pertinent findings regarding the claim; and a statement regarding the resolution of the claim. This report shall be available to the Department's Project Manager upon request.

The Design-Builder shall establish a local contact number for the purpose of filing claims and post that telephone number conspicuously at the Design-Builder's field office so that claimants can contact the right person quickly.

DB 107-25 DESIGN-BUILDER'S PAYROLLS

See [DB Section 102-4](#).

DB 107-26 ARCHEOLOGICAL AND HISTORICAL FINDINGS

As required by Stipulation VII in the *Programmatic Agreement Among the Federal Highway Administration, The Advisory Council on Historic Preservation, The Delaware Department of Transportation, and The Delaware State Historic Preservation Officer Regarding The Implementation of the Federal Aid Highway program in Delaware* for cultural resources, in the event that previously unidentified cultural resources are discovered during construction, the Design-Builder and DelDOT shall cease construction in the immediate area and immediately notify FHWA and the SHPO. The FHWA, DelDOT, and the SHPO will meet at the location of the discovery within five (5) days of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery. Any associated work will be paid for as Extra Work, including an appropriate adjustment in Contract Time in accordance with DB Section 109-8. Borrow and muck disposal areas furnished by the Design-Builder shall be subject to such assessment prior to use.

DB 107-27 DISPUTES RESOLUTION

All Disputes between the Design-Builder and the Department arising under or related to this Contract that are not resolved by mutual agreement shall be resolved by following the Claim procedure established in this Section. "Claim" means a written demand or assertion by the Design-Builder or the Department seeking, as a legal or equitable right: payment of money, Adjustment or interpretation of Contract terms, or other relief.



DB 107-27.1 Scope of the Procedure

The Dispute resolution procedure outlined in this [DB Section 107-27](#) covers all Disputes between the Department and the Design-Builder arising under or related to this Contract. This procedure shall be binding.

DB 107-27.2 Continuation of Performance

At all times during the pendency of a Dispute under this procedure, the Design-Builder shall continue Work pursuant to the terms of this Contract and the Department shall continue to pay the Design-Builder per the terms of the Contract. After resolution, the Department shall pay or be credited any amounts due the Design-Builder after conclusion of the Dispute resolution procedure.

DB 107-27.3 Claims for Adjustment and Dispute

In any case where the Design-Builder believes that extra compensation is due for Work or Material not clearly covered in the Contract or not ordered by the Department's Project Manager as an extra, or the Design-Builder feels that it has encountered unusual and unforeseen conditions beyond its control, as defined herein, not discoverable by reasonable inspection and diligence on the Design-Builder's behalf and if all other Contract provisions have been complied with, the Design-Builder shall notify the Project Manager orally or in writing of its intention to make claim for such extra compensation before the Design-Builder begins the Work on which the claim is based on. If written notification is not given within five working days and the Project Manager is not afforded proper facilities by the Design-Builder for keeping strict account of actual costs as required, then the Design-Builder waives the claim for extra compensation.

A . *Design-Builder Notification of Claims.* The Design-Builder shall notify the Project Manager orally or in writing of the intention to make a Claim for relief before beginning the affected Work. Within five Business Days of declaring the intention to make a Claim, the Design-Builder shall provide written notification of the Claim to the Project Manager that includes the following:

1. The date of the occurrence and the nature and circumstances of the occurrence that constitute a change to the Contract or the need for an interpretation of the Contract's terms;
2. The name and title of Department representatives knowledgeable of the conditions on which the Claim is based; and
3. The particular elements of Contract performance for which relief is sought under this Section.

When a Claim is based solely upon the need for a Contract interpretation the Design-Builder shall provide written notice of the intent to Claim as prescribed above within seven Calendar Days of the discovery by the Design-Builder of the alleged misinterpretation of the Contract by the Project Manager.

If the Design-Builder's written notification is not given to the Project Manager within seven Calendar Days as prescribed above or the Project Manager is not afforded proper facilities by the Design-Builder for keeping strict account of the actual costs incurred by the Design-Builder as a result of the alleged change or alleged misinterpretation of the Contract, then the Design-Builder waives the Claim. Such notice by the Design-Builder, and the fact that the Project Manager has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the Claim. Nothing contained in this Section shall be construed as establishing any Claim contrary to the terms of any other provision of the Contract Documents.



B. *Project Manager Response* Within ten Calendar Days after receipt of the Design Builder's written notice of a Claim, the Project Manager will respond in writing to the Design-Builder to:

1. Confirm that a change has occurred and that relief is due as provided herein; or
2. Confirm that the Project Manager agrees with the Design Builder's interpretation of the Contract and that relief is due as provided herein; or
3. Deny that relief is due and direct the Design-Builder to follow the formal Claim submittal procedure as described below; or
4. Advise the Design-Builder that adequate information has not been submitted to decide whether B.1., B.2. or B.3. above applies, and indicate the need for more information for further review. The Project Manager will respond to such additional information within ten Calendar Days of receipt from the Design-Builder; or
5. Advise the Design Builder that the Project Manager will review the Claim after obtaining the formal Claim submittal as described below.

Any Adjustments made to the Contract will not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information in accordance with this Section.

C. *Claim Submittal.* The Design-Builder shall submit a formal Claim in writing within 60 Calendar Days after Work on the Item Claimed has been completed. The Design-Builder can only recover, and the formal Claim shall only consist of, those items allowed under [DB 107-27.7](#). The formal Claim submittal must contain:

1. A description of the precise nature and basis for the Claim;
2. Each fact upon which the Contractor relies to support the claim;
3. The precise reason the Contractor believes that relief should be granted;
4. The language in the Contract upon which the Contractor relies in support of the Claim;
5. The amount of money or nature and extent of relief to which the Contractor believes it is entitled; and
6. Any other factors which the Contractor believes support the Claim.

When requesting a time extension or relief due to a constructive acceleration, the Design-Builder shall include an as-built Project Schedule that conforms to the requirements of the Contract. Failure to submit such a Schedule constitutes a waiver of the Design-Builder's right to receive a time extension or other relief due to a delay or a constructive acceleration.

In complying with the Claim submittal requirements listed above, the Design-Builder must certify the Claim using the following form:



The undersigned is duly authorized to certify this claim on behalf of (the Design Builder). (The Design-Builder) certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of the Design-Builder’s knowledge and belief, and that the amount requested accurately reflects the Contract Adjustment for which (the Design- Builder) believes that the Department is liable.

(THE DESIGN-BUILDER)

By: _____
(Name and Title)

Date of Execution: _____

The Design-Builder agrees to follow the procedure described in this Section for all Claims. The Design-Builder further agrees that any claimed dollar amount and/or relief sought that is not made pursuant to this Section and within the time limits prescribed by this Section shall be forever waived and not raised at any subsequent meeting or hearing dealing with the Claim. The Department will establish a claims procedure to be followed that is consistent with these Specifications and provides the means and methods by which the Contractor and the Department shall process the Contractor’s formal Claim.

D. Project Manager Review: Formal Claims submitted in accordance with this Section will be reviewed fully by the Project Manager. Within 30 Calendar Days after receiving the formal Claim submittal, the Project Manager will respond, in writing, with the Department's decision. If additional time is required by the Project Manager to review the Claim, the Project Manager will notify the Design-Builder.

DB 107-27.4 Design-Builder’s Appeal to the Claims Committee

The Design-Builder may appeal the Project Manager’s decision to the DelDOT Claims Committee for review. The Design-Builder must give notice of the appeal to the District in writing within ten Calendar Days of the Project Manager’s Decision. Failure to provide timely notice of an appeal constitutes a waiver of the Design- Builder’s right to appeal.

The Claims Committee will conduct a claim review meeting attended by representatives of the Design-Builder and the Department. The Claims Committee will conduct the Claim Review Meeting within 60 Calendar Days after the Project Manager receives the Design-Builder's notice of appeal. The proceedings of the Claim Review Meeting will be recorded by a Court Reporter. The cost associated with the Court Reporter will be shared equally by the Department and the Design-Builder. A copy of the record of the Claim Review Meeting will be made available to the Design-Builder. Within 15 Calendar Days of the Claim Review Meeting, the Committee's Chairperson will notify the Design-Builder, in writing, of the Committee's decision.

DB 107-27.5 Decision of the Secretary

Either party may appeal the Claims Committee's decision to the Secretary requesting to proceed with the arbitration process as outlined in [DB 107-27.6](#). The appellant shall give notice of the appeal to the Claims Committee's Chairperson, in writing, within ten Calendar Days after receiving the Claims Committee's decision. Failure by either party to provide timely notice of an appeal constitutes a waiver of that party’s right to appeal. After receiving the written notification, the Secretary or the Secretary’s designee (usually the Chief Engineer) will notify the parties, in writing, within 30 Calendar Days of the receipt of the notice regarding the Claim. The Secretary or the Secretary’s designee will review the record and may schedule a meeting or hearing with the parties to discuss the Claim. The Secretary or the Secretary’s designee will then issue a written decision that will serve as the final decision of the Department concerning the Claim.



DB 107-27.6 Arbitration

Any Claim, properly presented and processed through the Claim procedure outlined above, and finally decided by the Secretary or the Secretary's designee pursuant to [DB 107-27.5](#), in the absence of agreement by the Design-Builder and the Department as to the resolution thereof, and upon the demand of either party delivered in writing to the other within 30 Calendar Days from the date of the written decision by the Secretary or the Secretary's designee, as provided in [DB 107-27.5](#); shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect; except as otherwise modified by these Specifications. Failure by either party to provide a timely notice of appeal to the other constitutes a waiver of that party's right to appeal.

The arbitration proceeding may involve presentation of facts or such portions thereof as have previously been presented at prior administrative hearings held pursuant to [DB 107-27](#) herein or may be based entirely upon the record, as established therein. The record established at prior administrative hearings pursuant to [DB 107-27](#) shall be specifically admissible at such arbitration proceedings and such facts as have been established shall be specifically binding upon the parties; with the exclusion of opinions and conclusions thereon. Such arbitration shall be specifically based upon the claim presented at prior administrative hearings and no material, information, fact, and/or Claim not presented at such hearings held pursuant to said [DB 107-27](#) shall be admissible at any arbitration conducted pursuant to this Section. The arbitrators shall furnish a written decision to both parties that include the findings of the panel and an explanation of the basis for the findings. This agreement to arbitrate shall be strictly enforceable as provided under Chapter 57, Title 10 of the Delaware Code, as amended. The Design-Builder and the Department shall each pay half of the arbitration fee and the cost of the court reporter.

DB 107-27.7 Recoverable Costs

The Design-Builder shall not be entitled to recover any costs in a Claim other than those allowed by this Section. As described below, A. through E. identify all recoverable direct and indirect costs and F. identifies all non-recoverable costs.

- A. Labor. In accordance with [DB 109-8.2.2\(1\)](#).
- B. Bond, Insurance, and Tax. In accordance with [DB 109-8.2.2\(2\)](#).
- C. Materials. In accordance with [DB 109-8.2.2\(3\)](#).
- D. Equipment. In accordance with [DB 109-8.2.2\(4\)](#).
- E. Percentage Markups. In accordance with [DB 109-8.2.2 \(6\), \(7\) and \(8\)](#).
- F. Non-recoverable Damages or Expenses.

The expenses listed above as A. through E. shall constitute the sole cost(s) and expense(s) to which the Design-Builder shall be entitled on any claim submitted for additional compensation or settlement of any claim made under this Contract. The parties agree that the Department will have no liability for the following items of damage or expense:

- 1. Profit in excess of that provided herein;
- 2. Loss of profit;
- 3. The costs of lost productivity for labor and Equipment either on this Contract or any other;
- 4. Home office overhead in excess of that provided herein;
- 5. Consequential damages, including but not limited to loss of Bonding capacity, loss of bidding opportunities and insolvency;
- 6. Indirect costs or expenses of any nature;
- 7. Attorney fees, claim preparation expenses or costs of litigation; and
- 8. Interest on any claimed amounts.



The Design-Builder may submit a Claim on behalf of a Subcontractor according to [DB 107-27](#). Recoverable damages for Claims submitted on behalf of Subcontractors shall be solely limited to the list of all direct or indirect costs permitted by A. through D. above. For Work approved by the Department, the Subcontractor will be allowed a percentage markup as permitted by [DB 107-27.7\(E\)](#). The Design-Builder will be allowed an additional percentage markup as permitted by [DB107-27\(E\)](#) to be computed on the final sum total of such Subcontractor cost Claimed under A. through D. above for portions of Subcontractor Work approved by the Department.

DB 107-27.8 Liquidated Damages

A Claim, not for additional costs, but for a waiver by the Department of an assessment of Liquidated Damages, in whole or in part, may also be made by the Design Builder as part of this Section. Any Claim submitted shall not affect in any manner the imposition or waiver of Liquidated Damages, except that any Liquidated Damages shall be waived for any delay for which a time extension is granted in accordance with [DB 108-5](#). See also [DB 109-4.5](#).

DB 107-27.9 Claims for Delays

In order to receive an extension of Contract Time or to receive monetary compensation for delays to the Contract Schedule, the Design-Builder must request an extension of Contract Time in accordance with [DB 108-5](#). All requests for extensions of Contract Time shall be based on the Design-Builder's approved Baseline Progress Schedule. Failure to properly update and maintain the progress Schedule in accordance with the terms of the Contract shall constitute a waiver of the Design-Builder's rights to claim for a time extension and monetary damages due to a delay.

The Department may only grant time extensions in the performance of Work for delays identified in [DB 109-13](#). The only allowable compensable delays are identified in [DB 109.12.1](#). Concurrent delays are non-compensable unless all of the concurrent delays are eligible for compensation per [DB 109.12.1](#). All recoverable direct and indirect costs for compensable delays are identified in A. below, and all non-recoverable costs for compensable delays are identified in B. below. Compensation provided by A. below shall not be duplicative of compensation already provided as part of [DB 107-27](#) or [DB 109.8.2.2](#).

A. **Allowable Direct and Indirect Expenses.** Only the additional costs associated with the following items will be recoverable by the Design-Builder for delay compensation:

1. Extended Field Overhead. Field overhead costs necessary for the prosecution of the Work during the delay period, as follows:

a. General Field Supervision. Such costs include but are not limited to general field supervision, assistants, watchman, clerical and other field support staff that are physically located on the jobsite. Compute these labor costs in accordance with [DB 109.8.2.2\(1\)](#). For salaried personnel, calculate the rate of wage (or scale) actually paid by dividing the weekly salary by seven Days per week.

b. Field Office Facilities and Supplies. Such costs include but are not limited to field office trailers, tool trailers, office equipment rental, temporary toilets, and other incidental facilities and supplies that are physically located on the jobsite. Compute these costs on the basis of the actual added costs incurred by the Design-Builder to provide these services as a result of the delay.

c. Maintenance of Field Operations. Such costs include but are not limited to expenses for telephone, electric, water, and other similar services that are provided at the jobsite. Compute these costs on the basis of the actual added costs incurred to maintain these services as a result of the delay.



These extended field overhead costs are not duplicative of those compensated in [DB 109.8.2.2\(7\)](#).

2. Labor. For all necessary, non-salaried, idle labor that must remain on the Project during such periods of delay due to collective bargaining contracts or other reasons approved by the Project Manager. Compute the labor costs in accordance with [DB 109.8.2.2\(1\)](#).

3. Bond, Insurance, and Tax. In accordance with [DB 109.8.2.2\(2\)](#).

4. Equipment. For any idle Equipment other than small tools that must remain on the Project site during delays, the Design-Builder is to receive compensation at the rate calculated in [DB 109.8.2.2\(4\)](#). Should it not be necessary for machinery or Equipment to remain on the Project during delays, the Design-Builder is to receive transportation costs to remove the machinery or Equipment and return it to the Project at the end of the delay period. No compensation is recoverable for idle Equipment unless the Equipment has been held on the Project site on a standby basis at the request of the Project Manager and, but for this request, would have left the Project site.

5. Materials. Costs for material escalation due to the delay or the cost of storage of Materials due to the delay are recoverable. Obtain the Project Manager's approval prior to storing any Material due to a delay.

6. Percentage Markups. An additional 10% markup of the total of 1, 2, 3, and 4 above will provide full compensation for home office overhead and any other costs attributed to the delay for which no specific allowance is herein provided. This is the sole markup that is recoverable for a compensable delay. Markups from [Sections DB 107.27, 109.8.2.2\(6\) and 109.8.2.2\(7\)](#) shall not apply.

7. Records. Payment will not be made for delays until the Design-Builder has furnished the Project Manager with duplicate itemized statements of the cost as herein above specified and detailed as follows:

- a. Name, classification, date, daily hours, total hours, rate, and extension for each worker and foreman.
- b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and Equipment.
- c. Transportation costs.
- d. Cost of Bonds, property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes.

The Project Manager will compare the Department's records with those furnished by the Design-Builder and make any necessary Adjustments. When these records are agreed upon and signed by both parties, the records become the basis of payment for the expenses incurred, but do not preclude subsequent Adjustment based on a later audits or inspections of the Contractor's records by the Department.

The Design-Builder's cost records pertaining to expenses under this Section shall be open to inspection or audit by representatives of the Department as provided in [DB 107.27.10](#).

B. Non-Allowable Damages or Expenses. The expenses listed in A. above shall constitute the sole cost(s) and expense(s) to which the Design-Builder shall be entitled on any delay Claim submitted for additional compensation or settlement of any Claim made under these Specifications. The parties agree that the Department will have no liability for the items listed in [DB 107.27.7\(F.1 through F.8\)](#).

DB 107-27.10 Review of Design-Builder's Records by the Engineer.

The Design-Builder agrees to make its accounting records and cost information available at the time of submission of the Claim and such other records as the Department may require in order to determine the validity and amount of each item Claimed. The Design-Builder shall ensure that such records are open to



inspection or audit by representatives of the Department during the life of the Contract and for a period of not less than three years after the Contractor's acceptance of Final Payment as set forth in [DB 109-11](#). The Design-Builder shall retain such records for that period.

Where payment for Materials, Equipment, or labor is based on the cost of forces other than the Design-Builder's, the Design-Builder shall make every reasonable effort to ensure that the cost records of such other forces are open to inspection and audit by representatives of the Department on the same terms and conditions as the cost records of the Design-Builder. Payment for the cost of such forces may be deleted if the records of such third parties are not made available to the Department's representatives.

If an audit or inspection is to be commenced, the Project Manager will provide the Design-Builder with a reasonable notice of the time when such an audit or inspection is to begin. In cases where all or a part of such records are not made available, the Design-Builder understands and agrees that any items not supported by records because the records are not made available will not be recoverable. If payment has already been made in such a case, refund to the Department the amount so recovered.

DB 107-27.11 Design-Builder and Subcontractor/Supplier Disputes.

The Design-Builder shall resolve any dispute arising between the Design-Builder and its Subcontractors/suppliers concerning payments held in trust, as required by Chapter 8, Title 17 of the Delaware Code by arbitration. The Department shall not serve as the arbiter of such disputes, but shall, in the absence of agreement between the parties, designate the American Arbitration Association to resolve the matter.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 108
PROSECUTION AND PROGRESS**



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**DB SECTION 108
PROSECUTION AND PROGRESS**

DB 108-1 SUBLETTING OF CONTRACT

The Design-Builder shall not subcontract, sublet, sell, transfer, assign, purchase work or Materials from an organization other than its own, or otherwise dispose of the Contract or Contracts or any portion thereof, or of its right, title or interest therein, without written consent from the Project Manager. The Design-Builder shall perform with its own organization Work amounting to not less than 50% of the total Contract Price, except that any items designated in the Contract as “Specialty Items” may be performed by subcontract and the cost of any such Specialty Items so performed by subcontract may be deducted from the original Total Lump Sum Contract Price before computing the amount of Work required to be performed by the Design-Builder with its own organization. Only the original Contract Price and the value of subcontracted Work approved by the Project Manager will be used to compute the percentage of subcontracted Work. Adjustments or additional items of Work will not require an adjustment of the percentage computed as described above. The Design-Builder’s organization shall be construed to include only those workers on its payroll, employed and paid directly by the Design-Builder, and Equipment owned or rented by the Design-Builder with or without the operator(s) as is consistent with normal industry practice.

If the Design-Builder to whom the Contract is awarded proposes to subcontract any part of Work, the scope and value of the Work to be done by the Subcontractor shall be outlined. The cost of Materials to be used by the Subcontractor shall be outlined. The cost of Materials to be used by the Subcontractor shall be included in the value of the subcontracted Work. A Subcontractor shall not subcontract further a portion of the Work intended to be done by the original Subcontractor without the express written permission of the Project Manager. In granting such permission, the Project Manager shall ensure that the Subcontractor seeking to subcontract the Work to be performed by another shall nonetheless perform with its own organization Work amounting to not less than 50% of the total subcontracted price included in the Price Proposal.

When the Design-Builder has sublet a portion of the Contract or a bid item to a Subcontractor, the actual payment to the Subcontractor shall be applied to fulfill Disadvantaged Business Enterprise (DBE) requirements of the Contract, as Specified in [DB Section 102-19](#). The cost of a portion of the Contract or Project Component performed by a DBE shall be applied against the Design-Builder to determine if the Design-Builder is performing at least 50% of the total Contract bid price, as required herein.

The Design-Builder must obtain written permission from the Project Manager for each Subcontractor to whom the Design-Builder intends to subcontract or sublet a portion of the Work prior to execution of the subcontract agreement. As a prerequisite to payment for any Work done by a Subcontractor or on a Subcontractor’s behalf and prior to any Work being done on the Project by the said Subcontractor, the Design-Builder shall submit a certified copy of the Design-Builder’s Subcontractor agreement and any and all other contracts with suppliers or any other Person, firm, or organization for review and Approval by the Project Manager. Each subcontract shall be in writing and shall contain and state that all pertinent provisions and requirements of the prime contract are incorporated into the subcontract. Included with the submitted Subcontractor agreement shall be insurance certificates. It shall be the Design-Builder’s responsibility to determine that all such provisions are included and such provisions shall be implied where not specifically included.

The Design-Builder may also be required to submit additional information concerning the prospective Subcontractor or supplier, including any additional information required by the terms of this Contract, by the Department or FHWA, or other governmental agency, where necessary. Such information may include but may not be necessarily limited to:



- A. The organization that performs the Work is particularly experienced and equipped for such Work.
- B. Assurance by the Design-Builder that the Labor Standards Provision set forth in this Contract shall apply to labor performed on all Work encompassed by the Contract.
- C. All Civil Rights Provisions and DBE requirements have been satisfied.
- D. The Department is indemnified and saved harmless from the action of the Subcontractor or supplier.
- E. Disputes Resolution Clause is included in the subcontract.
- F. Design-Builder saves harmless and indemnifies the Department for omissions in the Design-Builder's Subcontractor agreement.

Any review performed or permission or Approval granted under these Specifications shall not operate, nor be interpreted as Approval of the Work to be performed by the Subcontractor or Material supplied by a supplier, nor shall it operate to relieve the Design-Builder of the sole responsibility for satisfactory completion of the Contract. No contracts, subcontracts, supplier agreements, sales, transfers, leases, assignments, or any other agreements applicable to this Contract shall in any case release the Design-Builder of its sole responsibility and liability under the Contract and bonds.

The Department, in its discretion, may refuse to pay for all or part of the Work or Materials or may refuse to accept any Work performed by such unapproved Subcontractor or Materials supplier and may refuse to consider work performed or Materials supplied as part of the subcontracted Work.

DB 108-2 START AND PROGRESS OF WORK

DB 108-2.1 Progress Schedules

Sufficient Materials, Equipment, and labor shall be provided by the Design-Builder to guarantee the completion of each site and the overall Project within the Contract time.

For each site, the Design-Builder shall submit a Critical Path Method (CPM) or bar chart progress schedule, to the Project Manager for review. Site Work shall not be started until the progress schedule and methods of construction operations for each site are acceptable to the Project Manager and are in conformance with all applicable erosion and sediment control requirements.

The Design-Builder shall employ and supply a sufficient force of workers, Materials, and Equipment and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Baseline Schedule to prevent Work stoppage and ensure completion of the Project within the Contract Time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely the Design-Builder's obligation and shall not be charged to the Department unless provided for in other provisions of the Contract.

The Design-Builder shall furnish weekly Work schedules indicating the number of personnel and location and nature of the Work to be performed.

DB 108-2.2 Failure to Submit Baseline Progress Schedule or Update

If the Design-Builder fails to submit a Baseline Progress Schedule or any revision or update when required, the Department's Project Manager may suspend payment per DB Section 109 or default the Contract.

DB 108-2.3 Monthly Progress Reports

The Design-Builder shall submit a monthly progress report, consisting of the following:

- A) A progress narrative;



- B) Quality certifications;
- C) A Change Order status report;
- D) A monthly subcontract report;
- E) Quantity calculations ([DB Section 109-2.5](#));
- F) An updated Contract Submittals List (CSL);

DB 108-2.3.1 Progress Narrative

The Design-Builder shall prepare and submit a monthly progress narrative. The progress narrative shall summarize the following information:

- A) Activity and progress for the Contract, including design and construction and identification of the start and completion dates of major phases of Work;
- B) Achievement of any Project Milestones;
- C) Quality Control efforts, including results of any Design Reviews and/or quality audits;
- D) Problems/issues that arose during the period and remaining problems/issues to be resolved;
- E) Resolution of problems/issues raised in previous progress reports or resolved during the period;
- F) Critical schedule issues and proposed resolutions, proposal of actions planned to correct any negative float or other schedule slippage, and explanation of potential delays and/or problems and their estimated impact on performance and the Substantial Completion Date; and
- G) Issues which may need the Department's Project Manager's attention or action for the next month, including Design Reviews.

DB 108-2.3.2 Quality Certifications

The Design-Builder shall submit monthly a certificate signed by the Design Manager and the Construction Project Manager certifying the following for the previous month:

- A) That all Work, including that of the Designer and all other designers, Subcontractors at all tiers, suppliers, and fabricators has been checked and/or inspected by the Design- Builder's QC staff and that all Work, except as specifically noted in the certification, conforms to the requirements of the Contract; and
- B) That the Quality Plan and all measures and procedures provided therein are functioning properly and are being followed, except as specifically noted in the certification.

DB 108-2.3.3 Change Order Status Report

The Design-Builder shall provide a report of outstanding Change Order requests containing the following:

- A) The Design-Builder's and the Department's Change Order identification numbers and/or coding;
- B) The issue title;
- C) A brief description of the change;
- D) Any outstanding issues to be resolved;



- E) The estimated cost and time implications; and
- F) The projected resolution date.

DB 108-2.3.4 Subcontract Report (CN-91)

As part of the monthly progress report, the Design-Builder shall submit a subcontract report providing the Department with an updated list of Subcontractors including DBE Subcontractors (design and construction at all tiers). The use of form CN-91 is required. Failure to submit a completed CN-91 will delay subsequent payments until an acceptable CN-91 is submitted. (See [Contract Documents Part 2 - Appendix 109A](#), Payment Certification)

DB 108-2.3.5 Contract Submittals List

The Design-Builder shall submit monthly updates to the Contract Submittal List with the Monthly Progress Report ([DB Section 108-2.3](#)). The updated list shall show the record of submittals made to date and shall show the submittals due over the next month.

DB 108-3 KEY PERSONNEL

DB 108-3.1

The Design-Builder shall provide personnel that meet the minimum requirements Specified in [Contract Documents Part 4 – Special Provisions](#), Special Provision 108C.

The Department’s Project Manager may designate other positions as Key Personnel or change the designation of some of the positions as needed at any time during the Contract. Additionally, any of the Key Personnel identified in [Contract Documents Part 4 – Special Provisions](#), Special Provision 108C, may serve in more than one capacity on the Project.

DB 108-3.2 Directory

Within 15 working days after NTP, the Design-Builder shall submit to the Department’s Project Manager a directory and organizational chart showing all of its Key Personnel. The directory shall be updated throughout the Contract as changes occur. The directory shall include the names, titles, areas of responsibility, office address and location, office telephone and facsimile numbers, and cellular and/or pager numbers of Key Personnel. The Design-Builder shall provide information sufficient for the Department to contact any of the Key Personnel on a 24-hour basis for the duration of the Contract.

The Department’s Project Manager shall provide a directory of the Department’s Project staff to the Design-Builder.

DB 108-3.4 Changes in Key Personnel

The Design-Builder shall assign the Key Personnel identified in the Design-Builder’s Proposal to this Project. Except in exceptional circumstances, as determined by the Department’s Project Manager, the Design-Builder shall submit the names and qualifications of proposed replacement Key Personnel to the Department’s Project Manager 30 Calendar Days in advance of any replacement of any Key Personnel.

The Design-Builder may change Key Personnel only upon receipt of a written consent from the Department’s Project Manager. The Department’s Project Manager may require written justification from the Design-Builder explaining the replacement of any Key Personnel.



DB 108-3.5 Traffic Requirements and Design-Builder's Operations

The Design-Builder shall conduct Work at all times in such a manner and in such sequence as will ensure the least interference with traffic. The Design-Builder shall give due regard to the location of detours and to the provisions for handling traffic. The Design-Builder shall not open up Work to the prejudice or detriment of Work already started, and the Project Manager may require the Design-Builder to finish a section on which the Work is in progress before Work is started on any additional sections.

DB 108-4 CHARACTER OF WORKERS AND EQUIPMENT

The Design-Builder shall employ only competent and efficient persons. Whenever, in the opinion of the Project Manager, any employee is careless or incompetent, obstructs the progress of the Work, acts contrary to instructions of the superintendent or foreman, or conducts themselves improperly, the Design-Builder shall, upon the request of the Project Manager, discharge the employee from the Work and shall not again employ that person on the Contract or any other Contract for the Department, except with the written consent of the Project Manager.

All machinery and Equipment owned or controlled by the Design-Builder, that is proposed to be used by the Design-Builder on the Work, shall be of sufficient size and capacity and such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of Work. Equipment used on any portion of the Project shall be such that no injury to the Roadway, adjacent property or other highways results from its use.

When methods and/or Equipment to be used by the Design-Builder in accomplishing the construction are not prescribed in the Contract, the Design-Builder is free to use any methods and/or Equipment that it demonstrates to the satisfaction of the Project Manager will accomplish the Contract Work in conformity with the requirement of the Contract.

When the Contract specifies that the construction be performed by the use of certain methods and/or Equipment, such methods and/or Equipment shall be used unless others are authorized by the Project Manager. If the Design-Builder desires to use a method and/or type of Equipment other than that Specified in the Contract, the Design-Builder may request authority from the Project Manager to do so. The request shall be in writing and shall include a full explanation of the reasons for desiring to make the change. If Approval is given, it will be on the condition that the Design-Builder will be fully responsible for producing construction Work in conformity with Contract requirements. If, after trial use of the substituted methods and/or Equipment, the Project Manager determines that the Work produced does not meet the Contract requirements, the Design-Builder shall discontinue the use of the substitute method and/or Equipment and shall complete the remaining construction with the Specified methods and/or Equipment.

The Design-Builder shall remove the deficient Work and replace it with Work of Specified quality, or take such other corrective action as the Project Manager may direct. No change will be made to the Lump Sum Contract Price for the Project Components or items involved, or in Contract Time as the result of authorizing a change in methods and/or Equipment under these provisions unless it is as a credit or a VEP.

DB 108-5 EXTENSION OF CONTRACT TIME

An extension of the Contract Time may be granted by the Department under the following conditions provided documentation has been given to the Project Manager. If the Design-Builder finds that it will be impossible to complete the Work on or before the time allowed by the Contract, the Design-Builder shall, prior to the termination of such time, submit a written request to the Project Manager for an extension of



time for completion of the Contract. The Design-Builder shall set forth fully therein the reasons that it considers would justify the request. If requested by the Project Manager, the Design-Builder shall submit a revised detailed progress schedule showing the remaining Work to be completed on or before the requested extended completion date. If the Project Manager finds that the Work was delayed or damage to the Work occurred on account of unusual conditions beyond the control of the Design-Builder to warrant additional time, the Project Manager will grant an extension of time for completion in such amounts as appears to be reasonable and proper. Upon written notice being sent by the Project Manager, the new completion time shall be incorporated into and become part of the Contract and shall be binding upon the Design-Builder and Surety. The Design-Builder shall not be entitled to any additional time as a result of any delay caused by the Design-Builder’s failure to prosecute the Work and/or the Design- Builder’s failure to work in accordance with the progress schedule without valid reason as permitted by these Specifications.

See [DB Section 107-27.9](#) Claims for Delays for additional information.

DB 108-6 FAILURE TO COMPLETE ON TIME

For each Calendar Day that Work remains incomplete after the overall Contract Time has expired or beyond the completion date established by the Contract, the sum Specified in [DB Section 109.45](#) will be deducted from any money due the Design-Builder. This sum shall not be considered and treated as a penalty but as liquidated damages due the Department by reason of inconvenience to the public, added cost of engineering and supervision, and other extra expenditures of public funds due to the Design-Builder’s failure to complete the Work on time. Any adjustment of the Contract time for completion of the Work granted under [DB Section 108-6](#) will be considered in the assessment of Liquidated Damages.

Road User Delay Costs (RUDC) will be assessed for each Calendar Day beyond twenty-eight (28) days that traffic is not restored to a site utilizing a detour route as temporary traffic control. RUDC’s assessment will be as specified in Table DB 108-6.

Table 108-6 Road User Delay Costs	
ADT (vehicles per day)	Daily Road User Delay Costs
0-500	\$235/day
501-2,000	\$960/day
2,001-4,000	\$2,000/day
4,001-6,000	\$3,180/day
6,001-13000	\$11,200/day

Each and every consecutive Calendar Day, including Saturdays, Sundays, and Holidays, shall be included in the computations for the assessment of Liquidated Damages and/or RUDC’s.

If there is a delay in the delivery of critical materials, such as steel, copper, or aluminum, due to defense needs, energy crisis, etc., a time extension shall be allowed for such delays. Each case will be independently evaluated to determine if the delays were, in fact, beyond the control of the Design-Builder or fabricator and delayed the Project completion. Satisfactorily supported time extension requests shall be made concurrently with the delay and not after the fact.

Requests for time extensions shall be subject to review by the Project Manager, and the Project Manager will determine the amount of time extension allowed.



There will be no acceptance of unsupported claims of delays in delivery of Material as a basis for time extensions. The Design-Builder is presumed to have included in its Contract price, allowance for any anticipated delays in procurement of Materials, which procurement is its sole responsibility. Unless some unusual market condition such as an industry-wide strike, natural disaster, or area-wide shortage arises after bids are taken and prevents procurement of Materials within the allowable time limitations, delays in delivery of such Materials do not provide sufficient reason for suspending time charges.

Permission for the Design-Builder or Surety to continue and finish the Work after the Contract Time and approved extensions have elapsed shall not waive the Department's rights under the Contract.

The Department may waive such portions of the Liquidated Damages as may accrue after the Work is substantially complete and is in a condition for safe and convenient use by the traveling public.

Payment of Liquidated Damages and/or RUDC's will be deducted from payments otherwise due the Design-Builder or be made by direct payment by the Design-Builder in the event the total Liquidated Damages due exceed said deductions.

DB 108-7 DEFAULT OF CONTRACT

The Project Manager may give notice to the Design-Builder and the Surety, in writing, declaring the Contract to be in default under the following conditions:

- A. If the Design-Builder fails to begin the Work within the time Specified in the Notice to Proceed.
- B. If the Design-Builder fails to perform the Work with sufficient labor, Equipment, and Material resources to ensure the prompt completion of the Work in accordance with the approved schedule.
- C. If the Design-Builder's Work is determined by the Project Manager to be defective or otherwise unacceptable Work or if the Design-Builder refuses or neglects to remove Materials or replace or repair rejected Work.
- D. If the Design-Builder discontinues the prosecution of the Work or fails to resume the Work that has been discontinued.
- E. If the Design-Builder becomes insolvent, declares bankruptcy, commits any acts of bankruptcy or insolvency, or allows any final judgment to stand unsatisfied for a period of ten calendar Days.
- F. Makes an assignment for the benefit of creditors without authorization by the Department.
- G. For any other cause whatsoever, fails to carry on the Work, in the Department's judgment in a manner consistent with Contract requirements.

If the Design-Builder or Surety, within a period of ten calendar Days after such notice, does not proceed in accordance therewith, then the Project Manager will declare the Design-Builder to be in default on the Contract, terminate the Design-Builder's right to proceed with the Work, and have full power and authority, without violating the Contract, to take over the prosecution of the Work from the Design-Builder. The Department may appropriate or use the Design-Builder's Materials at the site as may be suitable for use in the Project and may enter into an agreement with another contractor or entity for the completion of the Contract according to the terms and provisions thereof, or use other methods as in the opinion of the Project Manager will be required for the completion of the Contract.

All costs and changes incurred by the Department, as a result of the default, including the cost of completing the Work under Contract or remedying defective or otherwise unacceptable Work, and any applicable Liquidated Damages or disincentives will be deducted from monies due the Design-Builder for completed Work. If such cost exceeds the sum which would have been payable under the Contract, then the Design-Builder and the Surety shall be liable and shall pay to the Department the balance of such costs in excess of the Contract Price.



If it is determined, after termination of the Design-Builder's right to proceed, that the Design-Builder was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department in accordance with DB Section 108-9. Thus, damages to which the Design-Builder may be entitled as a result of an improper default termination will be limited to amounts as provided for in [DB Section 108-9](#).

DB 108-8 TERMINATION OF DESIGN-BUILDER'S RESPONSIBILITY

The Contract will be considered complete when all Work, including the acceptable submission of all required documents, has been satisfactorily completed, the final inspection made, and the Work accepted by the Department. The Design-Builder will then be released from further obligation except as set forth in the Design-Builder's Payment, Performance and Maintenance Bonds and [DB Section 103-1](#).

DB 108-9 TERMINATION OF CONTRACT

The Department may, by written order to the Design-Builder, terminate the Contract, or any site, or portion of the Contract when such termination would be in the best interest of the Department. In the event such termination occurs without fault and for reasons beyond the control of the Design-Builder, all completed items as of the date of termination will be paid for at the Contract Price, where applicable. Payment for partially completed and eliminated Work will be paid for as provided in [DB Section 109-9](#), Eliminated Items.

Acceptable Materials, obtained by the Design-Builder for the Work but which have not been incorporated therein, may, at the option of the Department, be purchased from the Design-Builder at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

After receipt of notice of termination from the Department, the Design-Builder shall submit, within 60 Days of the effective termination date, its claim for additional damages or costs not covered above or elsewhere in these Specifications. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, uncompensated bidding and Project investigation costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in claim preparation, Subcontractor costs not otherwise paid for, actual idle labor costs if Work is stopped in advance of the termination date, guaranteed payments for private land usage as part of original Contract, and any other cost or damage item for which the Design-Builder feels reimbursement should be made. The intent of negotiating this claim would be that an adjusted figure be reached with the Design-Builder. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Design-Builder agrees to make its cost records available to the extent necessary to determine the validity and amount of each item claimed.

Termination of the Contract or portion thereof shall not relieve the Design-Builder of its contractual responsibilities for the Work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the Work performed.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 109
LUMP SUM PRICE, PROGRESS, AND PAYMENT**



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APPENDIX 109A – FORMS



**SECTION DB 109
LUMP SUM PRICING, PROGRESS, AND PAYMENT**

This Section DB 109 describes and specifies the lump sum pricing concepts, specifies the means of determining the Work progress, and establishes the procedures for requesting and making payment.

DB 109-1 PRICING CONCEPT

Project Components (PC) will be used for all pricing. The price for each PC will be reflected as a Project Component Value (PCV) on Form SP, Schedule of Prices from Appendix C to the ITP. The sum of all the PCVs will be the Lump Sum Contract Price.

The pricing concept is summarized as follows:

- A) Project Components are identified and defined for Performance Bonds and Insurance, design and construction of the Project;
- B) Project Component Values (lump sum prices) are assigned to each PC and to designated activities or sites within each PC by the Proposer/Design-Builder per the Instructions To Proposers (ITP); and
- C) Details of the process are described in this Section DB 109.

DB 109-1.1 Project Components

DB 109-1.1.1 General Requirements for Defining Project Components

The Form PC's divide the Project into one or more groups of inter-related Work forming part of the Project. The following indicators were used to create the PCs, as applicable to the Project:

- A) Project Component 1 for preliminaries and general requirements, including activities shown in Form PC1 and Table 109-1;
- B) Project Component 2 for design activities by site in Form PC2;
- C) Project Component 3 for Construction activities by site in FormPC3;

See the ITP, Appendix C, for all Pricing Forms.

DB 109-1.1.2 Mobilization and Demobilization

Mobilization shall be included for each site in PC 3. Mobilization shall be 4% of the site Lump Sum Contract Price for each site.

Demobilization shall be included for each site in PC 3. Demobilization shall be 1% of the site Lump Sum Contract Price for each site.

DB 109-1.1.3 Material Delivered to the Site

This Section not used.

DB 109-1.1.4 Specific Rules for Project Components

This section not used.

DB 109-1.2 Schedule of Values

This section not used.



DB 109-1.3 Revisions during the Contract

DB 109-1.3.1 Revisions to Project Components

In the event that revisions to the PCs are required during the Contract, the following procedures shall apply:

A) Where new PCs are required, the Design-Builder shall revise and submit the following to the Department's Project Manager:

- 1) Form SP; and
- 2) Revised or additional Form PC.

B) Where revisions to existing PCs are required, the Design-Builder shall revise and submit the following to the Department's Project Manager for written Approval:

- 1) Any change to Form SP; and
- 2) Any revisions to PCs 1, 2, and / or 3, on Forms PC1, PC2, and / or PC3.

DB 109-1.3.2 Revisions to Schedule of Prices

The Design-Builder shall revise the affected PCVs and Form SP to incorporate any change to the Lump Sum Contract Price. The Design-Builder will update Forms SP and Forms PC1, PC2, PC3, and others as appropriate, and submit them to the Department's Project Manager for written Approval.

DB 109-2 MEASUREMENT/DETERMINING PROGRESS

There will be no measurement of quantities to determine payment due.

For PCs and/or Change Order paid on a Force Account basis, the Design-Builder shall substantiate progress with submittal of statements Specified in [Section DB 109-5.1](#).

For all Work paid on a lump sum basis, progress and payment shall be determined as follows.

DB 109-2.1 Project Component 1 (General Requirements)

A) Where the Contract requires submittal of a payment-performance bond, the requirement is met when the bond has been provided in the amount and under the terms required in the Contract and by a Surety which the Department accepts. Payment will be made on the amount shown on the paid receipt for such bond.

B) Where the Contract requires the submittal of insurance certificates or similar documents, the requirement is met when the document has been delivered to the Department's Project Manager and content of the document is shown to meet the Contract requirements and the Department's Project Manager notifies the Design-Builder in writing of that determination. Payment will be made in the amount shown on the insurance premium(s).

DB 109-2.2 Project Component 2 (Design)

Progress will be determined on a cumulative percent complete basis consistent with the following:

A) Preliminary Plans – upon acceptance of a site Preliminary Plan by the Project Manager, the Design-Builder may invoice up to 50% of the site value indicated in Form PC2.



- B) Semi-Final Plans - upon acceptance of a site Semi-Final Plan by the Project Manager, the Design-Builder may invoice up to 85% of the site value indicated in Form PC2.
- C) Final Plans - upon acceptance of a site Final Plan by the Project Manager, the Design-Builder may invoice 100% of the site value indicated in Form PC2.

DB 109-2.3 Project Component 3 (Construction)

Progress will be determined by site as follows:

- A) Mobilization shall be invoiced by site after the Project Manager has issued Notice to Proceed with construction to the Design-Builder and the Design-Builder has begun work.
- B) Construction work may be invoiced up to 99% of the site value indicated in Form PC3.
- C) Demobilization shall be invoiced at the end of the period following Site Final Acceptance in accordance with [Section DB 109-10.1](#).

The Design-Builder will not be considered to have progressed the Work under the following circumstances:

- A) Quality Control procedures have not been followed and documentation has not been provided, as documented by Non-Conformance Reports (NCR);
- B) Required temporary Erosion Control measures are not in place and properly maintained in accordance with Contract requirements; and/or
- C) Maintenance of Traffic measures are not in place and properly maintained.

DB 109-2.4 Other Project Components

If additional sites are added, payment shall be based upon a Lump Sum Price submitted by the Design-Builder and approved by the Project Manager.

DB 109-2.5 Unit Priced Work

This section not used.

DB 109-3 CHANGES TO LUMP SUM CONTRACT PRICE

The Lump Sum Contract Price shall be increased or decreased only by Change Order issued in accordance with [Section DB 104-3](#) and [Section DB 109-8](#).

The Design-Builder shall revise the PCVs in accordance with the terms of Change Order and submit the revisions to the Department's Project Manager for written Approval.

The Department's Project Manager may decide the applicable PC for the purpose of any revision in accordance with this [Section DB 109-3](#) if and insofar as the same is not identified in the pricing documents, and shall notify the Design-Builder in writing upon making any such decision.

Notwithstanding this [Section DB 109-3](#), the Department's Project Manager may decide not to include a sum payable to the Design-Builder pursuant to the Contract in a PCV, in which case the Department's Project Manager shall notify the Design-Builder of the decision and the Design-Builder may apply for payment of the sum in accordance with [Section DB 109-6](#).

DB 109-4 PAYMENTS ON CONTRACT

Payments to the Design-Builder for Work satisfactorily performed will be made monthly.



DB 109-4.1 Scope of Payment

The Design-Builder shall receive and accept compensation provided for in the Contract as full payment for furnishing all Material and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

DB 109-4.2 Payment Concept

This section not used.

DB 109-4.3 Progress Payments

This section not used.

DB 109-4.4 No Payment on Design-Builder's Non-Compliance

If the Design-Builder fails to comply with any lawful or proper direction concerning the Work or Material given by the Secretary, or his/her representative, the Design-Builder is not entitled to any payment for the Project Component with non-complying Work. No payment will be made for any Project Component or Material furnished until the Design-Builder has satisfactorily complied with such lawful or proper direction. *See also* [Section DB 109-6.1\(B\)\(4\)](#).

DB 109-4.5 Liquidated Damages

The Department will withhold from final payment any amounts due the Department from the Design-Builder for additional costs incurred by the Department resulting from the Design-Builder's failure to complete the work within the Contract time. The value of Liquidated Damages that will be assessed per day is as outlined in Section 108.09 of the most recent version of the Department's Supplemental Specifications to the August 2001 Standard Specifications.

DB 109-4.6 Road User Delay Costs

The Department will withhold from final payment the value of Road User Delay Costs (RUDC) for each Calendar Day beyond twenty-eight (28) days that traffic is not restored to a site utilizing a detour route as temporary traffic control. RUDC's assessment will be as specified in Table DB 108-6.

DB 109-5 REQUESTS FOR PAYMENT

The Design-Builder shall submit all requests for payment to the Department's Project Manager, except that the request for final payment for each site must be signed by the Design-Builder's Project Manager and designated Project Principal-in-Charge. The Design-Builder shall submit the request by the fifth Day of each month (if a Holiday, the next Work Day) or other mutually agreed date. The Design-Builder's Construction Project Manager and Design Manager shall execute the certifications on Form RPP.

There will be no advance payments.

Mobilization and demobilization will be paid per Section DB 109-2.3.

The Design-Builder shall submit the request for periodic payment using the format illustrated in Form RPP ([Contract Documents Part 2 – Appendix 109A](#)). The Design-Builder will complete the request for periodic payment in accordance with the instructions shown on Form RPP. The maximum cumulative payments at any point in time shall not exceed the sum of planned cumulative payment for each PC.



DB 109-5.1 Payment Requests with the Monthly Progress Report

Each application for periodic payment shall contain the following:

- A) The amount claimed to be payable using Form RPP, setting out the percentage and amount of each PCV, including amounts due under Force Account PCs and/or Change Orders;
- B) Any other amount claimed to be payable or deducted pursuant to a determination of the Department's Project Manager, identifying the relevant determination; and
- C) The signatures of the Design-Builder's Construction Project Manager and the Design Manager on the Form RPP Summary Sheet certifying progress reported and compliance with Contract requirements.

DB 109-5.2 Unit Price Work

This section not used.

DB 109-5.3 Partial Payment for Material Delivered to the Site

This section not used.

DB 109-5.4 Equipment Used to Construct the Project

The Department shall not pay for direct costs of Equipment used to construct the Project. The Design-Builder shall allocate costs for Equipment, whether new, used, or rented, as part of the activities with which the Equipment is associated.

DB 109-5.5 Bond and Insurance Premiums

The amount payable to the Design-Builder for bond and insurance premiums shall be a dollar-for-dollar pass-through of the Design-Builder's costs (not to exceed the amount shown on Form PC1 for such premiums).

DB 109-5.6 Permits

This section not used.

DB 109-5.7 Transportation Tax Exemption

All Unit prices shall be based on exemption from any transportation tax for which the State is, by law, exempt on Materials entering into and forming a part of the Project.

In order for the Design-Builders to take advantage of the exemption from payment of the tax on transportation and to have the construction Materials consigned to the State, in care of itself, the Design-Builder shall furnish the supplier with a statement certifying that the Design-Builder has been authorized to claim the exemption, identifying the Contract in which the authorization was given and instructing the supplier to make the shipment involved free of tax.

DB 109-5.8 Source of Supply and Carrier Rates on Construction Materials

Bidders must fully inform themselves as to the source of supply of acceptable Materials needed for the Work and in regard to the carrier rates and transportation facilities for these Materials before submitting Proposals.

Inability to secure satisfactory Materials from the source upon which the bid was based, or changes in carrier, or the alteration of transportation facilities for these Materials during the life of the Contract, shall not constitute cause for claim for extra compensation.



DB 109-6 REVIEW AND PROCESSING OF REQUESTS FOR PAYMENT

Upon receipt of a request for payment, the Department's Project Manager will proceed in accordance with this [Section DB 109-6](#).

Any adjustments by the Department's Project Manager to a request for periodic payment shall be reasonable and in accordance with the Contract Documents.

Upon resolution of any problems with any request for periodic payment that resulted in an adjustment in the amount of a prior request for payment, or upon satisfaction of any conditions that were the basis for such an adjustment, the Design-Builder may include the amount of the adjustment in the next request for payment.

DB 109-6.1 Payment Limitations and Partial Suspension of Payments

A) There will be no advance payments or payments for mobilization except as Specified in [Section DB 109-2.1\(D\)](#);

B) The Department will not pay for construction Work, including Work being paid on a Force Account basis, unless the following conditions are met:

- 1) Design Plans and Project Specifications are on Site for the Work being constructed;
 - 2) Design Plans and Project Specifications have been checked and reviewed in accordance with [Section DB 111-11](#) and design documentation maintained in accordance with [Section DB 111-17](#);
 - 3) Construction Work has been inspected and sampling and testing conducted in accordance with [Section DB 112-3](#);
 - 4) Items covered by NCRs issued by the Department, the Design QC Manager, or the Construction Project Manager are corrected and/or resolved to the satisfaction of the Department; and
 - 5) Construction documentation is completed and records and reports submitted and/or retained in accordance with [Section DB 112-7](#).
- E) The Department may suspend payment for Work for any period if the Design-Builder's performance during the period resulted in any of the following:
- 1) Serious disruptions to necessary Maintenance of Traffic and access through the Site;
 - 2) Serious disruptions to the Department's access to the Site or use of facilities provided for the Department's use;
 - 3) Unacceptable safety performance as evidenced by the Design-Builder's accident record;
 - 4) Non-compliance with environmental requirements that leads to citations, fines, and/or other penalties by environmental authorities;
 - 5) Serious disruptions to procedures and documentation required by the Quality Plan and/or Specified in the Contract;
 - 6) Continued reports of blocked vehicular and/or pedestrian access to properties; or

No payment will be made under PCs or Change Order being paid on a Force Account basis for design or construction Work necessitated to correct deficiencies noted on an NCR. The Design-Builder shall clearly delineate in its records and on the Force Account report (*see* [Section DB 109-8](#)) personnel and Equipment used on any corrective Force Account Work on such deficiencies.

If the Design-Builder fails to actively prosecute Work within a PC, the Department's Project Manager may suspend payment in that PC at the previous month's level or, as agreed between the Design-Builder and the Department's Project Manager, adjust the payment to a level commensurate with actual progress made.



DB 109-6.2 Certification for Payment

Within seven Calendar Days of receipt of a request in accordance with [Section DB 109-5](#), the Department's Project Manager shall issue to the Department, with a copy to the Design-Builder, a payment certificate showing the amount of any payment the Department's Project Manager considers payable by the Department to the Design-Builder. Such payment certificate shall be the sum of the following:

- A) The amounts shown to be due on Form RPP; and
 - B) The amounts determined by the Department's Project Manager to be due in respect of the following:
 - 1) Additional cost incurred and payable in accordance with the Contract;
 - 2) Work executed pursuant to a Force Account Change Order;
 - 3) Any other amount or allowance to which the Design-Builder is entitled under the Contract, unless account has been or will be taken of such amount or allowance by way of a revision of a PCV under [Section DB 109-1.3](#);
- less:*
- C) The retention monies as provided for in [Section DB 109-7](#);
 - D) Any amounts certified for payment on certificates previously issued; and
 - F) Any amounts recoverable from the Design-Builder in accordance with the Contract;

At the same time, the Department's Project Manager shall countersign the Form RPP to be based on the draft submitted by the Design-Builder pursuant to [Section DB 109-6](#), amended as necessary, certifying the Work and amounts the Department's Project Manager considers the Design-Builder to have achieved. The Department's Project Manager shall have power to omit from any such certificate the value of any Work with which the Department's Project Manager may, for the time being, be dissatisfied. The Department's Project Manager may delete, correct, or modify any sum or statement of fact previously certified by him or her.

DB 109-6.3 Payment by Department

Within 30 Calendar Days after receipt by the Department of an acceptable request for periodic payment (such acceptability as determined by the Department), the Department will pay the Design-Builder the amount of the request approved for payment by the Department's Project Manager, less any applicable retainage and less any amounts that the Department is otherwise entitled to withhold.

DB 109-6.4 Asphalt Cement Cost Adjustment

The Project Asphalt Cement Base Price shall be determined by the Department monthly as set forth in [Contract Documents Part 4 - Special Provisions](#).

DB 109-7 RETAINAGE OF FUNDS

The Department will not withhold retainage from periodic payments due the Design-Builder. The Department will deduct from the amounts due in periodic payment as outlined in the circumstances below.

Whenever Liquidated Damages are assessable, such damages shall be deducted from the monthly and final estimate. The payment of any current or final estimate or of any retained percentage shall in no way affect the obligation of the Design-Builder to repair or renew any defective parts of the construction and to be responsible for all damage due to such defects.



If at any time there is evidence of any lien or claim for which, if established, the Department might become liable, and which is chargeable to the Design-Builder, the Department shall have the right to retain out of any payment then due or to become due an amount sufficient to completely indemnify the Department against such lien or claim. If there should prove to be any such claim after all payments are made, the Design-Builder shall refund to the Department all monies that the Department may be compelled to pay in discharging any lien made obligatory in consequence of the Design-Builder's neglect or default.

No provision contained in these Specifications shall be construed as creating any debt, liability or obligation on the part of the State or Department to any Subcontractor, supplier, or materialman.

DB 109-8 EXTRA WORK, FORCE ACCOUNT WORK, AND RECORD KEEPING

DB 109-8.1 Contract Item Charges

The Department reserves the right to order changes in the scope of the Contract Work as is necessary to complete the Project, in accordance with the intent of the Contract Documents.

DB 109-8.2 New Item Charges

DB 109-8.2.1 Agreed Prices

Agreed prices for new items of Work, Material, or compensation for other impacts to the Department or the Design-Builder, may be incorporated in the Change Order as the Project Manager may deem them to be just and fair and beneficial to the State. These prices must be supported by a complete price analysis in the Change Order, or if approved by the Department's Project Manager, by reference to the weighted average bid or Proposal prices for similar types and quantity of Work from other recent contracts. The price analysis will be based on an estimated breakdown of charges listed in [Section DB 109-8.2.2](#). Agreed prices may be lump sum or Unit Priced Work.

DB 109-8.2.2 Payment for Differing Site Conditions, Major Changes, Extra Work, and Force Account

When the Contract requires the Department to compensate the Design-Builder for Differing Site Conditions, changes to the Contract, and/or Extra Work (either design or construction), (collectively called "Changed Work" in this Section) performed under [Section DB 104-7](#), the Project Manager and the Design-Builder shall jointly choose one of the following methods to calculate the compensation owed to the Contractor:

- (1) Negotiate a lump sum payment for the Changed Work; or
- (2) Perform the Changed Work on a time and material basis using the rules for "Force Accounts" described below to determine payment.

Should negotiated new price(s) involve Work to be performed by a Subcontractor, the Design-Builder's total allowable mark-up on the subcontracted portion of the Work shall not exceed 10% of the Subcontractor's proposed price. Upon request by the Department, submit documentation substantiating the price of the Subcontractor's proposed Work.

Should the Project Manager and the Design-Builder fail to agree on a method of compensation for Changed Work, the Project Manager may direct the Design-Builder to perform the Changed Work, provided that the Changed Work is within the scope of the Contract. When the Design-Builder performs Changed Work at the direction of the Project Manager, the Work is called "Force Account Work" and the Design-Builder will be compensated following the procedure set forth below. Prior to starting Force



Account Work, the Project Manager and the Design- Builder must meet to determine the labor, Equipment and Materials that are necessary to perform the Work. The Project Manager will make the final determination concerning what labor, Equipment and Materials are necessary. The Design-Builder must follow the direction of the Project Manager when performing the Force Account Work. Force Account Work is to be compensated in the following manner except as further provided in [Section DB 107-27](#) Disputes Resolution:

1. *Labor.* Receive as compensation the rate of wage (or scale) actually paid as shown on its certified payrolls for each and every hour that necessary labor and foremen are actually engaged in the Force Account Work. Superintendents, General Foreman, or other general supervisors of the Force Account Work are compensated by the overhead markup in Section (7.) below and are not paid as labor.

Receive as compensation the actual costs paid to, or on behalf of, workers by reason of health and welfare benefits or other benefits, when such amounts are required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed on the Work.

2. *Bond, Insurance, and Tax.* For Bond premiums, property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions, and social security taxes on the Force Account Work, receive the actual incremental cost thereof, necessarily and directly resulting from the Force Account Work. Furnish satisfactory evidence of the rate or rates paid for such Bond, insurance, and tax.

3. *Materials.* The Department reserves the right to furnish such Materials as it deems advisable. Make no claims for costs and markup on such Materials. Only Materials furnished by the Contractor and necessarily used in the performance of the Force Account Work will be paid under this Section. The cost of Contractor furnished Materials shall be the cost to the purchaser, whether Contractor, Subcontractor, or other forces from the supplier thereof, together with transportation charges actually paid by the purchaser, except as the following are applicable:

a. If a cash or trade discount by the actual supplier is offered or available to the purchaser, credit that amount to the State notwithstanding the fact that such discount may not have been taken.

b. If Materials are procured by the purchaser by any method which is not a direct purchase from a direct billing by the actual supplier to such purchaser, the cost of such Materials is the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such Materials.

c. If the Materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such Materials shall not exceed the price paid by the purchaser for similar Materials furnished from said source on items or the current wholesale price for such Materials delivered to the job site, whichever price is lower.

d. If the cost of such Materials is, in the opinion of the Engineer, excessive, then the cost of such Material is deemed to be the lowest current wholesale price at which such Materials are available in the quantities concerned delivered to the Project site, less any discounts as provided in a. above.

e. If the Contractor does not furnish satisfactory evidence of the cost of such Materials from the actual supplier thereof, the cost will be determined in accordance with d. above.

4. *Equipment and Plant.* Use only Equipment that is, in the opinion of the Project Manager, in good operating condition. Specifically describe the Equipment used when documenting such Equipment for payment. Use Equipment of suitable size and suitable capacity required for the Work to be performed. In the event the Design-Builder elects to use Equipment of a higher rental or payment value than that



suitable for the Work, payment will be made at the rate applicable to the suitable Equipment. The Project Manager will determine the suitability of the Equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate Equipment, the rate paid for the operator is to be that for the suitable Equipment.

a. Design-Builder-Owned Equipment and Plant. The hourly rates for Design- Builder-owned Equipment and plant will be determined from the applicable volume of the Rental Rate Blue Book (referred to hereafter as the "Blue Book"), published by Machinery Information Division of K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, CA 95110. These provisions apply to the Equipment and plant owned directly by the Contractor or by entities which are divisions, affiliates, subsidiaries, or in any other way related to the Contractor or its parent company.

The Blue Book will be used in the following manner:

1. The hourly rate will be determined by dividing the monthly rate by 176. The weekly, hourly, and daily rates will not be used.
2. The number of hours to be paid will be the number of hours that the Equipment or plant is actually used on a specific Force Account activity, not to exceed 176 hours per calendar month.
3. The current revisions to the Blue Book will be used in establishing rates. The current revision applicable to specific Force Account Work is as of the first Day of Work performed on that Force Account Work and that rate applies throughout the period the Force Account Work is being performed.
4. An area adjustment will be made. Equipment life adjustment will be made in accordance with the rate adjustment tables in the Blue Book. Charge overtime at the same rate indicated in (1) above.
5. The estimated operating costs per hour will be used for each hour that the Equipment or plant is in operation on the Force Account Work. Such costs do not apply to idle time regardless of the cause of the idleness.
6. Idle time for Equipment will not be paid, except where the Equipment has been held on the Project site on a standby basis at the written request of the Project Manager and, but for this request, would have left the Project site. Such payment will be made at one-half the rate established in (1) and (4) above. Such payment will not exceed 8 hours in a Day and will not exceed 40 hours in a week.
7. The rates established above include the cost of fuel, oil, lubrication, supplies, attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, and all incidentals.
8. Operator costs are not included in this hourly rate for this Equipment. In the event that a rate is not established in the Blue Book for a particular piece of Equipment or plant, the Project Manager will establish a rate for that piece of Equipment or plant that is consistent with its cost and use in the industry.

In the event that a rate is not established in the Blue Book for a particular piece of Equipment or plant, the Project Manager will establish a rate for that piece of Equipment or plant that is consistent with its cost and use in the industry.

b. Rented Equipment and Plant. In the event that the Contractor does not own a specific type of Equipment and must obtain it by rental, inform the Engineer of the need to rent the Equipment and of the rental rate for that Equipment prior to using it on the Work. The Contractor will be paid the actual rental rate for the Equipment for the time that the Equipment is actually used to accomplish the Work, provided



that rate is reasonable, plus the cost of moving the Equipment on to and away from the job if such moves are solely necessitated by the Force Account Work. For idle rental Equipment that must remain on the site because of a written directive from the Engineer and would have left the site but for that directive, the rented Equipment will be paid at the rental rate established above, not to exceed 8 hours per Day and not to exceed 40 hours per week. In no case will the Department pay the Contractor for equipment costs in excess of the actual cost paid by the Contractor for the rental. Provide a copy of the paid receipt or canceled check for the rental expense incurred.

5. *Miscellaneous*. No allowance will be made for: general superintendence; the use of tools whose Blue Book value is less than \$1,500.00; or other costs for which no specific allowance is herein provided.

6. *Profit*. Profit shall be computed at 5% of the following:

- a. Total Material cost (bare cost not including FOB).
- b. Total direct labor cost (actual hours worked multiplied by regular hourly rate and benefits) as provided by Section 109.04 1.

7. *Overhead*. Overhead is defined to include the following:

- a. All salaries and expenses of executive officers, supervising officers, or supervising employees and all home office expenses;
- b. All clerical or stenographic employees;
- c. All charges for minor Equipment, such as tools whose Blue Book value is less than \$1,500.00, including, but not limited to, shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and
- d. All drafting room accessories such as paper, tracing cloth, and b blueprinting.

Overhead costs for Force Account Work will be computed at 10% of the following:

- a. Total Material cost (bare cost not including FOB).
- b. Total direct labor cost (actual hours Worked multiplied by the regular hourly rate) and benefits as provided by Section 109.04 of the Standard Specifications.
- c. Total Equipment and Plant cost.
- d. Specific extraordinary overhead expenses, such as hiring of additional supervisory personnel or the use of a special type of minor Equipment (as defined above), which the Contractor has to purchase specifically for the Force Account, may be allowed. In such instances, the Contractor will be paid only the reasonable costs of such extraordinary overhead expenses provided the Engineer has agreed to such costs prior to their being incurred.

8. *Subcontracting*. For administration costs in connection with approved subcontract Work, receive an amount equal to 5% of the total of such Work completed as set forth in 1. through 4. above.

9. *Records*. Maintain Force Account Records in such a manner as to provide a clear distinction between the direct costs of Work paid for on a Force Account basis and the costs of other operations.

From the above records, furnish the Engineer completed Daily Force Account Work reports for each Day's Work to be paid for on a Force Account basis. Sign and submit such reports daily. Detail the daily Force Account Work reports as follows:



- a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
- b. Designation, dates, daily hours, total hours, rental rate (including a copy of the Blue Book pages used), and extension for each unit of machinery and Equipment.
- c. Quantities of Materials, prices, and extensions.
- d. Costs for transportation of Materials.
- e. Cost of property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; Bonds; and social security tax.

Substantiate Material charges with valid copies of vendor's invoices. Submit such invoices with the daily Force Account Work reports, or, if not available that Day, submit them with subsequent daily Force Account Work reports. Should the vendor's invoices not be submitted within 60 Days after the date of delivery of the Material, or within 15 Days after the Completion if the Work, whichever occurs first, the Project Manager reserves the right to establish the cost of such Materials at the lowest current wholesale prices at which said Materials are available, in the quantities concerned delivered to the location of Work less any discounts provided in [DB Section 109-8.2.2\(3.a\)](#).

The Project Manager will compare its records with the completed daily Force Account Work reports furnished by the Design-Builder and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both parties, the reports become the basis of payment for the Work performed, but do not preclude subsequent Adjustment based on a later audit by the Department.

Allow cost records pertaining to Work paid on a Force Account basis to be open to inspection or audit by representatives of the Department as provided in [DB Section 107-27.10](#).

DB 109-9 ELIMINATED WORK

Should any Work, including design Work, contained in the Contract be found unnecessary for the completion of the Work, the Project Manager may, upon written order to the Design-Builder, eliminate the items from the Contract. The elimination of these items shall not invalidate the Contract. When the Design-Builder is notified of the elimination of items, the Design-Builder will be reimbursed for the actual Work done and all actual costs incurred. Reimbursement of Materials actually purchased prior to notification of the elimination of items will be paid for at the actual cost of the Materials plus 15%. Such Materials shall become the property of the Department. In no event will reimbursement for an eliminated item exceed the extended amount of the Contract Item. Also, in no case will the Design- Builder be reimbursed for the loss of anticipated profit.

DB 109-10 ACCEPTANCE AND SUBSTANTIAL COMPLETION

DB 109-10.1 Project Acceptance

Final Acceptance will not occur until completion of the Project in accordance with this [DB Section 109-10](#).

A) *Site Substantial Completion.* Upon receiving written notice from the Design-Builder of Substantial Completion for a site, the Project Manager will make a semi-final site inspection. During this inspection, the Project Manager will note by stations and in detail all Work or conditions requiring correction. The Design-Builder shall immediately prosecute the corrective Work. When the noted corrections are completed to the satisfaction of the Project Manager, the Design-Builder shall submit a written request to stop time charges and request a final inspection.



B) *Site Final Acceptance.* The Project Manager will make a final inspection of the Work at each site to certify the site can be used, occupied, or operated for its intended use. The Project Manager will note any further corrective measures as deemed necessary. The Design-Builder shall prosecute corrective measures immediately. When the Work is satisfactorily completed, together with receipt of documentation as noted herein, the Project Manager will notify the Design-Builder in writing of the date of Site Final Acceptance.

C) *Project Final Acceptance.* The Project Manager will notify the Design-Builder in writing of the date of Project Final Acceptance.

Prior to Project Final Acceptance, the Design-Builder shall prepare and submit Record (as-built) Drawings of the following types for each site in electronic format on Compact Disc – Read Only Memory (CD-ROM) and one reproducible hard copy set:

- A) Plan and profile sheets;
- B) Signing and striping;
- C) Pavement typical sections;
- D) All Bridge Plans;
- E) Retaining Structure Plans;
- F) Utility relocation Plans;
- G) Lighting Plans;
- H) Drainage Structure Plans;
- I) Cross sections in areas with retaining Structures and/or cuts and/or fills in excess of ten feet high;
- J) Traffic Signal Plans;
- K) Stormwater Management Facilities Plans

If there are no outstanding items to be completed or corrected before Project Final Acceptance, the Design-Builder shall:

- A) Submit to the Department's Project Manager special guarantees, warranties, maintenance agreements, maintenance manuals, final certifications, and similar documents required under the Contract;
- B) Deliver tools, spare parts, instructions, and similar items required to operate and maintain the Work; and
- C) Make changeover of locks to all Equipment and facilities and deliver keys and/or combinations to the Department's Project Manager.

Final Acceptance shall be final and conclusive except for defects not readily ascertainable by the Department; actual or constructive fraud; mistakes; or other errors which the Design-Builder knew or should have known about as well as the Department's rights under any Warranty or guarantee. Final Acceptance may be revoked by the Department at any time prior to the issuance of the final payment upon the Department's discovery of such defects, mistakes, fraud, or errors in the Work.

Damage, theft, or vandalism to the items by the public after Final Acceptance will be repaired or replaced by the Department or by the Design-Builder in conformance with [DB Section 104](#). When the damage to an item is such that only partial repair or replacement is required and the Work is to be done by the Design-Builder, payment shall be made as provided in [DB Section 109-8.2](#).

DB 109-11 FINAL PAYMENT

The Project Manager will, as soon as practicable after the completion of the Contract, make a final estimate of the Work done thereunder and the value of such Work, and the Department shall pay the entire sum found to be due after deducting from all previous payments all amounts to be kept and all



amounts to be retained under the provisions of the Contract. All prior partial estimates and payments shall be subject to correction in the final estimates payment.

The acceptance by the Design-Builder of the last payment, as aforesaid, shall operate as and shall be a release to the State, the Department, and its agents from all claims of liability under the Contract, or for anything done or furnished or relating to the Work under the Contract, or for any act or neglect of the State, the Department, or its agents relating to or connected with the Contract.

DB 109-12 CHANGED CONDITIONS AND DELAY PROVISIONS

DB 109-12.1 Compensable Delays and Changed Conditions

The provisions of this Contract permit monetary compensation for delays and interference in certain defined instances. The Design-Builder agrees, other than is set forth specifically in [DB Section 109-13](#), that the only claims it may make for extra compensation caused by delay or interference affecting the performance or the scheduling of Contract Work is for those instances arising out of the following:

- A) Differing Site Conditions;
- B) Suspension of Work (other than stop orders pursuant to [Section DB 109-12.2\(B\)](#));
- C) Significant changes in the character of the Work; and
- D) Situations not referenced in [Section DB 109-13](#) and which are not within the contemplation of the parties at the time of entering into the Contract.
- E) Extra Work
- F) Inaccuracies of representations made by the Department in the Contract Documents

In addition, these aforementioned provisions may also form the basis for Extra Work compensation pursuant to [Section DB 109-8](#) and [Section DB 109-9](#). Failure of the Design-Builder to adequately progress the completion of the Work will be considered in determining whether the aforementioned instances are the primary causes of delay. In all such instances, for any claim asserted under this Section, the Design-Builder shall keep detailed written records of the costs and agrees to make them available to the Department at any time for purposes of audit and review.

Any Dispute relating to such claims shall be promptly submitted to the Department's Project Manager in writing, pursuant to the notice provisions of the Contract. Failure by the Design-Builder to notify the Department's Project Manager in writing pursuant to the provisions of this Contract, or to maintain and furnish cost records of such claims, shall constitute a waiver of the claim.

DB 109-12.2 Suspensions of Work Ordered by the Department

The Project Manager may suspend the Work in whole or in part by written order to the Design-Builder, for any reason or condition which would be in the best interest of the Department. The Project Manager may also suspend the Work when the Design-Builder fails to perform any provisions of the Contract. The Design-builder shall immediately comply with the written order of the Project Manager to suspend the Work wholly or in part. The Work shall be resumed when conditions are favorable as determined by the Project Manager or when methods are corrected as approved in writing by the Project Manager.

- A) If the delay resulting from the written suspension order is considered unreasonable, the Design-Builder shall submit a written request to the Project Manager providing the reasons and justification for any Contract adjustment considered necessary as a result of the suspension. The justification for a time extension shall follow the notification and documentation procedures defined in [DB Section 108-6](#). The written request for the Contract adjustment must be submitted to the Project Manager in writing seven Calendar Days following receipt of the Project Manager's notice to resume Work. An adjustment will not be made unless the request has been submitted within the prescribed time.



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

C) The request for an adjustment will be reviewed by the Project Manager. If there is Agreement that 1) there has been an increase in the Contract performance cost or time as a result of the suspension, and 2) the suspension was caused by conditions beyond the control and not the fault of the Design-Builder or those parties for whom the Design- Builder is responsible, adjustments in the Contract Price, excluding profit, will be made according to [DB Section 109-8.2.2](#). Any adjustments to Contract Time will be made according to [DB Section 108-6](#).

DB 109-13 FORCE MAJEURE

The Department will be responsible for and agrees to issue Change Orders for the following purposes:

A) Extend the completion deadlines as the result of any delay in the Critical Path on Baseline Progress Schedule caused by a force majeure event.

"*Force Majeure*" shall mean an event or circumstance which prevents Design-Builder from performing its obligations under this Contract, which event or circumstance (a) could not reasonably be anticipated as of the date of the Contract, (b) is not within the reasonable control of Design-Builder, (c) does not result from the fault or negligence of the Design-Builder, (d) the Design-Builder is unable to overcome or avoid or cause to be avoided by the exercise of reasonable care, and (e) includes, but is not limited to, the following events:

1. Acts of God (including fires, floods, hurricanes, tornados, earthquakes or other significant and unusual natural catastrophes) occurring at the project site or at the places of manufacture of Project components (so long as such components require greater than sixty (60) Days to be manufactured and fabricated) including their transportation routes; *excluding, however,* inclement weather (including rain, significant rainstorms (nor'easter), snow, ice, high winds and extreme heat) experienced from time to time;
2. Any Governmental Authority having jurisdiction over the Work suspends or otherwise prohibits the conduct of the Work, *excluding, however,* (1) any actions by any Governmental Authority resulting from the breach or alleged breach by the Claiming Party of any applicable Law and any Permit); and (2) any delay, rejection or other adverse action (including the imposition of conditions) taken with respect to any Permit for the Work to be acquired by the Claiming Party after the Effective Date;
3. War, epidemics, or blockades;
4. Acts of terrorism or sabotage;
5. Any change in governmental rule or change in the judicial or administrative interpretation of or adoption of any new governmental rules which are materially different with governmental rules in effect on the date the date of the Contract;
6. Strikes, job actions, work stoppages or slowdowns or labor disputes ("Labor Disputes") of any type that could not have been avoided by the reasonable action of the Contractor. Contractor shall be responsible for any Labor Disputes among its labor forces that resulted from its own acts or inaction or any acts or inaction of its Subcontractors or suppliers for whom Contractor is responsible;
7. The discovery at, near, or on the site of any archaeological, paleontological, biological, or Cultural Resources or hazardous or contaminated substances, provided that the existence of such resources or substances was not disclosed by the Department; and
8. Civil unrest, other than union activity.



B) Force majeure shall be limited to the matters listed above and specifically excludes from the definition the following matters which might otherwise be considered force majeure:

1. The suspension, termination, interruption, denial or failure to obtain, or non-renewal of any permit, license, consent, authorization, or approval (including all governmental approvals other than environmental approvals) which is necessary for the performance of the Work or the maintenance of the Project;
2. Any lawsuit relating to any new approval which is the Design-Builder's risk under the Contract;
3. The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State; by other public bodies; by railroad, transportation, or utilities; or by private enterprises, or any delay in progressing such Work by any third party as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;
4. The existence of any facility or appurtenance owned, operated, or maintained by any third party, as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;
5. The act, or failure to act, of any other public or governmental body or railroad, transportation company, or corporation, or utility, including, but not limited to, approvals, permits, restrictions, regulations, or ordinances attributable to the Design-Builder's design, submission, action or inaction, or means and methods of construction;
6. Restraining orders, injunctions, or judgments issued by a court which were caused by the Design-Builder's submissions, action or inaction, or means and methods of construction;
7. Any shortages of supplies or Material required by the Contract Work;
8. Variations in soil moisture content from that represented in reports, borings, or tests conducted by the Department and included in the Contract Documents.
9. Any situation which was within the actual or constructive knowledge of the parties at the time of entering into the Contract; and
10. All other matters not caused by the Department or beyond the control of the Department and not listed in [DB Section 109-13A\(1\) through \(8\)](#).

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 110
(SECTION NOT USED)**

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2
DB SECTION 111

DESIGN MANAGEMENT AND DESIGN QUALITY
CONTROL/QUALITY ASSURANCE



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**DB SECTION 111
DESIGN MANAGEMENT AND
DESIGN QUALITY CONTROL/QUALITY ACCEPTANCE**

DB 111-1 GENERAL DESIGN-BUILDER RESPONSIBILITIES

The Work shall be performed in accordance with the details as shown on the Design Plans, Project Specifications, and Working Drawings prepared by the Design-Builder, subject to the Department's Consultation and Written Comment.

It shall be the Design-Builder's sole responsibility to provide Design Plans, Project Specifications, and Working Drawings of such a nature to develop a finished product in accordance with the Contract requirements. The Design-Builder shall verify pertinent dimensions in the field prior to the design and review of Design Plans, Project Specifications, and Working Drawings. Review of the Design-Builder's Design Plans, Project Specifications, and/or Working Drawings by the Department shall not relieve the Design-Builder of the responsibility for the satisfactory completion of the Work in conformance with the Contract Documents.

Design Plans, Project Specifications, and Working Drawings shall be subject to the Department's Consultation and Written Comments per [DB Section 111-11](#) before beginning construction Work covered by the Plans and the design intent shall not be thereafter amended or altered without the prior Approval of the Design-Builder's Designer and subsequent Consultation and Written Comment by the Department.

The Contract Price includes the cost of furnishing all Design Plans and Working Drawings. The Design-Builder shall perform the following:

- A) Manage the Design and Design Quality Control of the Work ensuring that all Designers and Design Subconsultants properly check Project designs and that the QC Manager certifies QC procedures in accordance with the Contract;
- B) Obtain permits and/or permit modifications required by Design-Builder's Design Plans;.
- C) Provide information and coordination to obtain the necessary approvals from authorities having jurisdiction for noise restrictions, utility relocations, temporary road diversions and detours, shutdowns, temporary sidewalk closures, and pedestrian detours; and
- D) Coordinate with property, business, or other owners regarding any temporary or permanent impacts to their properties or current access and obtain temporary and/or permanent acquisition of necessary real property interests.
- E) Obtain necessary National Environmental Policy Act and Federal Highway Administration environmental clearances and approvals.

The procedures outlined in this Section are for the checking of design of Project components and construction sequences that affect the components of the Project.

Please refer to [Contract Documents Part 2 – Design-Build Section 101, Section 101-3](#), for the definitions of Quality Control (QC) and Quality Acceptance (QA).



DB 111-2 DESIGN-BUILDER'S DESIGN ORGANIZATION AND OBLIGATIONS DB

111-2.1 Designer

The Design-Builder shall appoint a suitably qualified and experienced design firm (Designer), which may be a Consultant or other member(s) firm of the Design-Build team, to undertake the design of the Project

Engineering Work shall be in accordance with all Delaware Professional Engineering ethics standards, regulations and standards of care. All engineering shall be conducted by and/or under the direct supervision of Professional Engineers registered in the State of Delaware.

Each individual aspect of the Engineering Work shall be conducted, prepared and documented in conformance with the provisions of [DB Section 111](#), Design Management and Design Quality Control.

Each individual aspect of the Engineering Work shall be conducted in conformance with the Project design criteria and design code(s) and shall result in work product/documents that meet all aspects of the specified design codes, construction codes, special provisions, performance specifications and all other Contract requirements.

Qualifications of each "Responsible Engineer" shall be submitted to the Department for approval. Each element and aspect of the design, including calculations, reports, supplemental studies, record drawings and other design drawings, shall be signed and sealed by one of the Design-Builder's Responsible Engineers registered in the State of Delaware.

These standards and requirements apply to all individuals involved in any design activity whether employed directly by the Design-Builder or by the Design-Builder's Responsible Engineer, Subcontractor(s) or Subconsultant(s).

DB 111-2.2 Location of Design-Builder's Designer

This section not used.

DB 111-2.3 Completeness of Design

At a minimum, the Designer shall determine the following for all temporary and permanent conditions, as applicable:

- A) Effects of all loading requirements;
- B) Dimensions of all elements;
- C) Sub-soil interaction to support the loads from above;
- D) Durability and maintainability requirements.

Working Drawings will be reviewed by the Department for conformance to Contract requirements. However, design will be considered complete upon the Department's Design Acceptance that is only to occur following submittal, review, and acceptance of the Record (as-built) Drawings.

DB 111-2.4 Design Manager

The Design-Builder shall designate and assign a Design Manager to manage all Work performed by the Design-Builder's Designer. The Design Manager shall be available as required in [DB Section 108-3](#).

The Design Manager and/or staff working under the direct supervision of the Design Manager shall conduct an assessment and evaluation of design such that the Design Manager can certify to the Design-



Builder and to the Department that the design satisfies the Contract requirements, including the following requirements:

- A) Accuracy;
- B) Adequacy;
- C) Compliance with Contract requirements including specified codes, regulations, standards, and permits;
- D) Conformance to standards of practice; E) Cost effectiveness;
- F) Quality; and
- G) Fitness for purpose and function as Specified in the Contract.

The Design Manager shall include such written certification for all Work being subjected to a Design Review as per [DB Section 111-11](#).

The Lead Engineer's activities shall include, at a minimum, assessment and evaluation of the following:

- A) Design reports;
- B) Design Reviews and conformity to Contract requirements;
- C) Review of shop drawings;
- D) Evaluation and mitigation of Non-Conformance Reports;
- E) Analytical approach;
- F) Drawing details for conformity to Contract requirements;
- G) Project Specifications for conformity to Contract requirements;
- H) Design and Working Drawings;
- I) Field design changes;
- J) Design Approvals for Materials and procedures; and
- K) Record Drawings for conformity with final design and Contract requirements.

DB 111-2.5 Responsible Engineer

The Designer shall designate and assign a responsible engineer for each Design-Builder- designated Design Unit. The responsible engineer(s) shall sign and seal design reports, Design and Working Drawings, and Project Specifications for the assigned Design Unit(s). Responsible engineers shall be Delaware- licensed Professional Engineers.

DB 111-2.6 Design Quality Control Manager

The Design-Builder shall assign a Design QC Manager. The Design-Builder's Design QC Manager shall be a person who is fully independent from the production of the design. The Designer or a firm associated with or subsidiary to the Designer may serve as the Design QC Manager, except any Designer that is a Principal Participant or any Designer (or subsidiary of a Designer) that is an Affiliate of any Principal Participant or Construction Subcontractor shall not serve as the Design QC Manager.

The Design-Builder's Design QC Manager shall be responsible for the QC of all Work conducted by the Designer.

The Design-Builder's Design QC Manager shall assess and evaluate the Design-Builder's design QC activities in order to be able to certify to the Design-Builder and to the Department that the design QC activities comply with the Quality Plan and Contract requirements.

The Design-Builder shall ensure that its Design QC Manager carries out all duties expressed and implied in the Contract.



The Design-Builder's Design QC Manager shall have QC responsibilities related to the following:

- A) Design of Project components;
- B) Changes in design of Project components; and
- C) Record Drawings.

The Design-Builder's Design Quality Control Manager shall also perform the following activities:

- D) Identify and report design- related non-conformities/non-compliance;
- E) Track, monitor, and report on status of outstanding design-related non-conformance reports;
- F) Provide monthly QC status report (*see* [DB Section 111-17.3.1](#)); and
- G) Submit Specified certificates.

These responsibilities are further Specified in [DB Section 111-11](#).

DB 111-3 RELATIONSHIP OF CONSTRUCTION STARTS TO DESIGN DEVELOPMENT AND REVIEW

It is the intent of the Department to only allow construction to begin on any part of the Project in accordance with [DB Section 111-11.5](#) Readiness for Construction.

DB 111-4 SCHEDULE FOR DESIGN CHECKS, REVIEWS, AND SUBMISSION OF CHECKED DESIGN

The Design-Builder is responsible for scheduling and conducting Design Reviews to meet design and/or construction needs of the Baseline Progress Schedule. The Design-Builder shall include in its Baseline Schedule submitted with its Proposal a minimum of 17 working days for the Department's Design Review of each submittal package. The 17 working days includes 2 working days for completeness review and 15 working days for Departmental review as follows:

- The Department will have 2 working days to review the submittal to ensure all the required components are included.
 - If the submittal is incomplete, the Department will return the submission to be resubmitted as a complete package. The 17 working day time period will restart upon receipt of the resubmission.
 - If the submittal is complete, the Department will review the complete package and return comments within 15 working days.
- The Design-Builder can have one Preliminary and one Semi-Final submission in review with the Department at one time. 5 working days will be added to the review times for all submittals in review at the time the limit is exceeded. For example, if the Design Builder submits two Preliminary submissions and two Semi-Final submissions at the same time, all four submissions will have 25 working days for review after the initial 2 working day completeness review.

The duration of Design Reviews shall be discussed and mutually agreed between the Department and Design-Builder during the Design Workshop (*see* [DB Section 111-15](#)) and verified and modified by mutual agreement during the course of the Project. The Design-Builder shall give written final notice of scheduled Design-Reviews to the Department's designated representative at least one week prior to any review.

The Design-Builder shall include the agreed Design Review schedule as part of the Baseline Schedule. The Design Review schedule shall be reviewed monthly until design Work is complete.

Except for Record Drawings, "submissions" shall be in the form of:

- A) 1 full size, true to scale, electronic pdf file of plans, specifications, data, reports, etc.
- B) Support documentation including property research, environmental coordination, subsurface information, etc.



The Design-Builder shall make Specified submissions of checked design in accordance with [DB Section 111-11](#).

The Design-Builder shall include design checks and Design Reviews as indicated in Table 111 and such additional reviews as may arise as indicated in [DB Section 111-11.4.3](#). The Design-Builder shall allow the time for the Department's participation and input to any Design Review as agreed as per this [DB Section 111-4](#). The Design-Builder shall incorporate this schedule into the Baseline Progress Schedule and report progress and updates in the monthly updates. The Design-Builder shall keep the Department up-to-date on exact timing of reviews through the weekly progress meetings.

The Design-Builder shall not be entitled to an increase in Contract Price or Time due to any differences between the mutually agreed Design Review schedule and the Design Review schedule assumed in the Design-Builder's Proposal.

DB 111-5 REVISIONS TO DESIGN

The Design-Builder shall deal with any changes to design initiated by the Design-Builder and already checked by the QC Manager and review by the Department *as an entirely new design*. The Design-Builder shall not be entitled to any increase in the Contract Price or extension of time pursuant to [DB Section 108-6](#) in such circumstances.

DB 111-6 DESIGN REVIEW PLAN

The Design-Builder shall prepare and submit a written Design Review Plan within 15 Calendar Days of NTP for Consultation and Written Comment by the Department. The Design Review Plan shall describe the level of design that the Designer will accomplish for each of the planned stages of design. The Design Review Plan shall include proposed review time for each Design Review, including the review time for Department and Project stakeholders. The Design-Builder shall stagger design review submittals such that the Department shall only undertake one design review at a time. Multiple sites will be treated as outlined in [DB Section 111-4](#).

DB 111-7 STAGES OF DESIGN DEVELOPMENT

The following are the five stages of design development:

- A) Preliminary Design;
- B) Semi-Final Design (with draft Specifications); C) Final Design (with final Specifications);
- D) Working Drawings (as applicable); and
- E) Record (as-built) Drawings.

The intent of each stage of design development and Design Review is the following:

- 1) Verify that the design complies with the Contract requirements;
- 2) In the case of reviews of Working Drawings, to allow construction to continue. The Design-Builder shall perform all five stages of design development, however Design Reviews are only required as designated by [DB Section 111-8](#).

Design Reviews or design checks shall be completed as Specified in [DB Section 111-11](#) at each stage of design development.

The Design-Builder shall time the Design Review and submissions (where Specified) to be consistent with the Baseline Progress Schedule.



DB 111-8 DESIGN REVIEWS

The Design-Builder shall submit to the Department for Consultation and Written Comment plans, reports, calculations and specifications, at the following stages of design development for all work elements:

- a) Preliminary Design
- b) Semi-Final Design
- c) Final Design
- d) Working Drawings
- e) Record Drawings

The Department may invite other Project Stakeholders to participate in Consultation and Written Comment.

The Design-Builder shall stagger design review submittals such that the Department shall only undertake one design review at a time. Multiple sites will not be reviewed concurrently.

The Design-Builder shall address and/or resolve the Department's comments in consultation with the Department prior to the Design Review process being considered complete. Any Stakeholder comments will be forwarded to the Design-Builder by the Department and shall be addressed and/or resolved by the Design-Builder.

Except where otherwise noted in the Part 3, Design Requirements, only the Final Design and Record Drawings require Approval.

DB 111-8.1 Preliminary Design Review

Preliminary Design Review is held when Design Plans are at the 50% stage of completion. The Preliminary Design Review is intended to verify that the design concepts proposed by the Design-Builder meet Contract requirements. The Preliminary Design Review shall verify the following:

- A) The design concepts governing future design development are defined consistently with Contract requirements;
- B) The final Basic Project Configuration;
- C) The design concepts are substantiated and justified by adequate Site investigation and analysis, and are constructible;
- D) Existing Right-Of-Way, property information and proposed impacts;
- E) Town Agreements, Detour Agreements, and Tax Ditch Agreements;
- E) Utility impacts;
- F) Draft NEPA, permit and consultation documents;
- G) Railroad coordination (if necessary);
- H) The specific standards applicable to the proposed concepts are identified and appropriate;
- I) The design meets Project quality requirements and required design QC procedures have been followed.

See also [DB Section 111-12](#) regarding design deviations and exceptions.

DB 111-8.2 Semi-Final Design Review

Semi-Final Review is held when the Design Plans and Project Specifications are at the 90% stage of completion.

The Design-Builder and the Department shall use the Semi-Final Design Review(s) to verify that the concepts and parameters established and represented by Preliminary Design are being followed and that



Contract requirements continue to be met. The Design-Builder shall specifically highlight, check, and bring to the attention of the Department any changes to information presented at Preliminary Design.

Semi-final Right-of-Way Plans shall be incorporated into the Semi-Final Plan set, and final NEPA and permit applications shall be submitted for approval at Semi-Final Design Review.

Final right-of-way approval is contingent upon the Department's Team Support's concurrence that Semi-Final Design Review comments have been addressed and the proposed right-of-way meets the engineering need for the project.

DB 111-8.3 Final Design Review

Final Design Review is held when the Design Plans and Project Specifications are 100% complete. The Design-Builder shall specifically highlight, check, and bring to the attention of the Department any changes to information presented at previous Design Reviews. The Design-Builder shall submit final design for Consultation and Written Comment by the Department (*See [DB Section 105-11](#)*).

The Design-Builder shall not construct any components until the design checks, Design Reviews, and Design certifications have been completed and the Department's provided Consultation and Written Comment for the design. The Design-Builder shall not commence any construction until any design-related Non-Conformance Reports (NCR) have been addressed and resolved to the satisfaction of the Department.

The Final Design Review, upon completion of the Department's Consultation and Written Comment, may be used to satisfy the applicable Readiness for Construction requirements of [DB Section 111-11.5](#).

DB 111-9 WORKING DRAWINGS

The Design-Builder shall check, review, and certify Working Drawings in accordance with [DB Section 111-11.1 through 111-11.3](#) and [DB Section 111-13](#) prior to their being issued for construction.

The Design-Builder shall invite the Department to participate in the review of Working Drawings. The Department may invite the Stakeholders to participate in reviews of Working Drawings.

Working Drawings include, but are not limited to, the following:

- A) Working drawings and shop drawings;
- B) Material and product data from Manufacturers; and
- C) Design calculations.

DB 111-10 RECORD DRAWINGS

The Design-Builder shall submit the Record (as-built) Drawings in accordance with [DB Sections 109-10.1 and 111-11](#). *See [DB Section 111-11.4.2](#)* for additional requirements and information relating to Record Drawings and information.

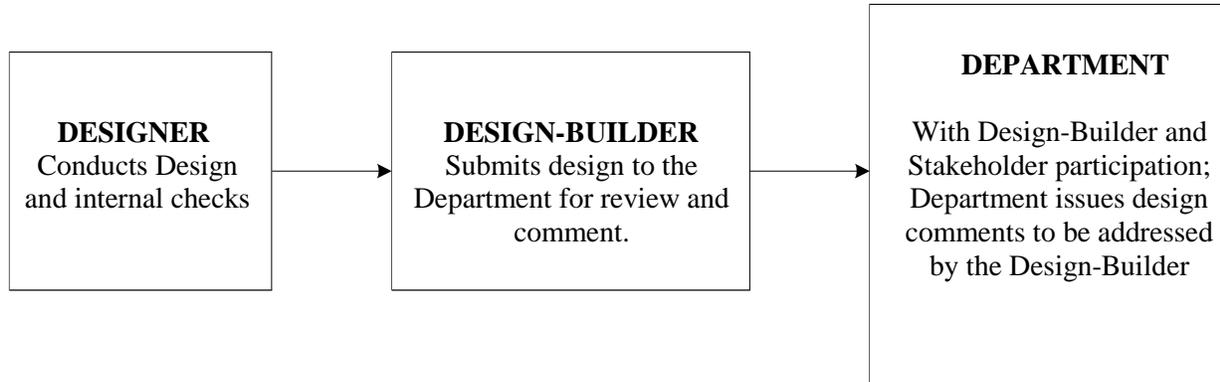
DB 111-11 DESIGN CHECKS, CERTIFICATIONS, AND REVIEWS

The Designer's organization shall check all design documents (drawings, Plans, Specifications, calculations, and reports) produced by the Design-Build Team. The Design-Builder's Design QC Manager will certify that these documents have been checked as per Contract requirements and the Design-Builder's Quality Plan. The Design-Builder's Design QC Manager's written certification shall be provided as Specified in [DB Section 111-11.5](#).



The Design-Builder and the Department shall follow the process shown in Figure 111 for designs being submitted for the Department’s review.

**FIGURE 111
DESIGN REVIEW FLOW CHART (DEPARTMENT CONDUCTS DESIGN REVIEWS)**



The Design-Builder shall conduct and complete the design checks, certifications, and reviews by the entity Specified in Table 111. The Department will provide Consultation and Written Comment for the design(s) prior to the Design-Builder releasing final designs for construction as Specified in [DB Section 111-11.5](#). The Department may also issue design NCRs that must be addressed and resolved to the satisfaction of the Department prior to releasing the design(s) for construction.

The Design-Builder shall conduct its Design Review or submit its design for review in accordance with Table 111, supported by a written certification issued by the Design-Builder’s Design QC Manager, at the stages of design development shown in Table 111 in accordance with the Design Review schedule in the Baseline Progress Schedule.

**TABLE 111
DESIGN CHECKS, CERTIFICATIONS, AND REVIEWS FOR PROJECT COMPONENTS**

STAGE OF DESIGN DEVELOPMENT	DESIGN CHECK AND CERTIFICATION TO DESIGN-BUILDER	DESIGN REVIEW
Preliminary Design	Designer and checker	Department
Semi-Final Design	Designer and checker	Department
Final Design	Designer and checker	Department
Working Drawings and related documents	Designer and checker	Department
Record Drawings	Designer and checker	Department’s designated representative
Temporary components	Designer and checker	Department



DB 111-11.1 Design-Builder's Independent Checks

The Design-Builder shall perform checks of Project components and effects of temporary components on the Project components using senior engineers not involved in the production of the design being reviewed who have equal or greater qualifications and experience as the Responsible Engineer for the design being checked.

Design checks shall include design assessment and analytical checks as Specified in [DB Sections 111-11.2 and 111-11.3](#).

DB 111-11.2 Design Assessment

Design assessment shall be the review of general compliance with the requirements of the Contract, taking into consideration the proposed method of construction, and, as a minimum, shall cover the following areas:

- A) Loads;
- B) Codes and standards;
- C) Methods of analysis;
- D) Computer software and its validation;
- E) Interface requirements;
- F) Maintenance requirements;
- G) Materials and Material properties;
- H) Durability requirements;
- I) Design flows.

DB 111-11.3 Analytical Check

This section not used.

DB 111-11.4 Design Reviews

Any time or cost impacts for revisions that result from the Department's and Stakeholders' participation in Design Reviews and/or caused by Design-Builder's non-compliance with Contract requirements, including the Department's and Stakeholders' time for reviewing revisions, shall be borne by the Design-Builder.

DB 111-11.4.1 Design Reviews Conducted by the Design-Builder's Design Quality Control Manager

The Design-Builder shall notify and invite the Department to participate in all Design Reviews conducted by the Design-Builder's Design QC Manager. The Department may also invite Project Stakeholders including affected Utility Owners to participate. The Department will provide Consultation and Written Comment (based on the Department and Stakeholder participation) regarding these Design Reviews.

For Design Reviews conducted by the Design-Builder's Design QC Manager (*see* Table 111), the Design-Builder's Design QC Manager shall provide a Design Review report for each Design Unit at the conclusion of each Design Review. The Design Review reports will identify any actions arising from the review. The Design Review report shall note items requiring corrective action on the design NCR, Form NCR-D (Appendix 111A). The Design-Builder's Design QC Manager shall send the design NCR to the Designer and a copy to the Department.



The Design-Builder shall conduct Design Reviews in the offices of the Designer and/or Design-Builder. The Responsible Engineer and any specialists with significant input to the design or review shall be present.

The Design-Builder shall make available all drawings, copies of calculations, reports, or other items pertinent to the Design Review.

DB 111-11.4.2 Record Drawings Review

Record (as-built) Drawings and Project Specifications shall incorporate complete information that defines the Work as constructed to meet the Contract requirements.

The Design-Builder (including the Design Manager and Construction Project Manager) shall be required to provide written acceptance of the as-built conditions after conducting final field reviews, completing Record Drawings (and other such documents) and resolving all Non-Conformance Reports.

The written as-built acceptance by each party shall clearly state that all aspects of the Project were found to comply with all aspects identified in the Contract relative to the design criteria, standards of construction and all project Performance Specifications and Special Provisions. Disclaimers, exceptions, or other such terms, shall not be included or considered acceptable in any written as-built acceptance.

The Design-Builder shall submit complete Record Drawings for each Design Unit to the Department for review and Design Acceptance in accordance with [DB Section 111-11](#). The Department review will verify the Project has been designed and constructed in accordance with Contract requirements and to see if Record Drawings comply with Contract requirements and fully and accurately reflect the Work performed.

The Design-Builder shall make all corrections noted in the review of Record Drawings and resubmit the corrected Record Drawings to the Department for review and Design Acceptance.

Design Acceptance by the Department will not occur until the Record Drawings are submitted, reviewed, and corrected to the satisfaction of the Department.

DB 111-11.4.3 Additional Reviews

The Department (with Stakeholder participation, if invited by the Department) may conduct additional “over-the shoulder” reviews as considered necessary to ensure a continued and uniform consistency in the quality and effective incorporation of revisions to designs. The Design-Builder may also conduct reviews necessary to facilitate early release of designs for construction.

DB 111-11.5 Readiness for Construction

It is expected that individual portions of engineered work will be released by the Design-Builder for construction prior to completion of all design and/or construction Engineering Work. Individual groups of working drawings, engineered work methods, plans, specifications or other documents and information presenting engineered work may be “Released for Construction” to the field crews to begin work, provided all aspects of the work have been prepared, reviewed, checked, independently checked, certified and fully coordinated with all other aspects of the works. Each page shall be signed/ sealed and dated.

Each sheet of each document, regardless of type, size, title or nature, which has been authorized by the Design-Builder as “Released for Construction”, shall include a stamp with the words “Released for



Construction” and shall be both initialed and dated individually by the Design Manager, the Design QC Manager and signed and sealed by the Responsible Engineer(s).

No documents shall be in use for actual construction of any temporary or permanent aspect of the work that do not include the “Released for Construction” stamp including all appropriate initials and dates.

The Design-Builder may start construction only after all the following items have occurred:

A) Final Design Review has occurred for the items being considered for construction; B) All Drawings and Documentation prepared by the Responsible Engineer, Manufacturer, Supplier, or other Persons are signed and sealed by a Delaware- licensed Professional Engineer;

C) The Designer has conducted its design checks throughout the design and certifies in writing that the design is complete to the appropriate level or stage of review, checked, and ready to be released for construction;

D) The Design-Builder’s Design QC Manager has signed the title sheet for the drawings, certifying to the following (the title sheet can be formatted to include the items of certification):

- 1) Design checks have been completed;
- 2) Work conforms to Contract requirements;
- 3) Any deviations or design exceptions have been approved in writing by the Department ([DB Section 111-11](#)); and
- 4) All outstanding issues or comments from Design Reviews and Department’s Consultation and Written Comment have been resolved;

B) The Responsible Engineer has signed all drawings prepared under his/her direction. For those drawings and documents included in the submittal that are prepared by a Manufacturer or Supplier or other Persons not under the Responsible Engineer’s direct supervision, the Responsible Engineer will affix a stamp that indicates the design shown on the sheet or document conforms to the overall design and Contract requirements;

C) The Lead Engineer has signed the title sheet to the drawings certifying to the items contained in this [DB Section 111-2.4](#). (The title sheet can be formatted to include the items of certification);

D) The Design-Builder has verified the following:

- 1) Working Drawings, Project Specifications, and related documents for the portion of the Project to be constructed are complete and checked in accordance with this [DB Section 111-11](#);
- 2) The design and drawings for Maintenance of Traffic (MOT) and temporary erosion control and environmental measures applicable to the Work are complete; and
- 3) Adequate stakes, lines, and/or monuments necessary to control the Work have been established on the Site; and
- 4) Utility companies have been given adequate notice and NTP for relocation work. If the relocation work is reimbursable, verify that the Department has set up funding and issued NTP.

The Department’s Consultation and Written Comment will not constitute Approval or Design Acceptance of the design or subsequent construction.

Any design NCRs issued by the Design-Builder’s Design QC Manager or the Department must be addressed and resolved by the Design-Builder to the satisfaction of the Department prior to any design being released for construction.



Upon meeting all of the Readiness for Construction requirements of this [DB Section 111-11.5](#), the Design-Builder may proceed at his own risk with construction of the Work covered by relevant design documents.

DB 111-11.6 Comment Resolution

The Department's and Stakeholders' comments from Design Reviews and Consultation and Written Comment will be recorded on Form DR ([Appendix 111A](#)) and transmitted to the Design-Builder. The Design-Builder shall record its proposed disposition and response to each comment and meet with the Department to resolve outstanding comments and dispositions. Final disposition and resolution will be documented on Form DR.

If the Design Review reveals non-conformance with Contract requirements, the Department will prepare Form NCR-D ([Appendix 111A](#)) and submit it to the Design-Builder for action. The Design-Builder shall complete Form NCR-D when the non-conformance is corrected and return Form NCR-D to the Department.

All Design Reviews shall include a comment and NCR resolution process where unresolved comments and NCRs are discussed and a written action plan and schedule for resolution of unresolved comments and NCRs is developed. The Design-Builder's QC Manager will lead the process.

DB 111-12 DESIGN EXCEPTIONS

All deviations (design exceptions) from Specified standards must be submitted to the Department for review and Approval. All requests for deviations and exceptions must be submitted with a justification report detailing the reasons to retain a non-standard or substandard feature or for providing an improvement that does not bring the feature up to standard. Requests for design deviations and exceptions must be submitted not later than the Preliminary Design Review and Approved by the Department in writing before the affected Design Units can be released for construction ([DB Section 111-11.5](#)). If the Department does not approve a design exception, it is the Design-Builder's sole responsibility to provide design in accordance with this Contract. The Department will not consider providing the Design-Builder additional time or compensation under this Contract due to the rejection of a design exception request.

DB 111-13 DESIGN CHANGES BEFORE CONSTRUCTION

Design changes may occur prior to construction or after final design and may be initiated by the Design-Builder, through its Designer, or the Department.

For all design changes requiring calculations, the Designer and the Design-Builder's Design QC Manager shall conduct a documented check of all calculations. All design changes requiring alteration of design documents released for construction shall undergo all review procedures included for original design documents in the Design-Builder's Quality Plan and [DB Section 111-11](#).

The Design-Builder shall bear all costs associated with changes initiated by the Design-Build Team. The Department shall be responsible for additional costs when changes requested by the Department are outside the scope of Work and the Contract requirements.

DB 111-14 DESIGN SUPPORT DURING CONSTRUCTION

The Designer shall verify during construction that the conditions actually encountered are consistent with the design and related Design Plans, Working Drawings, and Project Specifications. During the course of construction, if Design-Builder has questions, experiences interference / conflict caused by design, or



feels errors and omissions may exist in the Design Plans, Working Drawings, and Project Specifications, the Design-Builder's Construction Project Manager shall issue a written RFI (Request For Information) to the Designer for clarification and response with copies to the Department's Project Manager. The Designer shall respond to each RFI in writing and shall clearly indicate all necessary design revisions, if applicable. The Design-Builder shall provide a copy of all RFIs and responses to the Department as they are issued. The Designer shall prepare necessary adjustments in the Design Plans, Working Drawings, and Project Specifications and the Design-Builder shall obtain required Department Consultation and Written Comment. The Design-Builder shall be responsible for obtaining Stakeholder permits or approvals. The Designer shall check any such changes in accordance with the Quality Plan. The Design-Builder's QC Manager shall certify the change in writing as meeting the Contract requirements. The Design-Builder shall incorporate the adjustments in the Record Drawings. The Design-Builder shall retain copies of its QC Manager's written certifications and submit the certifications to the Department.

DB 111-15 DESIGN MOBILIZATION AND WORKSHOP MEETING

See [DB Section 105-12.1](#).

All agreements, schedules, and understandings reached during the design workshop shall be documented in writing and signed off by the Design-Builder's Project Manager and the Department.

DB 111-16 QUANTITY ESTIMATES

The Design-Builder shall provide quantity estimates for the Work on its Final Plans. The quantity estimates shall be in Units that facilitate sampling and testing (i.e., the Units shall be consistent with the Units used to determine frequency of sampling and testing). For example, if "X" numbers of compaction tests are Specified to be taken for every "Y" cubic yards of concrete the quantity estimate would need to be in cubic yards of concrete.

See also [DB Section 111-18.4](#).

DB 111-17 DESIGN DOCUMENTATION

DB 111-17.1 Progress Tracking

The Design-Builder shall include engineering and design progress and changes in its Baseline Progress Schedule (including Work on any design change) in the monthly updates.

DB 111-17.2 Design Quality Records

The Design QC Manager shall prepare and submit monitoring reports to the Department of all design issues and review comments resulting from the scheduled and additional checks and reviews, including spot-check reviews.

The Design-Builder shall also maintain an auditable record of all Quality Plan procedures. An independent auditor shall be able to determine by reviewing documentation if all procedures included in the Quality Plan have been followed.

The Design-Builder shall submit reports of checks and reviews within seven Calendar Days of the completion of the review.

The Design-Builder shall develop, implement, and maintain a log of design NCRs and/or notices indicating dates issued, reasons, status, or resolution and date of resolution.



The Design-Builder shall prepare and maintain daily records of design activities on forms acceptable to the Department.

DB 111-17.3 The Design-Builder's Design Quality Control Reports

DB 111-17.3.1 Monthly Report to the Delaware Department of Transportation

See [DB Section 108-2.3.1](#).

DB 111-17.3.2 Final Design Report

Upon completion of the Final Design for each Design Unit, including all its components and elements, the Design-Builder's Design QC Manager shall notify the Design-Builder, with a copy to the Department, of any outstanding monitoring report issues or unresolved review comments.

DB 111-18 DESIGN PLANS, WORKING DRAWINGS, AND PROJECT SPECIFICATIONS

The Contract Price will include the cost of furnishing all Design Plans, Project Specifications, Working Drawings, and Record Drawings.

The Contract Documents establish the minimum standards of quality and define requirements that the design and construction must satisfy.

During the design process, the Design-Builder shall develop Project Specifications and Design Plans based on the Contract Documents that are applicable to the specific Materials, products, Equipment, procedures, and methods that the Design-Builder intends to use.

During the Design Reviews, the Design Plans and Project Specifications will be evaluated by the Department to determine if they meet the Contract requirements.

DB 111-18.1 Plans

The Work shall be performed in accordance with the details as shown on the Design Plans prepared by the Designer and those Working Drawings prepared by the Design-Builder. It shall be solely the Design-Builder's responsibility to provide Working Drawings of such a nature as to develop a finished product in accordance with Design Plans, Project Specifications, and Contract requirements. The Design-Builder shall verify pertinent dimensions in the field prior to conducting a Working Drawings review.

Participation in the review of the Design-Builder's Design Plans and/or Working Drawings by the Department (or Stakeholders, if invited by the Department) shall not relieve the Design-Builder of the responsibility for the satisfactory completion of the Work.

Working Drawings shall be reviewed and approved in writing by the Designer before beginning the construction Work and shall not thereafter be amended or altered without prior written Approval of the Designer and the Department's Consultation and Written Comment.

All Final Design Documents and Record Drawings shall be signed and stamped/sealed by the appropriate responsible engineer and shall include, on the title sheet for the Plans, certification signatures of the Design-Builder's Design QC Manager (the title sheet can be formatted to cite the appropriate certification requirements of [DB Section 111-2.4 and 111-11.5](#)).



DB 111-18.2 Format and Organization for Design Plans and Record Drawings

All Design Plans and Record Drawings prepared by the Design-Builder shall be in accordance with the Model Plans found within the Department's Design Resource Center at the following web address: <http://www.deldot.gov/information/business/drc/modelplans.shtml>.

DB 111-18.3 CADD Standards

CADD formatting for Design Plans and Record Drawings shall conform to the Department's CADD manual and drafting standards as found within the Department's Design Resource Center at the following web address: <http://www.deldot.gov/information/business/drc/cadd.shtml>

DB 111-18.4 Project Specifications

The Design-Builder shall prepare Project Specifications based on Contract requirements. The Design-Builder may perform the following activities:

- A) Use the Delaware Department of Transportation's Standard Specifications as supplemented by the Design-Builder; and/or
- B) Prepare new Specifications to cover Work.

Project Specifications, including the Department's Standard Specifications, will be reviewed by the Design-Builder and the Department during Design Reviews to verify that the Project Specifications provide a level of quality that meets or exceeds the Contract requirements and are suitable and appropriate to control the Work. The Design-Builder shall be responsible for demonstrating that the Project Specifications meet or exceed the standard of quality established by the Department's Standard Specifications. Any deviation that results in a lesser standard of quality will require Department Approval and may require the execution of a Change Order. The Department shall determine, at its sole discretion, if the Project Specifications meet the Contract requirements. The Methods of Measurement and Basis of Payment included in the Department's Standard Specifications shall not apply to the Work included in the Design-Builder's Lump Sum Price Proposal. All Design Review required turnaround times will be increased by 1 week if the

Project Specifications shall define the type and frequency of QC sampling and testing to be conducted for the Work covered by a Project Specification. The Design-Builder shall use [DB Section 106](#) as well as the Department's Materials and Research Manual, to determine the type and frequency of QC sampling and testing.

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

STATEWIDE PIPE REPLACEMENTS

State Contract # [T201607002](#)
Federal Contract # [EBROS-2016\(26\)](#)

RFP PART 2

**DB SECTION 112
CONSTRUCTION QUALITY CONTROL AND QUALITY
ASSURANCE**



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**DESIGN-BUILD
SECTION 112
CONSTRUCTION QUALITY CONTROL/QUALITY ACCEPTANCE**

DB 112-1 GENERAL

The Construction QC/QA program will ensure that procurement, shipping, handling, fabrication, installation, cleaning, Inspection, construction, testing, storage, examination, repair, maintenance, and required modifications of all Materials, Equipment, and elements of the Work will comply with the requirements of the Contract Documents and that all Materials incorporated in the Work and all Equipment and all elements of the Work will perform satisfactorily for the purpose intended.

The approval of any Material or source of supply of such Material shall not relieve the Design-Builder of the responsibility to supply a Material which is compatible with all other Materials to be used on the Project, as such Materials are normally used, without defect and for the anticipated life of the Project. The Design-Builder warrants that all Materials used in the Work or Project shall be made, manufactured, processed, or produced by suitable means, that all Materials have been tested with satisfactory results, and that all Materials may be compatibly incorporated into the work or Project without defect. The Design-Builder further warrants with respect to all Materials used on the Project that:

(a) The ownership and title to such Materials shall be clear when incorporated and used in the work or Project and the Design-Builder shall have the right to lawfully transfer ownership or title of all Materials used in the work to the Department. All Materials used in the Work shall be free from any security interest, lien, or other encumbrance. It shall be the sole responsibility of the Design-Builder to resolve any security interest, lien, or other encumbrance placed on Materials used in the Work or Project.

(b) All Materials used in the Work shall be merchantable, shall be fit for the ordinary purpose for which such Material is used, and shall be fit and useable for the particular purpose for which such Material is intended to be used in the Work or Project, as such terms are used in the Delaware Uniform Commercial Code. Any Material which is not merchantable, not fit for the ordinary purpose for which such Material is used, or which is not satisfactory for use for the particular purpose required in the Work or Project shall be considered as defective. It shall be the Design-Builder's responsibility to determine that the Material meets these criteria, and the Design-Builder warrants that any and all necessary tests or evaluations of such Material have been made to determine material compatibility and suitability for use in the Work or Project.

In general, the Construction QC/QA procedures followed will be those prescribed in the Department's Construction Manual and Materials and Research Manual. These documents can be found on the Department's website.

Construction Manual:

http://www.deldot.gov/information/pubs_forms/manuals/construction_manual/index.shtml

Materials and Research Manual:

http://www.deldot.gov/information/pubs_forms/manuals/mat_research/index.shtml

DB 112-1.1 Definitions

See [DB Section 101-3](#) for definitions, including definitions of Quality Control and Quality Acceptance.



DB 112-1.2 Construction Quality Control Inspection

The Design-Builder is responsible for inspecting all construction processes, procedures, and workmanship. The Construction QC inspections will include the observations, measurements, and documentation Specified in the Construction Manual. Inspection observations, measurements, results, non-conformances and corrective actions will be documented. Inspection observation and documentation will include description of construction activity and location by Specification section.

DB 112-2 INSPECTION AND TESTING OF MATERIALS

DB 112-2.1 General

All Materials are subject to Inspection, sampling, and testing at any time before Final Acceptance of the Work at each site.

References in the Contract to a Delaware test method or test designation of the American Association of State Highway and Transportation Officials (AASHTO), the American Society for Testing and Materials (ASTM), International Building Code (IBC), or any other recognized national organization means the latest revision of that test method or Specification for the Work in effect on the Proposal due date, unless otherwise noted.

The Design-Build team is responsible for performing Quality Control testing on all materials and work performed. The Department is responsible for performing Quality Acceptance testing on materials to ensure conformance to specifications.

DB 112-2.2 Construction Quality Control Testing and Sampling

The Design-Builder's QC testers and samplers will be certified to the level appropriate for the Work being sampled/tested. The Design-Builder shall maintain a list of construction QC testers and samplers indicating what test certifications each person currently hold.

The QC testers and samplers will test and sample only those Materials for which they are certified to sample and test. Reports of each test will be recorded on the form prescribed for that test. All tests that do not pass Specified requirements will be added to a log of failed tests. This log of failed tests will be used to assure that the Work is reconciled by a passing test as Specified in [Contract Documents Part 2 - Appendix 112B](#).

DB 112-3 QUALITY ACCEPTANCE INSPECTION

Quality Acceptance Inspection will be performed by the Department or its designated representative assigned to the Project in accordance with [DB Section 106](#).

The Design-Build team is responsible for notifying Materials & Research 24 hours in advance when activities require Quality Acceptance testing and sampling as outlined in the Materials & Research Manual. The Department will not accept materials until Quality Acceptance testing is performed where required.

The Department will notify the D-B team of any materials or work failing to meet specifications. Materials and / or work must be corrected prior to progression on the project.



DB 112-4 DESIGN-BUILDER QUALITY CONTROL

The Design-Builder may choose to provide process control measures. The process control measures shall be adequate to produce a constructed product of acceptable quality that conforms to the Contract Documents. If the Design-Builder performs process control sampling, testing, and Inspection it must be performed at a rate sufficient to assure that the Work conforms to the Contract requirements.

The Design-Builder will provide personnel and Equipment capable of providing a product that conforms to Specified requirements and will provide personnel and Equipment capable of verifying and documenting this conformance. Continual production of non-conforming Work will not be allowed.

DB 112-5 DESIGN-BUILDER'S CONSTRUCTION QUALITY CONTROL ORGANIZATION

The Quality Plan shall provide the information regarding the construction Quality Control organization.

DB 112-5.1 Quality Control Manager

The Design-Builder shall assign an on-site QC Manager.

The Design-Builder's QC Manager shall be responsible for overall management and supervision of the Design-Builder's construction QC programs. Refer to Section 108C for the qualifications of the Design-Builder's QC Manager. The Design-Builder's QC Manager, or his/her designees, shall be delegated the authority to make needed improvements to the quality of Work, including the suspension of the Work if required.

The Design-Builder's QC Manager shall be responsible for coordinating the schedules of the Design-Builder's construction QC Inspectors and construction QC testers and samplers with the Design-Builder's construction activities so as not to delay the Design-Builder's operations due to Construction QC Inspection, sampling, and testing activities.

DB 112-5.2 Staffing Levels

The actual size of the field/site staff shall reflect the complexity, needs, shifts, and composition of QC activities consistent with Work in progress.

The Design-Builder's Quality Plan shall identify administrative and clerical support for the maintenance and management of records and documents pertinent to QC activities.

The QC staffing schedule shall be updated as necessary throughout the Contract duration to reflect accurate forecasting of QC staffing requirements.

DB 112-5.3 Laboratories

Laboratory QC testing shall be conducted by Department-approved testing laboratories. Laboratories will be accredited by the AASHTO Material Reference Laboratory (AMRL), the Concrete Cement Reference Laboratory (CCRL), the National Precast Concrete Association (NPCA) for precasters, or the Prestressed Concrete Institute (PCI), as appropriate, for the Work to be constructed. Department certification shall be obtained for all AASHTO and ASTM test methods to be performed by the testing Laboratory. Certification shall also be obtained for AASHTO and ASTM test methods that are modified or referenced by Delaware test methods.



The Department's rights to check Equipment, procedures, and techniques and to access testing facilities will also apply to Project Stakeholders when the Design-Builder is performing Work on their facilities.

DB 112-6 DESIGN-BUILDER SCHEDULING AND NOTICE TO THE DEPARTMENT

The Design-Builder shall notify the Department in writing by noon Thursday of each week of planned construction activities, including fabrication, for the following two weeks to allow the Department to schedule its resources. The Design-Builder shall deliver this information at the monthly coordination meeting where related discussion will occur. For activities (such as fabrication) occurring out of the immediate Project area (beyond 100 miles of the Project), the Design-Builder shall give the Department at least 21 Calendar Days' notice of planned Work.

DB 112-7 DOCUMENTATION

The Department will collect and preserve certain records concurrently during the Design - Builder's performance of the Work to assess the adequacy of the Design-Builder's Quality Control efforts. Records may include:

- A) Inspector Daily Reports (IDR);
- B) Record (as-built) Drawings;
- C) Secure databases, such as spreadsheets, standard database software, and computation books;
- D) Photographs; and
- E) Field change sheets.

A daily diary for construction-related activities will be maintained in which all significant occurrences on the Project shall be recorded daily in a narrative form, including, unusual weather, asserted occurrences, events and conditions causing or threatening to cause any significant delay or disruption or interference with the progress of any of the Work, significant injuries to person or property and a listing of each activity depicted on the current monthly plan update which is being actively prosecuted. Also, traffic accidents in the Project area will be noted as well as lane closures in effect at the time of the accident.

For Utility-related Work such data shall be maintained separately for each Utility facility.

For harmful/Hazardous Material remediation Work, such data shall be maintained separately for each site. Records shall document all QC operations, Inspections, visitors to the site, activities, and tests performed, including the Work of Subcontractors. The Design-Builder may use the forms provided by the Department or its own forms providing equivalent information. Such records shall include any delays encountered and Work noted that does not conform to the requirements of the Contract and design together with the corrective actions taken regarding such Work.

DB 112-8 MATERIAL ACCEPTANCE

Documentary evidence that Material and Equipment conform to the procurement requirements shall be available at the job Site no less than 24 hours prior to installation or use of such Material and Equipment. This documentary evidence shall be retained at the job Site and shall be sufficient to identify the specific requirements, such as, Contract Documents, codes, standards, or Specifications, met by the purchased Material and Equipment. Additionally, a copy of all documentary evidence that Material and Equipment conform to the procurement requirements shall be provided to the Department, or its representative, at the same time the Design-Builder receives such documentary evidence.

The Department reserves the right to inspect and review these documents at any time.



At the completion of the Project, the Design-Builder shall submit with the final invoice a certificate of compliance signed by the Design-Builder's Project Manager and QC Manager indicating that all Materials incorporated in the Project conform to the Contract requirements.

See [DB Section 106-2](#) for Materials Certification.

DB 112-9 FINAL ACCEPTANCE

The Department has the responsibility and authority for Final Acceptance of all Work.

The Design-Builder shall complete all Work and provide all documents, certifications, and other information in accordance with the Contract Documents. Final Acceptance will be based on QC testing verified by verification testing and the Final Inspection.

Final Materials Acceptance will be based on certificates of compliance and/or Manufacturer's test results where specified in the individual Specification, Materials Manual, or Construction Manual.

Deficient Materials and products shall be brought into compliance with Specifications or replaced. The method of reconciliation will be noted in the log of failed tests.