



Bridge Factors Factual Report Attachment 16 – FIU General Specifications for Design-Build Contract between FIU and MCM, Revised June 9, 2014

Miami, FL

HWY18MH009

(177 pages)

TABLE OF CONTENTS

SECTION 1	GENERAL REQUIREMENTS AND COVENANTS.....	9
1-1	GENERAL.....	9
1-2	ABBREVIATIONS.....	10
1-3	DEFINITIONS.....	11
SECTION 2	RESERVED	23
SECTION 3	AWARD AND EXECUTION OF CONTRACT	24
3-1	CANCELLATION OF AWARD AND/OR CONTRACT	24
3-2	CONTRACT BOND REQUIRED	24
3-2.1	General Requirements of the Bond	24
3-2.2	Continued Acceptability of Surety.....	24
3-2.3	Default by Design-Build Firm	24
3-2.4	Surety to Furnish Legal Defense.....	24
3-2.5	Liability for Wrongful or Criminal Act by Design-Build Firm	24
3-3	EXECUTION OF CONTRACT, INSURANCE CERTIFICATES AND BONDS	24
3-4	FAILURE BY DESIGN-BUILD FIRM TO EXECUTE CONTRACT, FURNISH BONDS AND INSURANCE.....	25
3-5	AUDIT AND EXAMINATION OF CONTRACT RECORDS AND PROPOSAL RECORDS/ESCROW OF PROPOSAL DOCUMENTS.....	25
3-5.1	Audit and Examination.....	25
3-5.2	Escrowing of Documents.....	26
3-6	PUBLIC RECORDS.....	27
3-7	OWNERSHIP OF DOCUMENTS	27
SECTION 4	SCOPE OF THE WORK.....	28
4-1	INTENT OF CONTRACT.....	28
4-2	WORK NOT COVERED BY THE GENERAL SPECIFICATIONS	28
4-3	ALTERATION OF PLANS OR OF CHARACTER OF WORK.....	28
4-3.1	General.....	28
4-3.2	Increase, Decrease or Alteration in the Work.....	28
4-3.2.1	Allowable Costs for Extra Work:.....	29
4-3.2.2	Subcontracted Work	33
4-3.3	No Waiver of Contract:.....	34
4-3.4	Conditions Requiring a Supplemental Agreement or Unilateral Payment:.....	34
4-3.5	Extra Work.....	34
4-3.6	Connections to Existing Pavement, Drives and Walks	34
4-3.7	Differing Site Conditions.....	34
4-3.8	Changes Affecting Utilities.....	35
4-4	UNFORESEEABLE WORK.....	35
4-5	RIGHTS IN AND USE OF MATERIALS FOUND ON THE SITE OF THE WORK	35
4-5.1	Ownership and Disposal of Existing Materials	35
4-5.2	Ornamental Trees and Shrubs.....	35
4-6	FINAL CLEANING UP OF RIGHT-OF-WAY	35
SECTION 5	CONTROL OF THE WORK	37
5-1	FIU'S PLANS	37
5-2	SHOP DRAWINGS (for Structures).....	37
5-2.1	Definitions	37
5-2.1.1	Shop Drawings	37
5-2.1.2	Permanent Works.....	37

5-2.1.3	Temporary Works	37
5-2.1.4	Construction Affecting Public Safety	38
5-2.1.5	Major and Unusual Structures.....	38
5-2.1.6	Special Erection Equipment:	38
5-2.1.7	Falsework:.....	38
5-2.1.8	Formwork.....	39
5-2.1.9	Scaffolding.....	39
5-2.1.10	Shoring.....	39
5-2.2	Submission of Shop Drawings, Product Data and Samples.....	39
5-2.3	Work Items Requiring Shop Drawings	40
5-2.4	Schedule of Submittals	40
5-2.4.1	Style, Numbering, and Material of Submittals.....	41
5-2.4.1.1	Drawings	41
5-2.4.1.2	Other Documents.....	41
5-3	SUBMITTAL PATHS AND COPIES.....	42
5-3.1	Bridge, Bulkhead, and Retaining Wall Structures, Cofferdams, and Lighting and Signing Structural Items, along with the applicable foundations.....	42
5-3.2	Signing, Lighting, Drainage Structures and Attenuators, and other nonstructural items.....	42
5-3.3	Building Structures.....	42
5-3.4	Design-Build Firm-Originated Design or Redesign.....	42
5-3.5	Temporary Works.....	42
5-3.6	Formwork and Scaffolding.....	42
5-3.7	Other Miscellaneous Design and Structural Details Furnished by the Design-Build Firm in Compliance with the Contract	42
5-4	CERTIFICATIONS.....	42
5-4.1	Special Erection Equipment:.....	42
5-4.2	Falsework and Shoring Requiring Shop Drawings	42
5-4.3	Temporary Formwork.....	43
5-5	PROCESSING OF SHOP DRAWINGS.....	43
5-5.1	Responsibility for Accuracy of Shop Drawings, Product Data, Samples or Similar Submittals.....	43
5-5.2	Scope of Review by Engineer.....	43
5-6	OTHER REQUIREMENTS FOR SHOP DRAWINGS FOR BRIDGES.....	43
5-6.1	Shop Drawings for Structural Steel and Miscellaneous Metals	43
5-6.2	Shop Drawings for Concrete Structures	43
5-6.3	Shop Drawing for Major and Unusual Structures	43
5-7	MODIFICATIONS FOR CONSTRUCTION.....	44
5-8	COST OF SHOP DRAWINGS.....	45
5-9	COORDINATION OF CONTRACT DOCUMENTS.....	45
5-10	CONFORMITY OF WORK AND CORRECTIONS FOR CONSTRUCTION ERRORS	46
5-11	ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS.....	46
5-12	ORDERS AND INSTRUCTIONS	47
5-12.1	Observation of the Work.....	47
5-12.2	Examination of the Work.....	47
5-12.3	Communications:	48
5-13	AUTHORITY AND DUTIES OF ENGINEER'S ASSISTANTS	48
5-14	ENGINEERING AND LAYOUT	49
5-14.1	General:.....	49
5-14.2	Control Points Furnished by FIU	49

5-14.3	Furnishing of Stake Materials.....	49
5-14.4	Layout of Work.....	49
5-14.5	Specific Staking Requirements.....	49
5-14.6	Personnel, Equipment, and Record Requirements.....	50
5-14.7	Payment:.....	51
5-15	QUALIFICATIONS OF DESIGN-BUILD FIRM'S PERSONNEL	51
5-15.1	Prosecution of Work.....	51
5-15.2	Design-Build Firm's Supervisory Personnel	51
5-15.2.1	Design-Build Firm's Project Manager	51
5-15.2.2	Design-Build Firm's Superintendent.....	52
5-15.2.3	Worksite Traffic Supervisor.....	52
5-15.2.4	List of Supervisory Personnel.....	53
5-15.2.5	Experience Requirements.....	53
5-15.2.6	Supervision for Emergencies	53
5-15.2.7	Scheduling Direction	53
5-15.2.8	Substitution of Supervisory Personnel.....	53
5-15.2.9	Supervisory Documentation	54
5-15.2.10	Apprentices:.....	54
5-16	GENERAL INSPECTION REQUIREMENTS	54
5-16.1	Cooperation by Design-Build Firm	54
5-16.2	Failure of Engineer to Reject Work During Construction:.....	55
5-16.3	Failure to Remove and Renew Defective Materials and Work.....	55
5-16.4	Inspection by Federal Government:	55
5-17	FINAL CONSTRUCTION INSPECTION	55
5-17.1	Maintenance until Acceptance	55
5-17.2	Inspection for Acceptance	55
5-17.3	Partial Acceptance.....	56
5-18	FINAL ACCEPTANCE	56
5-19	CLAIMS BY DESIGN-BUILD FIRM	56
5-19.1	General:.....	56
5-19.2	Procedures to File a Notice of Claim.....	57
5-19.2.1	Notice of Intent to File a Claim (NOI).....	57
5-19.2.2	Claims For Additional Compensation	57
5-19.2.3	Claim for Time Extension	57
5-19.3	Content of Written Claim	58
5-19.4	Certificate of Claim.....	58
5-19.5	Action on Claim	59
5-19.6	Mandatory Claim Records.....	59
5-19.7	Acceleration of the Work.....	59
5-19.8	Non-Recoverable Items.....	60
5-19.9	Exclusive Remedies.....	60
5-19.10	Settlement Discussions	60
5-19.11	Auditing of Claims	60
5-20	HIERARCHY FOR ISSUE RESOLUTION	62
5-21	RECOVERY RIGHTS, SUBSEQUENT TO FINAL PAYMENT	62
SECTION 6	CONTROL OF MATERIALS	63
6-1	INFORMATION ON MATERIALS.	63
6-1.1	General.....	63
6-1.2	Sampling and Testing.....	63
6-1.2.1	Pretest by Manufacturer	63
6-1.2.2	Point of Production Test:	63
6-1.2.3	Point of Distribution Test	63

	6-1.2.4	Point of Use Test.....	63
	6-1.3	Location of Laboratory.....	63
	6-1.4	Standard Operating Procedure.....	63
	6-1.5	Qualified Products List.....	64
	6-1.6	Approved Products List.....	64
	6-1.7	FIU Minimum Warranty Provisions.....	64
	6-1.7.1	Warranty.....	64
	6-1.7.2	Disputes Resolution Regarding Warranty.....	64
	6-1.7.3	Warranty Work.....	65
	6-1.7.4	Example Warranty Provision.....	66
6-2		DESIGNATION OF A SPECIFIC PROJECT AS A CRITERION (“OR EQUAL” CLAUSE).....	67
6-3		APPLICABLE DOCUMENTED AUTHORITIES OTHER THAN SPECIFICATIONS.....	68
	6-3.1	General:.....	68
	6-3.2	Test Methods.....	68
	6-3.3	Construction Aggregates.....	68
6-4		DOCUMENTATION.....	68
	6-4.1	Submission of Materials Certification and Reporting Test Results.....	68
	6-4.1.1	Certification on Qualified Products List (QPL) Products.....	68
	6-4.1.2	Certification on all Other Materials Not Specified.....	68
	6-4.2	Worksheets.....	69
	6-4.3	Retention:.....	69
6-5		INSPECTION TO ASSURE COMPLIANCE WITH ACCEPTANCE CRITERIA.....	69
	6-5.1	General:.....	69
	6-5.2	Quality Control (QC) Inspection.....	69
	6-5.3	Notification of Placing Order.....	69
6-6		INSPECTION AND TESTS AT SOURCE OF SUPPLY.....	69
	6-6.1	General:.....	69
	6-6.2	Cooperation by Design-Build Firm.....	70
	6-6.3	FIU Not Obligated to Make Inspection at Source.....	70
	6-6.4	Retest of Materials.....	70
6-7		QUALITY CONTROL (QC) PROGRAM.....	70
	6-7.1	General:.....	70
	6-7.2	Producers of Asphalt Mixes, Portland Cement Concrete (Structural), Earthwork, Cementitious Materials, Timber, Prestressed and/or Precast Concrete Products and Drainage Products.....	71
	6-7.3	Prestressed Concrete Plants.....	71
	6-7.4	Steel and Miscellaneous Metals Quality Control Program.....	71
	6-7.5	Quality Control Program Approval.....	71
	6-7.6	Design-Build Firm’s Quality Control Program.....	71
	6-7.7	Additional Requirements for Lump Sum Projects.....	72
6-8		LAB QUALIFICATION PROGRAM.....	72
6-9		STORAGE OF MATERIALS.....	73
	6-9.1	Method of Storage.....	73
	6-9.2	Use of Right-of-Way for Storage.....	73
	6-9.3	FIU Not Responsible for Stored Materials.....	73
	6-9.4	Storage Facilities For Samples.....	73
6-10		DEFECTIVE MATERIALS.....	73

6-11	PERSONNEL QUALIFICATIONS PROGRAMS.....	73
SECTION 7	LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC	74
7-1	LAWS TO BE OBSERVED.....	74
7-1.1	General:.....	74
7-1.2	Plant Quarantine Regulations.....	76
7-1.3	Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds	76
7-1.4	Compliance with Federal Endangered Species Act:.....	77
7-1.5	Occupational Safety and Health Requirements.....	78
7-1.6	Discovery of an Unmarked Human Burial.....	79
7-1.7	Insecticides and Herbicides	79
7-2	PERMITS AND LICENSES.....	79
7-2.1	General:.....	79
7-2.2	Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State.....	80
7-3	PATENTED DEVICES, MATERIALS AND PROCESSES.....	81
7-4	RIGHT-OF-WAY FURNISHED BY FIU.....	81
7-5	RESTORATION OF SURFACES OPENED BY PERMIT.....	81
7-6	SANITARY PROVISIONS	81
7-7	CONTROL OF THE DESIGN-BUILD FIRM'S EQUIPMENT	82
7-7.1	Traffic Interference:	82
7-7.2	Overloaded Equipment.....	82
7-7.3	Crossings	82
7-7.4	Protection from Damage by Tractor-Type Equipment.....	82
7-7.5	Design-Build Firm's Equipment on Bridge Structures	82
7-7.6	Posting of the Legal Gross Vehicular Weight	83
7-8	STRUCTURES OVER NAVIGABLE WATERS	83
7-8.1	Compliance with Federal and Other Regulations	83
7-8.2	Maintenance of Channel.....	83
7-9	USE OF EXPLOSIVES.....	83
7-10	FOREST PROTECTION	83
7-10.1	Compliance with State and Federal Regulations	83
7-10.2	Prevention and Suppression of Forest Fires	84
7-11	PRESERVATION OF PROPERTY.....	85
7-11.1	General:.....	84
7-11.2	Failure to Restore Damaged Property:.....	84
7-11.3	Design-Build Firm's Use of Streets and Roads.....	84
7-11.3.1	On Systems Other than FIU System.....	84
7-11.3.2	On FIU System	85
7-11.3.3	Within the Limits of a Construction Project	85
7-11.3.4	Traffic Signs, Signal Equipment, Highway Lighting, Vehicular Impact Attenuators, and Guardrail.....	85
7-11.4	Operations Within Railroad Right-of-Way.....	85
7-11.4.1	Notification to the Railroad Company.....	86
7-11.4.2	Design-Build Firm's Responsibilities.....	86
7-11.4.3	Watchman or Flagging Services.....	86
7-11.5	Utilities.....	86
7-11.5.1	Arrangements for Protection or Adjustment:	86
7-11.5.2	Cooperation with Utility Owners.....	87
7-11.5.3	Utility Adjustments	88
7-11.5.4	Weekly Meetings.....	88
7-12	RESPONSIBILITY FOR DAMAGES, CLAIMS, ETC.	89

	7-12.1 Design-Build Firm to Provide Defense against Claims and Suits.....	89
	7-12.2 Guaranty of Payment for Claims.....	89
7-13	INDEMNIFICATION/INSURANCE	89
	7-13.1 Indemnification.....	89
	7-13.2 Insurance.....	90
7-14	RESERVED	90
7-15	DESIGN-BUILD FIRM'S RESPONSIBILITY FOR WORK.....	90
7-16	OPENING SECTIONS OF HIGHWAY TO TRAFFIC	90
7-17	WAGE RATES.....	90
7-18	SUPPLEMENTAL AGREEMENTS.....	90
7-19	SCALES FOR WEIGHING MATERIALS.....	91
	7-19.1 Applicable Regulations.....	91
	7-19.2 Base for Scales	91
	7-19.3 Protection and Maintenance.....	91
7-20	SOURCE OF FOREST PRODUCTS.....	91
7-21	REGULATIONS OF AIR POLLUTION FROM ASPHALT PLANTS.....	91
	7-21.1 General:.....	91
	7-21.2 Dust Control:.....	91
	7-21.3 Asphalt Material.....	91
	7-21.4 Asphalt Plants.....	91
7-22	DREDGING AND FILLING.....	91
7-23	AVAILABLE FUNDS	92
7-24	SUBMITTAL OF WAGE RATE SUMMARY	92
7-25	DESIGN-BUILD FIRM'S MOTOR VEHICLE REGISTRATION	92
7-26	EQUAL EMPLOYMENT OPPORTUNITIES.....	92
7-27	PREVAILING PARTY ATTORNEY'S FEES.....	93
SECTION 8	PROSECUTION AND PROGRESS OF THE WORK.....	94
8-1	SUBCONTRACTING OR ASSIGNING OF CONTRACTS.....	94
8-2	WORK PERFORMED BY EQUIPMENT-RENTAL AGREEMENT	94
8-3	PROSECUTION OF WORK.....	95
	8-3.1 Compliance with Time Requirements.....	95
	8-3.2 Submission of Project Schedule.....	95
	8-3.3 Beginning Work:.....	100
	8-3.5 Pre-design/construction Conference	101
	8-3.6 Partnering.....	101
	8-3.7 Disputes Review Board	101
8-4	LIMITATIONS OF OPERATIONS.....	101
	8-4.1 Night Work.....	101
	8-4.2 Sequence of Operations.....	102
	8-4.3 Interference with Traffic	102
	8-4.4 Coordination with other Contractors	103
	8-4.5 Drainage	103
	8-4.6 Fire Hydrants.....	103
	8-4.7 Protection of Structures.....	103
	8-4.8 Fencing.....	103
	8-4.9 Hazardous or Toxic Waste - Mercury-Containing Devices and Lamps.....	103
	8-4.10 Tolls Coordination.....	104
	8-4.11 Milling.....	104
8-5	RESERVED	104
8-6	RESERVED	104
8-7	TEMPORARY SUSPENSION OF DESIGN-BUILD FIRM'S OPERATIONS.....	104

8-7.1	Authority to Suspend Design-Build Firm's Operations	105
8-7.1.1	State of Emergency:.....	105
8-7.2	Prolonged Suspensions.....	105
8-7.3	Permission to Suspend Design-Build Firm's Operations.....	106
8-7.4	Suspension of Design-Build Firm's Operations	106
8-8	COMPUTATION OF CONTRACT TIME	106
8-8.1	General:.....	106
8-8.2	Date of Beginning of Contract Time	106
8-8.3	Adjusting Contract Time	106
8-8.3.1	Increased Work:	106
8-8.3.2	Contract Time Extensions.....	106
8-9	FAILURE OF DESIGN-BUILD FIRM TO MAINTAIN SATISFACTORY PROGRESS	110
8-9.1	General:.....	110
8-9.2	Unsatisfactory Progress:	110
8-10	DEFAULT AND TERMINATION OF CONTRACT	110
8-10.1	Determination of Default.....	110
8-10.2	Termination of Contract for Convenience.....	112
8-10.3	Completion of Work by FIU	113
8-11	LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE THE WORK.....	113
8-11.1	Schedule of Applicable Liquidated Damages.....	113
8-11.2	Determination of Number of Days of Default	113
8-11.3	Conditions under which Liquidated Damages are Imposed.....	114
8-11.4	Right of Collection.....	114
8-11.5	Allowing Design-Build Firm to Finish Work:.....	114
8-11.6	Completion of Work by FIU	114
8-12	RELEASE OF DESIGN-BUILD FIRM'S RESPONSIBILITY	114
8-13	RECOVERY OF DAMAGES SUFFERED BY THIRD PARTIES.....	114
8-14	DAMAGE RECOVERY	114
8-15	RECOVERY RIGHTS SUBSEQUENT TO FINAL PAYMENT	115
SECTION 9	MEASUREMENT AND PAYMENT	116
9-1	MEASUREMENT OF QUANTITIES.....	116
9-1.1	Measurement Standards:	116
9-1.2	Method of Measurements.....	116
9-1.3	Determination of Pay Areas.....	116
9-1.4	Construction Outside Authorized Limits.....	116
9-1.5	Truck Requirements	116
9-1.6	Ladders and Instrument Stands for Bridge Projects.....	116
9-1.7	Determination of Pay Reduction.....	116
9-2	SCOPE OF PAYMENTS.....	116
9-2.1	Items Included in Payment:	116
9-2.1.1	Fuels	117
9-2.1.2	Bituminous Material:.....	117
9-2.2	Deviation from Plan Dimensions	117
9-2.3	Invoice Certifications	117
9-2.4	General Basis of Adjusted Pay.....	117
9-2.4.1	Deficiencies.....	117
9-2.4.2	Asphalt Design Thickness/Spread Rate	117
9-2.4.3	Quality.....	118
9-3	COMPENSATION FOR ALTERED QUANTITIES.....	118
9-3.1	General:.....	118
9-4	DELETED WORK.....	119
9-5	PARTIAL PAYMENT.....	119

9-5.1	General:.....	119
9-5.3	Withholding Payment:.....	120
9-5.4	Release of Retainage After Acceptance:.....	120
9-5.5	Partial Payments for Delivery of Stockpiled Materials.....	120
9-5.5.1	General:	120
9-5.5.2	Partial Payment Amounts	121
9-5.5.3	Off Site Storage	121
9-5.5.4	Retainage for Partial Payments of Stockpiled Materials	121
9-5.6	Reserved.....	122
9-5.7	Certification of Payment for Subcontracted Work.....	122
9-6	RECORD OF CONSTRUCTION MATERIALS	122
9-6.1	General:.....	122
9-6.2	Non-Commercial Materials	122
9-7	RECORD (AS-BUILT) DRAWINGS.....	122
9-8	DISPUTED AMOUNTS DUE THE DESIGN-BUILD FIRM	122
9-9	WARRANTY OF TITLE.....	123
9-10	FINAL PAYMENT	123
9-11	APPLICATION FOR FINAL PAYMENT	124
9-12	WAIVER OF CLAIMS	124
9-13	OFFSETTING PAYMENTS.....	124
SECTION 10	FORMS SECTION	125
10-1	Escrowed Document Affidavit.....	125
10-2	FIU Work Program Invoice Checklist.....	125
10-3	FIU Work Program Invoice Submittal Form	125
10-4	FIU Subcontractor/Subconsultant Invoice Tracking Form	125
10-5	Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant	125
10-6	Certification of Disbursement to Subcontractors/Subconsultants/Suppliers.....	125
10-7	Construction Compliance with Specifications and Plans	125
10-8	Request for Authorization to Sublet Work	125
10-9	Unilateral Payment.....	125
10-10	Contractor's Final Release and Affidavit.....	125
10-11	Work Order	125

SECTION 1 GENERAL REQUIREMENTS AND COVENANTS

1-1 GENERAL

These Design-Build General Specifications replace Division I, General Requirements and Covenants, of the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction, latest edition in effect on the date of the Solicitation Documents (FDOT Standard Specifications) in its entirety. No reference to any portion of Division I of the FDOT Standard Specifications in any of the Contract Documents or in any other Division or section of the FDOT Standard Specifications shall re-establish Division I or any portion thereof. Sentences that direct the Design-Build Firm to perform Work may be written in the active voice imperative mood. These directions to the Design-Build Firm are written as commands.

Division II, Construction Details, and Division III, Materials, of the FDOT Standard Specifications for Road and Bridge Construction, latest edition in effect on the date of the Solicitation Documents, as revised and as amended herein (and as might be amended on the Plans) and the Florida Department of Transportation Design Standards, latest edition in effect on the date of the Solicitation Documents, are incorporated by reference and made a part of these General Specifications. Any reference in Division II or Division III of the FDOT Standard Specifications to Division I of the same document, shall not apply unless the referenced section exists in the Florida International University (FIU) General Specifications with the same meaning. Any reference in the Contract Documents to the FDOT Standard Specifications shall be assumed to only mean Division II and Division III.

The FDOT Standard Specifications for Road and Bridge Construction, latest edition in effect on the date of the Solicitation Documents, as may be revised and amended in the Contract Documents, shall govern the Contract.

For purposes of determining the responsible party or decision-making entity, in the FDOT Standard Specifications (Division II and Division III), or other FDOT referenced documents, except for FIU General Specifications for Design-Build:

- (1) Wherever the words "Department," "Department - State of Florida Department of Transportation," "Department's Contract Office at Tallahassee," "State," "FDOT," appear, such words shall be taken to mean Florida Department of Transportation.
- (2) Wherever the words, "Director," "Director-Division of Road Operations," "Department's Engineer of Estimates," "Secretary," "Secretary of Transportation, State of Florida," "Department's Engineering Director" or "State Treasurer" appear, such words shall be taken to mean the President of Florida International University or his/her duly authorized representative specifically authorized to act in his/her behalf.
- (3) Wherever the words "District Engineer," "Engineer," "Department's Engineer of Materials," "State Estimates Engineer," or "Final Estimates Engineer" appear, it shall be taken to mean Associate Vice President of Facilities Management of Florida International University or his/her duly authorized representative specifically authorized to act in his/her behalf.
- (4) Wherever the FDOT Standard Specifications indicate a mailing address for a State office or agency, the office or agency and the address shown are hereby deleted and replaced by the following: Associate Vice President of Facilities Management, FIU Facilities Management 11555 SW 17TH ST, Miami, FL 33199

Any conflict or discrepancy between the FDOT Standard Specifications and the other Contract Documents shall be brought to the attention of FIU by the Design-Build Firm. The Design-Build Firm shall be solely responsible for any consequences arising from any reliance by the Design-Build

Firm on any such conflict or discrepancy without notifying FIU, as required above.

1-2 **ABBREVIATIONS**

AAN.....	American Association of Nurserymen, Inc.
AASHTO.....	American Association of State Highway and Transportation Officials
ACI.....	American Concrete Institute
AGC.....	The Associated General Contractors of America, Inc.
AGMA.....	American Gear Manufacturers Association
AIA.....	American Institute of Architects
AISI.....	American Iron and Steel Institute
ANSI.....	American National Standards Institute, Inc.
AREA.....	American Railway Engineering Association
ASCE.....	American Society of Civil Engineers
ASME.....	American Society of Mechanical Engineers
ASTM.....	American Society for Testing and Materials
AWG.....	American Wire Gauge
AWPA.....	American Wood Preservers Association
AWS.....	American Welding Society
AWWA.....	American Water Works Association
CRSI.....	Concrete Reinforcing Steel Institute
EASA.....	Electrical Apparatus Service Association
EPA.....	Environmental Protection Agency of the United States Government
FDOT.....	Florida Department of Transportation
FHWA.....	Federal Highway Administration
FNGA.....	Florida Nursery Growers Association
FSS.....	Federal Specifications and Standards
IEEE.....	Institute of Electrical and Electronics Engineers
IES.....	Illuminating Engineering Society
IPCEA.....	Insulated Power Cable Engineers Association
ISO.....	International Organization for Standards
FIU.....	Florida International University
MSTCSD.....	Minimum Specifications for Traffic Control Signals and Devices
MUTCD.....	Manual on Uniform Traffic Control Devices
NEC.....	National Electrical Code (as recommended by the National Fire Protection Association)
NEMA.....	National Electrical Manufacturers Association
NFPA.....	National Fire Protection Association
NIST.....	National Institute for Standards and Technology
NOAA.....	National Oceanic and Atmospheric Administration
OSHA.....	Occupational Safety and Health Administration
SAE.....	Society of Automotive Engineers
SI.....	International System of Units
SSPC.....	Society of Protective Coatings
UL.....	Underwriters' Laboratories

When any abbreviation is followed by a number or letter designation, or combination of numbers or letters, it is understood to designate a specification, test method, or other code or recommendation of the particular organization so shown.

1-3 **DEFINITIONS**

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

Addenda.

Written or graphic instruments issued by FIU prior to the execution of the Contract which

modify or interpret the Solicitation Documents by additions, deletions, clarifications, corrections or other type of modifications. Addenda will become part of the Contract Documents when the Contract is executed. Proposers, upon receiving addenda, shall insert same into the Contract Documents.

Adjusted Final Score.

The Score assigned to a Proposer and based on the summation of the Final Score and any bonus points awarded to Proposer.

Advertisement.

The public announcement, as required by law, inviting Proposals for Work to be performed or Materials to be furnished for the Project.

Alternate Bid (or Alternate).

An amount stated in the Price Proposal to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Solicitation Documents, is accepted by FIU.

Application for Payment.

The form accepted by FIU which is to be used by the Design-Build Firm in requesting partial or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Architect.

The Architect as defined in §481.203(3), Florida Statutes.

Architect of Record.

The Professional Architect or Architectural Firm registered in the State of Florida responsible for all architectural aspects of the Project. The Architect of Record shall be a part of the Design-Build Firm.

Architecture.

The practice of architecture as defined in §481.203(6), Florida Statutes.

Article.

The numbered prime subdivision of a Section of these Specifications.

Base Bid.

The sum stated in the Price Proposal for which the Proposer offers to perform the Work described in the Solicitation Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

Bid Preference.

The amount deducted (for evaluation purposes only) from the total Bid in order to calculate the Bid that will be used in the evaluation of the Bids.

Bond or Bonds.

See Contract Bond.

Bridge.

A structure, including supports, erected over a depression or over an obstruction such as water, highway or railway, or for elevated roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the roadway, of more than twenty (20) feet between the inside faces of end supports. A multiple-span box culvert is considered a bridge, where the length between the extreme ends of the openings exceeds twenty (20) feet.

Calendar Day.

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

Chief Purchasing Officer.

The President of FIU or such other person holding the position created as the head of the Purchasing Services at FIU, or the Designee of either such as person designated in writing and approved by the President.

Conceptual Plans (Functional Plans).

The plans furnished by FIU and included in the Solicitation Documents depicting at a conceptual level the desired end product of the Project. The Conceptual Plans may include but are not limited to, roadway, structural, signing, landscape, lighting, drainage and Intelligent Transportation System (ITS) plans.

Construction.

The process of building, altering, repairing, improving or demolishing any structure or building, or other improvement of any kind to any real property, as required by the Solicitation and Contract Documents. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

Construction Engineering & Inspection Consultant (CEI).

The firm employed by FIU to observe the progress and quality of the Work being performed by the Design-Build Firm. May also be referred to as the General Engineering Consultant.

Construction Manager-at-Risk (CM-At-Risk).

Replaces the general contractor and works for a fee with FIU and the architect through the design phase to contain the budget and schedule. The CM-At-Risk may provide a guaranteed maximum price ("GMP"), and bids the Work out to local trade contractors. The CM-At-Risk mobilizes to the site and manages the trade contractors for quality and schedule.

Consultant or Engineer of Record or Designer.

The Professional Engineer or Engineering Firm registered in the State of Florida that develops the criteria and concept of the project, performs the analysis, and is responsible for the preparation of the Contract Documents. The Engineer of Record shall be a part of the Design-Build Team.

Contract or Agreement.

The entire and integrated agreement between the parties thereunder which supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents, as amended from time to time, form the Contract between FIU and the Design-Build Firm setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

Contract Bond.

The security(ies) furnished by the Design-Build Firm and the Surety as a guaranty that the Design-Build Firm will fulfill the terms of the Contract in accordance with the Contract Documents, and pay all legal debts pertaining to the Construction of the Project

Contract Claim (Claim).

A written demand submitted to FIU by the Design-Build Firm in compliance with the Contract Documents requirements seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by FIU.

Contract Documents.

The term "Contract Documents" includes but is not limited to: Advertisement; Solicitation Documents; Design-Build Firm's Proposals including Technical Proposal, Price Proposal and/or Oral Interviews or Presentations; other information mailed or otherwise transmitted to the Proposers prior to the receipt of Proposals; Executed Form of Contract; Contract Bond; Warranty Bond; Specifications (as defined herein); Plans (including revisions thereto issued during construction); Addenda; Notice to Proceed; Work Orders; and Supplemental Agreements; all of which are to be treated as one instrument whether or not set forth at length in the form of Contract. The order of precedence for the Contract Documents is listed in Section 5-9 herein.

Contract Price.

The money payable by FIU to the Design-Build Firm for completion of the Work in accordance with the Contract Documents.

Contract Time.

The number of Calendar Days allowed for completion of the Work, including authorized time extensions.

Contractor.

In the context of the Contract Documents, Contractor means any company, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to perform the Work in the State of Florida. Such legal entity shall be the entity that enters into a written Contract with FIU to perform the Work for the Project described in the Solicitation Documents and Contract Documents. The word "Contractor" is also deemed to include a Design-Build Firm contracting with FIU for performance of work, including all engineering services and furnishing of materials.

Controlling Work Item.

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

Culverts.

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

Deadline.

The date and time established by FIU as the cut-off for any required actions by Proposers as outlined in the Solicitation Documents. The time included in the Deadlines shall be solely in accordance with FIU's clock.

Delay.

Any unanticipated event, action, force or factor which extends the Design-Build Firm's time of performance of any Controlling Work Item under the Contract. The term "Delay" is intended to cover all such events, actions, forces or factors, whether styled "Delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the Design-Build Firm, or the Design-Build Firm's subcontractors/subconsultants, materialmen, suppliers or other agents. This term does not include "Extra Work."

Design.

The drawings as prepared by the Design-Build Firm which shall identify the Construction elements, the major Construction details, and information as noted within the Contract Documents.

Design-Build.

The combining of Design and Construction phases of Work for a Project into a single contract.

Design-Build Firm.

In the context of the Specifications, Design-Build Firm means any company, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice engineering, architecture, and construction contracting, as appropriate, in the State of Florida. Such legal entity shall be the entity that enters into a written Contract with FIU to perform the Design and Construction Work for the Design-Build Project described in the Solicitation Documents and Contract Documents. In the context of the Solicitation Documents, the Design-Build Firm is the Proposer. The word "Contractor" shall also be taken to mean a Design-Build Firm contracting with FIU for performance of work.

Design-Build Firm's Laboratory.

The Design-Build Firm's laboratory duly qualified to provide services in accordance with FDOT, Miami-Dade County, or other official organization as required by the Contract Documents.

Design Criteria.

The criteria for Work to be provided to complete the Project as specified in the Solicitation Documents.

Designer of Record.

The Architect of Record and/or the Engineer of Record. The Architect of Record and/or the Engineer of Record shall be a part of the Design-Build Team.

Developmental Specification.

See "Specifications."

Effective Date of Contract.

The date as defined in the Contract.

Engineer.

The FIU Associate Vice President of Facilities Management acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

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

Engineer of Record.

See "Consultant or Engineer of Record or Designer."

Equipment.

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

Executive Director.

The President, of Florida International University, acting directly or through an authorized representative.

Extra Work.

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

Final Acceptance.

The written notice from FIU confirming that the entire Work of the Project contemplated by the Contract has been completed satisfactorily pursuant to the Contract Documents, as determined by FIU through a Final Inspection.

Final Inspection.

Initiated by written request from the Design-Build Firm, the inspection by FIU that occurs whenever all Materials have been furnished, all Work performed, and all Construction contemplated by the Contract Documents have been satisfactorily completed for the Project.

Final Score.

The score assigned to the Proposer based on the Technical Evaluation Committee review and evaluation of the Technical Proposals (which may include conducting Oral Interviews) in accordance with the Solicitation Documents Evaluation Criteria and scoring requirements.

Highway, Street, Expressway or Road.

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

Holidays.

Days designated by FIU as holidays are New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Friday immediately following Thanksgiving Day, Day Before Christmas (Winter Break Day 1), Christmas Day and Day Before New Year's (Winter Break Day 2).

Independent Testing and Inspection Firm.

A firm hired by the Design-Build Firm to provide testing and inspection services. This firm must be independent of all production Work and not associated with the Contractor, Consultant, subcontractors, subconsultants, and manufacturers. This firm must be duly qualified to provide Work in accordance with FDOT, FIU, Miami-Dade County or other official organization as required by the Contract Documents. All test and inspection shall be certified by a Professional Engineer employed by the firm.

Inspector.

An authorized representative of the Engineer, assigned to make official inspections of the materials furnished and of the Work performed by the Design-Build Firm

Invoice.

Set of documents, as required by the Contract Documents, submitted by the Design-Build Firm seeking compensation for the Work completed between the pre-established Work Program Invoice Submittal Dates.

Laboratory.

The testing laboratory used by FIU or FIU's designated consultant or the Design Builder.

Major Item of Work.

Any item of Work having an original Contract value in excess of five percent (5%) of the Original Contract Amount.

Materials.

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

Maximum Allowable Contract Time.

The Original Contract Time for the Work (Design and Construction) as specified in the Solicitation Documents.

Median.

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

Milestone.

A scheduled event signifying the completion of a major deliverable or a set of related deliverables, which is a contractually mandated completion date, as defined in the Contract Documents, represented in the schedule by a zero duration activity.

Notice of Award.

A written notice given by FIU to announce the Successful Proposer for the Project.

Notice to Proceed.

A written notice given by FIU to the Design-Build Firm fixing the date on which the Contract Time will commence to run and on which the Design-Build Firm shall start to perform its obligations under the Contract Documents.

Original Contract Amount.

The money payable by FIU to the Design-Build Firm established for completion of the Work pursuant to the Contract Documents on the date of the Notice to Proceed.

Original Contract Time.

The number of Calendar Days established by the Design-Build Firm and agreed to by FIU for completion of the Work pursuant to the Contract Documents.

Owner.

Florida International University.

Partial Acceptance.

Use by FIU of a partially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Final Acceptance of all the Work.

Performance and Payment Bonds.

See Contract Bond.

Plans.

The signed and sealed plans prepared by the Designer of Record that are accepted and stamped "Released for Construction" by the Engineer. These plans, including reproductions thereof, may be component plans addressing specific areas of construction (drainage, highway lighting, etc.) and shall show the location, character, dimensions, and details of the Work.

Preliminary Project Schedule.

The initial project schedule of anticipated major Milestones and their associated phasing with other activities, as required by the Solicitation Documents.

Price Proposal.

The sealed offer which the Proposer shall submit in response to the Solicitation Documents issued by FIU for providing the price for the services and performing the Work necessary to complete the Project.

Procurement.

Purchasing, renting, leasing, or otherwise acquiring any Goods and/or Services as defined in the FIU Procurement Policy.

Product Data.

Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Build Firm to illustrate Materials or Equipment for some portion of the Work.

Project.

The total Work to be provided under the Contract Documents.

Project Concept Report.

A document within the Solicitation Documents that depicts, at a conceptual level, the desired end product of the Project.

Project Schedule.

A diagram, graph or other pictorial or written schedule showing proposed or actual times of commencement and completion of the various elements of the Design and Construction of the Work in Critical Path Method (CPM) format and fixing the Contract Time.

Project Site.

The location of the Work as indicated in the Contract Documents.

Proposal.

The complete and properly signed offer or Proposal of the Proposer, inclusive of the Statement of Qualifications, Stipend Agreement for Design-Build Contracts (if applicable), Technical Proposal and the Price Proposal, submitted on the prescribed forms in compliance with the requirements of the Solicitation Documents

Proposal Guaranty/Bond.

The security furnished by the Proposer as guaranty that the Proposer will enter into the Contract for the Work if FIU accepts the Proposal.

Proposer.

An individual, firm, or corporation submitting a Proposal for the proposed Work directly to FIU. See Design-Build Firm.

Responsible Proposer.

A Proposer who, in the sole judgment of FIU, has the business judgment, experience, facilities and capability in all respects to perform fully the Contract requirements, and the integrity and reliability that will assure good faith performance, as required by the Solicitation Documents.

Responsive Proposal.

A Proposal, as submitted by a Proposer, that conforms in all material aspects to the requirements of the Solicitation Documents.

Right-of-Way.

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

Roadbed.

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

Roadway.

The portion of a highway within the limits of Construction.

Samples.

Physical examples which illustrate Materials, Equipment or workmanship and establish standards by which the Work will be judged.

Schedule of Values.

The Price Proposal submitted by the Design-Build Firm as part of the Proposal for the defined portions or components of the Work to be used as the basis for reviewing the Design-Build Firm's monthly Invoices.

Section.

A numbered division of the Specifications.

Shop Drawings.

All working, shop and erection drawings, diagrams, associated trade literature, calculations, illustrations, schedules, manuals and other data or information which are specifically prepared, assembled and submitted by the Design-Build Firm to illustrate and define some portion of the Work. The type of Work includes both permanent and temporary Work as appropriate to the Project.

Shoulder.

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

Solicitation Documents.

The term Solicitation Documents includes, if applicable: the Advertisement, Invitations to Bid (ITB), Requests for Statements of Qualification (RSOQ), Requests for Proposals (RFP), Invitations to Negotiate (ITN), Requests for Qualifications (RFQ), Addenda/Addendum, or other information or documentation mailed or otherwise transmitted to the Proposers for informational purposes in the preparation of the Proposals.

Special Provisions.

See "Specifications."

Specialty Engineer.

A Professional Engineer registered in the State of Florida, other than the Engineer of Record or the CEI, who undertakes the design and drawing preparation of components, systems, or installation methods and Equipment for specific portions of the Work or for special items of the permanent works not fully detailed in the Plans and required to be furnished by the Design-Build Firm by the Contract Documents such as but not limited to pot bearing designs, non-standard expansion joints, MSE wall designs and other specialty items. The Specialty Engineer may be an employee or officer of the Design-Build Firm or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant or Subconsultant of the Design-Build Firm.

A Specialty Engineer shall be qualified in accordance with the Rules of the Florida Department of Transportation, and Chapter 14-75, Florida Administrative Code ("F.A.C"). Any corporation or partnership which offers engineering services must hold a current Certification of Authorization from the Florida State Board of Professional Engineers.

For items of Work not specifically covered by Chapter 14-75, F.A.C., a Specialty Engineer will be considered qualified if he/she has the following qualifications:

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

Specifications.

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

- (1) **Developmental Specifications:**
A specification developed around a new process, procedure, or material prepared by FDOT that are made part of the Contract as an attachment to the Contract Documents.
- (2) **General Specifications:**
Specifications for Design-Build projects prepared by FIU entirely replacing Division I of the FDOT Standard Specifications.
- (3) **Standard Specifications:**
FDOT Standard Specifications for Road and Bridge Construction edition in effect on the date of the Solicitation Documents, excluding Division I.
- (4) **Supplemental General Specifications:**
Additions and revisions prepared by FIU to the General Specifications
- (5) **Special Provisions:**
Specifications prepared by FIU describing Work specifically related to the Project.
- (6) **Supplemental Special Provisions:**
Additions and revisions to the Special Provisions prepared by FIU.
- (7) **Supplemental Specifications:**
Additions and revisions to Divisions II and III of the FDOT Standard Specifications that are made part of the Contract as an attachment to the Contract Documents.
- (8) **Technical Special Provisions:**
Specifications prepared, signed, and sealed by an engineer registered in the State of Florida that are made part of the Contract as an attachment to the Contract Documents.

State.

State of Florida.

Subarticle.

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

Subconsultant.

An individual, firm or corporation having a direct contact with the Design-Build Firm or with any other Subconsultant for performance of a part of the Work for the Project.

Subcontractor.

An individual, firm, or corporation having a direct contract with the Design-Build Firm or with any other Subcontractor for performance of a part of the Work for the Project.

Subgrade.

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

Submittal.

A written or graphic document required by the Contract Documents to be submitted to FIU by the Design-Build Firm. Submittals may include drawings, specifications, project schedules, cash flow projections and schedules of values, shop drawings, and samples.

Substructure.

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

Successful Proposer.

The responsible and responsive Proposer that pursuant to the scoring methodology provided in the Solicitation Documents to whom FIU makes an award.

Superintendent.

The Design-Build Firm's authorized representative in responsible charge of the Work.

Superstructure.

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

Supplemental Agreement.

A written agreement between the Design-Build Firm and FIU, and signed by the Surety, modifying the Contract within the limitations set forth in the Contract Documents and FIU's Procurement Policy.

Supplemental Special Provisions.

See "Specifications."

Supplemental Specifications.

See "Specifications."

Supplier.

A manufacturer, fabricator, supplier, distributor, materialman, or vendor having direct contract with the Design-Build Firm or with any Subcontractor to furnish Materials or Equipment to be incorporated in the Work by the Design-Build Firm or any Subcontractor.

Surety or Surety Company.

The corporate body qualified to conduct business in the State of Florida, that is bound by the Contract Bond with and for the Design-Build Firm and who agrees to be responsible for acceptable performance of the Work by the Design-Build Firm and for payment of all debts pertaining thereto.

Technical Evaluation Committee.

The committee appointed by the President of FIU to review and evaluate the Proposals and conduct Oral Interviews, if determined necessary, and recommend to the FIU Operations

Committee a final ranking of the Proposers.

Technical Proposal.

The written information which the Proposer shall submit in response to the requirements of the Solicitation Documents issued by FIU, including data about the Proposer's approach to the Work.

Technical Score.

The scores provided by the Technical Evaluation Committee based on their review of the Technical Proposal using the using the evaluation criteria provided in the Solicitation Documents

Technical Special Provisions.

See "Specifications".

Traveled Way.

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

Unilateral Payment.

A payment of money made to the Design-Build Firm by FIU for sums FIU determines to be due to the Design-Build Firm for Work performed on the Project. The Design-Build Firm, by acceptance of such payment, does not waive any rights the Design-Build Firm may otherwise have against FIU for payment of any additional sums the Design-Build Firm claims are due for the Work.

Unit Price.

An amount stated in the Price Proposal as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Contract Documents.

Utility Relocation Schedule.

A document prepared by FIU and a Utility Operating Agency (UOA) that transmits to the Design-Build Firm and other right-of-way users the location, relocation, adjustment, installation, and/or protection of their facilities within the limits of the referenced FIU Project.

Warranty Bond.

The security(ies) furnished by the Design-Build Firm and the Surety as guaranty that the Design-Build Firm will fulfill the warranty terms of the Contract.

Work.

All labor, Materials and incidentals required to execute and complete the requirements of the Contract Documents, including superintendence, use of Equipment and tools, and all services and responsibilities prescribed or implied. The term "Work" shall also be deemed to include all architectural, engineering and related services, and all incidental costs relating thereto.

Work Order.

A written order issued by the Engineer and accepted by the Design-Build Firm, covering minor changes in the Plans and Specifications (except General Specifications), or quantities of work within the scope of the Contract, when prices for the Items of Work affected are previously established or negotiated and which are paid out of a contingency in the Contract.

Work Program Invoice Submittal Date.

Date pre-established by FIU to close the Invoice cycle on a monthly basis.

Working Day.

Any Calendar Day on which the Design-Build Firm works or is expected to work in accordance with the approved work project schedule.

Working Schedule.
See Project Schedule.

END OF SECTION 1

SECTION 2
RESERVED

END OF SECTION 2

SECTION 3
AWARD AND EXECUTION OF CONTRACT

3-1 CANCELLATION OF AWARD AND/OR CONTRACT

The performance by FIU of any of its obligations under the Contract will be subject to and contingent upon the availability of monies lawfully appropriated for such purposes. If FIU deems at any time during the term of the Contract that monies lawfully applicable to the Contract will not be available for the remainder of this term, or that the Contract must be canceled, FIU will notify the Design-Build Firm in writing, with instructions as to the effective date of cancellation, whereupon the obligations of the parties herein will end and the Contract shall be considered cancelled by mutual consent.

3-2 CONTRACT BOND REQUIRED

3-2.1 General Requirements of the Bond:

Upon award, the Design-Build Firm shall furnish to FIU, and maintain in effect throughout the life of the Contract, an acceptable Contract Bond for a sum at least equal to the amount of the Contract. The Design-Build Firm shall comply with the section in the Solicitation Documents entitled *Surety Companies Acceptable to FIU* and shall execute the Contract Bond form provided in the Solicitation Documents.

3-2.2 Continued Acceptability of Surety:

The Design-Build Firm shall provide a Contract Bond that remains acceptable to FIU throughout the life of the Contract. In the event that the Surety executing the Contract Bond, although acceptable to FIU at the time of execution of the Contract, subsequently becomes insolvent or bankrupt, or becomes unreliable or otherwise unsatisfactory due to any cause that becomes apparent after FIU's initial approval of the Surety company, then FIU may require that the Design-Build Firm immediately replace the applicable Contract Bond with a similar bond drawn on a Surety company that is reliable and acceptable to FIU.

3-2.3 Default by Design-Build Firm:

In case of default on the part of the Design-Build Firm, FIU will charge against the Contract Bond all expenses for services incidental to ascertaining and collecting losses under the bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

3-2.4 Surety to Furnish Legal Defense:

The Surety company shall indemnify and provide defense for FIU when called upon to do so for all claims or suits against FIU arising out of the Contract. The approved Contract amount, which amount shall be the original Contract amount as may be increased by subsequent Supplemental Agreements, is the sole limitation of this indemnification.

3-2.5 Liability for Wrongful or Criminal Act by Design-Build Firm:

The Design-Build Firm and Surety executing the bond shall be liable to FIU in any civil action that might be instituted by FIU or any officer of FIU authorized in such cases, for double any amount in money or property FIU might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Design-Build Firm, or the Design-Build Firm's agent(s) or employee(s).

3-3 EXECUTION OF CONTRACT, INSURANCE CERTIFICATES AND BONDS

Within ten (10) days excluding Saturdays, Sundays and holidays after Contract award or as

required by the Solicitation Documents, the Successful Proposer shall execute the necessary agreements to enter into the Contract with FIU and return the Contract along with the satisfactory Contract Bond and insurance certificates to FIU ATTN: Associate Vice President of Facilities Management, FIU Facilities Management 11555 SW 17TH ST, Miami, FL 33199.

For each Calendar Day that the Successful Proposer is late in delivering to FIU all required documents in properly executed form, FIU may either:

- (1) deduct one (1) Calendar Day from the allowable Contract Time, or
- (2) may annul the award of the Contract and award to another Proposer.

If FIU annuls the award, FIU reserves the right to award the Contract to either of the remaining Proposers, reject the remaining Proposals and re-advertise the Project, or accomplish the Work using day labor.

3-4 FAILURE BY DESIGN-BUILD FIRM TO EXECUTE CONTRACT, FURNISH BONDS AND INSURANCE.

In the event that the Design-Build Firm fails to execute the awarded Contract, to file acceptable Contract Bond and insurance certificates within twenty (20) days excluding Saturdays, Sundays and Holidays of Contract award or as required by the Solicitation Documents, FIU may annul the award, causing the Proposer to forfeit the Proposal Guaranty to FIU, not as a penalty but in liquidation of damages sustained. FIU may then award the Contract to either of the remaining Proposers, reject the remaining Proposals and re-advertise the Project, or accomplish the Work using day labor.

3-5 AUDIT AND EXAMINATION OF CONTRACT RECORDS AND PROPOSAL RECORDS/ESCROW OF PROPOSAL DOCUMENTS

3-5.1 Audit and Examination:

FIU reserves the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as herein defined) of the Design-Build Firm, any Subconsultant, or any Subcontractor. The Design-Build Firm or any Subconsultant or Subcontractor agrees to comply with the provisions of this section. Failure to provide reasonable access or comply with these requirements by the Design-Build Firm or any other entity hereto forenamed, shall be considered a breach of the Contract.

If FIU requests access to or review of any Contract Documents or Proposal Records and the Design-Build Firm refuses such access or review, the Design-Build Firm shall be in default under the Contract with FIU, and such refusal shall, without any other or additional actions, constitute grounds for suspension or disqualification of the Design-Build Firm. This provision shall not be limited in any manner by the existence of any Design-Build Firm claims or pending litigation relating to the Contract. Disqualification or suspension of the Design-Build Firm for failure to comply with this section shall also preclude the Design-Build Firm from acting in the future as a Subcontractor or Subconsultant of another firm doing work for FIU during the period of disqualification or suspension. Disqualification shall mean the Design-Build Firm is not eligible for and shall be precluded from doing future work for FIU until reinstated by FIU.

The Design-Build Firm shall preserve all Proposal Records and Contract Records for the entire term of the Contract and for a period of three years after the later of: (i) Final Acceptance of the Project by FIU; or, (ii) until all claims (if any) regarding the Contract are resolved. For the purpose of this Article, records include all books of account, supporting documents, papers pertaining to the cost of performance of the project work,

or papers that FIU deems necessary to ensure compliance with the Contract provisions.

Contract Records shall include, but are not limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audio tapes, supporting documents, any other papers or preserved data related to the Contract or the Contractor's performance of the Contract determined necessary by FIU for any purpose.

Proposal Records shall include, but are not limited to, all information and data, whether in writing or stored on a computer, writings, working papers, computer printouts, charts or other data compilations that contain or reflect information, data or calculations used by a Proposer in determining labor, Unit Price (where applicable), or any other component of a Proposal submitted to FIU. Proposal Records shall also include, but are not limited to, any material relating to the determination or application of equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from Subcontractors and Subconsultants, truckers or Material Suppliers, profit contingencies and any manuals standard in the industry that may be used by a Proposer in developing/preparing its Proposal.

3-5.2 Escrowing of Documents

Within five (5) days of issuance of the Notice to Proceed, the Design-Build Firm shall submit to FIU, in sealed container(s), a legible copy of the Proposal Records and any supporting documentation used by the Design-Build Firm to prepare its Proposal (the "Escrowed Documents"). The container(s) shall be clearly marked "Escrowed Documents" and shall show on the face of the container(s) the Design-Build Firm's name, address, date of submittal and FIU Procurement/Contract and Work Program number(s). FIU will maintain the container(s) in a sealed condition.

In addition to the Escrowed Documents, the Design-Build Firm shall execute and submit the Escrowed Documents Affidavit, attached hereto and incorporated herein, signed under oath by the Design-Build Firm, listing each Escrowed Document submitted by author, date, nature and subject matter. By executing this affidavit, the Design-Build Firm waives the right to use, directly or indirectly, any Document, other than the Escrowed Documents placed in escrow in the sealed container(s), in any dispute arising out of the Contract. Failure by the Design-Build Firm to provide the affidavit will be sufficient cause for FIU to nullify the award of the Contract to the Design-Build Firm.

Following execution of the Contract, FIU will hold the sealed container(s) and the original affidavit until the Design-Build Firm seeks an adjustment in time or money and files a claim or initiates any action against FIU, including mediation, arbitration or litigation. Such acts by the Design-Build Firm shall be sufficient grounds for FIU to open the sealed container(s). FIU reserves the right to reveal the contents of the sealed container(s) to consultants, experts and legal counsel retained by FIU to assist with claims evaluation and/or preparation to defend against the action brought by the Design-Build Firm. Confidentiality of the Escrowed Documents included in the sealed container(s) will be protected by FIU insofar as such protection does not conflict with the requirements of the Florida Public Records Act and Florida Sunshine laws.

When the Design-Build Firm executes the Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant binding complete release of all actual and potential claims and potential causes of action directly or indirectly related to the Contract and the Project as submitted with the Final Pay Estimate, FIU will release the sealed container(s) to the Design-Build Firm. The Design-Build Firm shall sign a receipt

acknowledging that the sealed container(s) has/have been returned to the Design-Build Firm unopened.

3-6 PUBLIC RECORDS

The Design-Build Firm shall allow access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Design-Build Firm in conjunction with the Contract. Failure to grant such access may be grounds for immediate unilateral cancellation of the Contract by FIU. Upon receipt of any public records request, the Design-Build Firm shall immediately notify FIU and secure prior written consent before releasing such records.

3-7 OWNERSHIP OF DOCUMENTS

All tracings, Plans, Specifications, maps and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of FIU without restriction or limitation on their use, and shall be made available upon request to FIU or its designee at any time. The Design-Build Firm shall therefore agree not to publish, copyright or patent any of the data furnished in compliance with the Contract. FIU or its designee shall have the right to visit the offices of the Design-Build Firm for review of the Work and the drawings of the Project at any time. The Design-Build Firm shall not be liable for use by FIU or its designee of said tracings, Plans, Specifications, documents, studies, or other data for any purpose other than intended by the terms of the Contract Documents or the Agreement.

END OF SECTION 3

SECTION 4
SCOPE OF THE WORK

4-1 INTENT OF CONTRACT

The intent of the Contract is to bind the Design-Build Firm to furnish all engineering and all of its associated direct and indirect costs, construction labor, Materials, Equipment, supervision, tools, transportation, and supplies required to complete the Work in accordance with the requirements of the Design and Construction Criteria Package, the Specifications, and the terms of the Contract Documents. The terms and conditions of this Contract are fixed price and fixed time. The Design-Build Firm's submitted Proposal (time and cost) is to be a lump sum proposal for completing the Work detailed in the Contract.

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

The Design-Build Firm shall develop Plans conforming to the Contract Documents. No substantial change as determined at the sole discretion of the Engineer in general plan or character of the Work shall be made without written agreement by the Engineer. The Plans shall be dated, stamped, and signed and sealed by the Engineer of Record (EOR) and shall be transmitted to the Engineer for the project records.

Pay adjustments, basis of payment and method of measurement as may be shown in the Contract Documents, shall not apply regardless except as provided in 9-2, Scope of Payments.

4-2 WORK NOT COVERED BY THE GENERAL SPECIFICATIONS

Proposed Construction and any contractual requirements not covered by these General Specifications may be covered by notes shown on the Plans, or by requirements provided by the Contract Documents.

Note: The Design-Build Firm shall be responsible for developing the Technical Specifications and Plans.

4-3 ALTERATION OF PLANS OR OF CHARACTER OF WORK

4-3.1 General

The Design-Build Firm shall have the right to make alterations in the Plans or character of the Work as may be considered necessary or desirable during the progress of the Work for satisfactory completion of the Work, provided no alterations are made which will result in a significant change in the general plan or character of the Work. The determination of significant change will be at the sole discretion of the FIU Project Manager. The Design-Build Firm shall secure the FIU Project Manager's written approval for all alterations. Approved alterations shall not be considered as a waiver of any conditions of the Contract Documents or release the Surety, nor shall they invalidate any of the provisions thereof.

4-3.2 Increase, Decrease or Alteration in the Work:

The FIU Project Manager reserves the right to make alterations in the character of the Work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance.

Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Design-Build Firm shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Design-Build Firm for any cause unless and until the Design-Build Firm follows the procedures set forth in 5-19 for preservation, presentation and resolution of the Claim, the Design-Build Firm may at any time, after having otherwise timely provided a notice of intent to Claim or preliminary time extension request pursuant to 5-19 and 8-8.3, submit to FIU a request for equitable adjustment of compensation or time or other dispute resolution proposal.

The Design-Build Firm shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Design-Build Firm's best knowledge and belief, and that the amount of the request accurately reflects what the Design-Build Firm in good faith believes to be FIU's responsibility. Such certification must be made by an officer or director of the Design-Build Firm with the authority to bind the Design-Build Firm. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-19.

While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Design-Build Firm or FIU, FIU will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by FIU thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by FIU.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Design-Build Firm shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below.

The Design-Build Firm shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a Controlling Work Item and the performance of such Controlling Work Item actually extends completion of the project due to no fault of the Design-Build Firm. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation.

The Design-Build Firm shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a Controlling Work Item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-19.

4-3.2.1 Allowable Costs for Extra Work:

The FIU Project Manager may direct in writing that extra work be done and, at the Engineer's sole discretion, the Design-Build Firm will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

- (a) Labor and Burden: The Design-Build Firm will receive payment for actual costs of direct labor and burden for the additional or unforeseen

work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a Controlling Work Item and the performance of such Controlling Work Item actually extends completion of the project due to no fault of the Design-Build Firm. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than one percent (1%) of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1

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

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

Bonuses to Design-Build Firm's employees shall not be included in the burden.

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

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- (2) Actual Rate for items listed in Table 4-3.2.1,
- (3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- (4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Design-Build Firm with authority to bind the Design-Build Firm. Timely

certification is a condition precedent to any right of the Design-Build Firm to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Design-Build Firm of any right to recover such costs. Any subsequent changes shall be certified to the FIU Project Manager as part of the cost proposal or seven (7) Calendar Days in advance of performing such Extra Work.

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

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

Allowable Equipment Rates will be established as set out below:

- (1) Allowable Hourly Equipment Rate = $\text{Monthly Rate} / 176 \times \text{Adjustment Factors} \times 100\%$.

- (2) Allowable Hourly Operating Cost = $\text{Hourly Operating Cost} \times 100\%$.

- (3) Allowable Rate Per Hour = $\text{Allowable Hourly Equipment Rate} + \text{Allowable Hourly Operating Cost}$.

- (4) Standby Rate = $\text{Allowable Hourly Equipment Rate} \times 50\%$.

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

working days on the project.

FIU will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, FIU will pay for the time to perform this work at the rate for standby equipment. Equipment may include vehicles utilized only by Labor, as defined above.

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

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

(i) Bond: The Design-Build Firm will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Design-Build. No compensation for bond premium will be allowed for additional or unforeseen work paid by FIU via initial contingency pay item.

(ii) The Design-Build Firm will be allowed a markup of ten percent (10%) on the first Fifty Thousand Dollars (\$50,000) and a markup of five percent (5%) on any amount over Fifty Thousand Dollars (\$50,000) on all subcontract work directly related to the additional or unforeseen work (i.e., when multiple subcontractors participate in the completion of unforeseen work the mark-up percentages will apply to the aggregate dollar amount subcontracted). Any such subcontractor mark-up will be allowed only by the Design-Build Firm and a first tier subcontractor, and the Design-Build Firm must elect the markup for any eligible first tier subcontractor to do so.

(2) When the cumulative total number of Calendar Days granted for time extension due to delay of a Controlling Work Item caused solely by FIU is, or the cumulative total number of Calendar Days for which entitlement to a time extension due to delay of a Controlling Work Item caused solely by FIU is otherwise ultimately determined in favor of the Design-Build Firm to be, greater than thirty Calendar Days FIU will compensate the Design-Build Firm for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of Calendar Days of entitlement that are in excess of thirty Calendar Days.

No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Design-Build Firm be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the

event there are concurrent delays to one or more Controlling Work Items, one or more being caused by FIU and one or more being caused by the Design-Build Firm, the Design- Build Firm shall be entitled to a time extension for each day that a Controlling Work Item is delayed by FIU but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay.

No compensation, whatsoever, will be paid to the Design-Build Firm for any jobsite overhead and other indirect impacts when the total number of Calendar Days granted for time extension due to delay of a Controlling Work Item caused solely by FIU is, or the total number of Calendar Days for which entitlement to a time extension due to delay of a Controlling Work Item caused solely by FIU is otherwise ultimately determined in favor of the Design-Build Firm to be, equal to or less than thirty (30) Calendar Days and the Design-Build Firm also fully assumes all monetary risk of any and all partial or single Calendar Day delay periods, due to delay of a Controlling Work Item caused solely by FIU, that when cumulatively totaled together are equal to or less than thirty (30) Calendar Days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more Calendar Days of time extension entitlement for each Calendar Day exceeding thirty (30) Calendar Days.

All calculations under this provision shall exclude weather days, days used for performing additional Work, days included in supplemental agreements, and days of suspended Work.

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

Where: A = Original Contract Amount;

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

- (e) Engineering Services: For professional engineering services, the Design-build firm will receive actual costs of such engineering services necessary to perform the work. Direct cost of such engineering services shall be prepared utilizing the current "Standard Scope and Staff Hour Estimation Handbook" developed jointly between the Florida Institute of Consulting Engineers (FICE) and the FDOT. Should the Engineering Firm be a Joint Venture Partner of the Design-Build Firm, no markup will be allowed on engineering services.

4-3.2.2 Subcontracted Work:

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

FIU shall require the subcontractor to provide a certification, in accordance with 4-3.2.1(a), as part of the cost proposal and provide such to the Engineer.

Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Design-Build Firm to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Design-Build Firm of any right to recover such subcontractor costs

4-3.3 No Waiver of Contract:

Changes made by the FIU Project Manager will not be considered to waive any of the provisions of the Contract, nor may the Design-Build Firm make any Claim for loss of anticipated profits because of the changes or by reason of any variation between the approximate quantities and quantities of Work actually performed. All Work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:

A Supplemental Agreement or Unilateral Payment shall be used for:

- 1) change in the Work as required by FIU, or,
- 2) any declared emergency as determined solely by the State or FIU.

The Design-Build Firm may not perform Work to be covered by a Supplemental Agreement or Unilateral Payment unless prior written authorization is received from the FIU Project Manager.

The FIU Project Manager's written authorization will set forth sufficient Work information to allow the Work to begin. The Work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter.

No payment will be made on a Supplemental Agreement or Unilateral Payment prior to FIU's approval of the document. All Supplemental Agreements are subject to the requirements in FIU's Procurement Policy, as amended from time to time.

4-3.5 Extra Work:

Extra Work authorized in writing by the Engineer will be paid to the Design-Build Firm in accordance with 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Design-Build Firm for such Extra Work. Any entitlement to a time extension due to Extra Work will be limited solely to that provided for in 4-3.2 for additional Work.

4-3.6 Connections to Existing Pavement, Drives and Walks:

The Design-Build Firm shall generally adhere to the limits of Construction at the beginning and end of the Project as detailed in the Plans. However, if the Engineer determines that it is necessary to extend the Construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated on the Design-Build Firm's Plans, the Engineer will provide direction regarding the desired connections.

4-3.7 Differing Site Conditions.

During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if

unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Design-Build Firm disturbs the conditions or performs the affected Work.

Upon receipt of written notification of differing site conditions from the Design-Build Firm, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Design-Build Firm whether or not an adjustment of the Contract is warranted.

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

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

4-3.8 Changes Affecting Utilities:

The Design-Build Firm shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Design-Build Firm, and the Design-Build Firm shall at the time of making the request for a change notify FIU in writing of any such potential impacts to utilities.

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

4-4 UNFORESEEABLE WORK.

When FIU requires Work which is not covered by a price in the Contract and such Work does not constitute a "Significant Change" as defined in 4-3.1, and FIU finds that such Work is essential to the satisfactory completion of the Contract within its intended scope, FIU will make an adjustment to the Contract. The basis of payment for such adjustment will be in the amount FIU determines is fair and equitable.

4-5 RIGHTS IN AND USE OF MATERIALS FOUND ON THE SITE OF THE WORK

4-5.1 Ownership and Disposal of Existing Materials:

Except as might be stipulated or implied otherwise on the Design-Build Firm's Plans or in the Design Criteria, all Materials which are not the property of other parties, and all Material in structures designated to be removed by the Design-Build Firm, shall become the property of the Design-Build Firm and shall be properly disposed of by the Design-Build Firm. Such Materials shall not include earth or other excavated Material required for the Construction of the Project. The Design-Build Firm is responsible to determine if any existing materials are the property of others and so indicate it on the plans. Additionally it is the Design-Build Firm's responsibility to coordinate with the property owner for proper removal and storage to perform the work.

Materials from existing structures which are required to be removed and which are

designated to remain the property of FIU may generally be used by the Design-Build Firm during Construction. Such Material shall not be cut or otherwise damaged during removal unless prior written consent is given by FIU. The Design-Build Firm shall store Material in an accessible location if so directed by FIU or its designee. FIU is not responsible for the quality or quantity of any Material salvaged.

4-5.2 Ornamental Trees and Shrubs:

Any ornamental trees or shrubs existing on the Project Site or in the right-of-way, which are required to be removed for the Construction operations and which are not specifically designated on the Design-Build Firm's Plans or in the Design Criteria to be reset, or to be removed by others prior to the Construction operations, shall remain the property of FIU, and shall be relocated by the Design-Build Firm as directed. The Design-Build Firm shall be fully responsible for maintaining all grass plots, trees and shrubs outside the limits of Construction in good condition. Tree limbs which interfere with Equipment operation and are approved for pruning shall be neatly trimmed and the tree cut coated with tree paint.

4-6 FINAL CLEANING UP OF RIGHT-OF-WAY

Upon completion of the Work, and before acceptance and final payment will be made, the Design-Build Firm shall remove from any right-of-way and the Project Site all falsework, Equipment, surplus and discarded Materials, rubbish and temporary structures; restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the Work, and leave the Project Site and the roadway in a neat and presentable condition throughout the entire length of the Work under Contract. The placing of Materials of any character, rubbish or Equipment, on abutting property, with or without the consent of the property owners, shall not constitute satisfactory disposal; however, the Design-Build Firm will be allowed to temporarily store Equipment, surplus Materials, usable forms, etc., on a well-kept site owned or leased by the Design-Build Firm, adjacent to the Project, but no discarded Equipment or Materials or rubbish shall be placed on such site.

Areas adjacent to the Project used as a Materials storage area or equipment yard shall be shaped, dressed and grassed by the Design-Build Firm in order to avoid an objectionable appearance, at such time as they are no longer needed by the Design-Build Firm for such purposes. When working adjacent to or over travel lanes, the Design-Build Firm shall ensure that dust, mud and other debris from Design-Build Firm's operation do not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for each day. The Design-Build Firm shall also pick up and remove trash from the job daily.

END OF SECTION 4

**SECTION 5
CONTROL OF THE WORK**

5-1 FIU'S PLANS

The plans furnished by FIU in the Solicitation Documents consist of general drawings that give a conceptual idea of the contemplated Construction.

Grades shown are finished grades and B.M. Datum is National Geodetic Vertical Datum of 1929 (NGVD-1929) unless otherwise noted on those plans.

5-2 SHOP DRAWINGS (for Structures)

Prior to the submission of any Shop Drawings, the Design-Build Firm shall prepare and submit to FIU or its designee for approval a schedule for all proposed Shop Drawings ("Shop Drawing Submittal Schedule"). To provide an orderly and balanced distribution of the Work, the Design-Build Firm shall coordinate, schedule, and control all submittals of Shop Drawings, Product Data and Samples, including those of the Design-Build Firm's various Subcontractors, Suppliers and engineers.

The Design-Build Firm shall furnish such Shop Drawings, Product Data and Samples as may be required to complete the Work in compliance with the design shown on the Plans and Specifications. The drawings shall be prepared on reproducible permanent transparent material made for such purpose. The sheets shall be no larger than 11" by 17" unless otherwise allowed by FIU. Each sheet shall be numbered consecutively for the series and the sheet number shall indicate the total number in the series (i.e., 1 of 12, 2 of 12, etc.). Each sheet shall have affixed thereon a title block indicating the name of the series, the subject of the sheet, FIU Project number, and the name of the person(s) drawing and checking, together with the dates on which the Work was done.

For the following categories of Shop Drawings, the Design-Build Firm shall submit, for overview by the Engineer, permanent reproducible drawings with one print and four sets of applicable computations. The print and cover sheet of each set of applicable computations shall be signed and sealed by the Design-Build Firm:

- (1) Design-Build Firm originated design.
- (2) Design and/or structural details furnished by the Design-Build Firm in compliance with the Contract.

5-2.1 Definitions:

5-2.1.1 Shop Drawings:

All working, shop and erection drawings, associated trade literature, calculations, schedules, manuals and similar documents submitted by the Design-Build Firm to define some portion of the Project Work. The type of Work includes both permanent and temporary works as appropriate to the Project.

5-2.1.2 Permanent Works:

All the permanent structures and parts thereof required of the completed Contract.

5-2.1.3 Temporary Works:

Any temporary Construction Work necessary for the Construction of the permanent works. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.

5-2.1.4 **Construction Affecting Public Safety:**

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

5-2.1.5 **Major and Unusual Structures:**

Bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

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

5-2.1.6 **Special Erection Equipment:**

Includes launching gantries, beam and winch equipment, form travelers, stability towers, strongbacks, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction equipment such as cranes.

5-2.1.7 **Falsework:**

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

5-2.1.8 **Formwork:**

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

5-2.1.9 **Scaffolding:**

An elevated work platform used to support workmen, Materials, and equipment, but not intended to support the structure.

5-2.1.10 **Shoring:**

A component of falsework such as horizontal, vertical, or inclined support members. In this Section, this term is interchangeable with falsework.

5-2.2 **Submission of Shop Drawings, Product Data and Samples:**

All Shop Drawings, Product Data and Samples prepared by the Design-Build Firm or Design-Build Firm's agents (Subcontractor, fabricator, Supplier, etc.) shall be reviewed, dated, stamped, approved and signed by the Engineer of Record prior to submission to the Engineer for overview and concurrence. The schedule for all working, shop and erection drawings, Product Data and Samples shall be submitted to the Engineer within thirty (30) days prior to the start of Construction as defined on the approved Project Schedule. The Design-Build Firm shall submit to the Engineer five (5) sets of Shop Drawings in compliance with the approved Shop Drawing Submittal Schedule.

The Engineer of Record's signed approval of drawings submitted shall confirm that the Design-Build Firm has verified the Work requirements, field measurements, Construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. Each series of drawings shall indicate the specification section and page or drawing number of the Plans to which the submission applies. The Design-Build Firm shall indicate on the Shop Drawings all deviations from the Contract drawings and shall itemize all deviations in the letter of transmittal to FIU or its designee.

The Design-Build Firm shall schedule the submission of Shop Drawings, Product Data and Samples so that approximately twenty-one (21) Calendar Days (beginning on the date of receipt) is allowed for overview by the FIU or its designee. The Design-Build Firm shall adjust schedules so that an additional approximate fourteen (14) Calendar Day period is provided for overview of each resubmittal by FIU or its designee.

The Design-Build Firm shall submit Shop Drawings, Product Data and Samples to facilitate expeditious overview. Voluminous submittals at one time may result in increased overview time by FIU or its designee. In no case will FIU be liable for resulting delays, added costs and related damages when the time required for overview extends beyond the approximate times shown herein. Only the Engineer's concurrence stamp (red ink) on Shop Drawings is valid and no Work shall be performed in advance of approval as demonstrated by the FIU stamp.

Drawings, Product Data and Samples shall be neat, legible, clean and prepared by a competent draftsman. Drawings shall show the date of submittal and each resubmittal and the name and number of the Project and name of the Design-Build Firm.

Drawings, Product Data and Samples shall be resubmitted by the Design-Build Firm until approved by the Engineer of Record and concurred by FIU or its designee. After FIU or its designee concurrence of drawings, no changes shall be made without resubmission, and all changes or revisions made later shall be clearly marked and dated. Working prints of drawings shall not be issued for use until after the drawing has been reviewed by the Engineer of Record and concurred by FIU or its designee, and the date of concurrence is noted on the tracing as stated.

Lack of compliance with any of the above shall, at FIU's or its designee's discretion, be considered cause for rejecting such submittal without review, and the cost of any delay caused by such rejection shall be borne by the Design-Build Firm.

5-2.3 **Work Items Requiring Shop Drawings:**

Some provisions of the Contract Documents may waive the requirement for submittals for certain items so identified; i.e., items constructed from standard drawings or those complying with alternate details for pre-stressed members under Section 450 of the FDOT Standard Specifications. The Design-Build Firm shall review the Contract Documents to determine the submittals required.

The following signing and lighting items are structural items:

- (a) Lighting: poles, bracket arms, frangible bases, and foundations.
- (b) Signing: Mounting brackets for bridge-mounted signs, overhead cantilever structures, overhead truss structures, overhead sequential sign structures, and multiple post sign supports, along with applicable foundations.

In general, FIU requires shop drawings for:

- (a) Bridge, bulkhead and retaining wall structures, cofferdams, and lighting and signing structural items, along with the applicable foundations.
- (b) Signing, lighting, drainage structures, attenuators, and other nonstructural items.
- (c) Building structures.
- (d) Design-Build Firm-originated re-design.
- (e) Design and structural details furnished by the Design-Build Firm in compliance with the Contract.
- (f) Temporary works affecting public safety.

5-2.4 **Schedule of Submittals:**

The Design-Build Firm shall prepare and submit a schedule of submittals that identifies the Work for which shop drawings apply which is coordinated with the Project Schedule. For each planned submittal, the Design-Build Firm shall define the type, and approximate number of drawings or other documents that are included and the planned submittal date, considering the processing requirements herein. Also, the Design-Build Firm shall submit the schedule of submittals to FIU or its designee within thirty (30) Calendar Days of the start of Construction, and prior to the submission of any shop

drawings. The Design-Build Firm shall coordinate the schedule of submittals with the project schedule to allow sufficient time for review, approval, and re-submittal as necessary.

5-2.4.1 **Style, Numbering, and Material of Submittals:**

5-2.4.1.1 **Drawings:**

The Design-Build Firm shall furnish all shop drawings that are necessary to complete the structure in compliance with the design shown on the plans. The Design-Build Firm shall: prepare or reproduce drawings on permanent material made for that purpose, such as tracing cloth, plastic, mylar, or xerographic bond paper, hereafter referred to as “masters”; use sheets no larger than 11” by 17” unless otherwise allowed by FIU consecutively number each sheet in the submittal series, and indicate the total number in the series (i.e., 1 of 12, 2 of 12, etc.); and, include on each shop drawing the following items as a minimum requirement: the complete FIU Project Number, drawing title and number, a title block showing the names of the fabricator or producer and the Design-Build Firm for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the project, the Design-Build Firm’s approval stamp with date and initials, and, when applicable, the signature and embossed seal of the Specialty Engineer. FIU or its designee may request a re-submittal when any of this minimum information is not included.

5-2.4.1.2 **Other Documents:**

The Design-Build Firm shall provide original documents or clearly legible photographic or xerographic copies of documents other than drawings, such as trade literature, catalogue information, calculations, and manuals. Provide sheets no larger than 11” by 17”. Clearly label and number each sheet in the submittal to indicate the total number of sheets in the series (i.e., 1 of 12, 2 of 12, etc.). Bind and submit all documents with a Table of Contents cover sheet. List on the cover sheet the total number of pages and appendices, and include the complete FIU Project Number, a title referencing the submittal item(s), the name of the firm and person(s) responsible for the preparation of the document, the Design-Build Firm’s approval stamp with date and initials, and, when applicable, the signature and seal of the Specialty Engineer.

The Design-Build Firm shall submit appropriately prepared and checked calculations and manuals that clearly outline the design criteria. Include on the internal sheets the complete FIU Project Number and the initials of the person(s) responsible for preparing and checking the document.

The Design-Build Firm shall clearly label trade literature and catalogue information on the front cover with the title, FIU Project Number, date and name of the firm and person(s) responsible for that document.

The Design-Build Firm shall provide these other shop drawing

documents listed above on drawing, xerographic, or glossy paper material as appropriate.

5-3 SUBMITTAL PATHS AND COPIES

5-3.1 **Bridge, Bulkhead, and Retaining Wall Structures, Cofferdams, and Lighting and Signing Structural Items, along with the applicable foundations:**

FIU will not require shop drawings for prequalified items, except for their corresponding foundations. Determine the number of copies and the submittal path to be followed based upon the discipline of the Work being performed (e.g., structural, civil, electrical) with the name of Engineer of Record shown adjacent to the title block on the structural plan sheets, and on the key sheets of roadway plans, signing, and pavement marking plans, and/or lighting plans.

5-3.2 **Signing, Lighting, Drainage Structures and Attenuators, and other nonstructural items:**

[Reserved.]

5-3.3 **Building Structures:**

[Reserved.]

5-3.4 **Design-Build Firm-Originated Design or Redesign:**

FIU or its designee will not consider any originated design or redesign unless it has been previously reviewed and approved by the Engineer of Record.

5-3.5 **Temporary Works**

For Construction Affecting Public Safety, submit to the Engineer of Record shop drawings and the applicable calculations for the design of special erection equipment, falsework, scaffolding, etc. Ensure that each sheet of the shop drawings and the cover sheet of the applicable calculations is signed and sealed by the Specialty Engineer.

5-3.6 **Formwork and Scaffolding:**

The Design-Build Firm is solely responsible for the safe installation and use of all formwork and scaffolding. FIU does not require any formwork or scaffolding submittals unless such work would be classified as Construction Affecting Public Safety.

5-3.7 **Other Miscellaneous Design and Structural Details Furnished by the Design-Build Firm in Compliance with the Contract:**

[Reserved.]

5-4 CERTIFICATIONS

5-4.1 **Special Erection Equipment:**

Submittal of signed and sealed erection plans and calculations will be required from the Specialty Engineer for any special erection equipment. Prior to its use, ensure that the Specialty Engineer personally inspects the special erection equipment and certifies to the Engineer in writing that the equipment has been fabricated in accordance with the submitted drawings and calculations. In addition, after assembly, ensure that the Specialty Engineer observes the equipment in use and certifies to the Engineer in writing that it is being used as intended and in accordance with the submitted drawings and calculations. In each case, ensure that the Specialty Engineer also signs and seals the letter of certification.

5-4.2 Falsework and Shoring Requiring Shop Drawings:

After its erection or installation but prior to the application of any superimposed load, the Design-Build Firm shall ensure that the Specialty Engineer personally inspects the falsework and certifies to the Engineer in writing that the falsework has been constructed in accordance with the Materials and details shown on the submitted drawings and calculations. Ensure that the Specialty Engineer also signs and seals the letter of certification.

5-4.3 Temporary Formwork:

Prior to the placement of any concrete, the Design-Build Firm shall ensure that the Specialty Engineer inspects the formwork and certifies to the Engineer of Record in writing that the formwork has been constructed to safely withstand the superimposed loads to which it will be subjected. The Design-Build Firm shall ensure that the Specialty Engineer signs and seals the letter of certification.

5-5 PROCESSING OF SHOP DRAWINGS

5-5.1 Responsibility for Accuracy of Shop Drawings, Product Data, Samples or Similar Submittals:

Concurrence by the Engineer of the Design-Build Firm's Shop Drawings, Product Data, Samples or similar submittals shall not relieve the Design-Build Firm of any responsibility for accuracy of dimensions and details, or for conformity of dimensions and details. All shop drawings shall be reviewed and approved by the Design-Build Firm. The Design-Build Firm shall be responsible for agreement and conformity of Design-Build Firm's Shop Drawings, Product Data, Samples or similar submittals with the approved Plans and Specifications.

5-5.2 Scope of Review by Engineer:

The Engineer will perform an overview of the shop drawings for general conformity to the requirements of the Contract Documents and to the intent of the Design Criteria, and not for the adequacy of the means, methods, techniques, sequences, and procedures proposed for Construction. The Engineer of Record's review of submittals, which include means, methods, techniques, sequences, and construction procedures, does not include an in depth check for the ability to perform the work in a safe or efficient manner. Review and concurrence by the Engineer does not relieve the Design-Build Firm of responsibility for dimensional accuracy to ensure field fit and for conformity of the various components and details. The Engineer will use a "red ink" stamp to concur with the Shop Drawing. No Work shall be performed without FIU review of the Shop Drawings as demonstrated by the red inked FIU stamp. .

5-6 OTHER REQUIREMENTS FOR SHOP DRAWINGS FOR BRIDGES

5-6.1 Shop Drawings for Structural Steel and Miscellaneous Metals:

Furnish shop drawings for structural steel and miscellaneous metals. Shop drawings shall consist of working, shop, and erection drawings, welding procedures, and other working plans, showing details, dimensions, size of Material, and other information necessary for the complete fabrication and erection of the metal work.

5-6.2 Shop Drawings for Concrete Structures:

Working drawings for concrete structures shall consist of such detailed plans as may reasonably be required for the effective prosecution of the Work. These may include details of falsework, bracing, centering and form work, masonry layout diagrams, and diagrams for bending reinforcing steel.

5-6.3 Shop Drawing for Major and Unusual Structures:

In addition to any other requirements, within sixty (60) days from the notice to proceed, submit information to the Engineer outlining the integration of the Major and Unusual Structure into the overall approach to the project. Where applicable to the project, include, but do not limit this information to:

- (1) The overall construction program for the duration of the Contract. Clearly show the Milestone dates. (For example, the need to open a structure by a certain time for traffic operations.)
- (2) The overall construction sequence. The order in which individual structures are to be built, the sequence in which individual spans of girders or cantilevers are erected, and the sequence in which spans are to be made continuous.
- (3) The general location of any physical obstacles to construction that might impose restraints or otherwise affect the construction, and an outline of how to deal with such obstacles while building the structure(s). (For example, obstacles might include road, rail and waterway clearances, temporary diversions, transmission lines, utilities, property, and the Design-Build Firm's own temporary works, such as haul roads, cofferdams, plant clearances and the like.)
- (4) The approximate location of any special lifting equipment in relation to the structure, including clearances required for the operation of the equipment. (For example, crane positions, operating radii and the like.)
- (5) The approximate location of any temporary falsework, and the conceptual outline of any special erection equipment. Provide the precise locations and details of attachments, fixing devices, loads, etc. in later detailed submittals.
- (6) An outline of the handling, transportation, and storage of fabricated components, such as girders or concrete segments. Provide the precise details in later detailed submittals.
- (7) Any other information pertinent to the proposed scheme or intended approach. Clearly and concisely present the above information on as few drawings as possible in order to provide an overall, integrated summary of the intended approach to the project. FIU will use these drawings for information, review planning, and to assess the Design-Build Firm's approach in relation to the intent of the original design. The delivery to and receipt by the Engineer does not constitute any FIU acceptance or approval of the proposals shown thereon. Include the details of such proposals on subsequent detailed shop drawing submittals. Submit timely revisions and re-submittals for all variations from these overall scheme proposals.

5-7 MODIFICATIONS FOR CONSTRUCTION

Where the Engineer allows the Design-Build Firm to make modifications to the permanent works for the purposes of expediting the Design-Build Firm's chosen Construction methods, the Design-Build Firm shall submit proposals to the Engineer for review and approval prior to modifying the works. Submit proposals for minor modifications under the shop drawing process. Indicate on all drawings the deviations from the Contract Documents and itemize all deviations in the letter of transmittal.

Minor modifications are those items that, in the opinion of the Engineer, do not significantly affect the quantity of Work, or the integrity or maintainability of the structure or its components (for example, adjusting concrete dimensions, substituting steel plate sizes, changing reinforcing

bar size and spacing, etc., all within the acceptable limits of the design.)

Major modifications are any modifications that, in the opinion of the Engineer, significantly affect the quantity of Work, or the integrity or maintainability of the structure or its components (for example, substituting alternative beam sizes and spacing, changing Material strength or type, and the like.)

Provide signed and sealed revised sheets to the Engineer for any required revisions to the Contract plans prior to submitting shop drawings. The Engineer's decision on the delineation between a minor and a major modification and the disposition of a proposal is final.

5-8 **COST OF SHOP DRAWINGS**

The Price Proposal shall include the cost of furnishing all Shop Drawings, Product Data and Samples. No additional compensation will be provided to the Design-Build Firm for such submittals.

5-9 **COORDINATION OF CONTRACT DOCUMENTS**

The Specifications, Plans, and all supplementary documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. In addition to the Work and Materials specifically called for in the Specifications and any additional incidental Work, not specifically mentioned, when so shown in the Plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the Work will be considered by FIU as being included in the Contract Price. Contract Documents referenced herein are FIU documents unless otherwise noted. Notwithstanding the order of precedence below, in the event of a conflict among any manual or publication incorporated by reference in the Contract Documents, FIU shall have the right to determine, in its sole discretion, which provision applies regardless of the order of precedence of the documents in which such manuals or publications are referenced. The Design-Build Firm shall request in writing FIU's determination respecting the order of precedence involving the referenced provisions promptly upon becoming aware of any such conflict.

In case of discrepancy, the governing order of the Contract Documents shall be as follows:

- (1) Supplemental Agreements or Work Orders;
- (2) Executed Contract (excluding exhibits listed separately herein);
- (3) Design-Build Firm's Proposal (including documentation accompanying the Proposal and any post-Proposal documentation submitted prior to the Notice of Award);
- (4) Addenda (which pertain to the Contract Documents), in the event of conflicts in the addenda, the most recent addendum will govern;
- (5) Solicitation Documents (unless listed separately herein);
- (6) Special Provisions;
- (7) Supplemental General Specifications for Design Build;
- (8) General Specifications for Design Build;
- (9) Technical Special Provisions;
- (10) Plans;

- (11) FDOT Road Design, Structures, and Traffic Operations Standards;
- (12) FDOT Developmental Specifications;
- (13) Supplemental Specifications;
- (14) FDOT Standard Specifications; and,
- (15) Executed Contract Bond

Computed dimensions shall govern over scaled dimensions. The set of Plans produced by the Design-Build Firm shall provide the level of information that will not require scaling off the drawings. Information provided in the Plans shall suffice to compute any and all dimensions eliminating the need for scaling.

5-10 CONFORMITY OF WORK AND CORRECTIONS FOR CONSTRUCTION ERRORS

All Work performed and all Materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions and Material requirements, including tolerances, shown on the Contract Documents.

For Work that the Design-Build Firm constructs incorrectly or that does not meet the requirements of the Contract Documents, the Design-Build Firm shall have the option of submitting an acceptance proposal to the Engineer for review and consideration. The acceptance proposal shall describe the error or defect and either describe remedial action for its correction or propose a method for its acceptance. In either case, the acceptance proposal shall address structural integrity, aesthetics, maintainability, and the effect on Contract time. FIU or its designee will evaluate any such proposal for its effect on these criteria and also for its effect on Construction administration. When the Engineer determines that a proposal infringes on the structural integrity or maintainability of the structure, FIU or its designee will require the Design-Build Firm to engage a Specialty Engineer to perform a technical assessment and submit the results to the Engineer.

In the event FIU or its designee finds that the Materials or the finished product in which the Materials are used are not within reasonable close conformity with the Plans and Specifications, but that reasonably acceptable Work has been produced, FIU will make a determination if the Work will be accepted and remain in place. In this event, FIU will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract Price for such Work or Materials as FIU deems necessary to conform to FIU's determination.

In the event FIU or its designee finds that the Materials or the finished product in which the Materials are used or the Work performed are not in reasonable close conformity with the Plans and Specifications and 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-Build Firm.

The Design-Build Firm shall carry out all approved corrective Construction measures at no expense to FIU. Notwithstanding any disposition of the compensation aspects of the defective Work, the Engineer's decision on the technical merits of a proposal is final.

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

5-11 ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS

Errors and omissions discovered in the Plans or Specifications shall be the sole and complete responsibility of the Design-Build Firm. The errors and omissions shall be brought to the attention of Engineer as soon as the Design-Build Firm discovers or is made aware or should be aware of such errors and omissions. Resolution of errors or omissions is subject to approval of the Engineer at no additional cost to FIU.

5-12 ORDERS AND INSTRUCTIONS

The supervision of the execution of the Contract is vested wholly in the Design-Build Firm. The orders, instructions, directions, or requests of FIU may come directly from FIU or the Engineer. The Design-Build Firm shall designate a representative to receive such instructions, directions or requests, and, if failing to do so, will be held responsible for the execution of them.

The Engineer shall have the right to suspend the Work wholly or in part for such period or periods as may be deemed necessary due to failure on the part of the Design-Build Firm to carry out orders given to perform any or all provisions of the Contract. The Design-Build Firm shall not suspend the Work and shall not remove any Equipment, tools, lumber or other Materials without the prior written permission of FIU.

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

5-12.1 Observation of the Work:

FIU or its designee shall have free access to the Materials and the Work at all times for measuring or observing the same, and the Design-Build Firm shall afford all necessary facilities and assistance for so doing.

After the Notice to Proceed has been issued, the Engineer will:

- (1) Make visits to the Project Site at intervals appropriate to the various stages of Construction to observe the progress and quality of the executed Work and to determine in general if the Work is proceeding in accordance with the Plans and Specifications. The Engineer will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work, will not be responsible for the Construction means, methods, procedures, techniques and will not be responsible for the Design-Build Firm's failure to perform the Construction Work in accordance with the Contract Documents. The Engineer will not be responsible for safety precautions and procedures in connection with the Work. During such visits and on the basis of on-site observations, the Engineer may disapprove Work as failing to conform to the Contract Documents.
- (2) Perform an overview of Samples, catalog data, schedules, Shop Drawings, laboratory, shop and mill tests of Materials and Equipment and other data which the Design-Build Firm is required to submit, only for conformance with the design concept of the Project and compliance with the information given by the Contract Documents.
- (3) Conduct, in company with the Design-Build Firm, a final inspection of the Project for conformance with the design concept of the Project and compliance with the information given by the Contract Documents.

5-12.2 **Examination of the Work:**

The duties of the Engineer include examining the Material furnished, enforcing the requirements of the Contract Documents (inclusive of the Work and administrative aspects) reporting its findings, and review, approving and recommend payment of partial and final Invoices. Neither FIU nor the Engineer underwrite, guarantees or ensures the Work done by the Design-Build Firm.

It is the Design-Build Firm's responsibility to perform the Work in all details in accordance with the Contract Documents. Failure by the Engineer or any representative of FIU engaged in on-the-site observation to discover defects or deficiencies in the Work of the Design-Build Firm shall never, under any circumstances, relieve the Design-Build Firm from the Design-Build Firm's liability therefore.

FIU Project representatives shall have no authority to permit deviation from, or to modify any of the provisions of, the Contract Documents without the written permission or instruction of the Engineer, or to delay the Design-Build Firm by failure to observe the Materials and Work with reasonable promptness.

The Engineer shall not have authority to supervise, direct, expedite or otherwise control and instructor order the Design-Build Firm or Design-Build Firm's employees in the fulfillment of the Design-Build Firm's obligation. The Engineer may only advise the Design-Build Firm when it appears that the Work and/or Materials do not conform to the requirements of the Contract Documents. Should the direction of the Engineer not be properly addressed by the Design-Build Firm the Engineer shall reserve the right to suspend work wholly or in part as detailed in section 5.12.

The payment of any compensation, irrespective of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Design-Build Firm to any FIU representative, is strictly prohibited, and any such act on the part of the Design-Build Firm will constitute a violation of the Contract and immediate grounds for termination of the Contract, should FIU so decide.

If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Design-Build Firm, the Design-Build Firm shall give FIU or its designee timely notice of readiness therefore. The Design-Build Firm shall furnish FIU the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, and/or such other applicable organizations as may be required by law, or the Contract Documents. If any such Work required so to be inspected, tested or approved is covered without written approval of FIU, it must, if requested by FIU, be uncovered for observation at the Design-Build Firm's expense. The cost of all such inspections, tests and approvals shall be borne by the Design-Build Firm, unless otherwise provided.

5-12.3 **Communications:**

Prior to the start of the Work, FIU will advise the Design-Build Firm as to how communications between FIU and Design-Build Firm will be handled. Thereafter, whenever reference is made to required communication between the Design-Build Firm and FIU, such communication, to be given consideration, shall be addressed in accordance with the approved procedure.

5-13 **AUTHORITY AND DUTIES OF ENGINEER'S ASSISTANTS**

The Associate Vice President of Facilities Management may appoint such assistants and representatives as desires. These assistants and representatives are authorized to observe all Work done and all materials furnished. Such observation may extend to all or any part of the Work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of the Specifications. Rather, they are authorized to call to the attention of the Design-Build Firm any failure of the Work or materials to meet the Contract Documents, and have FIU to reject materials or suspend the Work until any questions at issue can be referred to and decided by the Engineer.

The Engineer will immediately notify the Design-Build Firm in writing of any such suspension of the Work, stating in detail the reasons for the suspension. The presence of the Engineer's assistants in no way lessens the responsibility of the Design-Build Firm.

5-14 ENGINEERING AND LAYOUT

5-14.1 **General:**

Prior to commencing any Work, the Design-Build Firm shall verify the accuracy of all survey data provided by FIU. Any inaccuracies or errors discovered in the survey data shall immediately be brought to the attention of FIU or its designee in order that any adjustments required in the design be implemented expeditiously and cost effectively. Commencement by the Design-Build Firm of any survey-dependent Work shall be held as an acceptance of the survey data relevant thereto, after which time the Design-Build Firm shall have no Claim against FIU resulting from alleged errors, omissions or inaccuracies of the survey data.

5-14.2 **Control Points Furnished by FIU.**

All control points shall be established by the Design Build Firm.

5-14.3 **Furnishing of Stake Materials:**

The Design-Build Firm shall furnish all stakes, templates, and other Materials necessary to establish and maintain the lines and grades necessary for control and Construction of the Work.

5-14.4 **Layout of Work:**

Using the control points, the Design-Build Firm shall establish all horizontal and vertical controls necessary to construct the Work in conformance with the Plans and Specifications. The Work shall be performed by a Florida Registered Land Surveyor and shall include performing all calculations required and setting all stakes needed. The Design-Build Firm shall also establish all horizontal and vertical controls necessary to perform utility Construction required to be performed by the Design-Build Firm.

5-14.5 **Specific Staking Requirements:**

When performing embankment construction, the Design-Build Firm shall set stakes and/or establish control points providing station and grade information for all new construction components (mainline, ramps, etc., as mutually agreed to by the Engineer and the Design-Build Firm). The Design-Build Firm shall use stakes and/or control points to cross reference location for all material testing, and maintain stakes/control points for the duration of the construction activities.

When performing new base construction as part of the Project, set stakes to establish lines and grades for subgrade, base, curb, and related items at intervals along the line of the Work no greater than fifty (50) feet on tangents and twenty-five (25) feet on curves. Set grade stakes at locations that the Engineer of Record directs to facilitate checking of

subgrade, base, and pavement elevations in crossovers, intersections, and irregular shaped areas.

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

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

For resurfacing and resurfacing-widening type projects, establish horizontal controls adequate to ensure that the asphalt mix added matches with the existing pavement. In tangent sections, set horizontal control points at one hundred (100) foot intervals by an instrument survey.

In curb sections, set horizontal control points at twenty-five (25) feet intervals by locating and referencing the centerline of the existing pavement.

Establish by an instrument survey, and mark on the surface of the finished pavement at twenty-five (25) feet intervals, the points necessary for striping of the finished roadway. As an exception, for resurfacing and resurfacing/widening projects, establish these points in the same manner as used for horizontal control of paving operations.

Mark the pavement with white paint. If performing striping, the Engineer may approve an alternate method for layout of striping provided that the Design-Build Firm achieves an alignment equal to or better than the alignment that would be achieved using an instrument survey.

For projects that include temporary or permanent striping of “no passing zones,” provide the location and length of these zones as shown in the Plans, except projects where the vertical or horizontal alignment is new or altered from preconstruction alignment. For projects that consist of new or altered vertical or horizontal alignment, FIU or its designee will provide the location and length of the “no passing zones” during Construction. For these projects, notify the Engineer not less than twenty-one (21) Calendar Days prior to beginning striping.

For all projects, set a station identification stake at each right-of-way line at one hundred (100) feet intervals and at all locations where a change in right-of-way width occurs. Mark each of these stakes with painted numerals, of a size readable from the roadway, corresponding to the project station at which it is located. As an exception to the above, for projects where plans do not show right-of-way lines, set station identification stakes at locations and intervals appropriate to the type of Work being done. For resurfacing and resurfacing/widening projects, set station identification stakes at two hundred (200) feet intervals. No Work shall commence at any section of the Project until the right-of-way has been properly staked in the area where activities will be undertaken.

5-14.6 **Personnel, Equipment, and Record Requirements:**

The Design-Build Firm shall employ only competent personnel and use only suitable equipment in performing engineering layout work. The Design-Build Firm shall not engage the services of any person or persons in the employ of FIU or its designee for performance of engineering and layout work.

Adequate field notes and records shall be kept as layout work is accomplished. These field notes and records shall be available for review by FIU or its designee as the Work

progresses and copies shall be furnished to FIU on a monthly basis and at the time of completion of the Project. Any review of the Design-Build Firm's field notes or layout work by FIU or its designee, and the acceptance of all or any part thereof, shall not relieve the Design-Build Firm of responsibility to achieve the lines, grades, and dimensions shown in the Plans and indicated in the Specifications.

Prior to Final Acceptance of the Project, the Design-Build Firm shall mark in a permanent manner on the surface of the completed Work all horizontal control points.

5-14.7 Payment:
[Reserved.]

5-15 QUALIFICATIONS OF DESIGN-BUILD FIRM'S PERSONNEL

The Design-Build Firm shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work as required by the Contract Documents. Provide workmen engaged on special Work, or skilled work, such as bituminous courses or mixtures, concrete bases, pavements, or structures, or in any trade, with sufficient experience in such Work to perform it properly and satisfactorily and to properly and safely operate the Equipment involved. Provide workmen that shall make due and proper effort to execute the Work in the manner prescribed in the Contract Documents, or the Engineer may take action as prescribed below.

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

If, in the opinion of FIU, any person employed by the Design-Build Firm that is not qualified to perform the Work or is insubordinate, disorderly, disrupts, or is detrimental to the progress of the Work, such person shall be immediately removed from the Project by the Design-Build Firm upon written direction from FIU. Such person shall not be employed again on the Project without the written permission of FIU. If the Design-Build Firm fails to immediately remove such person, FIU may, at its sole discretion, withhold payments due, or which may become due, or may suspend the Work until the person is removed. The Design-Build Firm shall protect, defend, indemnify, and hold harmless FIU, its agents, officials and employees from any and all Claims, actions, or suits arising from such removal, discharge, or suspension of a Design-Build Firm employee based on the direction of FIU.

5-15.1 Prosecution of Work:

The Design-Build Firm shall give the Work the attention necessary to assure the scheduled progress is maintained. The Design-Build Firm shall cooperate with FIU and its designee and other contractors at work in the vicinity of the Project.

The Design-Build Firm shall provide, at Design-Build Firm's expense, all temporary electrical power and lighting necessary for Design-Build Firm's operations under the Contract while maintaining the existing level of illumination within the Project limits.

5-15.2 Design-Build Firm's Supervisory Personnel:

Unless otherwise specified in the Solicitation Documents, the following are the minimum requirements for the supervisory personnel from the Design-Build Firm:

5-15.2.1 **Design-Build Firm's Project Manager:**

The Design-Build Firm shall maintain a competent Project Manager during the duration of the Project regardless of the amount of Work sublet. The Project Manager assigned by the Design-Build Firm must be proficient with the English language, and shall possess a Registered Professional Engineer License in the State of Florida and three (3) years of specific experience in construction management on limited access facilities or have a minimum of five (5) years of specific work experience providing construction management in limited access highway facilities. The Project Manager shall be the point of contact for correspondence and all Project issues. The Project Manager shall attend all weekly, monthly and Project meetings deemed necessary by FIU or its designee.

The Project Manager shall have full authority to receive and execute instructions and/or orders from FIU or its designee, including promptly supplying any Materials, tools, Equipment, labor and incidentals that may be required. The Design-Build Firm shall submit a resume of the proposed Project Manager's experience to FIU or its designee for review prior to commencement of Work on the Project.

5-15.2.2 **Design-Build Firm's Superintendent:**

Regardless of the amount of Work sublet, the Design-Build Firm must have a competent Superintendent on the Project at all times while work is in progress to act as the Design-Build Firm's agent. The Superintendent shall be thoroughly experienced in the types of Work being performed, proficient with the English language, and have full authority to receive and execute instructions and/or orders from FIU or its designee, including promptly supplying any Materials, tools, Equipment, labor and incidentals that may be required. The Design-Build Firm shall submit a resume of the proposed Superintendent's experience to FIU or its designee for review prior to commencement of Work on the Project. The presence of the Design-Build Firm's Superintendent is a mandatory requirement even when only subcontracted work is underway.

5-15.2.3 **Worksite Traffic Supervisor:**

Regardless of the amount of Work sublet, the Design-Build Firm shall have a competent Worksite Traffic Supervisor responsible for initiating, installing, and maintaining all traffic control devices. The Design-Build Firm shall ensure that the Worksite Traffic Supervisor has at least one (1) year of experience directly related to worksite traffic control in a supervisory or responsible capacity and is certified by the American Traffic Safety Services Association Worksite Traffic Supervisor Certification Program or an equivalent program approved by FIU or its designee. The Design-Build Firm shall use approved alternate Worksite Traffic Supervisors when necessary.

The Worksite Traffic Supervisor shall be available on a twenty-four (24) hour per day basis, review the Project on a daily basis, and participate in all changes to traffic control. The Worksite Traffic Supervisor shall be given access to all equipment and Materials needed to maintain traffic control and handle traffic-related situations. The Design-Build Firm shall ensure that the Worksite Traffic Supervisor immediately corrects all safety deficiencies. The Design-Build Firm shall not allow minor deficiencies that are not immediate safety hazards to remain uncorrected for more than twenty-four (24) hours. The Worksite Traffic Supervisor shall be present to direct the

initial setup of the traffic control plan and any changes to it. In addition, the Worksite Traffic Supervisor shall be available on-site within forty-five (45) minutes after notification of an emergency situation and prepared to positively respond to repair the work zone traffic control or to provide alternate traffic arrangements.

FIU or its designee may direct the Design-Build Firm to remove a Worksite Traffic Supervisor from the Project that fails to comply with these provisions. FIU may temporarily suspend all activities, except traffic and erosion control and activities necessary for Project maintenance and safety, for failure to comply with these provisions.

5-15.2.4 **List of Supervisory Personnel:**

Whether initially or as a substitute, the Design-Build Firm shall not assign supervisory personnel to the Project if the Engineer has a reasonable objection. Prior to commencement of Work on the Project, the Design-Build Firm shall submit a written list of supervisory personnel assigned to the Project for the Engineer's review, including, but not limited to the positions outlined above, along with their resumes. FIU's acceptance of any supervisory personnel may be revoked on the basis of reasonable objection after due investigation, in which case the Design-Build Firm shall submit an acceptable substitute. No acceptance by FIU of any such supervisory personnel shall constitute a waiver of any right of FIU to reject defective Work. Any changes in the indicated personnel shall be subject to review and approval by FIU.

5-15.2.5 **Experience Requirements:**

Supervisory employees shall have been employed in a supervisory (leadership) capacity of a substantially equivalent level on a similar project for at least two (2) years within the last five (5) years.

5-15.2.6 **Supervision for Emergencies:**

The Design-Build Firm shall designate an individual as the Design-Build Firm's contact in emergencies and in cases where immediate action is required to maintain traffic or to handle any other problem that might arise. The contact person shall be proficient with the English language.

In addition, the Design-Build Firm shall submit, by certified mail, the phone numbers and names of personnel designated to be contacted in cases of emergencies, along with a description of the Project location, to the Florida Highway Patrol, FIU Police and all other local law enforcement agencies having jurisdictions in the vicinity of the Project.

5-15.2.7 **Scheduling Direction:**

The list of supervisory personnel shall name a qualified employee who shall provide scheduling direction to the entire Project.

5-15.2.8 **Substitution of Supervisory Personnel:**

The Design-Build Firm shall not replace or substitute any of the listed supervisory personnel without written approval from FIU. The Design-Build Firm shall observe industry standards and ethics when proposing individuals currently utilized on other projects. FIU's acceptance of any substituted personnel may be revoked on the basis of reasonable objection after due investigation, in which case the Design-Build Firm shall submit an acceptable substitute. No acceptance by FIU of any such personnel shall

constitute a waiver of any right of FIU to reject defective Work. FIU reserves the right to reject at any time personnel who are deemed unacceptable, technically or financially, or who have previously performed unsatisfactory Work for FIU.

5-15.2.9 **Supervisory Documentation:**

The Design-Build Firm shall document various supervisory functions needed to administer the Project. The reports and forms referenced herein shall conform to the FDOT Construction Project Administration Manual. The requirements of this section shall not supersede or otherwise alter specific documentation required by other sections of the Contract Documents. The Design-Build Firm shall provide the following documents:

- (1) Stormwater Pollution Prevention Plan Construction Inspection Report
- (2) Daily Report of Construction – Reference Section 6-4
- (3) Engineer’s Weekly Summary – Reference Section 6-4
- (4) Work Plan – Controlling Item of Work
- (5) Design-Build Firm’s Affidavit – Vehicle Registration
- (6) Drilled Shaft Log – If Applicable
- (7) Drilled Shaft Soil Excavation Log – If Applicable
- (8) Drilled Shaft Rock Excavation Log – If Applicable
- (9) Drilled Shaft Rock Core Log – If Applicable
- (10) Drilled Shaft Inspection Log – If Applicable
- (11) Drilled Shaft Concrete Placement Log – If Applicable
- (12) Pile Driving Installation Plan – If Applicable

5-15.2.10 **Apprentices:**

If the Design-Build Firm employs apprentices on the Project, the behavior of the Design-Build Firm and FIU shall be governed by the provisions of Chapter 466, F.S. and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Design-Build Firm shall include a provision similar to the foregoing sentence in each subcontract. The Design-Build Firm shall have the option of listing all available job vacancies with the local Job Service Florida office in order to take advantage of local pools of unemployed qualified construction personnel.

5-16 **GENERAL INSPECTION REQUIREMENTS**

5-16.1 **Cooperation by Design-Build Firm:**

The Design-Build Firm shall provide the Engineer with every reasonable facility for

ascertaining whether the Work performed and Materials used are in accordance with the requirements and intent of the Contract Documents. If the Engineer so requests, the Design-Build Firm shall, at any time before Final Acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Design-Build Firm shall restore the uncovered portions of the Work to the standard required by the Specifications. If the exposed or examined Work is determined to be unacceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed shall be at the Design-Build Firm's expense.

The Design-Build Firm shall revise and upgrade both Construction and testing procedures to prevent a recurrence of the conditions that contributed to the unacceptable Work. If the exposed or examined Work is determined to be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed shall be paid for as Extra Work.

The Design-Build Firm shall give FIU and its designee twenty-four (24) hours advance notice whenever the Design-Build Firm intends to perform Work during other than normal daylight hours. On such occasions, the Design-Build Firm's Superintendent and sufficient workmen shall be present to undertake the Work in a satisfactory manner. No additional compensation will be made to the Design-Build Firm for Work performed during such off periods.

5-16.2 Failure of Engineer to Reject Work During Construction:

If FIU or its designee should fail to reject defective Work or Materials, whether from lack of discovery of such defect or for any other reason, such failure to reject will not prevent FIU or its designee from later rejecting defective Work or Materials when such defective Work or Material is discovered, or obligate FIU to Final Acceptance of the defective Work. The Design-Build Firm shall make no Claim for losses suffered due to any necessary removals or repairs of such defects.

5-16.3 Failure to Remove and Renew Defective Materials and Work:

If, within the time frame indicated in writing from FIU or its designee, the Design-Build Firm fails or refuses to remove and renew any defective Materials used or Work performed, or fails or refuses to make necessary repairs in an acceptable manner, FIU shall have the right to repair or replace, or have repaired or replaced, the unacceptable or defective Materials or Work. Costs incurred by FIU for repairs or replacements shall be paid for from moneys due, or which may become due, the Design-Build Firm, or may be charged against the Design-Build Firm's Contract Bond.

Continued failure or refusal by the Design-Build Firm to make necessary repairs promptly, fully, and in an acceptable manner shall be sufficient cause for FIU, at its sole discretion and option, to perform the Work with its own forces, or to contract with any individual, firm or corporation to perform the Work. Costs incurred by FIU shall be paid for from moneys due, or which may become due, the Design-Build Firm, or may be charged against the Design-Build Firm's Contract Bond.

5-16.4 Inspection by Federal Government:

When the United States Government pays a portion of the cost of Construction, its representatives may inspect the Work as they deem necessary. However, such inspection will in no way make the Federal Government a party to the Contract.

5-17 FINAL CONSTRUCTION INSPECTION

5-17.1 Maintenance until Acceptance:

The Design-Build Firm shall maintain all Work until the Project is completed and

accepted by FIU as evidenced by written Final Acceptance in accordance with Section 5-18.

5-17.2 Inspection for Acceptance:

When, in the opinion of the Design-Build Firm, all Materials have been furnished, all Work has been performed, and the Construction contemplated by the Contract has been satisfactorily completed for the Project or a portion of the Project, the Design-Build Firm shall request that FIU perform an inspection of the Project. The inspection will be made within seven (7) Calendar Days of notification from the Design-Build Firm to determine the status of completion for the purposes of issuance of either Partial Acceptance or Final Acceptance.

If FIU considers the Work for a portion of the Project is complete, the Engineer will prepare written notice of acceptance and deliver to the Design-Build Firm a definitive certificate of Partial Completion which shall fix the date of Completion.

If the Engineer finds that all the Work for the Project has been satisfactorily completed, FIU will consider such inspection as the Final Inspection and issue a certificate in accordance with Section 5-18.

If any or all of the Work is found to be unsatisfactory, the Engineer will detail in writing the remedial work required to achieve Partial/Final Acceptance. At the time of delivery of a certificate of Partial Completion, the Engineer will deliver to the Design-Build Firm a written recommendation as to division of responsibilities pending final payment between FIU and Design-Build Firm with respect to security, operation, safety, maintenance, utilities, insurance and warranties and guarantees. The Design-Build Firm shall immediately perform such remedial work and subsequent inspections will be made on the remedial work until the Engineer accepts all the Work.

Until Final Acceptance of the Project in accordance with Section 5-18, the Design-Build Firm shall replace or repair any damage to the portion of Work that has received Partial Acceptance. Payment to the Design-Build Firm for such portion of the Work will be made by FIU pursuant to Section 7-15.

5-17.3 Partial Acceptance:

At the Engineer's sole discretion, the Engineer may accept any portion of the Work under the provisions of Section 5-17.2.

5-18 FINAL ACCEPTANCE

When the entire Work of the Project contemplated by the Contract has been satisfactory completed, as determined by the Engineer, FIU will issue a written Notice of Final Acceptance to the Design-Build Firm.

5-19 CLAIMS BY DESIGN-BUILD FIRM

5-19.1 General:

When the Design-Build Firm deems that compensation or a time extension is due beyond that agreed to by FIU, whether due to Delay, Extra Work, breach of Contract, or for work to be completed in accordance with Article 4-3, *Alteration of Plans or of the Character of Work*, and the Engineer is in disagreement or for any other cause, the Design-Build Firm shall follow the procedures set forth herein for preservation, presentation and resolution of the Claim or dispute.

Failure by the Design-Build Firm to follow any of the steps described herein, and/or provide all the information required in the specified timeframe(s) shall constitute a full, complete, absolute and irrevocable waiver by the Design-Build Firm of any right to bring an action against FIU, and no court shall have jurisdiction to hear any complaint where the provisions in this Article have not been followed.

5-19.2 **Procedures to File a Notice of Claim:**

5-19.2.1 **Notice of Intent to File a Claim (NOI):**

The Design-Build Firm shall submit a NOI in the following manner:

- a) Within ten (10) Calendar Days of the Design-Build Firm identifying a potential Claim, and before starting to work on the item(s) on dispute, the Design-Build Firm shall submit to the Engineer a written NOI;
- b) At a minimum, the NOI shall include the reason(s) for the potential Claim, explaining whether the Claim is for additional compensation and/or time extension;
- c) Submit the NOI to the Engineer via either Certified US Mail or hand deliver with a dated written acknowledgement from the Engineer of having received the NOI.

If such NOI is not timely provided to the Engineer and the Engineer is not afforded the opportunity to keep account of actual labor, Material, Equipment, and time for the work in dispute, the Design-Build Firm waives all rights to additional compensation and/or a time extension for such Claim. Proper submission of the NOI by the Design-Build Firm and the Engineer's ability to maintain account of the labor, Materials and Equipment, and time, shall not in any way be construed as establishing the validity of the Claim or method for computing any compensation or time extension for such Claim.

For any Claim or part of a Claim that pertains solely to final estimate quantities disputes, the Design-Build Firm shall submit within sixty (60) Calendar Days of receipt of FIU's final estimates, a Claim in full compliance with both Sub-article 5-19.3, *Content of Written Claim*, and Sub-article 5-19.4, *Certificate of Claim*, as to such final estimate Claim dispute issues..

Immediately following submission of a NOI, the Design-Build Firm shall comply with the requirements detailed in Sub-articles 5-19.2.2, *Claim for Additional Compensation*, and/or 5-19-2.3, *Claim for Time Extension*

5-19.2.2 **Claims For Additional Compensation:**

Following the submission of a NOI for additional compensation, the Design-Build Firm shall notify the Engineer when the work that is the subject of the NOI has been completed. The Design-Build Firm shall submit complete documentation regarding the Claim to the Engineer, as detailed in Sub-articles 5-19.3, *Content of Written Claim*, and 5-19.4, *Certificate of Claim*, and in compliance with the provisions of Sub-article 4-3.2.1, *Allowable Costs for Extra Work*, within sixty (60) Calendar Days after the completion of the work related to the Claim.

Failure by Design-Build Firm to submit all documentation to the Engineer as required above will constitute absolute and irrevocable waiver by the Design-Build Firm of any right to additional compensation for work that is the subject of the NOI.

5-19.2.3 **Claim for Time Extension:**

When the Design-Build Firm deems that a time extension is due as detailed in the NOI, the Design-Build Firm shall:

- a) Submit a written preliminary request for time extension pursuant to Sub-article 8-8.3.2, *Contract Time Extensions*, within five (5) Calendar Days after commencement of work related to the Claim for time extension
- b) Submit a request for Contract Time extension pursuant to Sub-article 8-8.3.2, *Contract Time Extensions*, within thirty (30) Calendar Days after the completion of the work related to the Claim for time extension or elimination of the impacts affecting the normal prosecution of the Work, as applicable. The Submittal of the Claim for a time extension shall follow the requirements of Sub-articles 5-19.3, *Content of Written Claim*, and 5-19.4, *Certificate of Claim*.

There shall be no entitlement to any time extension for any impacts, whatsoever, that are not to a Controlling Item of Work. In the instance of an impact to a Controlling Item of Work the provisions detailed under Sub-article 4-3.2.1 (d) (2) shall apply.

Failure by Design-Build Firm to submit all documentation to the Engineer as required above will constitute absolute and irrevocable waiver by the Design-Build Firm of any right to additional compensation and/or time extension for work that is the subject of the NOI.

5-19.3 Content of Written Claim:

For each submitted NOI, the Design-Build Firm shall submit a certified written Claim to FIU which, at a minimum, will include the following:

- a) The date or dates on which actions resulting in the Claim occurred or conditions resulting in the Claim became evident; and
- b) A detailed factual statement of the Claim providing all dates, locations, and items of work affected; and
- c) Identification of all pertinent documents and the substance of any material verbal communications relating to such Claim and the name of the persons making such material verbal communications;
- d) Identification of the provisions of the Contract which support the Claim and a statement of the reasons why such provisions support the Claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
- e) The amount of additional compensation sought and a breakdown of the amount sought in accordance with Sub-article 4-3.2.1, *Allowable Costs for Extra Work*; and
- f) A detailed compilation of the specific dates and the exact number of Calendar Days sought for a time extension and the basis for entitlement for each day of

time extension sought.

5-19.4 Certificate of Claim:

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

5-19.5 Action on Claim:

FIU will respond within forty-five (45) Calendar Days of receipt of a complete Claim submitted by the Design-Build Firm. Failure by FIU to respond to a Claim within forty-five (45) Calendar Days after receipt of a complete Claim in compliance with Sub-articles 5-19.2, *Procedures to File a Notice of Claim*, 5-19.3, *Content of a Written Claim*, and 5-19.4, *Certificate of Claim*, constitutes a denial of the Claim by FIU.

If FIU finds the Claim or any part thereof to be valid, such partial or whole Claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, through a Supplemental Agreement. If FIU finds the Claim not to be valid FIU shall notify the Design-Build Firm in writing.

The Design-Build Firm shall not file a complaint against FIU and no court shall have jurisdiction to hear any complaint on any Claim, or a part thereof, until after Final Acceptance by FIU of all Contract Work or denial of the Claim as described herein, whichever occurs last. Further, the Design-Build Firm shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time extension sought in the Design-Build Firm's written Claim. Any court proceeding shall be limited solely to the bases of entitlement and the amount of compensation and/or time extension sought, to those matters contained in the Design-Build Firm's written Claim. The Design-Build Firm shall not be precluded from withdrawing or reducing the amount of any compensation or time extension in the Design-Build Firm's written Claim.

Conditions precedent to the Design-Build Firm bringing any court action against FIU to resolve any disputes under the Contract are:

- a) The Design-Build Firm must have filed a timely Claim in accordance with all provisions of this Article 5-19, *Claims by Design-Build Firm*; and
- b) The Design-Build Firm shall have retained all records related to the Claim sufficient for FIU to conduct an audit of the Claim pursuant Sub-article 5-19.11, *Auditing of Claims*; and
- c) The Design-Build Firm must have first participated in pre-suit mediation wherein FIU and the Design-Build Firm shall select a mutually agreed-upon mediator and participate in mediation. All costs of mediation shall be borne by the Design-Build Firm, unless otherwise agreed upon by FIU.

5-19.6 Mandatory Claim Records:

After submission of a NOI to file a Claim for additional compensation or time extension, the Design-Build Firm must keep daily records of all labor and material and equipment costs incurred for operations affected by the Extra Work. These daily records must identify each operation affected by the Extra Work and the specific locations where Work is affected by the Extra Work. The Design-Build Firm shall provide the Engineer a

copy of the Design-Build Firm's daily records pertaining to the NOI. The copies of daily records shall be provided to the Engineer at no cost to FIU.

5-19.7 Acceleration of the Work:

FIU shall have no liability for any constructive acceleration of the Work, and the Design-Build Firm may not use constructive acceleration as a basis for a Claim for additional compensation.

If the Engineer gives written direction for the Design-Build Firm to accelerate its efforts, such direction and compensation, if warranted, will be reduced to a Supplemental Agreement.

5-19.8 Non-Recoverable Items:

The parties agree that for any Claim FIU will not have liability for the following items of damages or expense:

- (a) Loss of profit, incentives or bonuses;
- (b) Any Claim for other than Extra Work or delay;
- (c) Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- (d) Acceleration costs and expenses, except where FIU has expressly and specifically directed the Design-Build Firm in writing "to accelerate at FIU's expense"; nor
- (e) Claims preparation expenses.

5-19.9 Exclusive Remedies:

Notwithstanding any other provision of this Contract, the parties agree that FIU shall have no liability to the Design-Build Firm for expenses, costs, or items of damages other than those which are specifically identified as payable under Section 5-19, *Claims by Design-Build Firm*. In the event any legal action for additional compensation, whether on account of Extra Work, breach of Contract or otherwise, the Design-Build Firm agrees that FIU's liability will be limited to those items which are specifically identified as payable in Section 5-19, *Claims by Design-Build Firm*.

5-19.10 Settlement Discussions:

The content of any discussions or meetings between FIU and the Design-Build Firm to settle or resolve any Claims submitted by the Design-Build Firm shall be inadmissible in any court proceeding brought by the Design-Build Firm against FIU.

5-19.11 Auditing of Claims:

All Claims filed pursuant to this Contract shall be subject to audit at any time following the filing of the Claim, whether or not such Claim is subject of pending court proceedings. The audit may be performed, at FIU's sole discretion, by employees of FIU or by any independent auditor appointed by FIU, or both. The audit may begin after ten days written notice to the Design-Build Firm, subcontractor, or supplier. The Design-Build Firm, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any Claim, the Design-Build Firm, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow FIU's auditors to verify the Claim.

Failure to retain sufficient records of the Claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such Claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Design-Build Firm submitting a written Claim, FIU shall have the right to request and receive, and the Design-Build Firm shall have the affirmative obligation to provide to FIU, copies of any and all documents in the possession of the Design-Build Firm or its subcontractors, materialmen or suppliers as may be deemed relevant by FIU in its review of the basis, validity or value of the Design-Build Firm's Claim.

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

- (1) Daily time sheets and foreman's and/or Superintendent's daily reports and diaries;
- (2) Insurance, welfare and benefits records;
- (3) Payroll register;
- (4) Earnings records;
- (5) Payroll tax return;
- (6) Material invoices, purchase orders, and all Material and supply acquisition contracts;
- (7) Material cost distribution worksheet;
- (8) Equipment records (list of company owned, rented or other equipment used);
- (9) Vendor rental agreements and subcontractor invoices;
- (10) Subcontractor payment certificates;
- (11) Canceled checks for the project, including, payroll and vendors;
- (12) Job cost report;
- (13) Job payroll ledger;
- (14) General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
- (15) Cash disbursements journal;
- (16) Financial statements for all years reflecting the operations on this project;
- (17) Income tax returns for all years reflecting the operations on the Project;
- (18) All documents which reflect the Design-Build Firm's actual profit and overhead during the years the Contract was being performed and for each of the five years prior to the commencement of the Contract;
- (19) All documents related to the preparation of the Design-Build Firm's Price

Proposal including the final calculations on which the Price Proposal was based;

- (20) All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
- (21) Worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, benefits and insurance, Materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.

5-20 **HIERARCHY FOR ISSUE RESOLUTION**

In order to properly and expeditiously resolve all matters related to the Contract, whether technical or administrative in nature, FIU has established the hierarchy to be followed. The Design-Build Firm shall direct all matters to the Construction Engineering & Inspection (CE&I) Consultant for the Project. If the matter cannot be resolved at this level, the CE&I Consultant shall elevate the matter to the General Engineering Consultant (GEC), whom shall in turn elevate to FIU if necessary. The President, if the matter has escalated to his/her level, will have final authority on all decisions.

Each level of hierarchy shall have a maximum of three (3) Working Days to address, and respond to all matters raised to its level. However, resolution of any matter is not confined to this timeframe. All matters shall be submitted in writing, regardless of level of hierarchy, and shall include any available supporting documentation.

The Contractor shall provide a similar hierarchy for their organization to which FIU may escalate matters, with personnel of similar levels of responsibility. This list shall be provided at the Pre-Construction meeting.

5-21 **RECOVERY RIGHTS, SUBSEQUENT TO FINAL PAYMENT**

If an error is discovered in partial or the final pay estimate, or if defective Work or Materials used by or for the Design-Build Firm are discovered after final payment has been made, FIU reserves the right to Claim and recover from the Design-Build Firm and/or Design-Build Firm's Surety, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work or Materials.

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

END OF SECTION 5

**SECTION 6
CONTROL OF MATERIALS**

6-1 INFORMATION ON MATERIALS.

6-1.1 General:

Acceptance of Materials is based on the following criteria in Section 6. All requirements may not apply to all Materials. The Design-Build Firm shall use only Materials in the Work that meet the requirements of these Specifications. The Engineer may inspect and test any Materials, at points of production, distribution and use. Material is accepted by Material sampling and testing requirements for the following Work activities: Earthwork and Related Operations, Base Courses, Hot Bituminous Mixtures, Portland Cement Concrete, and Reinforcing Steel as stated in Division II of the FDOT Standard Specifications. All other Material acceptance will be in accordance with Section 6.

6-1.2 Sampling and Testing:

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

Ensure when a material is delivered to the location where it will be used, as described in the Contract Documents, there is enough volume delivered to take samples, at no expense to FIU.

6-1.2.1 Pretest by Manufacturer:

Submit manufacturer's certifications to FIU for qualification and use on FIU projects. Testing will be as specified in the Contract Documents. FIU may require the manufactures submit samples of materials for independent verification purposes.

6-1.2.2 Point of Production Test:

Test the materials during production as specified in the Contract Documents.

6-1.2.3 Point of Distribution Test:

Test the material at Distribution facilities as specified in the Contract Documents.

6-1.2.4 Point of Use Test:

Test the material immediately following placement as specified in the Specifications. After delivery to the project, FIU may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by Producer Certification. FIU may reject all materials that, when retested, do not meet the requirements of these Specifications.

6-1.3 Location of Laboratory:

FIU will use an independent testing laboratory for the review of, or testing of, samples normally submitted to the State Materials Engineer for testing. Design-Build Firm shall address all correspondence for sampling and testing to FIU.

6-1.4 Standard Operating Procedure:

FDOT's Standard Operating Procedures govern approval and production control requirements for sources of supply of certain Materials. Each Section of the Specifications pertaining to a material states whether a Standard Operating Procedure (SOP) is in effect for the material specified by that Section.

6-1.5 Qualified Products List:

A Qualified Product List (QPL) is published and maintained by the FDOT and is referenced throughout the Specifications. The items in the list have basic approval and are generally acceptable to FIU. However, the Design-Build Firm is advised that products on the QPL are still subject to final approval and acceptance by FIU. Furnish to the Engineer for approval, Producer Certifications for all products listed on the Qualified Products List. Do not incorporate any manufactured products or materials into the project without approval from the Engineer. The Design-Build Firm shall make no Claim for additional compensation or extension of Contract time to replace an item on the QPL that is rejected by FIU subsequent to execution of the Contract.

6-1.6 Approved Products List:

The State Traffic Engineering Office maintains the Approved Products List (APL) of Traffic Control Signal Devices. Traffic Monitoring Site Equipment and Materials are also included on the APL. The items in the list have basic approval and are generally acceptable to FIU. However, the Design-Build Firm is advised that products on the APL are still subject to final approval and acceptance by FIU.

6-1.7 FIU Minimum Warranty Provisions:

6-1.7.1 Warranty

The Design-Build Firm shall provide a warranty covering workmanship and Materials, as a minimum, for the following features: bearings, expansion joints, roadway pavement, lighting, retaining walls, approach slabs, drainage systems, concrete defects, structural steel defects, post-tensioning systems, foundation elements, elevators and elevator equipment, high performance material finishes, roofing, sealants and waterproofing, signage, railings and metal work. Other products or features the Design-Build Firm offered to warrant as part of the technical proposal. .

The Design-Build Firm shall develop the warranty criteria, measurable standards, and remedial work plans identified in the Design-Build Firm's Proposal, including associated type of distress and threshold values defining the extent and magnitude of such distresses that will necessitate remedial Work for each warranted feature. The warranty in Section 6-1.7.4 illustrates an example of the format that may be used for each warranted item.

The minimum warranty period for all structural items is five (5) years, and three (3) years for all roadway items. Structural items include, but are not limited to, bridges, buildings, canopies, overhead and cantilever sign assemblies, gantries, mast arm assemblies and bridge mounted sign assemblies. The Design-Build Firm shall assume responsibility for the performance of all associated warranty Work for the proposed warranty period. The warranty period begins at Project Final Acceptance.

At the end of the warranty period, the Engineer will release the Design-Build Firm from further warranty Work and responsibility, provided all previous warranty Work and remedial Work, if any, has been completed.

6-1.7.2 Disputes Resolution Regarding Warranty
[Reserved]

6-1.7.3 Warranty Work

During the warranty period, the Design-Build Firm shall perform all necessary remedial Work at no cost to FIU. All remedial work as authorized in writing by FIU shall be performed in accordance with the terms and conditions of the Contract. Approval by FIU of remedial work will not be issued prior to receiving a certificate of insurance with the same limits of coverage under the Contract and a Contract Bond for no less than the value, as determined by FIU, of the remedial work and all costs associated with the completion of the remedial work.

If remedial Work necessitates a corrective action to the pavement markings, adjacent lane(s), roadway shoulders, or any other elements, the Design-Build Firm shall perform these corrective actions using similar or better products to match existing conditions at no additional cost to FIU.

The Design-Build Firm shall provide Maintenance of Traffic, in accordance with the criteria established in the Contract, during the remedial Work period(s) at no additional cost to FIU. Lane closure restrictions stipulated in the Contract shall apply to all remedial Work. Notification of any required lane closures for remedial Work shall be made to FIU no later than fourteen (14) Calendar Days in advance unless a hazardous condition to the public has been identified. In such a case an emergency lane closure will be approved with a shorter notice. The Design-Build Firm shall obtain all required permits, at no additional cost to FIU, prior to performing any warranty Work operations.

The Design-Build Firm shall conduct a review(s) of the warranted features at least once annually during the warranty period. FIU may conduct a review(s) at intermediate times as deemed necessary by FIU. The Design-Build Firm shall conduct a final review no later than forty-five (45) Calendar Days before the end of the warranty period for each warranted feature.

All reviews by the Design-Build Firm shall be conducted at no additional cost to FIU. FIU shall be advised of the review schedule at least seven (7) Calendar Days prior to the review taking place. The results of the review, intermediate or final, shall be made available to FIU within fifteen (15) Calendar Days after completion of the review. The Design Build Firm shall deliver to the Engineer within fifteen (15) Calendar Days of the review a signed and sealed report detailing the inspection performed, results obtained from the review, and recommended remedial actions if applicable.

If the review findings, intermediate or final, are not accepted by FIU, FIU will provide written notification to the Design-Build Firm within thirty (30) Calendar Days of the date of receipt of the review results.

During the warranty period, the Design-Build Firm may monitor the Project using nondestructive procedures. The Design-Build Firm shall not conduct any coring, milling or other destructive procedures without prior approval by FIU.

If a measured distress value indicates remedial action is required in accordance with the Contract, the Design-Build Firm shall begin remedial Work within forty-five (45) Calendar Days for the remedial action required to correct the measured distress. The Design-Build Firm shall begin remedial Work within seventy-two (72) hours for any warranted feature deemed by FIU as an immediate danger to the traveling public. FIU will determine the allowable duration for the completion of the remedial Work.

In the event remedial action is necessary and forensic information is required to determine the source of the distress, then FIU may investigate using appropriate methods including, but not limited to, destructive techniques. The Design-Build Firm shall obtain approval from FIU prior to starting any forensic activities. All forensic activities shall be at no additional cost to FIU, and FIU will not be responsible for damages to the warranted features as a result of any forensic activities conducted by the Design-Build Firm.

The Design-Build Firm has the first option to perform all remedial Work. If, in the opinion of the Engineer, the feature showing distress poses an immediate danger to the traveling public and the Design-Build Firm cannot, or will not, begin remedial Work within seventy-two (72) hours, the Engineer has the authority to have the remedial Work performed by other forces. The Design-Build Firm shall be responsible for all incurred costs of the Work performed by other forces. Remedial Work performed by other forces does not alter any of the requirements, responsibilities or obligations of the warranty.

The Design-Build Firm shall complete all remedial Work to the satisfaction of the Engineer. Approval of remedial Work does not relieve the Design-Build Firm from the provisions of the warranty.

FIU will seek reimbursement from the Design-Build Firm for all expenses it may incur due to review/inspection of activities under Warranty Work. These expenses may include, but are not limited to, assessment of conditions requiring Warranty Work, review and concurrence from Specialty Engineer(s) for proposed remedial work submitted by the Design-Build Firm, legal expenses, and field inspection for the implementation of any and all remedial actions performed by FIU and/or its designee.

6-1.7.4 Example Warranty Provision

The following is an example of the warranty criteria, measurable standards, and remedial work plans for the warranted asphalt pavement feature:

Type of Distress	Type of Survey	Threshold Level for Each LOT (0.1 Mile) per lane	Remedial Action
Rutting	Any Survey	Depth > 0.30"	Remove and replace the distressed LOT(s) to the full distressed depth and full lane width.
		Depth < 0.30"	None required

Rideability	Any Survey	RN < 3.50	Remove and replace the distressed LOT(s) to the full distressed area(s) and full lane width
Cracking	Any Survey	Cracking >1/8" (Class 1B), accumulative cracking length > 50'	Remove and replace the distressed LOT(s) to the full distressed depth and full lane width.
Type of Distress	Type of Survey	Threshold Level for Each LOT (0.1 Mile) per lane	Remedial Action
Raveling, delamination and other disintegrated areas affecting the friction course	Intermediate Survey	Underlying layer exposed, individual length > 10'	Remove and replace the distressed area(s) to the full distressed depth and full lane width or temporarily patch the distressed area(s).
		Underlying layer exposed, individual length < 10'	Patch the distressed area(s) and remove and replace the distressed area(s) to the full distressed depth and full lane width prior to the final survey.
	Final Survey	Observation by the Engineer:	Replace the distressed area(s) and extend 50' at both ends at full lane width.
Pot holes, slippage area(s), segregated area(s) and other disintegrated areas.	Any Survey	Observation by the Engineer	Remove and replace the distressed area(s) to 150% of the area(s) or temporarily patch the distressed area(s) and remove and replace the distressed area(s) to 150% of the area(s) prior to the final survey.

Remark:

- (1) The Ride Number (RN) established by laser profiler will express the ride quality of the pavement of a LOT being tested.
- (2) For any two deficient LOTs not separated by 3 passing LOTs, the repair

Work shall cover the entire stretch (including the passing LOTs).

- (3) If the area of cracking, patching or raveling within a LOT exceeds sixty percent (60%) of the LOT area, the total LOT shall be corrected by approved methods.

6-2 **DESIGNATION OF A SPECIFIC PROJECT AS A CRITERION (“OR EQUAL” CLAUSE).**

Reference in the Contract Documents to any proprietary article, device, product, Material or fixture, or any form or type of Construction, by name, make, or catalog number, with or without the words “or equal,” establishes a standard of quality and is not intended to limit competition.

The Design-Build Firm may use any article, device, product, Material or fixture, or any form or type of Construction, that, in the judgment of the Engineer (expressed in writing), is equal, for the purpose intended, to that named.

6-3 **APPLICABLE DOCUMENTED AUTHORITIES OTHER THAN SPECIFICATIONS.**

6-3.1 **General:**

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

6-3.2 **Test Methods:**

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

6-3.3 **Construction Aggregates:**

Aggregates used on FIU projects must be in accordance with Rule 14-103, FAC.

6-4 **DOCUMENTATION.**

6-4.1 **Submission of Materials Certification and Reporting Test Results:**

The Design Build Firm shall provide certifications prior to placement of Materials. The Design Build Firm shall report test results at completion of the test and meet the requirements of the applicable Specifications.

6-4.1.1 **Certification on Qualified Products List (QPL) Products:**

Submit to the Engineer a notarized manufacturer’s certification on each QPL product that will be incorporated in the project. Submit the certification prior to utilization of the material on the project. Each certification will have the manufacturer letterhead, product name, batch number, FIU Project Number, category, title of certification person and test results in each product listed in the FIU Specification. This letter will also provide the following statement: “This product meets the material specifications as provided in the Contract Documents.” Ensure that the date of the manufacturer’s certification is current to the shelf life of the product. This letter will be delivered to the jobsite prior to placement or utilization. Retain test results for a minimum of three years.

6-4.1.2 **Certification on all Other Materials Not Specified:**

Submit to the Engineer a notarized manufacturer’s certification on each product that will be incorporated in the project. Submit the certification prior to

utilization on the project. Each certification will have the manufacturer letterhead, identification and type of material, FIU Project Number, test results of the material and notarized signature from the manufacturer. This letter will also provide the following statement: "This product meets the material specifications as provided in the Contract Documents." Ensure that the date of the manufacturer's certification is current to the shelf life of the product. Retain test results for a minimum of three (3) years.

6-4.2 Worksheets:

The Design Build Firm shall make available to the Engineer, when requested, worksheets used for collecting test information. Ensure the worksheets as a minimum contain the following:

- (1) Project Identification Number,
- (2) Time and Date,
- (3) Laboratory Identification and Name,
- (4) Training Identification Numbers (TIN) and initials,
- (5) Record details as specified within the test method.

6-4.3 Retention:

The Design Build Firm shall meet the requirements of Section 105 of the FDOT Standard Specifications.

6-5 INSPECTION TO ASSURE COMPLIANCE WITH ACCEPTANCE CRITERIA.

6-5.1 General:

The Engineer is not obligated to make an inspection of Materials at the source of supply, manufacture, or fabrication. The Design Build Firm shall provide the Engineer with unrestricted entry at all times to such parts of the facilities that concern the manufacture, fabrication, or production of the ordered Materials. The Design-Build Firm shall bear all costs incurred in determining whether the Material meets the requirements of these Specifications.

6-5.2 Quality Control (QC) Inspection:

The Design Build Firm shall provide all necessary inspection to assure effective QC of the operations related to Materials acceptance by FIU. This includes but is not limited to sampling and testing, production, storage, delivery, construction and placement. Ensure that the equipment used in the production and testing of the Materials provides accurate and precise measurements in accordance with the applicable Specifications. The Design Build Firm shall maintain a record of all inspections, including but not limited to, date of inspection, results of inspection, and any subsequent corrective actions taken.

6-5.3 Notification of Placing Order:

The Design Build Firm shall order Materials sufficiently in advance of their incorporation in the work to allow time for sampling, testing and inspection. Provide notification to the Engineer prior to placing orders for Materials.

The Design Build Firm shall submit to the Engineer a fabrication schedule for all items

requiring commercial inspection, before or at the pre-construction meeting. These items include, but are not limited to, steel bridge components, overhead cantilevered sign supports with cantilevered arms exceeding forty-one (41) feet [12 m], moveable bridge components or any other item identified as an item requiring commercial inspection in the Contract Documents. The Design Build Firm shall notify the Engineer in writing at least thirty (30) days before beginning any production and include a production schedule.

6-6 **INSPECTION AND TESTS AT SOURCE OF SUPPLY.**

6-6.1 **General:**

FIU, at its expense, may perform Quality Assurance inspections and material certifications for plant material or off-site manufactured items. The Design-Build Firm is responsible for the Design-Build Firm's Quality Control inspections to assure the quality of the material being produced and its conformity with the Specifications.

The Design-Build Firm shall submit three (3) copies of its plant or shop QA/QC plans to the Engineer for review and concurrence within sixty (60) days after the date of the Notice to Proceed for the Project. The Engineer will review the plans and return comments to the Design-Build Firm.

If a resubmittal is required by the Engineer, the Design-Build Firm shall make the required changes and resubmit three (3) copies of the corrected version to the Engineer within fifteen (15) days after receipt of the Engineer's comments. The Design-Build Firm's QA/QC plan shall address the methods and frequencies of testing and inspection. All QC Plans shall be in accordance with FIU Standards and Procedures.

6-6.2 **Cooperation by Design-Build Firm:**

Provide the Engineer with free entry at all times to such parts of the plant that concern the manufacturer or production of the Materials ordered, and bear all costs incurred in providing all reasonable facilities to assist the Engineer in determining whether the material furnished meets the requirements of the Specifications.

6-6.3 **FIU Not Obligated to Make Inspection at Source:**

The Engineer is not obligated to make an inspection of Materials at the source of supply. The Design-Build Firm is fully responsible for supplying satisfactory Materials.

6-6.4 **Retest of Materials:**

FIU and/or its designee may retest Materials that it has tested and accepted at the source of supply, after they have been delivered to the Project. FIU and/or its designee will reject all Materials that, when retested, do not meet the requirements of the Specifications.

6-7 **QUALITY CONTROL (QC) PROGRAM.**

6-7.1 **General:**

The Design-Build Firm shall meet the requirements of the FDOT's approved Quality Control Program for the production and Construction of Asphalt Mix, Portland Cement Concrete (Structural), Earthwork, Cementitious Materials, Timber, Prestressed and/or Precast Concrete Products and Drainage Products. This also includes transportation, storage, placement and other related Construction operations required by the Contract Documents.

An Independent Testing and Inspection Firm must be responsible for the implementation of the Quality Control Program. The Quality Control Manager must be

an employee of this firm, not be associated with the Design Build Firm, either as an employee or shareholder of the Company, and have full authority to act as the Design-Build Firm's agent to institute any and all actions necessary for the successful implementation of the QC Program.

When accreditation or certification is required, the Design-Build Firm shall provide supporting documents from the two (2) previous inspections performed by the accrediting or certifying agency available to FIU and/or its designee upon request.

The Design-Build Firm shall obtain the Engineer's approval prior to beginning production. The Design-Build Firm shall meet and maintain the approved QC Program requirements at all times. Production and Construction of these products without the Engineer's prior written approval of a Quality Control Program may result in rejection of the products. Continued approval will be subject to satisfactory results from FDOT and/or FIU evaluations. In cases of non-compliance with the approved Quality Control Program, the Design-Build Firm shall identify all affected Material and shall not incorporate or supply to any FIU project.

The following conditions may result in suspension of a QC Program:

- (1) Failure to timely supply information required;
- (2) Repeated failure of Material to meet Specification requirements;
- (3) Failure to take immediate corrective action relative to deficiencies in the performance of the QC Program;
- (4) Certifying Materials that are not produced under an approved QC Program for use on any FIU project; or
- (5) Failure to correct any deficiencies related to any requirement of the QC Program, having received notice from the Engineer, within the amount of time defined in the notice.

6-7.2 Producers of Asphalt Mixes, Portland Cement Concrete (Structural), Earthwork, Cementitious Materials, Timber, Prestressed and/or Precast Concrete Products and Drainage Products:

The Design-Build Firm shall have an approved Quality Control Program, developed in accordance with the guidelines in Section 105 of FDOT's Standard Specifications during the production of Materials to be used on any FIU project. In addition to meeting the requirements of Section 105, the producers of Portland Cement Concrete will meet the requirements Chapter 9.2, Concrete Production Facility Guidelines, of FDOT's Materials Manual.

6-7.3 Prestressed Concrete Plants:

The Design-Build Firm shall ensure that prestressed concrete plants participating in FDOT's Acceptance Program are qualified. Obtaining qualification will require a current Precast/Prestressed Concrete Institute (PCI) certification and an approved Quality Control Program, developed in accordance with the guidelines specified in Section 105 of FDOT Standard Specifications.

6-7.4 Steel and Miscellaneous Metals Quality Control Program:

Ensure that the fabricators of Steel and miscellaneous metal products participating in the FDOT's Quality Control Acceptance Program are qualified. Obtaining qualification requires an accepted Quality Control Plan, developed in accordance with Section 105 of the FDOT Standard Specifications. A current American Institute of Steel Construction (AISC) certification is a requirement for the Quality Control Acceptance Program of the steel and miscellaneous metal fabricators, provided that AISC certification program is available for the category of the fabrication products.

6-7.5 Quality Control Program Approval:

Producers of cementitious Materials, steel and miscellaneous metals, galvanized metal products and aggregates must submit their proposed Quality Control Program to the State Materials Office for acceptance. Producers of Asphalt Mixes, Portland Cement Concrete (Structural), Earthwork, Timber, Prestressed and/or Precast Concrete Products and Drainage Producers must have an FDOT approved Quality Control Program from the local FDOT District Materials Office.

6-7.6 Design-Build Firm's Quality Control Program:

The Design-Build Firm shall have an approved Quality Control Program meeting the requirements of Section 105 of the FDOT Standard Specifications for the transportation,

storage, placement, and other related Construction operations required by the Contract Documents.

6-7.7 Additional Requirements for Lump Sum Projects.

Prepare and submit to the Engineer a project-specific list of material items and quantities to be used on the project as a Job Guide Schedule in the same format as the FDOT's current Sampling, Testing, and Reporting Guide twenty-one (21) Calendar Days prior to commencement of construction. Provide up-to-date quantities for the items on the Job Guide Schedule to the Engineer with each monthly progress estimate.

FIU may not authorize payment of any progress estimate not accompanied by updated Job Guide Schedule quantities. Maintain the Job Guide Schedule throughout the project including the quantity placed since the previous submittal, and total to date quantity and any additional materials placed. Do not commence work activities that require testing until the Job Guide Schedule has been reviewed and accepted by the Engineer. At Final Acceptance, submit a final Job Guide Schedule that includes all materials used on the project in the same format as the monthly reports.

6-8 LAB QUALIFICATION PROGRAM.

The Design-Build Firm's Laboratories participating in any FIU project must meet one (1) of the following requirements:

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

In addition, they must also have current FDOT qualification when testing Materials that are used on any FIU project. The Design-Build Firm shall meet and maintain the qualification requirements at all times. Testing without FDOT's qualification may result in a rejection of the test results. In case of suspension or disqualification, prior to resumption of testing, resolve the issues to FDOT and FIU's satisfaction and obtain FDOT's reinstatement of qualification. Any of the following conditions may result in suspension of a Design-Build Firm Laboratory's qualified status:

- a. Failure to timely supply required information;

- b. Loss of accredited status;
- c. Failure to correct deficiencies in a timely manner;
- d. Unsatisfactory performance;
- e. Changing the laboratory's physical location;
- f. Delays in reporting the test data;
- g. Incomplete or inaccurate reporting; or
- h. Using unqualified technicians to perform testing.

It is prohibited for any laboratory to perform Contractor Quality Control testing and any other Acceptance Program testing on the same Contract.

6-9 **STORAGE OF MATERIALS.**

6-9.1 **Method of Storage:**

Store Materials in such a manner as to preserve their quality and fitness for the Work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific materials are prescribed under the applicable Sections. FIU and/or its designee may reject improperly stored Materials.

6-9.2 **Use of Right-of-Way for Storage:**

If the Engineer allows, the Design-Build Firm may use a portion of the right-of-way for storage purposes and for placing the Design-Build Firm's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. Provide any additional space required at no expense to FIU.

6-9.3 **FIU Not Responsible for Stored Materials:**

The protection of stored Materials is the Design-Build Firm's responsibility. FIU is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored Materials.

6-9.4 **Storage Facilities For Samples:**

Provide facilities for storage of samples as described in the contract and warranted by the test methods and Specifications.

6-10 **DEFECTIVE MATERIALS.**

The Engineer will consider the following Materials as defective: all Materials not meeting the requirements of the Specifications; segregated Materials, even though previously tested and approved; Materials that are or have been improperly stored; and Materials that are mixed with an excess of clay, coal, sticks, burlap, hay, straw, loam or earth, or other debris. The Engineer will reject all such Materials, whether in place or not. Remove all rejected material immediately from the site of the Work and from storage areas, at no expense to FIU. Do not use rejected material, the defects of which have been subsequently corrected, until the Engineer has approved the material's use. Upon failure to comply promptly with any order of the Engineer made under the provisions of this Article, the Engineer will remove and replace defective material and deduct the cost of removal and replacement from any moneys due or to become due the Design-Build Firm.

The Engineer will consider any haul unit load of mineral aggregates received for a FIU project as defective without an individual certification as required by Section 6-6.3.

6-11 PERSONNEL QUALIFICATIONS PROGRAMS.

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

END OF SECTION 6

SECTION 7 LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC

7-1 LAWS TO BE OBSERVED

7-1.1 General:

The Design-Build Firm shall comply with all Federal, State, and local laws and regulations which control the action or operation of those engaged or employed in the Work or which affect Materials used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).

The Design-Build Firm shall comply with the FHWA 1273, Required Contract Provisions for Federal-aid Construction Contracts, dated March 10, 1994 which is made part of the Contract Documents by reference and incorporated as an exhibit of the Contract. FHWA contract provisions shall also be made a part of all Design-Build Firm Subcontracts. FHWA 1273, is attached in its entirety as Exhibit A hereto.

The Design-Build Firm shall comply with the safety regulations promulgated by the State of Florida Department of Labor and Employment Security, comply with Chapter 403, Fla. Stat., regarding control of air pollution and that portion of Chapter 17-5, F.A.C., pertaining to open burning in land clearing operations. Where Work or structures included in the Contract are in "Navigable Waters of the U.S.," (33 of the Code of Federal Regulations, Part 329); "Waters of the U.S.," (33 of the Code of Federal Regulations, Part 323); or "Waters of the State," (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code) ; comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapters 161, 253, 373, and 403, Fla. Stat.; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, Florida Statutes regarding land reclamation and Chapters 62C-36 and 62C-39, F.A.C. Submit the Notice of Intent to Mine to:

Department of Environment Protection
Bureau of Mine Reclamation
Collins Building
2051 East Dirac Drive
Tallahassee, Florida 32310-3760

With a copy to:

Florida International University
Associate Vice President of Facilities
Management
11555 SW 17th Street
Miami, Florida 33199

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, Fla. Stat., regardless of exemptions allowed by Section 489.103, Fla. Stat.

prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

The Design-Build Firm shall indemnify, defend and save harmless FIU and all of its officers, agents and employees, in the amount of the Contract, against any claims or liability arising from or based on the violation of any such laws by the Design-Build Firm or its Subcontractors and Suppliers.

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

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

The Design-Build Firm or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

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

The "State of Florida Department of Environmental Protection (DEP) Generic Permit for Stormwater Discharge from Large and Small Construction Activities" applies to this Contract.

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

- (a) Preparation, execution and submission of DEP Generic Permit Notice of Intent (NOI) and payment of associated fee(s)
- (b) Preparation and submission of Erosion Control Plan as outlined in Section 104.
- (c) Any Design-Build Firm initiated SWPPP modifications
- (d) Performing inspections using a qualified inspector
- (e) Completion of SWPPP construction inspection reports

- (f) Executing associated certification forms provided by the Engineer
- (g) Preparation, execution and submission of Notice of Termination (NOT) of the DEP Generic Permit coverage.

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

Obtain and comply with all provisions of all required Dredge Permits, or required Dredge and Fill Permits, issued by various governmental agencies in conjunction with the Work.

Construct dikes prior to filling submerged land, and maintain the dikes throughout the filling period.

The Design-Build Firm shall exert every reasonable and diligent effort to ensure that all labor employed by the Design-Build Firm and its subcontractors for Work on the Project work harmoniously and compatibly with all labor used by other building and construction contractors now or hereafter on the site of the Work covered by this Contract. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others.

However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution. Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

7-1.2 Plant Quarantine Regulations:

The U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services have issued quarantine regulations pertaining to control of the nematodes of citrus, Rule 5B-44, Florida Administrative Code, and other plant pests. Contact the local (or other available) representatives of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the Division of Plant Industry of the Florida Department of Agriculture and Consumer Services to ascertain all current restrictions regarding plant pests that are imposed by these agencies. Keep advised of current quarantine boundary lines throughout the Construction period. These restrictions may affect operations in connection with such items as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, and other items which might involve the movement of Materials containing plant pests across quarantine lines.

Obtain quarantine regulations and related information from the following:

Animal and Plant Health Inspection Service
U.S. Department of Agriculture
3031 Lake Alfred Road
Winter Haven, Florida 33881

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

7-1.3 Introduction or Release of Prohibited Aquatic Plants, Plant Pests, or Noxious Weeds:

Do not introduce or release prohibited aquatic plants, plant pests, or noxious weeds into the Project limits as a result of clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping, or other such activities. Immediately notify the Engineer upon discovery of all prohibited aquatic plants, plant pests, or noxious weeds within the Project limits. Do not move prohibited aquatic plants, plant pests, or noxious weeds within the Project limits or to locations outside of the Project limits without the Engineer's permission.

Maintain all borrow material brought onto the Project site free of prohibited aquatic plants, plant pests, noxious weeds, and their reproductive parts. Refer to Rule 16C-52 and Rule 5B-57, F.A.C. for the definition of prohibited aquatic plants, plant pests, and noxious weeds. Furnish the Engineer, prior to incorporation into the Project, with a certification from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stating that the sod, hay, straw, and mulch materials are free of noxious weeds, including Tropical Soda Apple.

7-1.4 Compliance with Federal Endangered Species Act:

The Federal Endangered Species Act requires that FIU investigate the potential impact to threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If FIU's investigation identifies that there is a potential impact to a protected, threatened or an endangered species, FIU will make a biological assessment to determine what measures are necessary to mitigate such impact.

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

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event that FIU's biological assessment indicates that mitigation measures are necessary, cooperate as necessary to comply with such measures. Suitable habitat for the Manatee is located within the limits of this Project and the water management district permit contains specific conditions in regard to Manatee protection. The Design-Build Firm will be held responsible for any Manatees harmed, harassed, or killed as a result of Project Construction.

Take the following precautions to protect the Manatee:

- (1) Advise construction personnel of the Manatees, of its endangered status, and of the need to avoid any actions that would jeopardize the existence of Manatees.
- (2) Advise all work crews that there are civil and criminal penalties for harming, harassing, or killing Manatees.
 - (a) The Florida Manatee Act states: It shall be unlawful for any person at any time, by any means, or in any manner intentionally or negligently to annoy, molest, harass, or disturb any Manatee; capture or collect or

attempt to capture or collect any Manatee; pursue, hurt, wound, or kill any Manatee; or possess literally or constructively, any Manatee or any part of any Manatee. Any person violating the provisions of this paragraph shall be guilty of a misdemeanor of the first degree.

(b) Additional penalties of fines up to Twenty Thousand Dollars (\$20,000) and one (1) year imprisonment, or both, are provided for under the Federal Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

(3) Instruct appropriate work shift personnel in the appearance, habits, biology, migratory patterns, and preservation of the Manatee. At least one of these trained personnel shall be present on-site during Construction activities to maintain a constant surveillance for Manatees, assure the cessation of activities (such as dredging, excessive turbidity, and Construction barge activity) that may endanger Manatees cease, and assure that uninhibited passage for the animal is provided.

Instruct all work crews associated with the project of Manatees and the need to avoid collisions with Manatees.

(4) Post signs in the waterway to safeguard Manatees in the Project area. Specific warning sign and design placement is a condition of the Water Management District.

The Design-Build Firm shall abide by the following permit conditions, if applicable:

(1) Reporting of Manatee activity is required:

(a) Post the Manatee Hotline Number (800-342-5367) at on-site telephones to be used for information or help in dealing with Manatee problems. Telephone reports must be made immediately to the Manatee Hotline (1-888-404-FWCC) and the U.S. Fish and Wildlife Service Vero Beach - South Florida Field Office (772-562-3909) in the event of any injury, collision with, or killing of Manatees.

(b) Keep a log detailing sightings, collisions or other contact with Manatees as events occur during Construction. When Work is completed, forward this data to Florida Department of Environmental Protection, Marine Research Institute, Office of Protected Species Research, 100 Eighth Ave., S.E., St. Petersburg, FL 33701-5095; the U.S. Fish and Wildlife Service, 6620 South Point Drive, South, Suite 310, Jacksonville, FL 32216-0758 Attn: Bob Turner; and DERM.

(2) Operate all vessels associated with the Project at no wake\idle speed at all times.

(3) Cease all Construction activity in open water when a Manatee is sighted within three hundred (300) feet of the Project area. Construction may not resume until the Manatee has departed the area.

(4) No Construction debris shall be disposed of into the water.

(5) Prior to bridge demolition activity, conduct a visual survey of the affected areas to determine if any Manatees are present. If Manatees are present, cease Work

until they are safely out of the area.

7-1.5 Occupational Safety and Health Requirements:

The Design-Build Firm shall take precautions necessary for the protection of life, health and general occupational welfare of all persons (including employees of both the Design-Build Firm and FIU and its designee) until the Work of the Project has been completed and accepted by FIU.

The Design-Build Firm (and any Subcontractor) shall not require any person employed in performance of the Work of the Project to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under the safety and health standards, set forth in Title 29, CFR, Part 1926, including any subsequent revisions and/or updates.

7-1.6 Discovery of an Unmarked Human Burial:

When an unmarked human burial is discovered, immediately cease all activity that may disturb the unmarked human burial and notify the Engineer. Do not resume activity until specifically authorized by the Engineer.

7-1.7 Insecticides and Herbicides:

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

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

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

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

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

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

Maintain all permits until work is accepted by FIU.

Adhere to all labeling instruction.

If damage to desirable vegetation occurs as a result of herbicide use, FIU will monitor

the impacted vegetation to determine if damage is temporary or permanent. If the damage is determined to be permanent, replace damaged vegetation at no expense to FIU.

7-2 PERMITS AND LICENSES

7-2.1 **General:**

FIU, at its expense, may acquire the necessary permits and/or licenses required by Federal, State, and/or local regulatory agencies prior to letting; however, if FIU has not acquired any or all of the necessary permits and/or licenses, or if the applicable regulatory agency requires the Design-Build Firm to procure the permit or license, the Design-Build Firm shall acquire such permit or license, pay all charges and fees, and give all necessary notices. Once the permits and licenses are obtained, implementation and compliance with the conditions and requirements of the permits and/or licenses is the sole cost and responsibility of the Design-Build Firm.

No free passes will be issued to the Design-Build Firm for use on the toll plazas during the prosecution of this Contract. The Design-Build Firm will be required to pay all applicable toll charges in transporting personnel, Equipment or Materials to or from the site of Work.

If applicable, apply for a building permit upon receipt of the Notice to Proceed. The Design-Build Firm shall pay the fees for the building permit, plans review and inspections.

No additional Contract time will be granted to obtain the required permits or licenses or for coordination with any agency.

The Design-Build Firm shall acquire any modifications or revisions to an original permit when the Design-Build Firm requires such modifications or revisions to complete the Construction operations specified in the Contract Documents and within the right-of-way limits. Any required modifications to permits obtained by FIU that may result from changes that the Design-Build Firm proposes to this project, either prior or after the award of the project, shall become the sole responsibility of the Design-Build Firm.

Acquire all permits for Work performed outside the right-of-way or easements for the Project.

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

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

7-2.2 **Work or Structures in Navigable Waters of the U.S., Waters of the U.S., and Waters of the State:**

In general, one (1) or more governmental agencies will exercise regulatory authority over Work or structures, including related Construction operations, in: all tidal areas (Channelward of the mean high water lines on the Atlantic and Gulf Coast); in the ocean and gulf waters to the outer limits of the continental shelf; in all rivers, streams, and lakes to the ordinary high water line; in marshes and shallows that are periodically inundated and normally characterized by aquatic vegetation capable of growth and

reproduction; in all artificially created channels and canals used for recreational, navigational, or other purposes that are connected to navigable waters; and, in all tributaries of navigable waters up to their headwaters.

Whenever the Work under or incidental to the Contract requires structures or dredge/fill/Construction activities in "Navigable Waters of the U.S.," "Waters of the U.S.," and "Waters of the State," the Federal, State, county, and local regulatory agencies may require a permit. For such dredge/fill/Construction specified in the Contract Documents to be accomplished within the limits of the Project, or for any dredge/fill/Construction within the limits of FIU-furnished borrow areas, the Design-Build Firm shall procure the necessary permits.

Acquire any modifications or revisions to an original permit when such modifications or revisions are necessary to complete the construction operations specified in the Contract Documents and within the right-of-way limits.

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

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

7-3 PATENTED DEVICES, MATERIALS AND PROCESSES.

Payments to the Design-Build Firm are understood to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved with the Work of the Project. Whenever the Design-Build Firm is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be provided by suitable legal agreement with the patentee or owner of the copyright. A copy of such agreement shall be submitted to FIU; however, whether or not such agreement is made or filed, the Design-Build Firm and its Surety, in all cases, shall indemnify, defend and save harmless FIU and all of its officers, agents and employees, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, on Work of the Project, and shall indemnify FIU and all of its officers, agents and employees for any costs, expenses and damages which FIU may be obligated to pay by reason of any such infringement, at any time during the Work of the Project or after completion and acceptance of the Project by FIU.

The Design-Build Firm shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The Design-Build Firm shall indemnify and hold harmless FIU from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from incorporation in the Work of any such invention, design, process, product or device.

7-4 RIGHT-OF-WAY FURNISHED BY FIU

Except as otherwise stipulated in the Contract Documents, FIU will furnish all rights-of-way necessary for the proper completion of the Work at no expense to the Design-Build Firm.

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

7-5 RESTORATION OF SURFACES OPENED BY PERMIT

Upon the presentation of a duly authorized and satisfactory permit that provides that all necessary repair Work will be paid for by the party holding such permit, the Engineer may authorize the Design-Build Firm to allow parties bearing such permits to make openings in the highway. Upon the Engineer's written order, the Design-Build Firm shall perform, in an acceptable manner, all necessary repairs due to such openings, and such necessary Work that the Engineer orders, subject to the same conditions as the original Work performed. FIU will pay the Design-Build Firm for such Work.

7-6 SANITARY PROVISIONS

The Design-Build Firm shall provide and maintain in a neat and sanitary condition such accommodations for the use of Design-Build Firm's employees as are necessary to comply with the requirements and regulations of the State and local boards of health.

The Design-Build Firm shall not create any public nuisance.

7-7 CONTROL OF THE DESIGN-BUILD FIRM'S EQUIPMENT

7-7.1 Traffic Interference:

Design-Build Firm shall not permit Equipment to unreasonably interfere with traffic while the Equipment is on or traversing a road or street.

7-7.2 Overloaded Equipment:

Any hauling unit or Equipment loaded in excess of the maximum weights set out in the Florida Uniform Traffic Control Law (or lower weights that may be legally established for any section of road or bridge by the FDOT or local authorities) shall not be operated on any road or street except as provided below for crossings, or as provided by a special permit issued by the governmental unit having jurisdiction over a particular road or bridge. This restriction applies to all roads and bridges inside and outside the Project limits as long as these roads and bridges are open for public use. Roads and bridges which are to be demolished may be overloaded after they are permanently closed to the public. All liability for loss or damages resulting from Equipment operated on a structure permanently closed to the public shall be the responsibility of the Design-Build Firm.

7-7.3 Crossings:

Where it is necessary to cross an existing road, including specifically the existing travel lanes of a divided highway within the limits of the Project, the Design-Build Firm shall obtain the necessary permits from the governmental unit having jurisdiction. The Design-Build Firm shall comply with all permit conditions at no additional cost to FIU.

Cross existing roads or streets only at Engineer-designated points. FIU or its designee may require the Design-Build Firm to protect the pavement or Roadway at the crossing by using lumber, planks, or fill. The Design-Build Firm shall provide and or pay for flagging and watchman service, or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.

7-7.4 Protection from Damage by Tractor-Type Equipment:

Positive measures shall be taken by the Design-Build Firm to assure that tractor-type Equipment does not cause damage to roads. If any such damage occurs due to the

Design-Build Firm's negligence, the Design-Build Firm shall repair the damage to the satisfaction of the governmental unit having jurisdiction over the road and at no cost to FIU.

7-7.5 Design-Build Firm's Equipment on Bridge Structures:

The Specialty Engineer shall analyze the effect of imposed loads on bridge structures, within the limits of the Contract, resulting from the following operations:

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

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

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

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

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

7-7.6 Posting of the Legal Gross Vehicular Weight:

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

7-8 STRUCTURES OVER NAVIGABLE WATERS

7-8.1 Compliance with Federal and Other Regulations:

Where erecting structures in, adjacent to, or over, navigable waters, observe all regulations and instructions of Federal and other authorities having control over such waters. Do not obstruct navigation channels without permission from the proper authority, and provide and maintain navigation lights and signals in accordance with the

Federal requirements for the protection of the structure, of false work, and of navigation. In the event of accidental blocking of the navigation channel, immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage.

7-8.2 Maintenance of Channel:

Where the Work includes the excavation of a channel or other underwater areas to a required section, maintain the section from shoaling or other encroachment until Final Acceptance of the Project.

7-9 USE OF EXPLOSIVES

Use of explosives will not be allowed for the Project.

7-10 FOREST PROTECTION

7-10.1 Compliance with State and Federal Regulations:

In carrying out Work within or adjacent to State or National forests or parks, comply with all of the regulations of the State or Federal authority having jurisdiction, governing the protection of and the carrying out of Work in forests or parks, and observe all sanitary laws and regulations with respect to the performance of Work in these areas.

Keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction, installation, and maintenance of any construction camps, living quarters, stores, warehouses, sanitary facilities, and other structures; all in accordance with the requirements of the forest or park official.

7-10.2 Prevention and Suppression of Forest Fires:

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

7-11 PRESERVATION OF PROPERTY

7-11.1 General:

Preserve from damage all property, which is in the vicinity of or is in any way affected by the Work, the removal or destruction of which is not specified in the Plans. This applies to public and private property, public and private utilities (except as modified by the provisions of Section 7-11.5), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Design-Build Firm), etc. Whenever the Design-Build Firm's activities damage or injure such property, immediately restore it to a condition similar or equal to that existing before such damage occurred, at no expense to FIU.

Protect existing bridges during the entire construction period from damage caused by the construction operations or equipment. FIU will not require the Design-Build Firm to provide routine repairs or maintenance for such structures. However, the Design-Build Firm shall immediately repair, at no expense to FIU, all damage occasioned by the Design-Build Firm. In the event that the Design-Build Firm's Work results in damage to a bridge requiring repairs, the Design-Build Firm shall make such repairs with any equipment, Materials, or labor at the Design-Build Firm's disposal prior to continuing

Work.

The Design-Build Firm shall protect all geodetic monuments, horizontal or vertical, located within the limits of the Project.

7-11.2 Failure to Restore Damaged Property:

If the Design-Build Firm fails to restore such property, bridge, or road, FIU may, at its sole option and with forty-eight (48) hours notice to the Design-Build Firm, proceed to repair, rebuild, or otherwise restore the damaged property, bridge or road. The cost of such repairs will be deducted by FIU from any monies due or which may become due the Design-Build Firm.

7-11.3 Design-Build Firm's Use of Streets and Roads:

7-11.3.1

Where the Design-Build Firm hauls Material or Equipment to the Project over roads and bridges on the state park road system, state highway system, county road system, or city street system and such hauling causes damage, the Design-Build Firm, at Design-Build Firm's expense, shall immediately repair such road or bridge to as good a condition as existed before the hauling began.

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

7-11.3.2

The Design-Build Firm is also responsible for repairing damage caused by hauling Materials to the Project along roads outside the limits of the Project which are on FIU's property (roads under the jurisdiction of FIU) or specifically designated in the Plans as haul roads. The Design-Build Firm is also responsible for all damages to any road or bridge caused by the Design-Build Firm's failure to comply with Section 7-7.2.

7-11.3.3

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

7-11.3.4 Traffic Signs, Signal Equipment, Highway Lighting, Vehicular Impact Attenuators, and Guardrail:

Protect all existing roadside signs, signal equipment, highway lighting, vehicular impact attenuators, and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting, vehicular impact attenuators or guardrail lie within the limits of construction, or wherever so directed by

the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting, vehicular impact attenuators, and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

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

Payment for repairs will be made in accordance with Section 4-3.2.

7-11.4 Operations Within Railroad Right-of-Way:

If the Project's scope of Work is within or in the vicinity railroad right-of-way, the Design-Build Firm shall comply with the following sections:

7-11.4.1 Notification to the Railroad Company:

Notify the superintendent of the railroad company and the Engineer at least seventy-two (72) hours before beginning any operation within the limits of the railroad right-of-way; any operation requiring movement of employees, trucks, or other Equipment across the tracks of the railroad company at other than an established public crossing; and any other Work that may affect railroad operations or property.

7-11.4.2 Design-Build Firm's Responsibilities:

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

7-11.4.3 Watchman or Flagging Services:

The Design-Build Firm shall notify the Engineer at least seventy-two (72) hours in advance of beginning any operation within the limits of the railroad right-of-way that will require watchmen or flagman. The Engineer will schedule watchmen and/or flagmen through the appropriate railroad company(ies). FIU will be responsible for any and all costs and fees associated with providing watchmen and flagmen.

7-11.5 Utilities:

The Design-Build Firm shall be responsible for coordinating all utility relocations. Coordination shall include any necessary utility agreements when and where applicable. The utility company or FIU shall be responsible for the costs of all relocations, adjustments, etc. deemed absolutely necessary to accomplish the requirements of the Contract Documents. The Design-Build Firm shall make every attempt to design around existing utilities, minimizing impacts. Plans shall be provided to FIU showing existing and proposed utility locations and their relationship to the proposed construction. FIU shall determine, at its sole discretion, whether a utility relocation, adjustment, etc. is absolutely necessary to accomplish the requirements of the Contract Documents. All costs for relocations, adjustments, etc. identified and proposed by the Design-Build

Firm, for the convenience of the Design-Build Firm, shall be borne by the Design-Build Firm.

7-11.5.1 Arrangements for Protection or Adjustment:

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

The Design Build Firm shall make the necessary arrangements with utility owners for removal or adjustment of utilities where the Engineer determines that such removal or adjustment is essential to the performance of the required Construction.

FIU will not consider relocation or adjustment requests based on the Design-Build Firm's proposed use of a particular method of construction or a particular type of equipment as essential to the Construction of the Project if the Design-Build Firm could use other common methods and equipment without relocating or adjusting the utility.

The Engineer will determine the responsibility for any such required adjustments of utilities. The Design-Build Firm shall make all requested relocations or adjustments because of delivery to the job site of Design-Build Firm-furnished Materials, at no expense to FIU.

FIU considers relocations and adjustments (or other protection) under the following circumstances as essential to the construction of the Project:

- (1) Utilities lying within the vertical and horizontal construction limits, plus the reasonably required working room necessary for operation of equipment normally used for the particular type of construction, all as determined by the Engineer (and except as provided in paragraph (4) below). (In the case of overhead electrical conductors that carry more than 400 V, a minimum of ten (10) feet clearance between the conductor and the nearest possible approach of any part of the equipment is required, except where the utility owner effects safeguards approved by the Florida Department of Labor and Employment Security.)
- (2) Utilities lying within the horizontal limits of the Project and within twelve (12) inches below the ground surface or the excavation surface on which the Design-Build Firm operates construction equipment, or within twelve (12) inches below the bottom of any stabilizing course specified in the Plans.
- (3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in paragraph (4) below). Such normal limits shall extend to side slopes along the angle of repose, as established by sound engineering practice, unless the Contract Documents require support of the excavation sides by sheeting or the Design-Build Firm

elects to sheet such excavation for its own convenience.

- (4) Where utilities cross pipe trenches transversely within the excavation area, but not within positions from which relocation or removal is necessary, the utility owner is responsible for providing and effecting all reasonable measures for their support and protection during construction operations. Cooperate with the utility owner in the owner's effecting of such support and protective measures. The Design-Build Firm is responsible for all damage to the utility that is caused by the Design-Build Firm's neglect or failure to cooperate or to use proper precaution in performing its Work. In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, the Engineer will direct such relocation so as to cause the least impediment to the overall construction operations.

7-11.5.2 **Cooperation with Utility Owners:**

Cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement Work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

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

7-11.5.3 **Utility Adjustments:**

Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Cooperate with the various utility construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Design-Build Firm shall repair all damage to the relocated utilities resulting from its operations at no expense to FIU.

The requirements of Section 7-11.1 outline the Design-Build Firm's responsibility for protecting utility facilities. FIU will include in the Contract the utility authorities who are scheduled to perform utility work on the Project for FIU. Utility adjustments required by FIU shall be in addition to those desired by the Design-Build Firm.

The utility work required by FIU which will be accomplished concurrently with the Work will involve facilities owned by the agencies listed in the Solicitation Documents.

The utility agencies performing work for FIU shall advise the Design-Build Firm of the scheduled utility adjustment period. The utility adjustment period indicates the total time required for each phase of the work and may or may not be consecutive days. Utility adjustments may or may not be underway prior to the Design-Build Firm receiving its Notice to Proceed.

The Design-Build Firm shall coordinate all field activities to facilitate utility adjustments required by FIU.

Where utility work must be coordinated with Work, the portion of the anticipated relocation period covering such concurrent Work may or may not begin on the day Work and may or may not be consecutive days.

7-11.5.4 **Weekly Meetings:**

Conduct weekly meetings on the job site with all the affected utility companies and the Engineer to coordinate project construction and utility relocation. Submit a list of all attendees one week in advance to the Engineer for approval.

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

When utility relocations no longer affect construction activities, the Design-Build Firm may discontinue the meetings with the Engineer's approval.

7-12 **RESPONSIBILITY FOR DAMAGES, CLAIMS, ETC.**

7-12.1 **Design-Build Firm to Provide Defense against Claims and Suits:**

See Section 7-13, below.

7-12.2 **Guaranty of Payment for Claims:**

The Design-Build Firm guarantees the payment of all just claims for Materials, supplies, tools, Equipment or labor and other just claims against him or any Subcontractor in connection with the Contract. Final Acceptance and payment by FIU will not release the Design-Build Firm's bond until all such claims are paid or released.

7-13 **INDEMNIFICATION/INSURANCE.**

7-13.1 **Indemnification:**

The Design-Build Firm shall be required to indemnify and hold harmless, Owner (FIU), and all of Owner's Officers, Agents, Employees, and Successors from any claim, loss, damage, cost, charge, judgment or expense, to the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Design-Build Firm, its agents, employees, or subcontractors during the performance of the Contract, whether direct or indirect, and whether to any person or property to which Owner or said parties may be subject.

The Design-Build Firm shall also be required to indemnify and hold harmless, the Florida Department of Transportation (in its capacity as titleholder of the FIU System), and all of FDOT's officers, agents, employees, and successors from any claim, loss, damage, cost, charge, judgment or expense, to the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Design-Build Firm, its agents, employees, or subcontractors during the performance of the Contract, whether direct or indirect, and whether to any person or property to which Owner, FDOT or said parties may be subject.

The Design-Build Firm's obligation to indemnify the Owner or FDOT shall be triggered by Owner's notice of claim for indemnification to the Design-Build Firm. The Design-Build Firm's inability to evaluate liability or its evaluation of liability shall not excuse the Design-Build Firm's duty to indemnify within seven (7) days after such notice by Owner

is given by registered mail. Only an adjudication of judgment after the highest appeal is exhausted specifically finding Owner solely negligent shall excuse performance of this provision by the Design-Build Firm with respect to indemnification of the Owner. The Design-Build Firm shall pay all costs and fees related to this obligation and its enforcement by Owner. Owner's failure to notify the Design-Build Firm of a claim shall not release the Design-Build Firm of the above duty to indemnify.

The Design-Build Firm shall provide written evidence that a complete copy of the Proposal Documents, and any resulting Contract, has been delivered to the insurance company underwriting each insurance policy herein required of the Design-Build Firm.

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

The Design-Build Firm guarantees the payment of all just claims for materials, supplies, tools or labor and other just claims against it or any Subcontractor or Subconsultant, in connection with the Contract. The Owner's Final Acceptance and payment does not release the Contract Bond until all such claims are paid or released.

The parties agree that one percent (1%) of the total compensation to the Design-Build Firm for performance of this Agreement is the specific consideration from Owner to the Design-Build Firm for the Design-Build Firm's indemnity agreements.

7-13.2 Insurance:

Please refer to the Solicitation Documents.

7-14 RESERVED

7-15 DESIGN-BUILD FIRM'S RESPONSIBILITY FOR WORK.

Until acceptance by FIU, the Work shall be under the charge and custody of the Design-Build Firm. The Design-Build Firm shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work. In the case of extensive or catastrophic damage, FIU, at its sole discretion, may reimburse the Design-Build Firm for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Design-Build Firm including, but not necessarily limited to, Acts of God, of the public enemy, or of governmental authorities.

In addition to the above, the Design-Build Firm is not responsible for damage to any landscape items caused by an officially declared hurricane that occurs after the Final Acceptance of the entire Work, and during any remaining portion of the ninety (90) Calendar Day establishment period, as defined in Section 580-11 of the FDOT Standard Specifications.

7-16 OPENING SECTIONS OF HIGHWAY TO TRAFFIC.

Whenever any bridge or section of roadway is in an acceptable condition for travel, the Engineer may direct the Design-Build Firm to open it to traffic. FIU's direction to open a bridge or roadway does not constitute an acceptance of the bridge or roadway, or any part thereof, or waive any Contract provisions. Perform all necessary repairs or renewals, on any section of the roadway or bridge thus opened to traffic under instructions from the Engineer, due to defective material or Work or to any cause other than ordinary wear and tear, pending completion and

the Engineer's acceptance of the roadway or bridge, or other Work, at no expense to FIU.

7-17 WAGE RATES.

Predetermined Wage Rate Decisions (U.S. Department of Labor Wage Rate Tables) exist for Heavy, Highway, and Building Construction Projects, and are included in the Contract Documents, if applicable. FIU will include other Specialty Decisions when required. FIU will include Heavy Decisions in contracts for bridge construction over commercially navigable waters. FIU will include Highway Decisions in contracts for highway and/or bridge construction (other than over commercially navigable waters). FIU will include Building Decisions in contracts for building construction. Review Wage Rate Tables for completeness. Request additional classifications when needed. Initiate requests for additional wage rate classifications through the Engineer's office.

7-18 SUPPLEMENTAL AGREEMENTS.

Section 337.11, Florida Statutes, as amended, which prescribe certain limitations on the use of supplemental agreements, are a part of the Contract. In the event FIU's Procurement Policy and Section 337.11, Florida Statutes, conflict, FIU's Procurement Policy shall control.

7-19 SCALES FOR WEIGHING MATERIALS.

7-19.1 Applicable Regulations:

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

7-19.2 Base for Scales:

Place such scales on a substantial horizontal base to provide adequate support and rigidity and to maintain the level of the scales.

7-19.3 Protection and Maintenance:

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

7-20 SOURCE OF FOREST PRODUCTS.

If determined by FIU, compliance with Section 255.20, Florida Statutes will be required so that, where price and quality are equal, and when available, the Design-Build Firm will use only timber, timber piling, or other forest products that are produced and manufactured in the State of Florida.

7-21 REGULATIONS OF AIR POLLUTION FROM ASPHALT PLANTS.

7-21.1 General:

Perform all Work in accordance with all Federal, State, and local laws and regulations regarding air pollution and burning. In particular, pay attention to Chapters 17-2 and 17-5 of the Rules and Regulations of the Department of Environmental Protection, and to any part of the State Implementation Plan applicable to the Project. See also Section 110-9.2 of FDOT Standard Specifications regarding burning of debris.

7-21.2 Dust Control:

Ensure that excessive dust is not transported beyond the limits of construction in populated areas. The Design-Build Firm may control dust for embankments or other

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

7-21.3 Asphalt Material:

Use only emulsified asphalt, unless otherwise stated in the Plans and allowed by Chapter 17-2, F.A.C., as amended from time to time. Store and handle asphalt materials and components so as to minimize unnecessary release of hydrocarbon vapors.

7-21.4 Asphalt Plants:

Operate and maintain asphalt plants in accordance with Chapter 17-2, F.A.C., as amended from time to time. Provide the plant site with a valid permit as required under Chapter 17-2, F.A.C., prior to start of Work.

7-22 DREDGING AND FILLING.

Section 370.033, Florida Statutes, requires that all persons, who engage in certain dredge or fill activities in the State of Florida, obtain a certificate of registration from the Florida Department of Environmental Protection, and that they keep accurate logs and records of all such activities for the protection and conservation of the natural resources. Obtain details as to the application of this law from the Department of Environmental Protection. No excavation or dredging, beyond the specified depths, shall be allowed unless it is authorized by FIU.

7-23 AVAILABLE FUNDS.

For contracts in excess of Twenty-Five Thousand Dollars (\$25,000) or a term for more than one (1) year, comply with the following provisions of Chapter 339, Florida Statutes:

FIU will not, during any fiscal year, expend money, incur any liability, or enter into any contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If FIU enters into such a contract, verbal or written, in violation of this subsection, such contract is null and void, and FIU will not make any payments thereon. FIU will require a statement from FIU's chief financial officer or designee that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained prevents FIU from executing contracts for a period exceeding one (1) year, but FIU will make such contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

7-24 SUBMITTAL OF WAGE RATE SUMMARY.

It is a condition of this Contract, and the Design-Build Firm shall make it a condition of all subcontracts entered into pursuant to this Contract, that the Design-Build Firm submit to the Engineer's office, by the tenth (10th) of each month, the original Monthly Summary of Wage Rates, including those of all subcontractors. The Design-Build Firm shall review the Monthly Summaries of Wage Rates for completeness before submitting them to the Engineer.

7-25 DESIGN-BUILD FIRM'S MOTOR VEHICLE REGISTRATION.

The Design-Build Firm shall register all vehicles used in the course of providing the Work as required by Chapter 320, Florida Statutes. Submit such proof of registration in the form of a notarized affidavit to FIU. FIU will not make payment to the Design-Build Firm until the required proof of registration is on file with FIU.

If the Design-Build Firm fails to register any motor vehicle that it operates in Florida, pursuant

to Chapter 320, Florida Statutes, FIU may disqualify the Design-Build Firm from proposing on any future FIU Procurement, or FIU may suspend the Design-Build Firm from this and/or other FIU contracts.

7-26 EQUAL EMPLOYMENT OPPORTUNITIES. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS AND NONDISCRIMINATION

1. The Design-Build Firm shall comply with the Equal Opportunity, Disadvantaged Business Enterprise Participation Requirements, and Nondiscrimination Requirements for this project which are made part of the Contract Documents by reference and incorporated as exhibits of the Contract and are attached hereto as follows:

Disadvantaged Business Enterprise	EXHIBIT B
Executive Order # 11246	EXHIBIT C
Equal Employment Opportunity	EXHIBIT D
Title VI and related Statutes Nondiscrimination Agreement	EXHIBIT E
Company EEO/AA Requirements	EXHIBIT F
DBE Utilization	EXHIBIT G
DBE Reporting	EXHIBIT H

2. These contract provisions shall also be made a part of all Design-Build Firm Subcontracts.

7-27 PREVAILING PARTY ATTORNEY'S FEES.

If any dispute regarding Design-Build Firm claims arising hereunder or relating to the Contract (and the Design-Build Firm's Work hereunder) results in litigation, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees and costs including costs and expenses of expert witnesses.

In order for the Design-Build Firm to be the prevailing party, the Design-Build Firm must receive an adjusted judgment or adjusted award equal to at least eighty percent (80%) of its contested claims filed with FIU, failing which FIU will be deemed the prevailing party in such litigation.

For purposes of determining whether the judgment of award is eighty percent (80%) or more of the contested claims, "adjusted award" or "adjusted judgment" shall mean the amount designated in the award or final judgment as compensation to the Design-Build Firm for its claims (exclusive of interest, cost or expenses), less: (i) any amount awarded to FIU (exclusive of interest, costs or expenses) on claims asserted by FIU against the Design-Build Firm in connection with the Contract; and (ii) any amount offered in settlement prior to initiation of Design-Build Firm litigation (exclusive of interest, cost or expense).

The term "contested claim" or "claims" shall mean the initial written claim(s) submitted to FIU by the Design-Build Firm (disputed by FIU) which have not otherwise been resolved through ordinary close-out procedures of the Contract prior to the initiation of litigation. Design-Build Firm claims or portions thereof which FIU agreed to pay or offered to pay prior to initiation of litigation shall not be deemed contested claims for purposes of this provision. If the Design-Build Firm submits a modified, amended or substituted claim after its original claim and such modified, amended or substituted claim(s) is for an amount greater than the prior claim(s), the higher amount shall be the claim(s) for purposes of determining whether the award is at least eighty percent (80%) of the Design-Build Firm's claim(s).

Attorneys' fees and costs awarded to the prevailing party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to FIU through and including trial, appeal and collection.

In the circumstance where an original claim is subsequently modified, amended or a substituted

claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted, regardless of whether such original claim amount is ultimately used in determining if the judgment or award is at least eighty percent (80%) of the cumulative claims.

The term "litigation" shall include mediation proceedings, but shall not include arbitration.

As a condition precedent to litigation, the Design-Build Firm shall have first submitted its claim (together with supporting documentation) to FIU, and FIU shall have had sixty (60) days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, FIU and the Design-Build Firm agree that neither party shall avail itself of Section 768.79, Florida Statutes, as amended from time to time, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

Should this provision be judged unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this provision shall be void in its entirety and each party shall bear its own attorneys' fees and costs.

END OF SECTION 7

**SECTION 8
PROSECUTION AND PROGRESS OF THE WORK**

8-1 SUBCONTRACTING OR ASSIGNING OF CONTRACTS

The Design-Build Firm shall not subcontract, sell, transfer assign or otherwise dispose of the Contract or any portion thereof, or the rights or responsibilities therein, without written consent by FIU. Upon request, the Design-Build Firm must furnish FIU with a copy of any subcontract related to the Project. Subcontracting of any portion of the Work does not relieve the Design-Build Firm or the Surety of their respective liabilities under the Contract. FIU recognizes a Subcontractor only in the capacity of an employee or agent of the Design-Build Firm, and the Engineer may require the Design-Build Firm to remove the Subcontractor as in the case of an employee of the Design-Build Firm.

If after Contract award, the Design-Build Firm wishes to modify the *Prime & Subcontractor/Subconsultant Information Statement* form submitted with its Proposal, the Design-Build Firm must provide a written request for approval by FIU by submitting a *Request for Authorization to Subcontract Work* form. With the Engineer's acceptance of the request, the Design-Build Firm may subcontract a portion of the Work, but shall perform with his own organization Work amounting to not less than forty percent (40%) of the total Contract Amount, unless otherwise provided in the Solicitation Documents. If the Design-Build Firm subcontracts a portion of an item included in the Schedule of Values, FIU will use only the subcontracted portion of the cost in determining the percentage of subcontracted Work.

FIU must notify the Design-Build Firm in writing within five (5) business days of receipt of the Request for Authorization to Subcontract Work form, that FIU does not approve the request. If such written notification is not provided within the established timeframe, the Design Build Firm may proceed with the subcontracting of the work as identified in the submitted Request for Authorization to Subcontract Work form. For the purpose of meeting the requirement of this Article, FIU will not consider off site commercial production of materials and manufactured component products that the Design-Build Firm purchases, or their transportation to the Project, as subcontracted work.

All Sucontractors/Subconsultants as identified in the paragraphs above, whether approved with the Design-Build Proposal or approved after Contract award through the *Request for Authorization to Subcontract Work*, shall be reported with the Design-Build Firm's monthly invoice in the *FIU Subcontractor-Subconsultant Invoice Tracking Form*.

8-2 WORK PERFORMED BY EQUIPMENT-RENTAL AGREEMENT

The limitations set forth in Section 8-1, regarding the amount of Work that may be sublet do not apply to Work performed by Equipment rental agreements. The Design-Build Firm shall notify FIU, in writing, if the Design-Build Firm intends to perform any Work through an Equipment rental agreement. The notification shall be submitted to FIU and/or its designee before any rental Equipment is used on the Project.

The notification shall include a list of the Equipment being rented, the Work to be performed by the Equipment, and whether the rental includes an Equipment operator. Notification to FIU and/or its designee will not be required for Equipment being rented (without operators) from an Equipment dealer or from a firm whose principle business is renting or leasing Equipment.

The operators of all rented Equipment, whether rented on an operated or a non-operated basis, are subject to all wage rate requirements applicable to the Project. When renting Equipment without operators, the Design-Build Firm shall carry the operators on its own payroll. For Equipment that is rented on an operated basis, and when required by the Contract or requested

by the Engineer, furnish payrolls from the lessor with the names of the operators shown thereon. When a lessor provides rentals of Equipment on an operated basis that exceed Ten Thousand Dollars (\$10,000), such lessor is subject to any Equal Employment Opportunity requirements that are applicable to the project.

8-3 PROSECUTION OF WORK

8-3.1 Compliance with Time Requirements:

The Design-Build Firm shall commence Work in accordance with the Notice to Proceed and the approved Project Schedule and shall provide sufficient labor, Materials and Equipment to ensure the completion of the Work within the Contract time allowed including approved increases. If the Design-Build Firm fails to furnish sufficient and suitable Equipment, forces and Materials to assure the progress of the Work in accordance with the approved Project Schedule, FIU may withhold all payments which are, or may become due, or may suspend the Work until such deficiencies are corrected.

8-3.2 Submission of Project Schedule

Submit to the Engineer for approval a Critical Path Method (CPM) Project Schedule (Project Schedule) within thirty (30) Calendar Days after execution of the Contract or at the pre-design/construction conference, whichever is earlier. The Project Schedule shall not exceed time limits currently stated in the Contract Documents, shall be updated on a monthly basis, and revised at appropriate intervals (in coordination with the Engineer) as required by the conditions of the Work and Project, and shall provide for expeditious and practicable execution of the Work.

Any comments to the Project Schedule will be provided to the Design-Build Firm within thirty (30) Calendar Days of its submittal. The Design-Build Firm shall incorporate the comments and submit a revised Project Schedule for approval by the Engineer within the following fifteen (15) Calendar Days. Once the Project Schedule has been accepted it will become the baseline schedule for the Project. Approval of the Project Schedule will be dependent upon satisfactorily identifying Work items, dates and durations in conformance with the scope of Work, terms of the Contract and the established Contract Time.

The Project Schedule shall include detailed schedule diagrams and schedule data as described below for the entire Contract Time. The Project Schedule shall be consistent with the Design-Build Firm's Maintenance of Traffic plan, showing activities for each discrete Contract activity to be accomplished within each Maintenance of Traffic phase. Include activities in the Project Schedule for the design of all components of the Project, its deliverables and reviews. Sufficient liaison shall be conducted and information provided to indicate coordination with utility owners having facilities within the project limits. The schedule must reflect utility adjustment and relocations, when required.

Failure to include any element of work or any activity relating to utility work will not relieve the Design-Build Firm from completing all work within the Contract Time at no additional time or cost to FIU, notwithstanding the acceptance of the schedule by FIU.

The Design-Build Firm shall cooperate with the Engineer in scheduling and performing the Design-Build Firm's Work to avoid conflict, delay in or interference with the work of other contractors and/or projects or operation of the FIU System.

The Design-Build Firm shall prepare and keep current, for the Engineer's review and concurrence, a schedule of the submittals required by the Contract Documents which is coordinated with the Project Schedule and allows the Engineer a minimum of fifteen (15) Working Days to review submittals.

The Project Schedule must show Work activities in sufficient detail to demonstrate a reasonable and workable plan to complete the Project within the Contract Time. It should also show the order and interdependence of activities and the sequence in which the Work will be accomplished. Additionally, the Project Schedule should describe all activities so that the Work is readily identifiable and the progress on each activity can be readily measured.

The Design-Build Firm shall secure prior approval from the Engineer for any activity spanning more than thirty (30) days, except Maintenance of Traffic (MOT) and procurement activities. The schedule shall include, but is not limited to the following activities:

All Work:

- (1) Precedent activities affecting the start of Design-Build Firm's activities;
- (2) Plan and Specifications preparation, submittal, review, and processing;
- (3) Construction and maintenance of traffic milestones, including completion of construction on roadway sections, temporary detours and bridges, and traffic openings, closures, or shifting;
- (4) Milestones, when required by the Contract Documents;
- (5) In a project with more than one construction or maintenance of traffic phase, each phase, corresponding activities, and completion date(s);
- (6) Procurement time for Materials, plant and equipment;
- (7) Shop drawing preparation, submittal, and processing for all elements requiring shop drawings;
- (8) Review time of shop drawings;
- (9) Utility relocations;
- (10) Obtaining permits or licenses;
- (11) Any other activity required by the Contract Documents
- (12) Work under another Contract;
- (13) Other concurrent conditions or work that impact the Design-Build Firm's start or completion of an activity;

Bridges:

- (1) Mobilization;
- (2) Concrete mix design and pertinent information;
- (3) Test piling, test drilled shaft, and/or load test program;
- (4) Segmental casting facility mobilization;

- (5) Fabrication and delivery of piling;
- (6) Segmental fabrication per span per structure;
- (7) Beam or girder fabrication per span per structure;
- (8) Pile installation or drilled shaft per bent per structure;
- (9) Pile caps or spread footings per bent per structure;
- (10) Columns per bent per structure;
- (11) Pier caps per bent per structure;
- (12) End bents per structure;
- (13) Beam, girder or segment erection-span by span per structure;
- (14) Diaphragms;
- (15) Stay-In-Place Form Installation;
- (16) Deck placement-span by span per structure;
- (17) Parapets-span by span per structure;
- (18) Bridge deck planning and grooving;
- (19) Expected material allowance requests and payments;

Roadway:

- (1) Submission of job mix formula for asphalt pavement and recommended testing requirements;
- (2) Delivery schedule for items such as drainage items, guardrail, sign structures, signs, lighting facilities, and traffic signals;
- (3) Internal access and haul roads (location and duration in-place);
- (4) Clearing and grubbing by location or roadways;
- (5) Excavation;
- (6) Embankment for each abutment location;
- (7) Embankment placed for each roadway;
- (8) Drainage - structures and pipe runs for each roadway;
- (9) Retaining walls per location;
- (10) Base for each roadway;
- (11) Curb for each roadway;

- (12) Pavement (asphalt and/or concrete) for each roadway;
- (13) Bridge approach slabs per location;
- (14) Guardrail for each roadway;
- (15) Slope pavement or riprap;
- (16) Roadway lighting for each roadway;
- (17) Signing for each sign structure location and for each roadway;
- (18) Striping for each roadway;
- (19) Traffic signals per location;
- (20) Landscaping, sodding, seeding and mulching for each roadway;
- (21) Expected material allowance requests and payments.

The Project Schedule shall consist of network diagrams, a bar chart, and accompanying mathematical analyses. A network diagram shall show the order and interdependence of activities and the sequence in which the Work is to be accomplished. The mathematical analysis of the network diagram shall include a tabulation of each activity shown on the detailed network diagrams. A bar-graph and analysis shall together, show the following information for each activity, as a minimum:

- (a) Activity description.
- (b) Early start date.
- (c) Late start date.
- (d) Original duration - in working days.
- (e) Total Float.

All submittals, baseline, revised baseline or monthly progress updates, shall include an electronic version of the schedule on a CD Rom or USB Drive. The files shall be in the following formats:

- (1) Primavera (P6) project files using the Primavera Project Planner (latest version) "Export Option" menu selection.
- (2) Hard copy rendering produced by the Design-Build Firm matching the P6 file

A report with the following schedule activity information for each construction activity: identification, description, original duration, remaining duration, start date, finish date, total float, and percent complete. The bar chart diagram shall not be included in this report. All printed reports will be submitted on 8½ by 11 inch, 8½ by 14 inch or 11 by 17 inch paper.

All diagrams shall be CPM Network Diagrams in time-scale logic diagram, by week or month, grouped (banded) by phase and sorted by early start days. The critical path,

defined as the longest continuous path of work activities, must be prominently identified in the Project Schedule. Submit the Network Diagram, printed in color in ANSI B (11 by 17 inch) size. The network diagram shall contain, as a minimum, the following information for each schedule activity: identification, activity description, total duration, remaining duration, start date, finish date, late start date, late finish date and total float.

A Project Schedule narrative report shall be submitted describing current project schedule status and identifying potential delays. This report will include a description of the progress made since the previous schedule submission and objectives for the upcoming thirty (30) Calendar Days. It will be submitted on 8½ by 11 inch paper. This report shall at a minimum include the following information:

- (a) **Project Status:**
This report shall indicate if the project is on schedule, ahead of schedule or behind schedule. If the project is ahead of schedule or behind schedule, the report shall include the specific number of Calendar Days. If the project is behind schedule, the report shall include a detailed recovery plan that will put the project back on schedule or include a properly supported request for Time Extension.
- (b) **Critical Path:**
The report will describe the current critical path of the project and indicate if this has changed in the last thirty (30) Calendar Days. Discuss current successes or problems that have affected either the critical path's length or have caused a shift in the critical path within the last thirty (30) Calendar Days. Identify specific activities, progress, or events that may reasonably be anticipated to impact the critical path within the next thirty (30) Calendar Days, either to affect its length or to shift it to an alternate path.
- (c) **Logic Changes/Addition and/or Deletion of Activities:**
List all schedule logic changes that have been made to the schedule since the previous submission. For each change, describe the basis for the change and specifically identify the affected activities by identification number.
- (d) **FIU Participation/Review/Approval:**
Identify any and all activities, either in progress or scheduled to occur within the following thirty (30) days that require FIU participation, review, approval, etc.

Monthly updates shall be submitted for review/acceptance seven (7) Calendar Days before the Estimate Cut-off Date for payment purposes established by FIU. The submittal is to maintain the logic of the baseline schedule, unless changes have been agreed upon by the Design-Build Firm and the Engineer (to better reflect the current progress of work and sequence of activities) Original activity durations shall not be modified for any reasons. The Engineer shall approve or reject the schedule update within five (5) Calendar Days from its submittal.

Sufficient liaison shall be conducted and information provided to indicate coordination with utility owners having facilities within the Project limits. The schedule must reflect the utility adjustment schedules included in the Contract Documents (if applicable), unless changed by mutual agreement of the utility company, the Design-Build Firm, and FIU.

If the Engineer determines the schedule submitted is deficient, it will be returned to the Design-Build Firm for correction. Submit a corrected schedule within two (2) Calendar Days from the transmittal date. Use the approved schedule for planning, organizing,

directing, and reporting progress.

The Engineer will designate the date, time and location for a regular monthly Project Schedule update meeting at which all principal parties are expected to attend. These monthly meetings will be held the week before the Work Program Invoice Submittal Date so that job progress will coincide with the monthly Invoice. At this meeting, the Design-Build firm shall provide a current baseline schedule, updated to reflect actual start dates, actual finish dates, changes in sequences and days remaining. Current schedule, job progress, delays, and projections will be among the priority items addressed.

If the Contract duration changes as a result of approved time extensions or supplemental agreements, the Project Schedule shall be adjusted accordingly.

Contract payments may be withheld for failure to finalize either the initial or a revised Project Schedule in the specified time, until the Project Schedule is approved. Partial payment requests by the Design-Build Firm without an approved Project Schedule update will result in a ten percent (10%) retainage of the invoiced amount, in addition to any retainage specific to the Contract, on the total amount agreed upon with Engineer for the corresponding pay period. This retainage will be withheld by FIU until the update has been approved. Failure to obtain an approved Project Schedule update for three (3) consecutive months will result in retainage of the full amount approved by the Engineer for the corresponding pay period. Once the update has been approved, any and all retainage will be paid to the Design-Build Firm in the following payment request. No interim payments will be made for withheld retainage.

Prosecute the Work in accordance with the latest approved updated Project Schedule. Submit at the Weekly Progress Meeting a three week look-ahead schedule detailing the upcoming activities planned for the period and one week back detailing the recent progress of work. The activities listed in the three week look-ahead schedule shall match the activities listed in the Project Schedule, at a minimum, or provide further breakdown of a specific task with multiple sub-tasks. If progress of critical items is delayed, due to no fault of FIU, provide a written plan itemizing methods to complete the Project within the time allowed. All additional costs associated will be at no expense to FIU. Submit supplementary schedules for approval by the Engineer to demonstrate how progress will be regained.

Float is not for the exclusive use or benefit of either FIU or the Design-Build Firm. Time extensions for damages or delays will be granted only to the extent that time adjustments to the affected activities exceed the total float time along the affected paths of the updated baseline schedule current at the time of delay.

8-3.3 **Beginning Work:**

No Work under the Contract shall commence until the Notice to Proceed (NTP) has been issued by FIU. FIU will issue the Notice to Proceed within thirty (30) Calendar Days after execution of the Contract by the last party.

The Design-Build Firm shall commence Work under the Contract within ten (10) Calendar Days after the date of Notice to Proceed unless otherwise agreed upon in writing by FIU. The Design-Build Firm shall commence Work only on activities not requiring signed and sealed plans prepared and submitted by the Design-Build Firm to FIU for concurrence. Such activities include Mobilization and surveys not affecting traffic. All documents submitted by the Design-Build Firm shall be Released for Construction by the Engineer as a requirement to commence work.

8-3.4 Provisions for Convenience of Public:

The Design-Build Firm shall schedule operations so as to minimize any inconvenience to adjacent businesses or residences. FIU or its designee reserves the right to direct the Design-Build Firm as to the performance and scheduling of Work in any areas of the Project where restrictions caused by Construction operations present significant hazards to the health and safety of the general public. In such critical locations, where there is no assurance of continuous effective prosecution of the Work once the construction operations are begun, FIU or its designee may require the Design-Build Firm to delay removal of the existing (usable) facilities.

8-3.5 Pre-design/construction Conference:

Prior to Design-Build Firm's commencement of the design and construction on the Project, FIU or its designee will schedule a pre-design/construction conference with the Design-Build Firm and other affected parties to review the proposed Work activities and schedule of events.

8-3.6 Partnering:

In accordance with the Contract Documents, a non-bid pay item may be established for Partnering for this Project. The objective of Partnering is to establish a partnership charter and action plan for the Design-Build Firm, the Engineer and other parties impacted by the activities covered under the Contract to identify and achieve reciprocal goals. These objectives may be met through participation in a major workshop held as early as possible after the Contract is awarded and follow-up workshops held periodically throughout the duration of the Contract.

If the partnering option is exercised on this Project, as early as possible after Notice of Award (and prior to the Pre-Construction Conference), the Design-Build Firm shall meet with FIU or its designee to plan an initial partnering workshop. At this planning session, a workshop facilitator (acceptable to FIU) shall be selected. In addition, the agenda, duration, location, time and attendees for the initial shall be determined. Attendees shall include, as a minimum, the Engineer and appropriate key FIU Project personnel, the Engineer of Record, the Design-Build Firm's Superintendent and its other key project personnel.

8-3.7 Disputes Review Board:

[Reserved]

8-4 LIMITATIONS OF OPERATIONS

8-4.1 Night Work:

In all areas where performing Work during the hours of dusk or darkness, furnish, place, and maintain lighting facilities capable of providing light of sufficient intensity (5 ft-cd minimum) to allow good workmanship and proper inspection at all times. Arrange the lighting so as not to interfere with or impede traffic approaching the worksite(s) from either direction, or produce undue glare to property owners and the traveling public.

The Design-Build Firm may light the worksite(s) using any combination of portable floodlights, standard equipment lights, existing street lights, temporary street lights, etc. that provides the proper illumination.

Submit a lighting plan at the Preconstruction Conference showing the type and location of lights to be used for night Work. Show the location of all lights necessary for every aspect of Work to be performed at night. Present the plan on standard size roadway plan sheets (not larger than 24 by 36 inches) and on a scale of one hundred (100) or fifty (50) foot to one (1) inch.

Obtain the Engineer's approval of the lighting plan prior to beginning any night Work. Perform all modifications that the Engineer may require to the lighting setup in order to fit field conditions.

Furnish and place warning signs to alert approaching motorists of lighted Construction area(s) ahead. Provide warning signs that are five (5) foot by five (5) foot

Equip pickups and automobiles used on the project with amber flashing lights or white strobe lights. Operate these lights while in the worksite.

Provide all equipment with a minimum of four (4) ft. sq. of reflective sheeting that is visible to approaching motorists.

Provide reflective vests for all personnel. Ensure that all personnel wear these vests at all times while within the worksite.

Provide a light meter to demonstrate that the minimum light intensity is being maintained.

Provide sufficient fuel, spare lamps, generator, etc. to maintain lighting of the worksite.

Utilize padding or shielding, or locate mechanical and electrical equipment to minimize noise, as directed by the Engineer. Provide portable generators with noise levels that comply with all applicable Federal, State, and local environmental regulations.

Provide a uniformed, off-duty law enforcement officer with a marked law enforcement vehicle equipped with a blue flashing light for all night time Work that is performed within five (5) feet of the travel lanes.

Have the Superintendent present on site to control all operations involved. Ensure that the Superintendent maintains contact with the Engineer and takes all required actions to correct any problem noted.

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

Install all required traffic control devices such as signs, stripes, etc. before commencing Work for the night and before leaving the worksite the next morning.

Include compensation for lighting for night Work in the Contract prices for the various items of the Contract.

8-4.2 Sequence of Operations:

The Design-Build Firm shall not start new Work that will adversely impact Work in progress. Under such circumstances, FIU reserves the right to require the Design-Build Firm to finish a section on which Work is in progress before Work is started on any new section.

8-4.3 Interference with Traffic:

At all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. Operate all vehicles and other Equipment in such a manner that they will not be a hazard or hindrance to the traveling public. Materials and equipment stored along the roadway shall be placed outside the clear zone so as to cause no obstruction to vehicular traffic.

Where existing pavement is to be widened and stabilizing is not required, prevent any open trench from remaining after working hours by scheduling operations to place the full thickness of widened base by the end of each day. Do not construct widening strips simultaneously on both sides of the road, except where separated by a distance of at least ¼ mile along the road and where either the Work of excavation has not been started or the base has been completed. Obtain information concerning special events occurring during the life of the Contract. Special events may include but are not limited to concerts, football, basketball or baseball games, parades, etc., which will increase traffic volumes on the Interstate during the allowable Work times. Unless specifically authorized in writing by the Engineer, perform no Construction activities on Holidays, as defined by FIU, or during the duration of a special event.

8-4.4 Coordination with other Contractors:

The right is reserved by FIU to have other Work performed by other contractors and to permit public utility companies and others to do Work during the Construction of, and within the limits of, or adjacent to the Project. The Design-Build Firm shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent Work. The Design-Build Firm shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the Work of others as required by the Plans and Specifications.

The Design-Build Firm shall be responsible for any damage done by the Design-Build Firm's operations to the Work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Design-Build Firm's Work. The Design-Build Firm agrees to make no claims against FIU for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Design-Build Firm and others working within the limits of or adjacent to, the Project, FIU will decide as to the relative priority of all concerned.

8-4.5 Drainage:

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

8-4.6 Fire Hydrants:

Keep fire hydrants on or adjacent to the highway accessible to fire apparatus at all times, and do not place any material or obstruction within fifteen (15) feet of any fire hydrant.

8-4.7 Protection of Structures:

Do not operate heavy equipment close enough to pipe headwalls or other structures to cause their displacement.

8-4.8 Fencing:

Erect permanent fence as a first order of business on all projects that include fencing where the Engineer determines that the fencing is necessary to maintain the security of livestock on adjacent property, or for protection of pedestrians who are likely to gain access to the project from adjacent property. Secure the right-of-way on Limited Access Facilities at all times by a fence, either temporary or permanent, that meets the height of the existing fence or the height required in the Contract.

8-4.9 Hazardous or Toxic Waste – Mercury-Containing Devices and Lamps:

When the Design-Build Firm's operations encounter or expose any abnormal condition

which may indicate the presence of a hazardous substance, toxic waste, or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and FIU and/or its designee shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution. Every effort shall be made by the Design-Build Firm to minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas.

The Design-Build Firm's operations in the affected area shall not resume until so directed by FIU.

Disposition of the hazardous substance, toxic waste or pollutant shall be made in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Design-Build Firm performs Work necessary to dispose of hazardous substance, toxic waste or pollutant and the Contract does not include provisions for disposal, payment will be made, when approved in writing by a Supplemental Agreement, prior to the Work being performed.

FIU may agree to hold harmless and indemnify the Design-Build Firm for damages when the Design-Build Firm discovers or encounters hazardous materials or pollutants during the performance of services for FIU when the presence of such materials or pollutants were unknown or not reasonably discoverable.

Such indemnification agreements are only effective if the Design-Build Firm immediately stops Work and notifies FIU of the hazardous material or pollutant problem. Such indemnification agreement is not valid for damages resulting from the Design-Build Firm's willful, wanton, or intentional conduct or the operations of Hazardous Material Design-Build Firms.

This Contract may require the removal and special disposal of mercury-containing devices. Include payment for the proper removal and disposal of mercury-containing devices in the payment for the related contract items.

8-4.10 **Tolls Coordination:**

During the life of the Contract, coordinate Work activities, and those of subcontractors, with FIU and the FIU Traffic Management Center. Names, addresses and telephone numbers of these individuals will be provided at the preconstruction conference.

8-4.11 **Milling:**

The Design-Build Firm shall provide positive drainage of the remaining pavement after milling. This operation shall be done during the same day as milling. The Design-Build Firm shall provide suitable transitions between milled areas of varying thickness in order to create a reasonably smooth longitudinal riding surface. The Design-Build Firm shall also restrict the milling operation such that any lane milled will be repaved the same day as the milling operation.

8-5 **RESERVED**

8-6 **RESERVED**

8-7 **TEMPORARY SUSPENSION OF DESIGN-BUILD FIRM'S OPERATIONS**

8-7.1 **Authority to Suspend Design-Build Firm's Operations:**

The Engineer, at its sole discretion, may suspend the Work, wholly or in part, for such period(s) as FIU deems necessary, due to adverse weather conditions, catastrophic occurrences, and heavy traffic congestion caused by special events. Written notice, giving the particulars of the suspension, will be transmitted to the Design-Build Firm by the Engineer. Contract Time will be charged during all suspensions of the Design-Build Firm's operations. FIU, at its sole discretion, may grant an extension of Contract Time and reimburse the Design-Build Firm for specific costs associated with the suspension. Further, in such instances, FIU's determination as to entitlement to either time or compensability will be final, unless the Design-Build Firm can prove by clear and convincing evidence that FIU's determination was without any reasonable factual basis.

No additional compensation will be paid to the Design-Build Firm when the operations are suspended for the following reasons:

- a. The Design-Build Firm fails to comply with the Contract Documents;
- b. The Design-Build Firm fails to carry out orders given by FIU; or
- c. The Design-Build Firm causes conditions considered unfavorable for continuing the Work.

Immediately comply with any suspension order. Do not resume operations until authorized to do so by the Engineer in writing. Any operations performed by the Design-Build Firm and otherwise constructed in conformance with the provisions of the Contract after the issuance of the suspension order and prior to the Engineer's authorization to resume operations will be at no cost to FIU.

Further, failure to immediately comply with any suspension order will also constitute an act of default by the Design-Build Firm and is deemed sufficient basis in and of itself for FIU to declare the Design-Build Firm in default in accordance with 8-10, with the exception that the Design-Build Firm will not have ten (10) Calendar Days to correct the conditions for which the suspension was ordered.

8-7.1.1 **State of Emergency:**

FIU has the authority to suspend the Design-Build Firm's operations, wholly or in part, pursuant to a Governor's Declaration of a State of Emergency. FIU will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of the Design-Build Firm's operations. FIU, at its sole discretion, may grant an extension of Contract Time and reimburse the Design-Build Firm for specific costs associated with the suspension. Further, in such instances, FIU's determination as to entitlement to either time or compensability will be final, unless the Design-Build Firm can prove by clear and convincing evidence that FIU's determination was without any reasonable factual basis.

8-7.2 **Prolonged Suspensions:**

If the suspension of Work is for an indefinite period of time, the Design-Build Firm shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily. The Design-Build Firm shall take reasonable precautions to prevent damage to or deterioration of the Work performed, shall provide suitable drainage of the Project Site, the Project and adjacent roadway by opening ditches, shoulder drains, etc.

8-7.3 Permission to Suspend Design-Build Firm's Operations:

The Design-Build Firm shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the permission of FIU. All requests for suspension of the Contract Time shall be in writing to FIU and shall identify specific dates to begin and end.

Contract Time will be charged during suspension periods requested by the Design-Build Firm and approved by FIU. The Design-Build Firm is not entitled to any additional compensation for suspension of operations during such periods.

8-7.4 Suspension of Design-Build Firm's Operations:

No Work shall be performed during the FIU Holidays unless the Design-Build Firm submits a written request to work on a Holiday at least ten (10) Calendar Days in advance of the requested date(s) and receives written approval from the Engineer. Contract Time will be charged during these Holidays regardless of whether or not the Design-Build Firm's operations have been suspended. Contract time will be adjusted in accordance with Section 8-8.3. The Design-Build Firm is not entitled to any additional compensation for suspension of operations during such Holidays.

During such suspensions, remove all equipment and materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the FDOT Standard Specifications. The Design-Build Firm is not entitled to any additional compensation for removal of equipment from clear zones or for compliance with Section 102 and Section 104 of the FDOT Standard Specifications during such holiday periods.

8-8 COMPUTATION OF CONTRACT TIME

8-8.1 General:

Perform all Work in accordance with the Contract Documents, within the number of Calendar Days submitted in the proposal, or as may be extended in accordance with the provisions herein.

8-8.2 Date of Beginning of Contract Time:

The date on which Contract Time will begin shall be the date as specified in the Notice to Proceed.

8-8.3 Adjusting Contract Time:

8-8.3.1 Increased Work:

FIU may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new Work items, or provides for unforeseen Work. FIU will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the additional designated Work delays the Contract completion schedule.

8-8.3.2 Contract Time Extensions:

FIU may grant an extension of Contract Time when a Controlling Work Item is delayed by factors not reasonably anticipated or foreseeable at the time of Proposal. FIU may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by FIU to fulfill an obligation under the Contract results in delays to the Controlling Work Items, FIU will

consider such delays as a basis for granting a time extension to the Contract Time.

Whenever the Engineer suspends the Design-Build Firm's operations, as provided in Section 8-7, for reasons other than the fault of the Design-Build Firm, the Engineer will grant a time extension for any delay to a Controlling Work Item due to such suspension. FIU will not grant time extensions to the Contract for delays due to the fault or negligence of the Design-Build Firm.

FIU does not include an allowance for delays caused by the effects of inclement weather, or suspension of Design-Build Firm's operations due to Holidays as defined in Section 8-7.4, in establishing Contract Time. The Engineer will monitor the effects of weather and, when found justified, record time extensions on a monthly basis. The Design-Build Firm will be notified of the time extension assessed by the Engineer and will have seven (7) Calendar Days to concur or disagree with this assessment. Time extensions will be granted through a Supplemental Agreement.

FIU will grant time extensions, on a Calendar Day for day basis, for delays caused by the effects of rains or other inclement weather conditions (such as low temperatures preventing placement of asphalt or concrete for Controlling Work Items) related adverse soil conditions, or suspension of operations due to holidays that prevent the Design-Build Firm from productively performing controlling items of work resulting in:

- (1) The Design-Build Firm being unable to work at least fifty percent (50%) of the normal work day on pre-determined controlling work items due to adverse weather conditions, Holiday suspensions; or
- (2) The Design-Build Firm must make major repairs to work damaged by weather, provided that the damage is not attributable to the Design-Build Firm's failure to perform or neglect; and provided that the Design-Build Firm was unable to work at least fifty percent (50%) of the normal workday on pre-determined Controlling Work Items.

No additional compensation will be made for delays caused by the effects of inclement weather. No time extensions will be granted for inclement weather for days when work had not originally been scheduled, pursuant to the currently approved Project Schedule.

FIU will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Design-Build Firm or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply.

In such cases, the Design-Build Firm shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation

will be made for delays caused by delivery of materials or component equipment.

FIU will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Design-Build Firm furnishes documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

FIU may consider approving time extensions to the Contract for acts of war or other public enemies; riots that would endanger the Design-Build Firm's employees; acts of jurisdictional governmental authorities acting outside the scope of current laws and ordinances; epidemics and/or quarantine restrictions.

FIU will consider the effect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

- (1) Delays are the result of either utility work that was not detailed in the Contract Documents, or utility work that was detailed but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.
- (2) Utility work actually affected progress toward completion of Controlling Work Items.
- (3) The Design-Build Firm took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Design-Build Firm's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Design-Build Firm's operations to avoid delays.

As a condition precedent to an extension of Contract Time the Design-Build Firm must submit to the Engineer:

- (1) A preliminary request for an extension of Contract Time must be made in writing to the Engineer within five (5) Calendar Days after the commencement of a delay to a controlling item of work. If the Design-Build Firm fails to submit this required preliminary request for an extension of Contract Time, the Design-Build Firm fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay.
- (2) In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay; and

- (3) Further, the Design-Build Firm must submit to the Engineer a request for a Contract Time extension in writing within thirty (30) days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Design-Build Firm wishes FIU to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Design-Build Firm contends that the delay is compensable, then the Design-Build Firm shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Design-Build Firm fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Design-Build Firm waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Design-Build Firm, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Design-Build Firm, the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Design-Build Firm, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), as stated in 8-3.2, is a condition precedent to the Design-Build Firm having any right to the granting of an extension of contract time or any monetary compensation arising out of any delay. The Design-Build Firm's failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to FIU's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, FIU's determination as to entitlement as to either time or compensability will be final, unless the Design-Build Firm can prove by clear and convincing evidence that FIU's determination was without any reasonable factual basis.

FIU includes a thirty (30) Calendar Days timeframe in the calculation of the Contract Time. This timeframe is intended for the Design-Build Firm to make all necessary arrangements for the Engineer to perform an inspection of the Project to verify all items listed in the Schedule of Values have been completed, pursuant to Section 5-17-.2. Any deficiencies and/or required

modifications will be summarized by the Engineer and provided to the Design Build Firm. The Design-Build shall address all items listed by the Engineer within the remaining time frame in the Contract Time. No time extensions will be granted to complete pending items after FIU inspection of the Project as requested by the Design-Build Firm. Any delays incurred by the Design-Build Firm to complete the list of pending items will be subject to the provisions of Section 8.11.

8-9 **FAILURE OF DESIGN-BUILD FIRM TO MAINTAIN SATISFACTORY PROGRESS**

8-9.1 **General:**

Time is of the essence of the Contract. Section 337.16, Florida Statutes, establishes certain requirements pertaining to the suspension or revocation of a Design-Build Firm's Certificate of Qualification because of delinquency on a previously awarded Contract.

8-9.2 **Unsatisfactory Progress:**

(a) Unsatisfactory progress will be deemed to have occurred when:

1. The allowed Contract Time for performing the Work has expired and the Contract Work is not complete; or
2. The specified time or date for performing a Milestone stage of the Work (as may be set forth in the Contract Documents) has expired and the Work for that Milestone stage is not complete; or
3. The allowed Contract Time has not expired and the dollar value of completed Work is fifteen percent (15%) or more below the dollar value of Work which should have been completed according to the accepted project schedule for the Project. The dollar value of Work which should have been completed is defined as the average between the early start and late start scheduled earnings according to the approved project schedule. After falling fifteen percent (15%) behind, the delinquency continues until the dollar value of Work is within five percent (5%) of the dollar value of Work which should be completed according to the accepted project schedule for the Project.

Accordingly, if FIU deems that Unsatisfactory Progress has occurred, FIU and the Design-Build Firm agree that FIU may withhold progress payments until FIU, at its sole discretion, determines that the Design-Build Firm is no longer making Unsatisfactory Progress. At FIU's sole discretion, FIU may resume making progress payments to the Design-Build Firm once the Design-Build Firm provides reasonable assurances that the Work will be performed satisfactorily to FIU.

8-10 **DEFAULT AND TERMINATION OF CONTRACT**

8-10.1 **Determination of Default:**

The following acts or omissions constitute acts of default and, except as to subparagraph (i), FIU will give notice, in writing, to the Design-Build Firm and its Surety for any delay, neglect or default, if the Design-Build Firm:

- (a) If the Design-Build Firm fails to begin the Work under the Contract within the time specified in the Notice to Proceed;
- (b) or fails to perform the Work with sufficient workmen and Equipment or with sufficient Materials to assure the prompt completion of the Contract as related

to the project schedule;

- (c) or performs the Work unsuitably, or neglects or refuses to remove Materials or to perform anew such Work as may be rejected as unacceptable and unsuitable;
- (d) or discontinues the prosecution of the Work; or fails to resume Work which has been discontinued within a reasonable time after notice to do so;
- (e) or fails to pay timely its Subconsultants/Subcontractors, Suppliers or laborers; or becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
- (f) or allows any final judgment to stand against it unsatisfied for a period of ten (10) Calendar Days;
- (g) or makes an assignment for the benefit of creditors;
- (h) or fails to comply with Contract requirements regarding minimum wage payments or EEO requirements, if applicable;
- (i) or fails to comply with the Engineer's written suspension of Work Order within the time allowed for compliance and which time is stated in that suspension of Work Order;
- (j) or for any other cause whatsoever, fails to carry on the Work in an acceptable manner, or if the Surety executing the Contract Bond, for any reasonable cause, becomes unsatisfactory in the opinion of FIU;
- (k) or fails to provide all required insurance and to keep said insurance in force during the duration of the Contract;
- (l) or fails to comply with 3-7.

For a notice based upon reasons stated in subparagraphs (a) through (h) and (j): if the Design-Build Firm, within a period of ten (10) Calendar Days after receiving the notice described above, does not proceed to correct the default, FIU may give notice of default in writing to the Design-Build Firm and the Surety (where applicable) stating the nature of the default and providing the amount of time which will be allowed to correct the default.

If the Design-Build Firm (within the curative period described in the notice of default) does not correct the default, FIU will have full power and authority to remove the Design-Build Firm and to declare the Contract in default and terminated.

If the Contract is declared in default, FIU may require the Design-Build Firm's Surety to take over and complete the Contract performance. Upon the failure or refusal of the Surety to assume the Contract within the time demanded, FIU may take over the Work covered by the Contract.

Regarding subparagraph (i), if the Design-Build Firm fails to comply with FIU's written suspension of Work Order within the time allowed for compliance and which time is stated in that suspension of Work Order, FIU will, upon written certificate from the Engineer of the fact of such delay and the Design-Build Firm's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of the Work out of the hands of the Design-Build Firm and to

declare the Design-Build Firm in default.

FIU shall have no liability for profits (including anticipated profits) related to unfinished Work on a Contract terminated for default.

Regarding subparagraph (l), if the Design-Build Firm fails to comply with 3-7, FIU will have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Design-Build Firm and to declare the Design-Build Firm in default.

FIU has no liability for anticipated profits for unfinished work on a Contract that FIU has determined to be in default.

Notwithstanding the above, FIU reserves the right to declare the Design-Build Firm (or its "affiliate") in default and immediately terminate the Contract, without any prior notice to the Design-Build Firm, in the event the Design-Build Firm (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. FIU's right to default the Design-Build Firm (or its "affiliate") for "conviction" of a "contract crime" extends to and is expressly applicable to any and all FIU Contracts that were either advertised for proposal; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Design-Build Firm (or its "affiliate") that resulted in the "conviction." In the event FIU terminates this Contract for this reason, the Design-Build Firm shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Design-Build Firm shall only be paid for any completed Work up to the date of termination. Further, the Design-Build Firm shall be liable for any and all additional costs and expenses FIU incurs in completing the Work after such termination.

8-10.2 Termination of Contract for Convenience:

FIU may, by written notice, terminate the Contract or a portion thereof after determining that, for reasons beyond either FIU's or Design-Build Firm's control, the Design-Build Firm is prevented from proceeding with or completing the Work as originally contracted for, and that termination would therefore be in the public interest.

Such reasons for termination may include, but need not be necessarily limited to, executive orders of the President of the United States relating to prosecution of war or national defense, national emergency which creates a serious shortage of Materials, orders from duly constituted authorities relating to energy conservation, and restraining order or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws, or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Design-Build Firm.

When the Contract, or any portion thereof, is terminated before completion of all items of Work in the Contract, payment will be made for Work completed, at the Contract Unit Price (where applicable), and according to the formulas and provisions set forth in 4-3.2 for items of work partially completed, and such payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started.

Reimbursement for mobilization expenses (when not otherwise included in the Contract), including moving Equipment to the job, will be considered where the volume of Work completed is too small to compensate the Design-Build Firm for these expenses under the Contract Unit Prices (where applicable); the intent being that an equitable

settlement will be made with the Design-Build Firm.

Acceptable Materials procured by the Design-Build Firm for the Work, that have been inspected, tested, and approved by FIU, and that are not incorporated in the Work, may be purchased from the Design-Build Firm at actual cost, as shown by receipted bills and actual cost records, at such points of delivery as may be designated by FIU.

Termination of the Contract, or a portion thereof, under the provisions of this Section, shall not relieve the Design-Build Firm of Design-Build Firm's responsibilities for the completed portion, nor shall it relieve Design-Build Firm's Surety of its obligation for, and concerning any just claims arising out of, the Work performed.

8-10.3 Completion of Work by FIU:

Upon declaration of default and termination of the Contract, FIU reserves the right to appropriate or use any or all Materials and Equipment on the Project Site where Work is or was occurring which are suitable and acceptable, and may enter into agreements with others for the completion of the Work under the Contract, or may use other methods which in the opinion of FIU are required for completion of the Contract. All costs and charges incurred by FIU because of or related to the Design-Build Firm's default (including the costs of completing Contract performance) shall be charged against the Design-Build Firm. If the expense of Contract completion exceeds the sum which would have been payable under the Contract, the Design-Build Firm and the Surety shall be jointly and severally liable and shall pay FIU the amount of the excess.

If, after the default notice curative period has expired, but prior to any action by FIU to complete the Work under the Contract, the Design-Build Firm demonstrates an intent to cure the default in accordance with FIU's requirements, FIU may, but is not required to, permit the Design-Build Firm to resume Work under the Contract. In such circumstances, any costs of FIU incurred by the delay (or from any reason attributable to the delay) will be deducted from any monies due or which may become due to the Design-Build Firm under the Contract.

8-11 LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE THE WORK

FIU and the Design-Build Firm recognize that time is of the essence regarding the Contract. In as much as failure to complete the Project by the approved Project Schedule will result in injury to FIU, and as damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that, if the Project, or the specified components thereof (Milestones), are not accepted by FIU by the issuance of Final Acceptance or within such further time, if any, as in accordance with the provisions of the Contract Documents shall be allowed for such acceptance, the Design-Build Firm shall pay to FIU as liquidated damages for such delay(s), and not as a penalty, the amounts established in the following Schedule of Applicable Liquidated Damages, for each and every Calendar Day that the actual Final Acceptance has been achieved beyond the Contract Time or established Milestones.

8.11.1 Schedule of Applicable Liquidated Damages

Original Contract Amount	Daily Charge Per Calendar Day
\$50,000 and under	\$313
Over \$50,000 but less than \$250,000	\$580
\$250,000 but less than \$500,000	\$715
\$500,000 but less than \$2,500,000	\$1,423
\$2,500,000 but less than \$5,000,000	\$2,121
\$5,000,000 but less than \$10,000,000	\$3,057
\$10,000,000 but less than \$15,000,000	\$3,598

\$15,000,000 but less than \$20,000,000	\$4,544
\$20,000,000 and over	\$8,537*

* Plus 0.00027 of any amount over \$20,000,000

8-11.2 Determination of Number of Days of Default:

Days of default will be counted in Calendar Days, and FIU has the right to apply, as payment on liquidated damages for such default, any money FIU owes to the Design-Build Firm.

8-11.3 Conditions under which Liquidated Damages are Imposed:

If the Design-Build Firm (or, in circumstance of the Design-Build Firm default, the Surety) fails to complete the Work within the Contract Time stipulated, or within such extra time as may have been granted by FIU, the Design-Build Firm (or the Surety) shall pay to FIU, not as a penalty but as liquidated damages, the amount due as calculated in this Article.

8-11.4 Right of Collection:

FIU reserves the right, at its sole option, to apply as payment on liquidated damages due, any money which is due the Design-Build Firm by FIU.

8-11.5 Allowing Design-Build Firm to Finish Work:

Permitting the Design-Build Firm to continue and to finish the Work, or any part of it, after the expiration of the Contract Time allowed, including time extensions, shall in no way act as a waiver on the part of FIU of the liquidated damages due under the Contract.

8-11.6 Completion of Work by FIU:

In the event of default of the Contract and the completion of the Work by FIU, the Design-Build Firm and the Design-Build Firm's Surety shall be liable for the liquidated damages under the Contract Documents. No liquidated damages shall be chargeable for any delay in the Final Acceptance of the Work due to any unreasonable action or delay on the part of FIU.

8-12 RELEASE OF DESIGN-BUILD FIRM'S RESPONSIBILITY

The Contract will be considered completed when all Work has been accepted by FIU. The Design-Build Firm will then be released from further obligation, except as set forth in the Contract Bond and as provided in Recovery Rights, Subsequent to Final Payment as provided in Section 8-15.

8-13 RECOVERY OF DAMAGES SUFFERED BY THIRD PARTIES

In addition to the above liquidated damages, when the Design-Build Firm fails to complete the Work within the time in the Contract Documents or within such additional time that FIU may grant, FIU may recover from the Design-Build Firm amounts which FIU pays for damages suffered by third parties, unless failure to timely complete the Work was caused by FIU's act or omission.

8-14 DAMAGE RECOVERY

A damage recovery fee will be assessed against the Design-Build Firm if all lanes specified in the Traffic Control Plans or as specified in Section 102 of the FDOT Standard Specifications, are not opened to traffic during the times shown in the Traffic Control Plans. Fees will be assessed beginning at the appropriate time as shown in the Traffic Control Plans or as specified in Section 102 of the FDOT Standard Specifications and continue until all lanes are opened as recorded by the Engineer. This assessment will be made in the following amounts per impacted lane:

1. First thirty (30) minutes and under: One Thousand Dollars (\$1,000).
2. Each additional thirty (30) minute period or portion thereof: One Thousand Five Hundred Dollars (\$1500) up to three (3) hours.
3. After three (3) hours, a fee of Twenty-Five Thousand Dollars (\$25,000) will be assessed. The Design-Build Firm will also stop all work, make all the affected lanes safe for vehicular traffic, and open all lanes.

Any and all damage recovery charges will be assessed in the payment request submitted by the Design-Build Firm following the incident. All charges assessed throughout the duration of the Contract will be deducted from the total Contract Price and will not be reimbursed to the Design-Build Firm.

8-15 RECOVERY RIGHTS SUBSEQUENT TO FINAL PAYMENT

FIU considers the Project complete when the Design-Build Firm has completed all the Work and FIU has accepted all the Work. FIU will then release the Design-Build Firm from further obligation as set forth in the Contract Bond, except that FIU reserves the right, if it discovers an error in a partial or final pay request, or if it discovers that the Design-Build Firm performed defective Work or used defective Materials, after final payment has been made, to claim and recover from the Design-Build Firm or its Surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and Materials.

The Design-Build Firm shall retain all records pertaining to the Project for a period of three years from the date of Final Acceptance of the Project by FIU and shall, upon request, make all such records available to FIU or its designee. Such records shall include all books of account, supporting documents and papers that FIU deems necessary to ensure compliance with the provisions of the Contract Documents.

END OF SECTION 8

**SECTION 9
MEASUREMENT AND PAYMENT**

9-1 MEASUREMENT OF QUANTITIES

9-1.1 Measurement Standards:

The Engineer will measure all Work completed under the Contract in accordance with the United States Standard Measures.

9-1.2 Method of Measurements:

The Engineer will take all measurements horizontally or vertically.

9-1.3 Determination of Pay Areas:

Not applicable.

9-1.4 Construction Outside Authorized Limits:

Not applicable.

9-1.5 Truck Requirements:

Not Applicable.

9-1.6 Ladders and Instrument Stands for Bridge Projects:

Not Applicable.

9-1.7 Determination of Pay Reduction:

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

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

9-2 SCOPE OF PAYMENTS

9-2.1 Items Included in Payment:

The Design-Build Firm shall accept the compensation as provided for in the Contract as full payment for:

- 1) Furnishing all Materials and for performing all Work contemplated and embraced under the Contract;
- 2) For all loss or damage arising out of the nature of the Work or for actions of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its Final Acceptance;
- 3) For all other costs incurred under the Specifications; and,

- 4) Any and all expenses incurred due to tolls collected by FIU during the execution of the Work

The Design-Build Firm shall request payment for Work completed by submitting an invoice. The invoice shall be based on the approved Schedule of Values and shall include the FIU Procurement/Contract Number, the Work Program Number, the invoice number, the invoice date and the period that the invoice represents. The Design Build Firm shall submit the invoice to FIU or its designee. Upon receipt and approval, payment will be made less an amount retained or withheld in accordance with Section 8.3.2 and/or Section 9-5 as applicable.

9-2.1.1 Fuels:

FIU will not pay any fuel price adjustments for any reason whatsoever for the Project.

9-2.1.2 Bituminous Material:

FIU will not pay any bituminous material adjustments for any reason whatsoever for the Project.

9-2.2 Deviation from Plan Dimensions:

If the Design-Build Firm fails to construct any item to Plan or authorized dimensions within the Specifications tolerances, FIU, at its sole discretion, may:

- 1) require the Design-Build Firm to reconstruct the Work to acceptable tolerances at no additional cost to FIU;
- 2) accept the non-conforming Work without payment to the Design-Build Firm; or,
- 3) accept the non-conforming Work at a reduced price.

Refer to FIU form "Construction Compliance with Specifications and Plans"

9-2.3 Invoice Certifications:

When submitting any invoice, the Design Build Firm shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the invoice is submitted in good faith, that the supportive data are accurate and complete to the Design Build Firm's best knowledge and belief, and that the amount of the invoice accurately reflects what the Design Build Firm in good faith believes to be FIU's liability. Such certification must be made by an officer or director of the Design Build Firm with the authority to bind the Design Build Firm. The Design Build Firm also agrees to indemnify FIU for any costs and expenses, including but not limited to audit costs, attorneys' fees and expert witness fees that FIU incurs due to any fraudulent statements made by Design Build Firm in said invoices. Refer to FIU Form "Subcontractor/Subconsultant Invoice Tracking Form".

9-2.4 General Basis of Adjusted Pay:

9-2.4.1 Deficiencies:

When a deficiency occurs that results in the acceptance of a material at a reduced payment level as defined in these Specifications, the Engineer will apply a reduction in payment for the material in question based on the Schedule of Values approved for the Contract and/or unit prices as determined using the six-month FDOT State wide pay item averages at the Engineer's discretion. The dates will be the six months prior to the letting date for this Contract.

9-2.4.2 Asphalt Design Thickness/Spread Rate:

The average spread rate per subplot will be used to determine if the amount of asphalt placed on the project meets the minimum requirements specified in the Contract Documents. Before placing asphalt mix, propose a target spread rate for each layer, which when combined with other layers, will meet the design thickness or spread rate specified in the Contract Documents.

The weight of the mixture will be determined as provided in Section 320-2 of the FDOT Standard Specifications (including the provisions for automatic recordation system).

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

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

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

During construction, monitor the mix spread rate of each subplot at frequent intervals in accordance with Section 330-2.2 of the FDOT Standard Specifications in order to meet the target spread rate for each subplot.

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

Reductions in pay will be determined per subplot by applying a proportional reduction in payment for the material in question, based on a ratio of the average spread rate for the subplot to the design spread rate, which will then be applied in accordance with 9-2.4.1. Any quantity over the designed spread rate specified in the Contract Documents shall not be paid.

9-2.4.3 **Quality:**

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

9-3 **COMPENSATION FOR ALTERED QUANTITIES**

9-3.1 **General:**

When a change or combination of changes in the Contract Documents results in an increase or decrease in the original Contract and the Work added or deleted is of the same general character as that shown or described in the Contract Documents, the Design-Build Firm shall accept payment in full at the Original Contract Price for the actual quantities of Work done. No allowance will be made for any loss of anticipated profits because of increase or decreases in quantities provided, however, that increased

or decreased Work covered by the Supplemental Agreement will be paid for as stipulated in the Supplemental Agreement.

Compensation for alterations in plans or quantities of Work requiring supplemental agreements shall be stipulated in such agreement, except when the Design-Build Firm proceeds with the Work without change of price being agreed upon, the Design-Build Firm shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of Work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the Work, the Design-Build Firm agrees to do the Work in accordance with Section 4-3.2.

9-4 **DELETED WORK**

FIU reserves the right to cancel the portions of the Contract by payment to the Design-Build Firm of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the Work by FIU. No allowance will be made for any loss of anticipated profits because of deleted work.

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

9-5 **PARTIAL PAYMENT**

9-5.1 **General:**

For the purposes of this section, "Contract Amount" is defined as the Original Contract Amount, as adjusted by approved Supplemental Agreements, and Contract time is defined as the original Contract Time adjusted by approved Contract Time extensions.

The Design-Build Firm will receive partial payments on monthly Invoices, based on the amount of Work completed in accordance with the Schedule of Values prepared by the Design-Build Firm and approved by the CE&I, and Extra Work, if applicable, documented through approved Work Orders and/or executed Supplemental Agreements. Payment to the Design Build Firm will be made in compliance with Chapter 218, Florida Statutes, Florida Prompt Payment Act. The monthly payments will be made only for those quantities approved by the CE&I. Invoices shall include the Procurement/Contract number, the Work Program number, the Invoice number, the Invoice date and the period that the Invoice represents, and required certification. Invoices shall be submitted no later than twelve (12) O'clock Noon the pre-established FIU Work Program Invoice Submittal Dates (a copy of the current year Work Program Invoice Submittal Dates may be found on the FIU's website). The Design-Build Firm shall refer to the "FIU Work Program Invoice Checklist" to ensure completeness of Invoice. Late, incomplete and inaccurate monthly Invoice may be delayed for processing, at FIU's discretion, to the following pay period. The following documents shall accompany all monthly Invoices:

- a) FIU Work Program Invoice Submittal Form
- b) FIU Subcontractor/Subconsultant Invoice Tracking Form
- c) Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant*
- d) Certification of Disbursement to Suncontractors/Subconsultants/Suppliers*
- e) Construction Compliance with Specifications and Plans

*These forms are not required with the submission of the first monthly Invoice.

The amount of such payments shall be the total value of the Work done to the date of the estimate based on the approved Schedule of Values less an amount retained, less Damage Recovery (if applicable), less Liquidated Damages (if applicable) and less payments previously made (if applicable). The amount retained shall be determined in accordance with the following schedule:

Percentage of Original Contract Time Completed	Amount Retained
0 to 75	5% of the Work completed.
75 to 100	When the percent of Contract Time used exceeds the percent of Contract Amount earned by more than 15%, FIU will withhold the standard 5% retainage and an additional 5% retainage of the amount due on the current Invoice.

For Contracts with multiple Projects, FIU will apply the above percentages separately to each Project.

9-5.3 Withholding Payment:

Should any defective Work or Materials be discovered prior to Final Acceptance, or should a reasonable doubt arise prior to Final Acceptance as to the integrity of any part of the completed Work, the Engineer will not authorize payment for such defective or questioned Work until the defect has been remedied and causes of doubt removed.

9-5.4 Release of Retainage After Acceptance:

After the Design-Build Firm has furnished to FIU all submittals required by the Contract, and FIU has issued Final Acceptance of the Project, the retainage may be reduced to One Thousand Dollars (\$1,000) plus any amount FIU elects to deduct for defective Work as provided in Section 9-5.3. The Design-Build Firm must submit a request for release of retainage. FIU reserves the right to process a partial retainage release. For Contracts with multiple Projects, FIU will release the prorated retainage for each Project.

9-5.5 Partial Payments for Delivery of Stockpiled Materials:

9-5.5.1 General:

Partial payments will be allowed for Materials stockpiled in locations approved by the Engineer. The Design-Build Firm shall furnish FIU with copies of third party's certified invoices to document the value of the materials received. The following conditions shall apply to all payments for stockpiled Materials:

- 1) There must be reasonable assurance that the stockpiled Material will be incorporated into the Project on which partial payment is made.
- 2) Only properly documented delivery charges will be included in partial payments.
- 3) Partial payments will not be made for Materials which were stockpiled prior to award of the Contract.
- 4) The stockpiled material must be approved by the Engineer.

5.5.2 **Partial Payment Amounts:**

The following partial payment restrictions apply:

- (1) Partial payments less than Five Thousand Dollars (\$5,000) for any one (1) month will not be processed.
- (2) Partial payments for any item listed in the Schedule of Values with an extended total less than Five Thousand Dollars (\$5,000) will not be processed.
- (3) Partial payments for structural steel and precast items will not exceed eighty-five percent (85%) of the material cost for the item.
- (4) Partial payment will not be made for aggregate and base course material received after paving or base Construction operations begin.

9-5.5.3 **Off Site Storage:**

If the conditions of 9-5.5.1 are satisfied, partial payments will be allowed for Materials stockpiled in approved in-state locations. Additionally, partial payments for Materials stockpiled in approved out-of-state locations may be allowed if the conditions of 9-5.5.1 and the following conditions are met:

- (1) Furnish FIU a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Design-Build Firm and FIU. Under this bond, the Obligor shall be the material supplier and the Obliges shall be the Design-Build Firm and Florida International University. The materials bond shall be in the full dollar amount of the proposal price for the materials described in the Contract.
- (2) The following clauses must be added to the Contract between the Design-Build Firm and the supplier of the stockpiled materials:

“Notwithstanding anything to the contrary, <supplier> will be liable to the Design-Build Firm and Florida International University should <supplier> default in the performance of this agreement.”

“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Design-Build Firm’s obligation to furnish the materials described in this agreement to Florida International University.”
- (3) The agreement between the Design-Build Firm and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Design-Build Firm.

9-5.5.4 **Retainage for Partial Payments of Stockpiled Materials:**

The standard retainage as described in Section 9-5 will be withheld from all of the partial payments hereinabove described.

9-5.6 **Reserved**

9-5.7 **Certification of Payment for Subcontracted Work:**

Prior to receipt of any payment, the Design-Build Firm shall certify that all Subcontractors/Subconsultant/Suppliers having an interest in the Contract have received their pro rata share of previous payments from the Design-Build Firm for all Work completed and Materials furnished to date, unless the Design-Build Firm demonstrate good cause for not making any required payment and furnishes written notification of any such good cause to both FIU and the affected Subcontractor/Subconsultant/Supplier. This certification shall be in the form designated by FIU. Refer to FIU form "*Certification of Disbursement to Subcontractors/Subconsultants/Suppliers*".

9-6 **RECORD OF CONSTRUCTION MATERIALS**

9-6.1 **General:**

For all Construction Materials used in the Construction of the Project, (except Materials exempted by Section 9-6.2), preserve for FIU's inspection the invoices and records of the Materials for a period of three (3) years from the date of completion of the Project. Apply this requirement when subcontractors purchase Materials, and obtain the invoices and other Materials records from the subcontractors.

Not later than one (1) month after completing the Project, furnish the Engineer with a certification of Construction Materials procured for the Project by the Design-Build Firm and all subcontractors. Provide this certification in the form of an affidavit completed on an FIU-furnished form.

9-6.2 **Non-Commercial Materials:**

Section 9-6.1 does not apply to Materials generally classed as non-commercial, such as fill materials, local sand, sand-clay, or local materials used as stabilizer.

9-7 **RECORD (AS-BUILT) DRAWINGS**

During the progress of the Work, the Design-Build Firm shall maintain or cause to be maintained records of the exact locations, as installed, of all Materials which were not installed exactly as shown on the approved drawings within the Contract Documents (Contract Drawings). This information shall be recorded on the Design-Build Firm's field sets of drawings along with revisions that have been authorized by Supplemental Agreement, if any. The Design-Build Firm shall make its field sets of drawings available for review by the Engineer on a monthly basis. Any missing and/or inaccurate information identified by the Engineer shall be verified/incorporated to the as-built set of plans by the Design-Build Firm before the following review.

Upon completion of the Work, the Design-Build Firm shall prepare a set of record drawings, which shall be noted "As-Built", and shall bear the date and name of the subcontractors (if applicable) that performed the Work. Where the Work is installed exactly as shown on the Contract Drawings, the drawings shall not be disturbed.

The Design-Build Firm shall review the completed record drawings and ascertain that all data furnished on the drawings are accurate and truly represent the Work as actually installed. The electronic files, including the "As-Built" information, shall be submitted to FIU when completed, together with two sets of black line prints of the record drawings for certification at the time of Final Acceptance.

9-8 **DISPUTED AMOUNTS DUE THE DESIGN-BUILD FIRM**

FIU reserves the right to withhold payment from the final Invoice any disputed amounts between the Design-Build Firm and FIU. Release of all other amounts due shall be made as provided in Section 9-9. Release from each Subcontractor/Subconsultant/Supplier has filed a notice of non-payment.

The Design-Build Firm must provide a waiver and release from each Subcontractor/Subconsultant/Supplier or shall demonstrate to FIU's sole satisfaction good cause for not making the required payment to the Subcontractor/Subconsultants/Supplier.

9-9 **WARRANTY OF TITLE**

The Design-Build Firm warrants and guarantees that title to all components of the Work paid by FIU and covered by any Invoice, whether incorporated in the Project or not, will pass to FIU no later than at the time of payment, free and clear of all liens.

9-10 **FINAL PAYMENT**

When the Contract Work has been completed by the Design-Build Firm and the Final Inspection and Final Acceptance have been given by FIU, an offer of final payment showing the value of the Work will be prepared by FIU as soon as the necessary measurements and computations can be made. All prior Invoices and payments will be subject to correction in the final payment. Provided that the requirements of A) through C) of this Article have been met, the amount of the final Pay Estimate, less any sums that may have been deducted or retained under the provisions of the Contract will be paid to the Design-Build Firm as soon as practicable after Final Acceptance of the Work and pursuant to Chapter 218, Florida Statutes, Florida Prompt Payment Act.

- A) The Design-Build Firm has submitted written acceptance of the balance due, as determined by FIU, as full settlement of the Design-Build Firm's account under the Contract and of all claims in connection therewith.
 - i) The Design-Build Firm shall have the option of accepting the balance due with the stipulation that acceptance of such payment will not constitute a waiver of pending claims pursuant Section 5-19, *Claims by Design Build Firm..* The Design-Build Firm shall specifically identify the Claim filed and still pending pursuant to Section 5-19. No payments will be made under this option without the Design-Build Firm's qualified acceptance letter and required backup documentation.
 - ii) By exercising this option, the Design-Build Firm agrees that any pending or future suit must be limited to the particulars in any unresolved claims filed pursuant to Section 5-19 and must filed three hundred and sixty-five (365) Calendar Days from the date the Final Acceptance of the Project. Failure by the Design-Build Firm to file suit within this period shall constitute full acceptance without qualification.
- B) The Design-Build Firm has furnished a sworn affidavit to the effect that all bills are paid and no suits are pending (other than those exceptions listed if any) in connection with the Contract and that the Design-Build Firm has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of FIU. Any tort liability exceptions, if any, shall be accompanied by evidence of adequate insurance as required in Section 7-13. Refer to FIU Form "*Contractor's Final Release and Affidavit*".
- C) The Surety on the Contract Bond has consented (by completion of its portion of the affidavit and surety release) to final payment to the Design-Build Firm and agrees that the making of such payment shall not relieve the Surety of any of its obligations under the Contract Bond.

9-11 **APPLICATION FOR FINAL PAYMENT**

The Design-Build Firm's application for Final Payment shall be accompanied by the following:

- (1) FIU Work Program Invoice Submittal Form.
- (2) *Certificate of Partial/Final Payment Waiver and Release from Contractor/Consultant* form
- (3) Final Schedule of Contract Values/Invoice.
- (4) Consent of Surety to make Final Payment and Release, Signed and Sealed.
- (5) Power of Attorney from Surety for Release of Final Payment, Signed, Sealed, and dated the same as Consent of Surety.
- (6) *Design-Build Affidavit of Contract Completion* form
- (7) Release of Lien from each Subconsultant/ Subcontractor/Supplier who has filed notices of non-payment to FIU.
- (8) List of Subcontractors/Subconsultants/Suppliers contact information, with telephone numbers, e-mail and location addresses.
- (9) Other special warranties as required by the Specifications, in the name of FIU.

9-12 **WAIVER OF CLAIMS**

The making of an offer for final payment by FIU and acceptance by the Design-Build Firm will constitute:

- a) A waiver of all claims by FIU against Design-Build Firm, except claims arising from unsettled liens, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein;; and
- b) A waiver of all claims by Design-Build Firm against FIU, other than those previously made in writing pursuant to Section 5-19 and remaining unsettled.

9-13 **OFFSETTING PAYMENTS**

If payment of any amount due FIU after settlement, or final adjudication of any claim is not made by the Design-Build Firm within sixty (60) days, FIU may, at its sole discretion, offset such amount from payments due the Design-Build Firm for Work performed under any other contract with FIU, excluding amounts owed to Subcontractors/Subconsultants/Suppliers. Offsetting any amount in this manner shall not be considered a breach of the Contract by FIU.

END OF SECTION 9

SECTION 10
FORMS SECTION

Following is a list of FIU forms, as referenced and incorporated herein. All references to the "Contractor" in the FIU forms are intended to mean the Design-Build Firm.

- 10-1 Escrowed Document Affidavit
- 10-2 FIU Work Program Invoice Checklist
- 10-3 FIU Work Program Invoice Submittal Form
- 10-4 FIU Subcontractor/Subconsultant Invoice Tracking Form
- 10-5 Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant
- 10-6 Certification of Disbursement to Subcontractors/Subconsultants/Suppliers
- 10-7 Construction Compliance with Specifications and Plans
- 10-8 Request for Authorization to Sublet Work
- 10-9 Unilateral Payment
- 10-10 Contractor's Final Release and Affidavit
- 10-11 Work Order

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

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 who 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 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 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.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT B

7-24 Disadvantaged Business Enterprise Program.

7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan: Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

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

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

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

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

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

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

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

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

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

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

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

1. DBE Commitments – at or before the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

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

(a) the procedures adopted to comply with these Specifications;
(b) the number of subordinated Contracts on Department projects awarded to DBEs;

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

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

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

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

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

7-24.5 Counting DBE Participation and Commercially Useful Functions:

49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE Commitments, only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Update DBE Commitments to reflect changes to the initial amount that was previously reported or to add DBEs not initially reported.

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

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

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

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

(d) When a DBE performs as a participant in a joint venture, the

Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

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

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

(g) Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

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

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

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

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

EXHIBIT C

CHAPTER 15 - EQUAL OPPORTUNITY

15.1 GENERAL

15.1.1 To effectively assure Equal Employment Opportunity (EEO), the Federal Highway Administration (FHWA) requires that all federal aid highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations (29 CFR Subtitle A, Parts 30, 31 and 32). These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for federal aid funds, the Local Agency must comply with the civil rights requirements (26 CFR Chapter 1, Part 230).

15.1.2 Local agencies and contractors shall accept the following statement as their operating policy:

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, age, disability, or national origin. 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."

15.1.3 A Local Agency must include the "Required Contract Provisions for Federal-Aid Construction Contracts" (also known as FHWA 1273) into all construction contracts. For information purposes only, all contracts must also reference Executive Order 11246. The Office of Federal Contract Compliance Programs, U.S. Department of Labor has the exclusive authority to determine compliance with Executive Order 11246 and its regulations for implementation.

15.1.4 FDOT will monitor both the local agency and its contractors for compliance as a part of the normal project management reviews and through contract compliance reviews of selected contracts.

15.1.5 When the Local Agency signs Local Agency Agreement it agrees to the following that appears in the agreement:

Executive Order 11246 - Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I - Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

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

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting

forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as

a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with

supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government

contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- (1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- (2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
- (3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- (4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- (5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- (6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out

personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and

employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be

incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant,

contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of

the United States in the enforcement of those obligations. Each such applicant shall also undertake

and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to

carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to

refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law

enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this

Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations

of the administering department or agency issued thereunder.

Part IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No.

10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are

not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p, 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

CHAPTER 15 - EQUAL OPPORTUNITY

15.1 GENERAL

15.1.1 To effectively assure Equal Employment Opportunity (EEO), the Federal Highway Administration (FHWA) requires that all federal aid highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations (29 CFR Subtitle A, Parts 30, 31 and 32). These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for federal aid funds, the Local Agency must comply with the civil rights requirements (26 CFR Chapter 1, Part 230).

15.1.2 Local agencies and contractors shall accept the following statement as their operating policy:

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, age, disability, or national origin. 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."

15.1.3 A Local Agency must include the "Required Contract Provisions for Federal-Aid Construction Contracts" (also known as FHWA 1273) into all construction contracts. For information purposes only, all contracts must also reference Executive Order 11246. The Office of Federal Contract Compliance Programs, U.S. Department of Labor has the exclusive authority to determine compliance with Executive Order 11246 and its regulations for implementation.

15.1.4 FDOT will monitor both the local agency and its contractors for compliance as a part of the normal project management reviews and through contract compliance reviews of selected contracts.

15.1.5 When the Local Agency signs Local Agency Agreement it agrees to the following that appears in the agreement:

Executive Order 11246 - Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I - Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

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

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting

forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as

a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with

supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government

contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- (1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- (2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
- (3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- (4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- (5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- (6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out

personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and

employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be

incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant,

contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of

the United States in the enforcement of those obligations. Each such applicant shall also undertake

and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to

carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to

refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law

enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this

Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations

of the administering department or agency issued thereunder.

Part IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No.

10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations,

orders, instructions, designations, and other directives issued by the President's Committee on Equal

Employment Opportunity and those issued by the heads of various departments or agencies under or

pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are

not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p, 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

EXHIBIT E

7-24 Disadvantaged Business Enterprise Program.

7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan: Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

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

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

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

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

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

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

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

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

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

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

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

1. DBE Commitments - at or before the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

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

(a) the procedures adopted to comply with these Specifications;
(b) the number of subordinated Contracts on Department projects awarded to DBEs;

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

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

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

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

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

7-24.5 Counting DBE Participation and Commercially Useful Functions:

49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE Commitments, only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Update DBE Commitments to reflect changes to the initial amount that was previously reported or to add DBEs not initially reported.

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

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

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

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

(d) When a DBE performs as a participant in a joint venture, the

Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

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

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

(g) Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

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

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

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

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

→ **7-25 On-The-Job Training Requirements.**

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

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

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

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

(a) No trainees will be required for contracts with a contract time allowance of less than 225 calendar days.

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

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

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

1. When a start date on the approved On-The-Job Training Schedule has been missed by 14 or more days;
2. When there is a change(s) in previously approved classifications;

3. When replacement trainees are added due to voluntary or involuntary termination

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

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

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

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

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

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

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

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

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

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

The minimum length and type of training for each classification will be as established at the Post-Preconstruction Trainee Evaluation Meeting and approved by the Department. Graduation to journeyman status will be based upon satisfactory completion of a Proficiency Demonstration set up at the completion of training and established for the specific training classification, completion of the minimum hours in a training classification range, and the employer's satisfaction that the trainee does meet journeyman status in the classification of training. Upon reaching journeyman status, the following documentation must be forwarded to the District Contract Compliance Office:

Trainee Enrollment and Personnel Action Form

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

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

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

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

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

When approved in advance by the District Contract Compliance Manager, credit will be given for training of persons in excess of the number specified herein under the current contract or a Contractor will be allowed to bank trainees who have successfully completed a training program and may apply those trainees to a training requirement in subsequent project(s) upon approval of the Department's District Contract Compliance Manager. This credit will be given

even though the Contractor may receive training program funds from other sources, provided such other source do not specifically prohibit the Contractor from receiving other form of compensation. Credit for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees are concurrently employed on a Federal Aid Project; contributes to the cost of the training, provides the instruction to the trainee and pays the trainee's wages during the offsite training period.

No credit shall be given to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman for a period ample enough to allow the employee time to gain experience in the training classification or failure to continue training the employee time to gain experience in the training classifications is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Section.

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

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

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

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

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

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

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

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

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

EXHIBIT F

COMPANY EEO/AA REQUIREMENTS

- A. The Contractor and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more must comply with the civil rights requirements (26 CFR Chapter 1, Part 230).
- B. Contractor must comply with Title VI Program, related civil rights laws and regulations (29 CFR Subtitle A, Parts 30, 31 and 32) and abide by the following operating policy:
 - 1. It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, age, disability, or national origin. 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, preapprenticeship, and/or on-the-job training.
 - 2. Contractor must also comply with the requirements of FHWA-1273.

1.08 TITLE VI AND RELATED STATUTES NONDISCRIMINATION AGREEMENT

- A. While performing this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") - agrees to the following:
 - 1. Compliance with Regulations: The contractor will comply with the Regulations on nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation ("USDOT") Title 49, Code of Federal Regulations, Part 21. The recommendations may be amended from time to time, (from here on referred to as the Regulations). They are incorporated here by reference and made a part of this contract.
 - 2. Nondiscrimination: In work performed during the contract, the Contractor will not discriminate on the grounds of race, color, or national origin in the selection and holding of subcontractors. This includes obtaining materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations.
 - 3. Solicitations for Subcontractors, 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, the contractor will inform each potential subcontractor or supplier of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin. The solicitations includes obtaining materials or leases of equipment,
 - 4. Information and Reports: The contractor will provide all information and reports required by the Regulations or directives. It will also permit access to its books, records, accounts, other sources of information, and its facilities that are determined by the County or FDOT to be important to ensure compliance with such Regulations, orders and instructions. In some cases, another entity possesses the information required of a contractor and refuses to give the information. Here, the contractor will confirm the lack of information with the County, or the FDOT as appropriate, and will explain its efforts to obtain the information.
 - 5. Sanctions for Noncompliance: In the event that the contractor does not comply with the nondiscrimination provisions of this contract, the County should enforce contract sanctions as it or the FDOT may determine to be appropriate. Sanctions may include, but are not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor should include the terms of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued modifying the Provisions. The contractor will take action with on any subcontract or procurement that the County or the FDOT directs in order to enforce provisions including sanctions for non-compliance. However, if a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the contractor may ask the County to enter into such litigation to protect the interests of the County. Also, the contractor may ask the United States to enter into such litigation to protect the interests of the United States.

EXHIBITS G AND H

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION **DBE BID PACKAGE INFORMATION**

275-030-11
EQUAL OPPORTUNITY OFFICE
09/13
Page 1 of 2

DBE Utilization

The Department began its DBE race neutral program January 1, 2000. **Contract specific goals are not placed on Federal/State contracts;** however, the Department has an overall 8.60% DBE goal it must achieve. In order to assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this letting.

As you prepare your bid, please monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract with the Department, information will be requested of the contractor's DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBE's.

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information. Forms may be downloaded at: www.dot.state.fl.us/proceduraldocuments/ .

DBE Reporting

If you are the prime contractor on a project, complete the Bidder Opportunity List through the Equal Opportunity Compliance system within 3 business days after the pre-construction or pre-work conference for all federal and state funded projects. This **will not** become a mandatory part of the contract. It will assist the Department in tracking and reporting planned or estimated DBE utilization. During the contract, the prime contractor is required to report actual payments to DBE and MBE subcontractors through the web-based Equal Opportunity Compliance (EOC) system.

All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact EOOHelp@dot.state.fl.us.

Bid Opportunity List

The Federal DBE Program requires States to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including both **DBE's and non-DBEs**.

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within 3 business days of submission of the bid or proposal for ALL subcontractors or sub-consultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is:

<https://www3.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance%2f> .

DBE/AA Plans

Contractors bidding on this contract are to have an approved DBE Affirmative Action Plan (FDOT Form 275-030-11B) on file with the FDOT Equal Opportunity Office before execution of a contract. DBE/AA Plans must be received with the contractors bid or received by the Equal Opportunity Office prior to the award of the contract.

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a (3) three year period and should be updated at anytime there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

- Print the first page of the document on company stationery ("letterhead") that indicates the company's name, mailing address, phone number, etc.
- Print the company's name in the "___" space; next to "Date" print the month/day/year the policy is being signed; record the signature of the company's Chief Executive Officer, President or Chairperson in the space next to "by" and print the full first and last name and position title of the official signing the policy.
- Print the DBE Liaison's full name, email address, business mailing address and phone number the bottom of email.

E-mail the completed and signed DBE AA Plan to: eeoforms@dot.state.fl.us.

The Department will review the policy, update department records and issue a notification of approval or disapproval; a copy of the submitted plan will not be returned to the contractor.