



# STATE OF MARYLAND

## Department of General Services General Conditions for Construction Contracts

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**SECTION 1 - DEFINITIONS AND RESPONSIBILITIES:**

**1.01 DEFINITIONS AND CONDITIONS:**

- A. The words and terms stated in subsection B have the meanings indicated.
- B. (1) **Approved Equal** - Those materials, supplies or services, or compatible items of construction whose quality, design or performance characteristics are functionally equal or superior to an item specified and which meet all salient characteristics and other requirements of the contract as determined by the Department.
- (2) **The Architect** - The person commissioned by the State to design the project and/or provide construction-phase architectural or engineering services. If the design was performed by an engineer rather than an architect, "architect" shall refer to the engineer. If the design was performed by the State, "architect" shall refer to the State. The Procurement Officer may exercise any power or authority of the architect under the contract.
- (3) **Breach** - Means material breach of the contract - Synonymous with "default."
- (4) **Change Order** - A written order or directive signed by the Procurement Officer, directing a Contractor to perform as specified, which the Changes clause of the contract authorizes the Procurement Officer to issue with or without the consent of the Contractor. An order of the Procurement Officer, by virtue of being called a "change order," does not necessarily constitute and shall not be construed to be a change in the scope of the contract or in the work required under the contract or to entitle the Contractor to additional compensation for performing the work which is the subject of the order.
- (5) **Claim** - Means a complaint by the Contractor or by the State relating to the contract - also called a "dispute."
- (6) **Contract and Contract Documents** - Contract and Contract Documents - The written agreement executed between the State and the Contractor by which the Contractor is bound to perform the work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate him therefore at the mutually established and accepted rate or price. The contract includes solicitation documents, the construction bid form, contract forms and bonds, Instructions to Bidders, the executed Bid/Proposal Affidavit and Contract Affidavit, General Conditions, specifications, addenda, supplemental conditions and specifications, all special conditions and provisions, all technical provisions, all plans, the notice to proceed, any written change orders and supplemental agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all approved shop drawings (subject to Sections 3.02I and J and all other provisions of the contract) which are in accordance with the requirements of the other contract documents, and all other documents as provided in the contract. These documents which comprise the contract are sometimes referred to collectively as the "contract documents."
- (7) **The Contractor** - The person or organization having a direct contractual relationship with the State for the execution of the work.
- (8) **Contract Completion Date** - The date upon which the Work of the Contract is to be completed. The Contract Completion Date is calculated by adding the Contract Time to the Start Date.
- (9) **Contract Time** - The number of calendar days, including weekends and holidays, within which the Contractor shall complete the Work of the Contract. The Contract Time shall commence upon the Start Date.
- (10) **Critical Path Method (CPM)** - Critical Path Method (CPM) - A scheduling/management tool recognizing a network of work elements or activities and a critical path for completion of a construction project.

- (11) **Day** - Means calendar day unless otherwise designated.
- (12) **The Department or DGS** - Refers to the Department of General Services, State of Maryland.
- (13) **Dispute** - Means a complaint by the Contractor or the State relating to the contract - also called a “claim.”
- (14) **Including** - Means “including but not limited to.”
- (15) **Inspector** - A representative of the Department assigned to review on-site construction activities for the State in accordance with Section 4.06.
- (16) **Notice to Proceed** - A written notice to the Contractor of the start date on which he shall begin the prosecution of the work.
- (17) **Payment Bond** - The security in the form approved by the Department and executed by the Contractor and his surety, and paid for by the Contractor, as a guarantee that the Contractor will pay in full all his bills and accounts for materials and labor used in the construction of the work, as provided by law.
- (18) **Performance Bond** - The security in the form approved by the Department and executed by the Contractor and his surety, and paid for by the Contractor, guaranteeing for the benefit of the State complete performance of the contract in accordance with its terms.
- (19) **Plans** - The official design drawings issued or accepted by the State as part of the contract documents, including those incorporated into the contract documents by reference.
- (20) **Procurement Officer** - (a) Any person (i) authorized by the Department to formulate, enter into, or administer the contract or to make written determinations with respect to the contract and (ii) an authorized representative acting within the limits of the representative’s authority; and (b) the Secretary or Deputy Secretary of the Department.
- (21) **Project Manager** – The individual designated by the Department to manage the project on behalf of the State.
- (22) **Repair** - To restore after injury, deterioration, or wear; to mend; to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable; or to bring into conformity with contract requirements. Upon completion of such repair it must be, unless otherwise stated, rendered to such condition as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish, to be applied without extra cost to the State. When the word “repair” is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for the normal use for which it was intended.
- (23) **The State** - The State of Maryland and/or the Department of General Services.
- (24) **The Secretary** - The Secretary or Deputy Secretary of the Department of General Services, or his designee.
- (25) **SF&P** - The State Finance and Procurement Article of the Annotated Code of Maryland.
- (26) **Solicitation Documents** - The State’s Invitation to Bid or Request for Proposals and any amendment(s) thereto.
- (27) **Start Date** - The date provided in the Notice to Proceed upon which the Work is authorized to commence.

(28) **SubContractor** - Except as is otherwise provided herein, "SubContractor" means an entity having a direct contract with the Contractor to furnish a part of the work. It includes one who furnishes material worked to a special design according to the plans and specifications for the Work.

(29) **Supervisory Personnel** - The individual(s) designated by the Contractor to direct or oversee the on-site work of the Contract. (30)

**Surety** - The corporate body bound as required by law for the full and complete performance of the contract by the Contractor or for the payment by the Contractor to SubContractors and suppliers.

(31) **Work** - The furnishing of any and all labor, materials, equipment, services, utilities and other incidentals and the manufacture or fabrication of materials or equipment necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the contract.

(32) **Written Notice** - Written notice shall be deemed to have been duly served on the Contractor if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is directed, or if delivered or sent by regular or certified mail or by facsimile transmission to the last business address known to the State. Written notice shall be deemed to have been given to the Department upon actual receipt of written notice.

## **1.02 CONTRACTOR'S RESPONSIBILITIES:**

A. The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible (1) for all construction means, methods, techniques, sequences and procedures, (2) for coordinating all portions of the work under the contract, and (3) to the extent he or his SubContractors or suppliers at any tier design or are required to design any portion of the work, for design. Contractor must aggressively and diligently pursue completion of the contract within the contract time.

B. The Contractor shall be responsible to the State for the acts and omissions of his employees, SubContractors and suppliers at any tier, and their agents and employees performing any of the work to or for the Project.

C. The Contractor shall not be relieved from its obligations to perform the work in accordance with the contract performance or nonperformance of inspections, tests or approvals by the State or persons hired by the State.

D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the contract documents and shall not unreasonably encumber the site with any materials or equipment.

### **E. Cutting and Patching of Work:**

(1) The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

(2) The Contractor shall not damage or endanger any portion of the work or the work of others or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of others or any separate Contractor except with the written consent of the Department and of such separate Contractor. The Contractor shall not unreasonably withhold his consent to cutting or otherwise altering the work.

F. The Contractor shall perform all work in accordance with the terms, provisions, conditions, lines, grades, typical cross-sections, dimensions, and other data in or required by the contract documents, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.

**G. Indemnification.**

- (1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State and the architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its SubContractors or suppliers at any tier to perform any requirement of the contract or by any negligent act or omission on the part of the Contractor or its SubContractors or suppliers at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this subsection.
- (2) In any and all claims against the State or the architect or any of their agents or employees by any employee of the Contractor, any subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (3) Except to the extent that the Contractor is also the architect, as provided in Section 1.01B, the obligations of the Contractor under this subsection shall not extend to the liability of the architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the architect, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.

**H. Performance Evaluations**

- (1) The Department will perform for the benefit of itself and other State agencies evaluations (interim and/or final) of the performance of the Contractor and SubContractors and suppliers.
- (2) Performance evaluations may be used or reviewed by a procurement officer in the course of making a determination of responsibility under other procurements.
- (3) Unsatisfactory performance of this contract (or any part of it), whether or not the contract is terminated for default and whether or not an unsatisfactory report (interim or final) is issued, may result in a determination that the Contractor is not a responsible bidder or offeror under COMAR 21.06.01.01.
- (4) Nothing in this contract shall be construed to limit or qualify the authority of a procurement officer under SF&P or COMAR Title 21.

**SECTION 2 - CONTRACT DOCUMENTS - SHOP DRAWINGS:**

**2.01 CONTRACT DOCUMENTS:**

A. The contract documents are complementary. That which is called for by any one shall be as binding as if called for by all.

- (1) The intent of the contract documents is to include in the scope of the contract, at no additional cost to the State, all work necessary for proper completion of the project ready for continual efficient operation including any work reasonably inferable.

- (2) **Clarification:** Prior to bidding, the Contractor should obtain clarification of all questions which may have arisen as to intent of the contract documents, or any actual conflict between two or more items in the contract documents. Should the Contractor have failed to obtain such clarification, then the Department may direct that the work proceed by any method indicated, specified or required, in the judgment of the Department, by the contract documents. Such direction by the Department shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his bid to the State and that he is not entitled to claim extra costs as a result of failure to receive such clarification.
- (3) **Jargon:** Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.
- (4) **Precedence:** In case of conflict between the specifications and the drawings, the specifications will control. Typewritten or printed text shall govern over handwritten or drafted notes.
- B. **Drawings:** The Contractor shall do no work without proper drawings and/or instructions. Drawings may or may not be drawn to scale, and symbols may be used to indicate materials and structural and mechanical requirements. When symbols are used, those parts of the drawings are of necessity diagrammatic or schematic and it is not possible to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the work. Diagrammatic or schematic indications of piping, duct work and conduit and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments at no increased cost to the State.
- (1) **Copies at the Site/As-built Drawings:** The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the architect and the State. Additionally, one set of all contract drawings must be maintained as "as-built" drawings. These as-built drawings shall be marked up by the Contractor in the field on a regular basis (at least monthly) to record all changes in the work as they occur, and the exact location of all work and equipment, including exposed and concealed pipe runs, valves, plugged outlets, cleanouts and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate "as-built" record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceiling shall be dimensioned. Contractor will not be entitled to receive progress payments unless the on-site as-built drawings are kept up to date as required by the Contract. "As-Built" drawings shall be delivered to the architect, in a condition satisfactory to him, as a condition precedent to Substantial Completion Inspection of the work. Final payment and release of final retainage, if any, will not be made until the as-built drawings are revised in accordance with the Architect's comments and these revised drawings are approved by the Architect.
- (2) **Ownership:** All drawings remain the property of the State. They shall not be used by the Contractor on other projects and they shall be returned to the State, if requested, upon completion of the work.
- C. **Large Scale Detail Drawings:** The architect shall furnish, when the State directs, additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The work shall be executed in conformity therewith.
- D. **Dimensions:** The Contractor shall carefully check all dimensions prior to execution of the particular work. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Department prior to any construction or demolition. Should any dimensions be missing, the Department must be consulted and it will supply them prior to execution of the work. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may conflict therewith. Whenever a stock size manufactured item or piece of equipment is specified or is proposed

by the Contractor to be furnished, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment furnished by the Contractor.

**2.02 SHOP DRAWINGS AND MATERIAL SUBMITTALS:**

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, Contractor shall submit to the architect for review and approval, in accordance with the Contractor's schedule, shop drawings and other material submittals which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the contract documents with respect to the review of such submissions. The data on the shop drawing or material submittal must be complete with respect to quantities, dimensions, specified performance and/or design criteria, materials and similar data to enable the architect to review the information as required. These documents shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- B. All shop drawings and material submittals must show the name of the project and the Department's contract number.
- C. **Size of Drawings:** All shop drawings and details submitted to the architect for approval shall be printed on sheets of the same size as the contract drawings prepared by the architect. When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the architect's drawings, this is acceptable. Sheets larger than the architect's drawings will not be accepted except when specifically permitted by the Department. Shop detail supplied on a sheet of letter size 8-1/2" x 11" is acceptable for schedules and small details.
- D. **Items for which shop drawings will be required:** Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all concrete reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, moldings, marble and slate, special rough hardware and all heating, ventilating, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, fuel storage tanks, fire sprinkler systems, etc., or as indicated in the submittal register, if provided in the specifications.
- E. **Copies Required:** Contractor shall supply ten (10) copies of shop drawings and material submittals for use by the architect and the Department, in addition to such copies as the Contractor may desire to be returned for his own use.
- F. **Examination and Approval:** The architect will examine and return shop drawings, material submittals, and requests for information with reasonable promptness noting desired corrections, or approving them with or without conditions, or rejecting them. The Contractor shall allow the architect and DGS up to 14 calendar days (unless a longer review time is identified in the contract documents) following receipt of each submittal or resubmittal of shop drawings, material submittals, and requests for information to review the documents and respond to the Contractor. The time for architect and DGS review shall be increased to the extent that additional time for review is needed due to the fault or responsibility of the Contractor or his subcontractors and suppliers. The Contractor will be notified of the cause of the delay and advised of how long it will take to complete the review; provided however that mere failure to give the Contractor such notice shall not entitle the Contractor to compensation or a time extension.
- G. **Field Dimensions and Conditions:** The Contractor is responsible for checking dimensions and existing conditions in the field. See also Section 3.04.
- H. **Resubmission:** When the architect notes desired corrections, or rejects the drawings, the Contractor shall resubmit the drawings with proper corrective changes in a timely manner. The State reserves the right to charge the Contractor its actual cost for review of resubmittals.

I. **Contractor's Responsibility:** Unless the Contractor has, in writing, expressly notified the architect and the Department to the contrary at the time of the submission, the State and the architect may assume that shop drawings and other material submittals from the Contractor are in conformity with the contract documents and do not involve any change in the contract price, or any change which will alter the space within the structure, or alter the nature of the building or work from that contemplated by the contract documents, or constitute a substitution of materials or equipment or a change in the contract or the scope of work. If the Contractor fails to give notice strictly in accordance with this subsection, approval of any shop drawing or material submittal shall not be binding on the State. See also Sections 5.01C and 5.03.

J. **Notations by State or Architect:** Should the Contractor consider any rejection or notation by the State or architect on the shop drawings or other material submittals, or any other action or inaction of the State or the architect, to cause an increase or decrease in the scope of the work from that required by the contract documents, the Contractor shall:

(1) Desist from further action relative to the item he questions;

(2) Immediately notify in writing the architect and the Department; and

(3) Furnish both, within fourteen days, with a written statement of the increased or decreased cost involved.

No work shall be executed until the entire matter is clarified and the Contractor is ordered by the State to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto.

### **2.03 COST AND PRICE CERTIFICATION (COMAR 21.07.01.23):**

A. Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer, or

(2) A change order or contract modification, expected to exceed \$100,000, or smaller amount set by the procurement officer.

B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

## **SECTION 3 - SCOPE OF THE WORK:**

### **3.01 INTENT OF THE CONTRACT DOCUMENTS:**

It is the intent of the contract documents to show all of the work necessary to complete the project.

### **3.02 GENERAL CONDITIONS CONTROLLING:**

In the event of a conflict between these General Conditions and any other provision of the contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary. Nothing in the bid, proposal, or other submissions from the Contractor shall prevail over any contract documents unless expressly agreed to by the Procurement Officer in writing by a properly approved change order or contract modification.

**3.03 DIFFERING SITE CONDITIONS (COMAR 21.07.02.05):**

- A. The Contractor shall promptly, and before such conditions are disturbed, notify the procurement officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The procurement officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (1) above; provided, however, the time prescribed therefore may be extended by the State.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

**3.04 SITE INVESTIGATION (COMAR 21.07.02.06):**

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the State, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the State.

**3.05 CONDITIONS AFFECTING THE WORK:**

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the State. The State is not responsible for any representation or purported agreement concerning conditions or contract requirements made by any State employee or representative prior to the execution of this contract, unless such understanding or representation is expressly stated in the contract.

**3.06 CHANGES -- MISCELLANEOUS:**

**A. Changes (COMAR 21.07.02.02)**

(1) The procurement officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

- (a) In the specifications (including drawings and designs);
- (b) In the method or manner of performance of the work;
- (c) In the State-furnished facilities, equipment, materials, services, or site; or
- (d) Directing acceleration in the performance of the work.

(2) Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(3) Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(4) Subject to paragraph (6), if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (2) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(5) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under (1) above or the furnishing of written notice under (2) above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice under (2) above.

(6) Each contract modification or change order that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

(7) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

**B. Miscellaneous**

(1) In the event of a dispute between the Department and the Contractor as to whether any work is included in the scope of the contract such that the Contractor would be obligated to provide that work at no additional cost to the State, the Procurement Officer may order the Contractor under this Section 3.06 to perform the work (a "Work Order"). If the Contractor considers such an order to be a change in the scope of the contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide the notice required by this section and initiate a claim therefore in accordance with contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as a "change order," does not necessarily constitute a change in the scope of the contract or in the work required under the contract. The Contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the contract otherwise requires the Contractor to perform as stated in the order.

(2) A request by the Contractor for additional time or additional costs caused by the impact of an order of the Procurement Officer on the as-built critical path for completion must be accompanied by (a) a reasonably detailed description of the effect of the order on the adjusted as-planned/as-built critical path and (b) supporting documentation. The mere existence of a change order does not entitle Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. Contractor's entitlement thereto shall depend upon the effect of the change order on the adjusted as-planned/as-built critical path for

completion, even if a schedule other than a CPM schedule is used on the project, and shall be subject to the requirements of Section 7.06. A change order granting a time extension may provide (a) that the completion date will be extended only for specific critical activities, (b) that the remaining completion date(s) for all other portions of the work will not be altered, and (c) for an equitable adjustment of liquidated damages under the new required completion dates.

- (3) Upon receipt of a signed written order of the Procurement Officer under this Section 3.06, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the contract and grounds for termination for default or any other remedy available to the State.
- (4) The State may issue a unilateral order on the State's terms (including a promise to pay the Contractor a "not to exceed" ("NTE") amount) which the Contractor may then dispute in accordance with Sections 3.06A and 6.13. Pending resolution of such a dispute, Contractor must proceed diligently with performance of the contract as ordered by the Procurement Officer.
- (5) The terms "not to exceed" and "NTE" when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.
- (6) The Change Order/Work Order form attached hereto is the form which will be used by the State for all orders under this Section 3.06.
- (7) Contractor shall use the attached PCO Cover Sheet when submitting all requests for change orders and contract modifications.

### **3.07 MODIFICATION OF CONTRACT PRICE:**

When changes in the work require modification of the contract price, such modification shall be accomplished in accordance with the requirements of Section 3.06 and the following requirements:

- A. The Contractor shall promptly submit to the Department and to the architect a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
- B. For all changes in the work to be performed by a SubContractor, the Contractor shall furnish the SubContractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the SubContractor authorized to act for the SubContractor. If requested by the Department or the architect, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.
- C. Modification of the contract price, when required, shall be determined as follows:
  - (1) Variations in Estimated Quantities (COMAR 21.07.02.03) - Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

- (2) A lump sum price agreed upon by both the Department and Contractor. This lump sum shall be supported by a fully itemized cost breakdown provided by the Contractor which shall include:
- a) Labor;
    - (i) The wages to be paid for each and every estimated hour of work to be performed.
    - (ii) The estimated costs to be paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work; and
    - (iii) An equitable percentage, to be determined by the Contractor and Procurement Officer, applied against the labor cost (premium pay and fringes excluded) for liability and worker's compensation insurance premiums, unemployment insurance contributions and FICA taxes on such labor cost.
  
  - b) Material; For materials to be used in accordance with the contract, acceptable to the Department, the Contractor shall document the estimated cost.
  
  - c) Equipment; For any machine power tools or equipment (whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or those rates which may be specified elsewhere in the contract, or reasonable rates, whichever are less. Rates shall include fuel and lubricants which are necessary to execute the work required on the change.
- (3) If job conditions or circumstances, or the extent or nature of the change, or failure of the Department and the Contractor to agree upon a lump sum price or the application of unit prices, prevent the determination of the cost of any proposed change, the work shall be done on the basis of a Force Account, as hereinafter stated under Section 8.02 FORCE ACCOUNT WORK, if so ordered by the Department.
- (4) If the change involves a credit to the State, unless the amount must be determined by the application of unit prices, then the amount of the credit shall be the greater of (a) the alternate or other itemized price for such work stated in Contractor's bid, or (b) a reasonable price, including overhead and profit.
- (5) If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit.
- (6) The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs, excluding those items which may be included in overhead.
- (7) (a) The mark-up allowable to a SubContractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the SubContractor's overhead and five percent (5%) for the SubContractor's profit, based upon the SubContractor's costs of labor, materials, and equipment.
- (b) For work performed by a SubContractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the SubContractor's materials, equipment, and labor.
- (8) The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.
- (9) If the Contractor and the Department cannot agree as to the extent the contract time shall be increased for extra work or the extent the contract time shall be reduced for work omitted by the State, the increase or decrease, as the case may be, shall be

determined by the Procurement Officer based on the impact of the change, if any, on the as-built critical path for completion of the work, whether or not a CPM schedule is used.

- D. The allowable percentages of cost for overhead and profit as provided in 3.07C(6) and (7), 7.06P(3), and 8.02A, and all other applicable provisions of the contract, are deemed to include but not be limited to all costs and expenses of the following kinds: project management, supervision and coordination; job supervision and field office expenses required by the contract; expenses for supervisors, superintendents, managers, timekeepers, clerks and watchmen; cost of correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office; use of small tools (for purpose of definition, equipment with a new cost of \$500 or less will be considered "small tools."), costs of vehicles generally used for transporting workmen, materials, tools, or equipment to job location, and other incidental costs; and all expenses of maintenance or operation of Contractor's regularly established principal office, branch office, and similar facilities, and all other costs and expenses customarily classified as overhead.
- E. Contractor's entitlement to compensation or additional time for delays for which the State is responsible or for which an extension is due the Contractor is also subject to Sections 3.06 and 7.06.
- F. No allowance shall be made to the Contractor for loss of anticipated profits on account of changes in the work.
- G. Execution of a written change order by Contractor, or failure of the Contractor to dispute the terms of a written order of the Procurement Officer strictly in accordance with contract requirements, shall be binding and conclusive and shall operate as an accord and satisfaction as to (a) all compensation payable to Contractor for the work associated with the change order, and (b) Contractor's right to an extension of the contract completion time. Contractor may not execute or accept a change order subject to any conditions or reservation of rights or claims which have not been agreed to in writing the Procurement Officer. Any attempt by the Contractor to impose such conditions or reservations shall not be binding on the State. Contractor's sole remedy for disputing the terms of an order by the Procurement Officer or for making a claim is to strictly follow the procedures stated in this Section 3.07 and Sections 3.06 and 6.13.
- H. Whenever the Contractor is entitled to an increase in the contract price, the amount of the increase shall not include any amount for increased costs or premiums of bonds unless: (1) DGS requires an increase in the amount of the penal sum of the bond or bonds, (2) the Contractor actually incurs such cost, (3) the surety actually increases the penal sum of the bonds, and (4) DGS receives proof in satisfactory form that the surety has increased the penal sum of the bonds.
- I. The contract is subject to all applicable provisions of COMAR 21.05.03.04 (Negotiated Overhead Rates) and 21.05.03.05 (Price Negotiation Policies and Techniques).

### **3.08 UNAUTHORIZED WORK:**

The Contractor shall not be paid for any work outside the scope of the contract not authorized in writing by the Procurement Officer.

## **SECTION 4 - CONTROL OF THE WORK:**

### **4.01 INTERPRETATION OF THE CONTRACT DOCUMENTS -- AUTHORITY OF THE ARCHITECT:**

- A. The Procurement Officer shall be the final interpreter of the contract documents. He will furnish with reasonable promptness, through DGS or the architect, such clarifications as he may deem necessary for the proper execution of the work. Clarifications issued by the architect shall be consistent with the intent of the contract documents and, when in special instances the architect is authorized by the Department so to act, the architect has authority to stop work whenever such stoppage may be necessary to ensure the proper execution of the contract.

- B. Except as otherwise expressly provided in the contract documents, all decisions of the architect are subject to approval by the Department. The architect has no authority to waive or change the requirements of the contract documents except as provided in Section 3.07C(11) above.

**4.02 CONFORMITY WITH CONTRACT REQUIREMENTS:**

- A. All work performed and all materials furnished shall be in conformity with the contract requirements.
- B. In the event the Department finds the materials, or the finished product in which the materials are used or the work performed are not in complete conformity with the contract requirements 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 Contractor.
- C. In the event the Department finds the materials or the finished product in which the materials are used are not in complete conformity with the contract requirements, but have resulted in a satisfactory product, it shall then make a determination if the work shall be accepted. In this event, the Procurement Officer will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment, if any, in the contract price.

**4.03 ADJACENT WORK:**

The State shall have the right, at any time, to contract for and/or perform other work on, near, over or under the work covered by this contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit his own work to such other work as may be directed by the Department.

**4.04 CONTROL BY THE CONTRACTOR:**

The Contractor shall constantly maintain efficient supervision of the work, using his best skill and coordinating ability. He shall carefully study and compare all drawings, specifications and other instructions and check them against conditions existing or being constructed on the project. He shall at once report to the Department any error, inconsistency or omission which he may discover.

**4.05 COORDINATION WITH UTILITIES:**

- A. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances, the operation of moving them, the making of new connections thereto if required by the contract documents, or by other requirements of the utility company.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.
- D. The Contractor shall cooperate with the owners of any 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 those parties will not be unnecessarily interrupted.

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

**4.06 INSPECTIONS, TESTS, STATE INSPECTORS:**

- A. As used in this section and elsewhere wherever the context calls for it, "inspection" includes testing and/or approval of work.
- B. The Contractor shall, at his expense, maintain an adequate inspection system and perform, or cause to be performed, such inspections as are required by the contract (such as an electrical inspection from an independent (non-governmental) electrical inspection agency approved or licensed as required by law when required under the contract. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities - see General Condition Section 8.01E(2)(b)) or as otherwise will ensure that the work conforms to contract requirements. The Contractor shall maintain complete records of inspections and shall give the Department copies of these records as they are made. All work shall be conducted under the general direction of the Department and is subject to State inspection at all places and at all reasonable times to ensure strict compliance with the contract.
- C. If the contract, or any applicable laws, ordinances, regulations, or order of any public authority or agency having jurisdiction require any work to be specially inspected, tested or approved, the Contractor shall give the Department, the architect, and any other public authority or agency which must be present or which otherwise should be notified, timely notice (at least 14 calendar days) of readiness for inspection and, if the inspection is by an authority or agency other than the Department, the date of the inspection.
- D. The State may charge the Contractor any additional cost of inspection when work is not ready at the time specified by the Contractor, or when prior rejection makes reinspection necessary.
- E. All work, including fabrication and source of supply, is subject to inspection by the architect, the State, and the State inspector. Inspectors for the State are not authorized to revoke, alter, or waive any requirements of the contract. Inspectors are authorized to call the attention of the Contractor to any failure of the work to conform to the contract, including but not limited to the existence of unsafe conditions, inadequate safeguards and exits, and nuisances. Inspectors are authorized to suspend the work or any portion of the work, at no additional charge to the State, until resolution of issues concerning compliance with contract requirements.
- F. Inspections by the State or the architect are for the sole benefit of the State. Inspections by the State or the architect, or the presence or absence of a State inspector or the architect at any inspection, or the failure of the State inspector or the architect to report any deviation by the Contractor from contract requirements shall not: (1) relieve the Contractor of responsibility for adequate quality control measures, compliance with contract requirements, or damage to or loss of material; (2) constitute or imply acceptance of any work; or (3) affect the continuing rights of the State to hold Contractor responsible for failure to meet contract requirements.
- G. If the State determines that any work requires special inspection not required by the contract, the Department may direct the Contractor to obtain such inspection and the Contractor shall do so. If the inspection reveals a failure of the work to comply with contract requirements, Contractor shall bear all costs of the inspection, including any additional compensation paid or payable to the architect and any other costs incurred by the State. In all other cases, the Department shall bear such costs and an equitable adjustment shall be made to the contract price.
- H. Required certificates or other documentation of inspection shall be obtained by the Contractor and promptly delivered by him to the architect, DGS, and any other public authority or agency entitled thereto.

**4.07 REMOVAL OF DEFECTIVE WORK:**

- A. All work and materials which do not conform to the requirements of the contract will be considered unacceptable.

- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, design error or omission by the Contractor or his SubContractors and suppliers at any tier, or any other cause attributable to the Contractor or his SubContractors or suppliers at any tier, shall be promptly removed and replaced by work and materials which shall conform to the contract requirements or shall be remedied otherwise in an acceptable manner authorized by the Department.
- C. Upon failure of the Contractor to comply promptly with the provisions of this section, the Department shall have authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed at the Contractor's expense.
- D. Any time lost by the Contractor for correction of work not in accordance with the contract shall be made up by the Contractor at his expense.

**4.08 MAINTENANCE OF WORK DURING CONSTRUCTION:**

- A. The Contractor shall maintain the work during construction and until Substantial Completion. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such waters and such drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been removed. Such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.
- C. All cost of maintenance work during construction and until Substantial Completion shall be included in the base bid and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's work is halted by the State under the provisions of the contract, the Contractor shall maintain the entire project as provided herein and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contractor has been declared in default.
- E. On projects where traffic flow is maintained, the Contractor shall be responsible for repair and restoration of all traffic damage to the Work, either partially or totally completed, until such time as the Work is accepted by the State.

**4.09 FAILURE TO MAINTAIN ENTIRE PROJECT:**

Failure on the part of the Contractor, at any time, to comply with the provisions of Section 4.08 may result in the State notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance promptly after receipt of such notice, the Department may immediately proceed to maintain the project and the entire cost of this maintenance will be charged against the Contractor

**4.10 STATE'S RIGHT TO DO WORK:**

If the Contractor fails to prosecute the work properly or diligently or fails to perform any provision of the contract, the State may make good such deficiencies at the Contractor's expense or terminate the contract for default under Sections 7.07 and/or 7.08, or both.

**4.11 PROGRESS MEETINGS--SCHEDULING MEETINGS:**

**A. General.**

The Contractor and his major SubContractors shall hold and attend progress meetings with the State and the architect (unless the architect's absence is excused by the Department) at the site at least monthly. The Department may require progress meetings to be held more frequently at no additional cost to the State. Minutes of progress meetings shall be prepared and circulated by the architect.

**B. SubContractor Progress Meetings.**

The State and the architect must receive timely prior written notice of all progress meetings between the Contractor and its SubContractors or suppliers at any tier. The State and the architect may attend all such meetings. Contractor must keep minutes of all such meetings and must promptly provide DGS and the architect with copies of the minutes.

**C. Scheduling Meetings.**

See Section 7.06T.

**SECTION 5 - MATERIALS**

**5.01 GENERAL:**

- A. All materials shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the architect in writing, as soon as possible after execution of the contract by the Department, of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work.
- B. Materials include all: equipment; parts; products; methods of construction or of performing the work which may be the subject of a patent, copyright or other right or restriction governing its use; and processed and unprocessed natural substances required for completion of the contract. The Contractor, in accepting the contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use and requirements for connection, setting, maintenance and operation. Whenever an article or material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these specifications shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes or regulations.
- C. **Approval.** All materials are subject to the architect's approval as to conformity with the specifications, quality, design, color, etc. No work for which approval is necessary shall be used until written approval is given by the architect. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications. See also Sections 2.021 and 5.03.
- D. **New Materials.** Unless otherwise specified, all materials shall be new. Old or used materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Department.

- E. **Quality.** Unless otherwise specified, all materials shall be of the best quality of the respective kinds.
- F. **Samples.** The Contractor shall furnish for approval all samples as directed and materials used shall be the approved samples.
- G. **Proof of Quality.** The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in Section 5.03 of these General Conditions.
- H. **Standard Specifications.** When no specification or code is cited or otherwise applicable and the quality, processing, composition or method of installation of an item is only generally referred to, then:
- (1) For items not otherwise specified below, the applicable specification shall be the latest edition of the applicable American Society for Testing Materials specification.
  - (2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable specification shall be the applicable portions of the latest edition of the State plumbing code.
  - (3) For items generally considered as heating, refrigerating, air-conditioning or ventilation, the applicable specifications shall be the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
  - (4) For items generally considered as electrical, the applicable specifications shall be the applicable provisions of the latest edition of the International Building Code and the National Electric Code.
  - (5) For items generally considered as fire protection, the applicable specifications shall be the applicable sections of the latest edition of the State Fire Prevention Code and the National Fire Protection Association Code.

**5.02 STORAGE AND HANDLING OF MATERIALS:**

- A. Materials shall be stored so as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment. At completion of the project such storage areas must be restored to their original condition by the Contractor at his expense.
- B. All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50 F). All valves shall be stored under roof on wood pedestals, above ground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer and all requirements of the architect on oiling, protection and maintenance of equipment during storage. It shall be solely the Contractor's responsibility to safely store and care for all equipment and materials. Materials not properly stored prior to installation shall not be considered for payment.
- C. Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
- D. Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as the "Limit of Contract."

E. Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.

**F. Explosives.**

(1) Explosives shall not be stored upon any property belonging to the State.

(2) Should the Contractor desire to use explosives on any project he shall first receive written approval of DGS and obtain all permits required by law, at the Contractor's expense. The approval will stipulate the time, place and quantity to be used and manner of use.

(3) The Contractor assumes all responsibility for injury to persons or property which may result from the use or transportation of explosives, as well as complying with any and all applicable statutes, ordinances, regulations and restrictions in relation to the use of explosives.

**G. Paints.**

(1) Oil base paints and flammable liquids shall not be stored in large quantities on the project. Containers shall be limited to five gallon size. Any liquid with a flash point of less than one hundred (100) degrees Fahrenheit shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans.

(2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

**5.03 SUBSTITUTIONS:**

A. Should the Contractor desire to substitute another material for one or more specified by name, he shall apply in writing for such permission and state the credit or extra involved with the use of such material.

B. The Contractor shall not submit for approval materials other than those specified without a clear, express, written statement that such a substitution is proposed. Approval in any form or by any means of a substitute material by the architect or anyone else, when the Contractor has not so designated such material as a "substitute," shall not be binding on the State nor release the Contractor from any obligations of his contract, unless the Department, in writing, expressly acknowledges the proposed substitution and approves it. See also Sections 2.021 and 5.01C.

**5.04 APPROVED EQUAL:**

A. The terms "or equal," "equal," and "approved equal" are used as synonyms throughout the specifications. They are implied in reference to all manufacturers or products named in the specifications unless otherwise stated. The Department is the final judge as to equality. The Department does not represent or warrant under any circumstances that there exists an equal to any item specified or that an equal is readily available, even if the words "or equal" are used in the specifications.

B. When several products or manufacturers are named in the specifications as acceptable for the same purpose or use, the Contractor may select any of those so named. However, all of the units of a given type required for and used in the project must be the same in material and manufacture.

**5.05 BUY AMERICAN STEEL:**

The Contractor must comply with the requirements of the Maryland Buy American Steel Act, Title 17, Subtitle 3 of SF&P and COMAR 21.11.02, which are incorporated into and made a part of the contract.

**SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES:**

**6.01 LAWS TO BE OBSERVED:**

- A. The Contractor shall keep fully informed of all Federal, State, and local laws, ordinances, rules and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, rules, ordinances, regulations, orders and decrees; he shall protect and indemnify the State and its representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees, SubContractors or suppliers at any tier. Whenever the contract documents require the Contractor to comply with provisions of Federal, State, or local laws, regulations, ordinances or codes, Contractor must comply whether such laws, regulations, ordinances or codes are expressly incorporated into the contract or not.
- B. The Contractor must comply with the provisions of the Workers' Compensation Act and Federal, State and local laws relating to hours of labor.
- C. The provisions of this contract shall be governed by the laws of the State of Maryland.
- D. If the Contractor observes that the contract documents are at variance with any applicable law, ordinance or regulation, he shall promptly notify the Procurement Officer and the architect, and, except as provided in subsection E, any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice, he shall bear all costs arising therefrom.
- E. The State is not responsible for the actions, orders or interpretations of Federal, county, municipal, or other local officials or representatives respecting the application to the work of Federal, State, or local laws, ordinances, regulations or codes. Contractor shall not be entitled to additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.
- F. Compliance with Laws (COMAR 21.07.01.22) - the Contractor hereby represents and warrants that:
  - (1) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
  - (2) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
  - (3) It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
  - (4) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

**6.02 PERMITS AND LICENSES:**

- A. When required by law or the contract, the State or its authorized representative will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the contract documents and he shall include the cost of said fees in his base bid. The State shall not be responsible for the actions or

interpretations of county, municipal, or other local agencies or officials respecting the application of Federal, State or local laws, rules, ordinances, regulations, codes, or policies to the work.

- B. The Contractor must be licensed as required by Title 17, Subtitle 6 or Title 8 of the Business Regulation Article, Annotated Code of Maryland, and must be qualified by submission and approval of a Qualification Questionnaire (DGS Form 340-8-CQ3) to the Department.

**6.03 PATENTS, COPYRIGHTS, TRADE SECRETS, AND PROTECTED MATTER:**

- A. The Contractor assumes the risk that any materials, equipment, processes, or other items required under the contract or furnished by the Contractor (including the CPM software furnished to the Department under Section 7.06J(2)(1)) are subject to any patent, copyright, trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the State. Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall save the State harmless from loss or expense on account thereof.
- B. When an item specified by the State or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Contractor will, at his option, and at no additional cost to the State, (1) procure for the State the right to use the item; (2) replace the item with an approved, non-infringing equal; or (3) modify the item so it becomes non-infringing and performs substantially the same as the original item.

**6.04 LAND, AIR AND WATER POLLUTION, AND EROSION CONTROL:**

- A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time and shall maintain them in proper condition during the course of the contract. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. Temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. The Department shall be kept advised of all such off-site control measures taken by the Contractor. This shall not relieve the Contractor of responsibility for such work.
- C. The Contractor must submit evidence to the Department that the governing Federal, State and local air pollution criteria will be and were met. This evidence and related documents will be retained by the Department for on-site examination.
- D. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, or by the order of any State or Federal agency or official enforcing applicable laws, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer under Section 7.09, Suspension of the Work. If it is determined that the suspension, delay, or interruption is due wholly or in part to acts or omissions of the Contractor in breach or violation of the terms of this contract or acts of the Contractor not required by this contract, Contractor shall be responsible for all additional costs and delays resulting from such acts or omissions.
- E. The term "environmental litigation," as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the State has not duly considered, either substantively or procedurally, the effect of the work on the environment.

## **6.05 INSURANCE REQUIREMENTS**

A. The Contractor shall maintain in full force and effect liability insurance necessary to cover claims arising from the Contractor's operations under this Contract. The following types of insurance coverage shall be provided:

- (1) Primary General Liability
- (2) Umbrella Liability or Excess Liability
- (3) Automobile Liability
- (4) Workers' Compensation
- (5) Builder's Risk
- (6) Professional Design Errors & Omissions, if design services are provided by Contractor

Note: The Contract may require the Contractor to maintain other types of insurance.

- B. The insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted. Evidence of insurance shall be provided to the Department prior to the execution of the Contract by means of a Certificate of Insurance with copies of all endorsements attached or by certified copy of the complete policy with all endorsements. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the contract for default. Exclusion endorsement copies shall be attached to the Certificate of Insurance. The Certificate of Insurance shall be accompanied by a document (a copy of State License or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer.
- C. The Contractor shall not commence work under this Contract until all the insurance required under this Subsection has been obtained and approved by the Department, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been obtained by the subcontractor and approved by the Contractor. All SubContractors shall be required in the subcontract documents to carry insurance for the line items described in the subcontract. The Contractor shall be responsible to determining appropriate limits for subcontractors, and for enforcing insurance coverage requirements for its subcontractors.
- D. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall be written on forms (including the actual wording of the policies and all endorsements) acceptable to the Department and with insurance companies that hold a current A.M. Best rating of A and that are duly licensed to transact the prescribed coverages in the jurisdiction in which the work of the Contract is to be performed.
- E. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall be endorsed to state that the insurance carrier shall provide at least sixty (60) days notice to the Department in the event of cancellation, non-renewal, or material change in the coverage, either by the insurance company or the Contractor.
- F. The General Liability and Umbrella Liability/Excess Liability insurance policies required by this Subsection or elsewhere in the contract Documents shall include endorsements stating that the State and the Department and any other entities designated by the Department are additional insureds with respect to liability arising out of or resulting from the operations and completed operations of the named insured under the Contract.
- G. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall contain endorsements stating that such coverage as is provided by the policies for the benefit of the additional insured is primary and other coverage maintained by additional insured (if any) shall be non-contributing with the coverage provided under the policies.

- H. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall contain waivers of subrogation in favor of the State and the Department and any other entity designated by the Department and shall provide that the bankruptcy or insolvency of the insured does not relieve the insurance company of its obligations under the policies.
- I. In the event any party maintains insurance with limits exceeding the limits required hereunder, the Certificates of Insurance provided to the Department shall state the full extent of the coverage available to the parties. Such excess liability coverage will inure to the benefit of the parties in the event of loss in excess of the minimum insurance required herein.
- J. If, during the term of the Contract, the Contractor fails to secure and maintain the required insurance, the Department shall have the right (without the obligation to do so) to secure the insurance in the amounts specified in the name of the Contractor, in which case, the Contractor shall pay all premiums, deductibles, self-insured retentions or other amounts associated with the insurance and shall furnish all information that may be required in connection with the Department purchasing such insurance.
- K. It is understood and agreed that the coverages and limits contained herein are the minimum requirements only. The Contractor is responsible for providing insurance coverage that meets the needs of the Contractor itself, its subcontractors, sub-consultants, employees, and others as obligated in the Contract Documents. All insurance policies shall contain at a minimum the following provisions:
- (1) Primary General Liability Insurance
- (a) Coverage – The policy shall include provisions that offer protection against all risks and exposures, including without limitation:
- (i) Premises and Operations Coverage
  - (ii) Products and Completed Operations Coverage
  - (iii) Blanket Contractual Liability Coverage, including any indemnity provisions
  - (iv) Broad Named Insured Endorsement
  - (v) Notice, Knowledge, and Unintentional Errors and Omissions Coverage
  - (vi) Incidental Malpractice Coverage
  - (vii) Independent Contractors Coverage
  - (viii) Personal Injury Coverage
  - (ix) Broad Form Coverage for damage to property of the State, as well as other third parties resulting from the Contractor's Work
  - (x) Any aggregate limits apply on a "per project" basis
- (b) Limits of Liability – Minimum Limits of Liability dedicated to the Project of \$1,000,000 each occurrence and \$2,000,000 aggregate shall be provided.
- (c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.
- (d) Status of the State as Additional Insured – The Policy shall name the State and the Department and any other entities required by the Department as additional insured.
- (e) Term of Coverage – The term of coverage shall be the full contract period. Contractor shall continue to name all additional insured for the entire Period.
- (f) Other Coverage/Features – The Primary General Liability Insurance Policy and all Umbrella Liability/Excess Liability Policies are also subject to the following requirements:
- (i) All policies shall include a provision that no act or omission of the Contractor or any party acting under its direction will affect or limit the obligations of the insurance company in respect of any additional insured.
  - (ii) All policies shall delete any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work under the Contract.
  - (iii) All policies must provide that the insurance company has the duty to adjust a claim and provide a defense.

(2) Umbrella Liability Insurance

- (a) Coverage – Coverage shall be at least as broad as the underlying primary commercial general liability policy.
- (b) Limits of Liability – Unless expressly modified by the Procurement Officer, Limits of Liability dedicated to the project in the amounts of \$5 million per occurrence and \$5 million aggregate shall be provided.
- (c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.
- (d) Status of the State as Additional Insured – The Policy shall name the State and the Department and any other entities required by the Department as additional insured.

(3) Automobile Liability Insurance

- (a) Coverage – All vehicles used in conjunction with the Contract shall be insured.
- (b) Limits of Liability – Minimum Limits of Liability, primary to Umbrella Liability coverage described above, in the amounts of \$1 million per occurrence and \$1 million aggregate shall be provided.
- (c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.

(4) Workers' Compensation

- (a) Coverage – Statutory Workers' Compensation as required by the State of Maryland.
- (b) Limits of Liability – Statutory.

(5) Builder's Risk Insurance (and Installation Floater, if not included in Builder's Risk Coverage)

- (a) Named Insured – At a minimum the policy shall insure the Contractor, the State, the Department, and any other party with an insurable interest in the Project.
- (b) Coverage – All risks of direct physical loss of or damage to the property (including without limitation perils of flood). Coverage shall be as broad as possible with respect to both covered property interests and covered locations. All covered locations shall be named, and shall include the contract number and project description. Coverage applies to all materials, supplies, and equipment that are consumed on or intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site. If the Builder's Risk Policy does not cover materials onsite that have not yet been installed, Contractor shall also provide an Installation Floater. Contractor shall comply with any requirements in the Policy for project reports by the Contractor to the insurance company. The Builder's Risk Policy shall be endorsed: (i) waiving the insurance company's rights of recovery under subrogation against all insureds and additional insureds on the policy; (ii) to make the Department a Loss Payee for all claims; and (iii) to delete any provisions that void coverage with respect to the Department for acts or omissions of the Contractor or any other party.
- (c) Limits of Liability – Full replacement cost of the structure under construction, plus debris removal coverage and ordinance coverage for all risk perils, and cost of materials onsite that have not yet been installed. Any sub-limits must be clearly identified, and are subject to prior approval by the Department.
- (d) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.

- (6) Design Errors & Omissions (applicable only to projects where Contractor is also providing Design Services).
- (a) Coverage – Work done or to be done by or on behalf of the Contractor and covering errors and omissions.
  - (b) Limits of Liability – Limits of Liability dedicated to the project in the amounts of \$1 million per occurrence and \$2 million aggregate shall be provided.
  - (c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.
  - (d) Status of the State as Additional Insured – The Policy shall name the State and the Department and any other entities required by the Department as additional insured.

**6.06 ASSIGNMENT, NOVATION, CHANGE OF NAME:**

The provisions of COMAR 21.05.02.24 respecting assignment, novation and change of name are incorporated into and made a part of the contract.

**6.07 SEPARATE CONTRACTS:**

- A. The State reserves the right to let other contracts in connection with or adjacent to this work. (See also Section 4.03.) The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. The Contractor is entitled to no overhead, profit, or other compensation for work done for the State by other Contractors.
- B. If any part of the Contractor's work depends on proper execution or results of the work of any other Contractor, the Contractor shall inspect and promptly report to the Department and the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other Contractor's work after the execution of his work.
- C. To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the architect and the Department any discrepancy between the executed work and the drawings.

**6.08 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES:**

- A. In carrying out any of the provisions of the contract, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the State, it being understood that in all such matters they act solely as agents and representatives of the State.
- B. The State may terminate the contract for default or hold the Contractor liable for damages for breach of the contract as provided in subsection C if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending of the contract, or the making of any determinations with respect to the performance of the contract.
- C. In the event this contract is terminated for default or the Contractor is held liable for damages as provided in subsection B hereof, the State shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a termination for default or a breach of the contract by the Contractor, and (2) in addition to any other damages to which it may be entitled, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

D. Non-hiring of officials and employees (COMAR 21.07.01.05) - No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this contract.

**6.09 NO WAIVER OF RIGHTS -- STATE'S REMEDIES CUMULATIVE -- STATE'S DAMAGES:**

- A. The State shall not be precluded or estopped by any measurement, estimate, change order, contract modification, certificate of payment, or payment from showing the true amount and character of the work furnished by the Contractor, or from showing that any measurement, estimate, change order, contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the work does not in fact conform to the contract. The State may recover from the Contractor or his sureties, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, change order, contract modification, certificate of payment, or payment as a result of such failure to conform to the contract. The State's rights in this respect shall not be waived or barred by any inspection, acceptance or approval of the work, or by payment therefore, or by granting an extension of time, or by taking possession, or by execution of a change order based on the erroneous measurement, estimate, or change order, contract modification, certificate of payment, or payment.
- B. The activities of the architect and State personnel respecting this contract, including inspection of the work, review of submittals, monitoring of progress, and so forth are for the benefit of the State only and are not for the benefit of the Contractor. The State's failure to bring to the attention of the Contractor deficiencies in the work or the Contractor's performance will not constitute waiver or excuse of the Contractor's failure to comply strictly with contract requirements.
- C. The waiver by the Procurement Officer of any breach of contract by the Contractor shall not operate as a waiver of any other or subsequent breach.
- D. The rights and remedies of the State and the obligations of the Contractor under various provisions of the contract documents and under provisions of applicable law are cumulative and not exclusive.
- E. For any claim or cause of action accruing to the State as a result of or arising out of this contract, the State may collect damages of any kind, including consequential damages and damages for purely economic loss.

**6.10 SOLICITATION WARRANTY -- CONTINGENT FEE PROHIBITION (COMAR 21.07.01.09):**

The Contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement. Contractor must comply with the provisions of 13-223 of SF&P.

**6.11 ASSIGNMENT OF ANTITRUST CLAIMS:**

The Contractor sells, transfers and assigns to the State of Maryland all rights, title and interest of, in and to any causes of action arising at any time before the date of this assignment or during the performance of this contract under the antitrust laws of the United States, including Section 1 of the Sherman Act, and the antitrust laws of Maryland relating to the purchase by Contractor or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this contract. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

**6.12 FEDERAL PARTICIPATION:**

When the United States government pays all or any portion of the cost of a project, the work may be subject to inspection by Federal agencies. Such inspection shall in no sense make the Federal government a party to this contract.

**6.13 DISPUTES AND CONTRACT CLAIMS (COMAR 21.07.02.05-1):**

- A. This contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10.
- B. Except as otherwise provided in this contract or by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, claim means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.
- D. Within 30 days after Contractor knows or should have known of the basis for a claim relating to this contract, Contractor shall file a written notice of claim with the procurement officer.
- E. Contemporaneously with, or within 90 days after, the filing of a notice of claim, Contractor shall submit the written claim to the procurement officer. If Contractor so requests, the procurement officer, on conditions the procurement officer deems satisfactory to the unit, may extend the time in which Contractor must submit the claim. An example of when a procurement officer may grant an extension includes situations in which the procurement officer finds that a contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical.
- F. The claim shall set forth all the facts surrounding the controversy. Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of the claim.
- G. The procurement officer shall mail or deliver written notification of the final decision within:
  - (1) 90 days after the procurement officer receives the claim if the claim is an amount for which the Appeals Board accelerated procedure, set forth in COMAR 21.10.06.12, may be used;
  - (2) 180 days after the procurement officer receives the claim for a claim not covered under §G(1) of this regulation; or
  - (3) A longer period that the procurement officer and Contractor agree to in writing.
- H. The final decision may award a contract claim only for those expenses incurred not more than 30 days before Contractor was initially required to have filed the notice of claim.
- I. The procurement officer's decision is the final action of the agency. If the procurement officer fails to render a final decision within the time required, Contractor may deem the failure to be a final decision not to pay the claim.
- J. If the final decision grants the claim in part and denies the claim in part, the agency shall pay Contractor the undisputed amount. Payment of the partial claim is not an admission of liability by the agency and does not preclude the agency from recovering the amount paid if a subsequent determination modifies the final decision.
- K. Contractor may file a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of notice of the decision.

- L. Pending resolution of a claim, Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision..
- M. No claim for extra costs is allowable for delays resulting from the causes stated in Section 7.07D(1). Only noncompensable time extensions will be granted for such delays.
- N. As provided in Section 15-219(b) of SF&P and COMAR 21.10.04.02B, a claim shall include the amount of the claim, the facts on which the claim is based, and all relevant data and correspondence that may substantiate the claim, and the claim must be certified by a senior official, officer, or general partner of the Contractor or the SubContractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the State is liable. The Procurement Officer may consider a claim as not being filed until Contractor complies with this provision. The Procurement Officer is not required to notify the Contractor of its failure to comply with this provision; the burden is on the Contractor to comply with the Contractor's obligations under the law and the contract.
- O. Contractor shall take all reasonable action to mitigate or to avoid costs or damages for which the State may be liable.
- P. A final decision of the Procurement Officer shall be prima facie evidence of the correctness of the decision. On any appeal from a decision of the Procurement Officer, the Contractor will have the burden of proof and the burden of going forward with the evidence on all issues, including the propriety of a termination for default.
- Q. (1) As used in this paragraph, "SubContractor" includes subcontractors and suppliers of the Contractor at any tier.  
(2) The State shall have no liability to the Contractor for any claim of a SubContractor against the Contractor if the Contractor has no liability therefor to the SubContractor or if the Contractor has a valid defense against the claim of the SubContractor. Any agreement between the Contractor and the SubContractor making liability on the part of the Contractor to the SubContractor contingent upon a determination of liability on the part of the State to the Contractor shall not make the State liable to the Contractor for the claim of the SubContractor if the Contractor would not otherwise be liable therefor. The purpose of this provision is to adopt the Severin doctrine, without exception, as a matter of contract between the State and the Contractor.
- R. If Contractor contends that any change order or proposal for a change order or other order issued under Section 3.06 will or may cause an increase in the time required for performance, or damages or additional overhead or costs to the Contractor or his SubContractor and suppliers at any tier, Contractor must include the additional time and compensation claimed to be due in Contractor's change order proposal if one was requested by the State, or if no change order proposal was requested by the State, then in the claim submitted by the Contractor. Contractor is entitled to no extensions of the completion time for which he has failed to file a timely notice of claim or the claim itself, in the proper form and supported by complete and proper documentation, as required by this Section and Sections 3.06, 3.07 and 7.06. Contractor may not unilaterally "reserve his rights" to file any claims or any requests for extensions of time. Contractor's rights to additional compensation or time extensions are contingent upon Contractor strictly following the notice and filing requirements of the contract. All proposals or requests for additional time and time-related compensation are subject to this Section, Sections 3.06, 3.07 and 7.06, and all other applicable provisions of the contract documents.

**6.14 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATION (COMAR 21.07.01.10):**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of

the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**6.15 PRE-EXISTING REGULATIONS (COMAR 21.07.01.17):**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

**6.16 STATE PROPERTY NOT SUBJECT TO LIEN:**

Neither the Contractor nor any SubContractor or supplier at any tier may have or acquire any lien against State property.

**6.17 STATE NOT SUBJECT TO LIMITATIONS:**

The State is not bound by laches or any statute of limitations or repose, and Contractor may not assert laches, limitations, or a statute of repose as a defense against any claim or action brought by the State.

**6.18 CONFLICT OF INTEREST:**

The contract is subject to the provisions of Section 13-212 of SF&P and COMAR 21.05.08.08, Conflict of Interest.

**6.19 CENTURY COMPLIANT SOFTWARE, ETC.:**

A. "Century compliant" means that a product or item:

- (1) Is able to process date data accurately including date data century recognition, calculations that accommodate same century and multi-century formulas and date values (including leap year factors), and date data interface values that reflect century when used either in a stand-alone configuration or in combination with other century compliant products used by the State; and
- (2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year.

B. The Contractor warrants that the electronic products and components, including computers, software, and other devices and materials, provide or developed under this contract are century compliant. Contract agrees to promptly repair or replace any product furnished under this contract that is not century compliant, provided the State give Contractor notice of breach of the warranty within a reasonable time after discovery.

C. The warranty provided by this section is in addition to any other warranties provided by law or this contract.

**6.20 COMMERCIAL NONDISCRIMINATION POLICY:**

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply

opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

Note: Paragraph 6.20A must be incorporated into every subcontract entered into under this contract

- B. As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

## **SECTION 7 - PROSECUTION, PROGRESS, AND QUALITY OF THE WORK:**

### **7.01 NOTICE TO PROCEED:**

After the contract has been executed, the Department will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the start date on which the Contractor is expected to begin work. The specified contract time shall begin on the start date stated in the "Notice to Proceed." Except as provided in Section 7.06Q(1), any work started or materials ordered before the start date stated in the "Notice to Proceed" shall be at the risk of the Contractor. The Contractor is prohibited from doing any work on the site without the insurance required by this contract.

### **7.02 PROJECT SIGNS AND INSPECTOR'S FIELD OFFICE:**

#### **A. Project Sign:**

- (1) The State will provide one project sign for each major entrance to the project. The Contractor shall be responsible for transportation of the sign from its place of origin, placement and maintenance of the sign. The location of signs will be directed by the State Inspector.
- (2) Posts for sign(s) shall be supplied by the Contractor and made of 4 x 4 inch construction-grade lumber, pressure preservative treated, 10 feet long. The sign(s) shall be bolted to the posts using at least two 1/2 inch bolts per post. Washers shall be used between the bolts and the sign faces and the posts and nuts. The posts shall be set into the ground to a depth of three feet, six inches with the bottom of the signs two feet six inches above the ground. (3) The Contractor shall be responsible for removing the sign(s), restoration of the site and disposal of the sign(s) as directed by the Department.

#### **B. Inspector's Field Office:**

If so specified, the Contractor shall furnish and maintain, at his cost and for the State's exclusive use, an inspector's field office. Specific requirements will be described in the specifications.

**7.03 PUBLIC CONVENIENCE AND SAFETY:**

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project site shall be placed so as to cause a minimum of obstruction to the public. Sprinkling to inhibit dust shall be performed by the Contractor at no additional cost to the State. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction, are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets and portions of the project under construction shall not be obstructed more than is absolutely necessary.

**7.04 BARRICADES AND WARNING SIGNS:**

- A. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.
- B. The Contractor shall erect warning signs prior to any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the FHWA Manual on Uniform Traffic Control Devices, or as directed.
- C. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Contractor will, at no additional cost to the State, provide suitable guardrails.

**7.05 PRESERVATION, PROTECTION AND RESTORATION OF PROPERTY:**

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the State property from injury or loss arising in connection with this contract. He shall repair and indemnify the State against any such damage, injury or loss, except such as may be directly and solely due to errors in the contract documents or caused by agents or employees of the State. He shall adequately protect adjacent property as provided by law and the contract documents.
- B. The Contractor shall box all trees which are liable to be injured by the moving, storing and working up of materials. He shall use no tree for any attachment or anchorage.
- C. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.
- D. To the extent permitted by law, in any emergency affecting the safety of life, or of the work, or of the adjoining property, the Contractor, without special instruction or authorization, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury.

**7.06 PROGRESS SCHEDULE -- DELAYS:**

- A. (1) All time limits in the contract documents are of the essence of the contract.
- (2) Contractor and the State agree that the time stated in the contract for the completion of the work is a reasonable time, considering the climatic range and the usual business conditions prevailing in the locality of the project. The contract time shall be the full time allowed or required for completion of every task involved in completion of the work, including lead-time for ordering and fabrication of equipment and materials.
- (3) This project is subject to limited funding and tight budgeting. The State's budgeting, including budgeting for expenses of operation after completion and for payment to the architect and others working on the project, is based on the contract extending for the full time allowed by the contract for completion. The State is not obligated (a) to accept an early completion schedule from the Contractor, or (b) to accept the project prior to the completion date of the contract. The State will not be liable for any claims based on the Contractor's assertion of an intention to finish early.

**B. Preliminary Network Diagram.**

- (1) Unless the contract documents expressly state otherwise, the Contractor is to furnish a preliminary network diagram.
- (2) Within 14 days of the execution of the contract, Contractor must submit a preliminary critical path network (CPM) diagram outlining activities for the first 90 days of construction. Include a skeleton diagram for the remainder of the work with the preliminary diagram. This preliminary diagram must be approved prior to the first requisition being process. Include each significant construction activity. Coordinate each activity in the network with other activities. Schedule each construction activity in proper sequence.
- (3) The diagram must be cost-loaded and will be used as the basis for approval of requisitions. Requisitions submitted must be accompanied by an updated, cost-loaded schedule. The requisition amount must agree with the amount shown by the cost-loaded CPM.
- (4) With submission of the preliminary network diagram, include a tabulation by date of submission of submittals required during the first 90 days of construction. List those required to maintain orderly progress of the work, and those required early because of long lead time for manufacture or fabrication.
- (5) Distribute the preliminary network diagram to all parties that need to know about construction activities that are scheduled early, including the Architect, DGS and the using agency.

**C. Completion Schedule.**

- (1) Within 30 days after contract execution and at such other times as required by subsections E and H on next page, the Contractor shall submit a schedule indicating the time allocated by the Contractor for the performance of each portion of the work, the submittal information required by subsection D, the dollar value of each work item (dollar loading) properly and reasonably sequenced, and the Contractor's labor requirements (labor loading) for achieving each task shown on the schedule. The schedule shall show completion of the work within the contract time. The Department may decline to issue a Notice to Proceed until Contractor has submitted the required schedule and it is approved by DGS. Nothing in this section shall be construed to require the Department to issue Notice to Proceed when the required schedule has been submitted and approved.

- (2) (a) Contractor shall also submit, with the schedule required under (1) above,
- (i) a written narrative explaining the bases of Contractor's determinations of durations and prices for major work activities and describing Contractor's approach for meeting the completion dates for major work activities and contract completion;
  - (ii) a listing of the major items of construction equipment planned for use on the project (including type, number of units, unit capacities, and a schedule showing the proposed time each piece of equipment will be on the job, keyed to the activities on which the equipment will be used);
  - (iii) identification of activities which may be expedited by use of overtime or additional shifts; (iv) identification of sequencing and other restraints such as manpower, material, and equipment;
  - (v) a listing of the proposed work days, holidays and any special non-work days being used for the computer reports (schedules and updates).

(b) If required by DGS, such explanation shall include (at no additional cost to the State) estimated quantities and production rates, hours per shift which are proposed, unit prices of materials, and prices of installed equipment.

- D. The Contractor's schedule shall include as separate work activities, all necessary activities relating to submittals, including but not limited to the work or materials covered by the submittal, the SubContractor involved, the submittal required, the activity or event number as shown in the CPM schedule (if required), and all necessary dates for submittal, review and response, resubmittal (if necessary), and final approval by DGS.
- E. Subject to the requirements of subsection J, Contractor shall submit with each application for payment a revised schedule accurately updated to reflect all: (1) revisions to the schedule; (2) changes made or planned in the construction sequence; (3) actual construction activities to date including (i) commencement and completion dates for activities started or completed during the reporting period, (ii) current progress of activities started in prior reporting periods including completion dates for activities completed during the reporting period; (4) delays and their effects on the critical path (whether or not a CPM schedule is required); (5) extensions of time granted by the Department; (6) the Contractor's planned schedule for completing remaining activities; and (7) adjustments to the dollar loading and labor loading associated with items (1) through (5) above. This required schedule update shall be furnished monthly whether or not Contractor submits an application for payment in that month.
- F. All of Contractor's schedules, including monthly schedule updates and recovery schedules under subsection H, shall be reviewed by the architect and DGS and shall be approved or rejected by DGS. Approval by DGS of any schedule submitted under this Section 7.06 shall constitute approval of the schedule only for general conformity with contract requirements and shall not constitute approval, acceptance, or admission of the reasonableness, accuracy, achievability, or feasibility of the schedule or of the Contractor's ability to meet the schedule, or waiver or excuse of default or delay by the Contractor, extension of the time for completion, waiver or modification of contract requirements, admission of fault or responsibility for delay on the part of the State or the architect, or acceptance or admission on the part of the State of any liability or responsibility for the schedule or for acceleration or other costs or delay damages of the Contractor which are inferable from the Contractor's schedule or update.
- G. Contractor agrees that accurate schedules and updates are critical to the State's ability to complete the project efficiently and economically; to judge the impact of alleged delays, differing site conditions, change orders and other events; and to deal fairly with the Contractor. If the Contractor fails to submit reasonable and accurate preliminary network diagrams, schedules, or revisions, including recovery schedules under subsection H, as required by the contract: (1) the State is not obligated to pay the Contractor for work completed until proper, accurate diagrams, schedules, and updates are furnished as required; and (2) the State is not liable for and Contractor is not entitled to damages, compensation, or time extensions for delays starting, occurring or continuing during the period when an accurate and reasonable schedule or update was due but not furnished by the Contractor.
- H. Whenever the project shall be behind schedule or alleged by either party to be behind schedule, the Department may require the Contractor to furnish, at no additional cost to the State, a revised schedule (hereinafter called a "recovery schedule") showing how

the Contractor will finish the work by the contract completion date. This revised schedule shall include all of the information required under subsection E above, subject to the requirements of subsection J.

I. The Contractor's construction schedule shall begin with the Start Date provided in the Notice to Proceed and conclude with the date of contract completion. Except as provided in Section 7.06B(2), float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or the State, but is jointly owned. Delay for which the State is responsible in any portion of the work shall not automatically mean that the extension of the contract completion date is warranted or due the Contractor. Contractor agrees that a delay in any given activity at any given time may not necessarily affect critical activities and may not necessarily cause non-critical activities to become critical. The effect of any given delay may be only to absorb float and may not necessarily delay critical activities. Subject to Section 7.06B(2), extensions of time for delays for which the State is responsible will be granted only to the extent that affected activities exceed the total float along their paths on the current approved CPM schedule.

**J. CPM Scheduling.**

(1) Unless the contract documents expressly permit the Contractor to use a schedule other than a CPM schedule, the schedules to be furnished by the Contractor under this Section 7.06 shall be CPM schedules. Contractor's CPM schedule must be submitted within 30 days after the contract is executed. Following rejection by DGS or conditional approval subject to correction, Contractor shall make the necessary corrections, and resubmit proper schedules within 14 calendar days. Contractor may use only CPM schedule software approved by the Department.

(2) (a) Scheduling of construction is the responsibility of the Contractor. CPM scheduling is required to assure adequate planning and execution of the work and to assist DGS, the architect and the Contractor in evaluating the progress of the work and the impact on the schedule of events which could affect the completion date.

(b) Logic or network diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. These diagrams must show how the start of a given activity is dependent on preceding activities and how its completion restricts the start of following activities.

(c) Detailed logic or network activities shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment and their installation and testing. All activities of DGS and the architect that affect progress, and contract required dates for completion of all or part of the work will be shown.

(d) The selection and number of activities shall be subject to DGS approval. Logic or network diagrams need not be time scaled but shall be drafted to show continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event number, description of the activity, cost loading, labor loading, and activity duration in calendar days. Schedules shall be plotted so they can be displayed on a wall eight feet high. A summary schedule, plotted on a single sheet, shall be provided also.

(e) The mathematical analysis of the network shall include a tabulation of each activity. The following information will be furnished, at a minimum, for each activity:

- (i) I, J numbers if Arrow Diagramming Method (ADM) is used.
- (ii) Activity and Precedence relationships if Precedence Diagramming Method (PDM) is used.
- (iii) Activity Description.
- (iv) Estimated duration of activity (in calendar days).
- (v) Percent of activity completed.

- (vi) Earliest start date (by calendar date).
  - (vii) Earliest finish date (by calendar date).
  - (viii) Actual start date (by calendar date).
  - (ix) Actual finish date (by calendar date).
  - (x) Latest start date (by calendar date).
  - (xi) Latest finish date (by calendar date).
  - (xii) Float or slack (in calendar days).
  - (xiii) A monetary value of each activity.
  - (xiv) SubContractor responsible for each activity.
  - (xv) Labor requirements for each activity.
- (f) Work elements should be broken down into activities of durations of from 1 to 21 calendar days. No activity should ever represent more work than can be accomplished in 21 calendar days.
- (g) The analysis shall list the activities in sorts or groups as follows:
- (i) By the preceding event number from lowest to highest and then in order of the following event number;
  - (ii) By the amount of float, then in order of preceding event number;
  - (iii) In order of latest allowable start dates, then in order of preceding event numbers; and
  - (iv) In order of latest allowable finish dates, then in order of preceding event numbers.
- (h) In addition to the requirements of subsection E, updates shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payments made to the Contractor will be based on the total value of such activities completed or partially completed after verification by DGS and the architect, and this updated schedule analysis shall be used as a basis for partial payment. The update will state the percentage of the work actually completed and scheduled as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative float shall also be reported. The Contractor also shall submit a narrative report with the updated analysis which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.
- (i) Sheet size of diagrams shall be 30 by 42 inches. Each updated copy shall show a date of the latest revision, and the date of the latest updating.
- (j) All schedules, including the initial schedule, recovery schedules, and monthly updates, shall be submitted in three (3) paper copies and one (1) copy on diskette.
- (k) The Contractor shall be prepared to effect schedule revisions in the network in response to changes to the contract under the terms thereof, at the direction of DGS. In the event that change orders are experienced, they shall be reflected as new activities in the network, or as changes in logic and/or time framing of existing activities. They shall be introduced at the next updating after receipt of a change order, and shall be subject to the approval of DGS. Change order logic shall affect only those activities and performance dates directly concerned. Adjustments to the completion date for those activities, or to the completion date for the contract as a whole, will be considered only to the extent that there is not sufficient remaining float to absorb the additional time which may be authorized for completion of individual activities.
- (l) When the first schedule is furnished, Contractor shall also furnish to DGS, for the State's permanent use and retention, the CPM scheduling software used by the Contractor for scheduling the project and one copy of an operating or user's manual for using the software.

(3) (a) CPM schedules and updates, including recovery schedules, shall include the following: (a) lists of activities showing early and late start and finish dates; (b) a brief time-impact comparison in graph form (preferably on one page) comparing the critical path as-built to date and as-planned for the remainder of the work (as shown on Contractor's last schedule or update) with the critical path as-built and as-planned as of the time of the schedule or update currently being submitted; and (c) all other information normally provided in a reasonable CPM schedule or update.

(b) Logic or network diagrams must be furnished (1) with the first schedule submitted under this subsection J, (2) with recovery schedules submitted under subsection H, (3) if requested by DGS with each monthly update submitted under subsection E, and (4) whenever the Contractor changes the sequence of work, whether diagrams are requested by DGS or not.

K. Delays set forth in Section 7.07D(1) shall be noncompensable even if an extension of time is granted.

L. Except as may be expressly agreed otherwise by the Procurement Officer in writing, no action or inaction by the State or its representatives shall constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor or agreement of the State to pay for alleged delays or acceleration of construction, including: (1) a request for a revised schedule, a recovery schedule, or an anticipated completion date from Contractor; (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.

M. Contractor must take all reasonable action to avoid or to mitigate the effects of delays, including but not limited to: (1) rescheduling or resequencing the work, (2) accepting other work and (3) reassigning personnel. When the Contractor is responsible for any delay, the Department may order the Contractor to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to the State. The Contractor does not have the unilateral right to complete the work late and pay liquidated or other damages.

N. Failure of the Contractor to request, as required by Section 3.06B and this Section 7.06, a time extension to which he might otherwise be entitled, shall constitute a waiver of Contractor's right to an extension of the required completion date.

O. Liquidated Damages

(1) (COMAR 21.07.02.08) - Time is an essential element of the contract and it is important that the work be vigorously prosecuted until completion. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.

(2) Prior to and after the contract completion date, the State may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of the State, is behind schedule so as not reasonably to be able to complete the contract on time. Due account may be taken of excusable delays and for delays for which the State is responsible, provided that the Contractor has properly requested time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.

P. (1) The term "delay" shall mean any act, omission, occurrence, event, or other factor which necessarily extends the time reasonably required for completion of the contract. This Section 7.06 covers every such act, omission, occurrence, event, or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, constructive suspension, extension or otherwise.

- (2) Whenever the State shall be liable to the Contractor for an equitable adjustment for delay, the amount of the equitable adjustment shall be determined in accordance with this subsection P and other applicable provisions of this Section 7.06.
- (3) Only the following items may be recoverable by the Contractor as compensation or damages for delay: (a) direct costs, consisting of (i) actual additional salaried and non-salaried on-site labor expenses; (ii) actual additional costs of materials; (iii) actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment; (iv) actual additional extended field office expenses, excluding those which are to be included in overhead; (v) actual additional reasonable costs of SubContractors and suppliers at any tier for which the Contractor is liable, subject to 3.07C(7)(a); (b) actual additional costs, proven by clear and convincing evidence, resulting from labor or other inefficiencies proven by clear and convincing evidence; and (c) an additional percentage, determined in accordance with Section 3.07C(6) and (7)(b), of the total of items (a)(i) through (v) above, for overhead and profit.
- (4) No other compensation or damages are recoverable by Contractor for compensable delays or extensions of the completion time except as expressly stated in this subsection P. In particular, the State will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a SubContractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorneys fees, costs of claims preparation and presentation, and costs of litigation.
- (5) There shall be deducted from the compensation payable to the Contractor under this section for delay any and all costs, expenses, and overhead recovered or recoverable by the Contractor under change orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.
- (6) Contractor shall be entitled to no compensation or damages for delay unless, within ten (10) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay, the Contractor notifies the Procurement Officer in writing of (a) the alleged delay and its anticipated duration, and (b) the act, omission, occurrence, event or other factor allegedly causing the delay. Knowledge on the part of the State of the act, omission, occurrence, event, or other factor, or of the delay allegedly resulting therefrom, shall not excuse Contractor's failure to give the Procurement Officer the notice required by this subsection P(6).
- Q. (1) Except as provided in paragraph 2 below, if the Department fails to issue a Notice to Proceed within 90 days following execution of the contract by the Department, or by such date later than 90 days as may be contemplated by the solicitation documents, the Contractor will have as its sole remedy the option of: (a) declaring the contract void without any liability or obligation on the part of the State except that if the Department fails to issue a Notice to Proceed for reasons unrelated to submission, review, and acceptance of the submittals required by Section 7.06(B)&(C), the Department shall reimburse the Contractor its actual costs of developing same; or (b) accepting an extended period, at no additional cost to the State, for issuance of a Notice to Proceed.
- (2) If the failure of the Department to issue a Notice to Proceed within 90 days following execution of the contract by the Department, or by such date later than 90 days as may be contemplated by the solicitation documents, is caused, wholly or in part, by breach or default of the Contractor or other fault of the Contractor or his SubContractors or suppliers at any tier, the Contractor shall be entitled to no relief under paragraph (1) above based on delay in issuance of the Notice to Proceed. In such a case, the Contractor shall be bound to perform the contract within the time allowed following actual issuance of the Notice to Proceed, at no additional cost to the State.
- R. Requests for time extensions must be filed and supported as provided in Section 3.06 and other applicable provisions of the contract.

**S. Weather**

(1) Definition of rain days and drying days.

- (a) Rainfall sufficient to result in a workday being potentially lost due to rain (rain day) shall be defined as liquid precipitation greater than .10 inch.
- (b) It shall be considered normal for the workday immediately following a rain day of precipitation greater than 1.00 inch to potentially be lost due to wet ground conditions (drying day). The Department may allow additional drying days if deemed reasonable, in its discretion.

(2) Unusually severe weather.

- (a) Rain. To qualify as unusually severe weather due to rain, the number of actual weekdays lost due to rain days and drying days must be greater than that calculated for the month in question using the following procedure:

- (i) Using the last ten (10) years of weather data for the project location from the National Oceanic and Atmospheric Administration (NOAA) or similar source, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and the standard deviation from the average.
- (ii) Contractor shall then add the average number of weekdays lost to the standard deviation. The sum (the average plus the standard deviation) shall be considered normal for the month in question.
- (iii) Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days for the month to determine the net number of weekdays lost to rain:
  - rainfall occurred on a non-work weekday such as a holiday;
  - rainfall occurred at a time when no weather-dependent work was in progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
  - Contractor was still working or able to work on all weather dependent activities to the extent that production was or could have been within actual normal levels established on the project (average plus or minus the standard deviation).

- (b) Time adjustments for rain. If the net number of weekdays lost to rain is less than the normal number in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain is more than the normal number for the month in question, an excusable and noncompensable time extension will be granted. No adjustments will be made for the time between the start date stated in the Notice to Proceed and the first day of the following month or for the last partial month.

- (3) Other weather conditions. Time extensions for delays due to unusual weather conditions other than rain (such as snow, extreme cold or heat, high winds, etc.) will be considered only to the extent Contractor can prove (a) conditions were unusually severe, and (b) they caused actual delay to the adjusted as-planned/as-built critical path.

**T. Scheduling Meetings**

The Contractor shall meet with the State and the architect (unless the architect's absence is excused by the Department) at least monthly to discuss in detail the Contractor's updating of the schedule, the necessity for revisions or corrections in the schedule or updates, and all other issues or matters relating to the scheduling of the project and the Contractor's obligations under the project respecting scheduling. This meeting shall be in addition to the progress meetings required by 4.11.

**7.07 TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, TIME EXTENSIONS (COMAR 21.07.02.07):**

- A. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the State may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the State resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in the contract and if the State so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned the State in completing the work.
- C. If fixed and agreed liquidated damages are provided in the contract and if the State does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
- (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of SubContractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the SubContractors or suppliers; and
  - (2) The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.
- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to the clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes"
- F. The rights and remedies of the State provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- G. As used in paragraph D (1) of this clause, the term "SubContractors or suppliers" means subcontractors or suppliers at any tier.
- H. The State may terminate for default under this Section 7.07 at any time when the Contractor is in default or breach of any material obligation of the contract, including after substantial completion, such as for failure in a timely manner to complete a punch list, to perform warranty work, or to perform any other substantial requirement of the contract.

**7.08 TERMINATION FOR DEFAULT -- GROUNDS OTHER THAN FOR LACK OF DILIGENCE:**

- A. If the Contractor fails to perform any provisions of the contract not governed by Section 7.07 of these General Conditions, the State may terminate the whole or any part of the contract for default by written notice of default to the Contractor. Termination for default in such a case shall be governed by subsections (2) through (7) of COMAR 21.07.01.11B, which are incorporated into and made a part of the contract.
- B. Except as may be expressly agreed otherwise by the Procurement Officer in writing, no action or inaction by the State or its representatives or the architect shall constitute waiver of any default by the Contractor.
- C. The State may terminate for default under this Section 7.08 at any time when the Contractor is in default or breach of any material obligation of the contract, including after substantial completion.

**7.09 SUSPENSION OF THE WORK (COMAR 21.07.02.04):**

- A. The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the State.
- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault of negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this contract.
- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the procurement officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the contract.

**7.10 STATE'S RIGHT TO TERMINATE FOR CONVENIENCE:**

The provisions of COMAR 21.07.02.09 respecting the State's right to terminate the contract for convenience are incorporated into and made a part of this contract.

**7.11 PARTIAL ACCEPTANCE:**

- A. If, in its sole discretion, the Department desires to accept any portion of the project, then the Department shall have the right to accept and use those portions of the project which in the opinion of the Department can be used for their intended purpose. The conditions of occupancy, use, and the responsibilities of the Contractor and the State for maintenance, heat, light, utilities, and insurance shall be established. The State has no obligation to accept the project in portions.
- B. Partial Acceptance shall in no way relieve the Contractor of his responsibilities under the contract.
- C. If the Department accepts the work in portions then warranties on the accepted portions do not begin to run until substantial completion of the whole project is deemed to be achieved.

**7.12 SUBSTANTIAL COMPLETION:**

- A. When the Contractor reasonably believes the work satisfies the requirements of 7.12B, the Contractor shall notify the Regional Manager of the Construction Division and the architect in writing that the work will be ready for Substantial Completion Inspection and testing on a definite date. Reasonable notice shall be given by the Contractor to permit the Department to schedule the Substantial Completion Inspection. The Contractor shall not request Substantial Completion Inspection until the work is in fact substantially complete. The Contractor shall deliver to the Inspector, on the scheduled Substantial Completion Inspection date, a complete, comprehensive set of field mark-up drawings accurately documenting the As-Built Project and all of the Operation and Maintenance (O&M) Manuals required under the contract and shall have completed all required training and demonstration of equipment as required by the contract documents.
- B. The Department shall establish the date of substantial completion and shall fix the time(s) at which the warranties will begin if, on the basis of the Substantial Completion Inspection, the Department determines that, at a minimum and in accordance with the contract documents:
- (1) all electrical, mechanical, and life safety systems have been completed and successfully tested and successfully inspected for conformity to all requirements of the contract documents and all applicable codes and standards;
  - (2) complete, comprehensive field mark-up drawings of the As-Built Project, and all of the Operation and Maintenance (O&M) Manuals required under the contract, have been delivered to the Department;
  - (3) all other requirements for substantial completion, including the completion of required training and demonstration of equipment, have been met; and
  - (4) the project appears able to be occupied and usable for its intended purpose.
- C. The work shall not be deemed substantially complete if, in the absolute discretion of DGS, completion of unfinished work, whether called punch list work or otherwise, would cause inconvenience to or interfere with the use of the premises by using agency personnel or others using the premises.
- D. If the Department determines that substantial completion has been achieved, the Department shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (the "punch list"). All punch list work shall be completed within thirty (30) days after the date of substantial completion determined by DGS, unless DGS establishes a different period for completion of the punch list work. If the Contractor fails to complete the remaining items so listed in the time stipulated the State shall have the undisputed right to complete the work at the Contractor's expense. The Contractor may be required to complete multiple punch lists, which may be prepared by DGS, by the architect, or by the using agency, until the contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the contract for default.
- E. Prior to the granting of substantial completion by DGS, the architect, DGS, and/or the using agency may prepare lists of work requiring completion or requiring completion as a prerequisite to the granting of substantial completion. These "work lists" shall not constitute punch lists and shall not be construed as indicating that the work has been completed to the extent that it is substantially complete.
- F. Final payment shall not be made until all contract work including all punch list work is complete to the satisfaction of the Department.
- G. Acceptance of the work as substantially complete shall not excuse or waive any failure of the Contractor to complete the contract as required by the contract documents.

**7.13 CLEANING UP:**

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work shall remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the State. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the State.

**7.14 WARRANTY:**

- A. Except to the extent that the contract documents impose longer warranty obligations on the Contractor for all or any part of the work, the Contractor warrants for a two year period commencing on the date of substantial completion of the project as a whole or on such other date agreed between the parties:
- (1) that the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship;
  - (2) that all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner;
  - (3) found not to be as guaranteed by this section or otherwise not in conformity with the contract and that he will make good all damages caused to other work or materials in the process of complying with this section;
  - (4) that the entire work shall be water-tight and leak-proof in every particular.
- B. This Section 7.14 provides for a period during which the Contractor is bound to replace work in addition to being liable for failure to perform the contract in accordance with its terms. Nothing herein releases or limits the Contractor's liability for latent defects or for any substantial failure to perform the work in accordance with the contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

**7.15 NOTICE TO STATE OF LABOR DISPUTES:**

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor must insert the substance of this clause, including this subsection B, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the SubContractor shall immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

**SECTION 8 - PAYMENTS:**

**8.01 SCOPE OF PAYMENT:**

- A. Payments are made on the valuation of work accomplished and on account of materials delivered to the site for incorporation in the work which are suitably stored and protected.

- B. Payments shall also be made on account of materials or equipment for incorporation in the work but stored at some off-site location agreed upon by the Department, such payment to be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the Department to establish the State's title to such materials or equipment or otherwise to protect the State's interest, including proof of applicable insurance, transportation to site, and freedom from liens and security interests.
- C. Prior to application for first payment, the Contractor shall submit to the Department and the architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, and based upon the dollar loadings of the approved schedule. This schedule shall be so divided as to facilitate payments to SubContractors. This submission shall be in the standard Department form and shall be supported by such evidence as to its correctness as the Department may direct. This schedule shall be used as a basis for certificates of payments unless at a later date the schedule is found to be in error, in which case the schedule will be corrected.
- D. Application for payment shall be submitted on or about the 25th day of each month but not before ten days of job operation.
- E. In applying for payments the Contractor shall submit a requisition, based upon the dollar loadings of the approved schedule, itemized in such form and supported by such evidence as the Department may require, showing the Contractor's right to the payment claimed. Each requisition shall prominently display the Contractor's Federal Employers Tax Identification Number or Social Security number.
  - (1) In applying for all payments, or final payment, the Contractor shall submit in addition to the above a certificate that he has paid:
    - (a) All labor to date,
    - (b) All vendors and material suppliers in full for all items received, and
    - (c) All SubContractors in full, less the retained amount.
  - (2) In applying for the final payment, the Contractor shall also submit the following:
    - (a) Such evidence as the Department may demand to establish the State's title to materials and to give reasonable assurance that liens and security interests of others do not exist. Nothing in this subsection shall be construed to allow anyone to obtain a lien on State property.
    - (b) An electrical certificate from an independent (non-governmental) electrical inspection agency approved or licensed required by law. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities (see also General Condition Section 4.06B).
    - (c) All other guarantees as called for by the contract.
    - (d) All required equipment, operation, training, maintenance, and other manuals and parts lists.
    - (e) If the Architect provides comments on the field mark-up drawings submitted at Substantial Completion Inspection, a complete set of revised field mark-up drawings documenting the as-built project shall be resubmitted to the Architect.

## **8.02 FORCE ACCOUNT WORK:**

- A. When the Contractor is required to perform work as a result of or alleged by the Contractor to be an addition or change to the contract for which there are no applicable unit prices in the contract, the Department and Contractor shall attempt to agree upon a price for the performance of such work. If an agreement cannot be reached, the Department may require the Contractor to do such work on a force account basis to be compensated as follows:

(1) Labor. The Contractor shall be paid as follows:

(a) The actual wages for each and every hour work is performed.

(b) The actual costs paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work; and

(c) An equitable percentage, to be determined by the Contractor and Procurement Officer, applied against the labor cost (premium pay and fringes excluded) for liability and worker's compensation insurance premiums, unemployment insurance contributions and FICA taxes on such labor cost.

(2) Materials. For materials in accordance with the contract, accepted by the Department and used, the Contractor shall receive the actual cost of such materials.

(3) Equipment. For any machine power tools or equipment (whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or those rates which may be specified elsewhere in the contract, or reasonable rates, whichever are less. Rates shall include fuel and lubricants which are necessary to execute the work required on the change.

(4) Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment), the Contractor shall receive the actual cost of such materials and supplies used.

(5) Bond - Whenever the Contractor is entitled to an increase in the contract price, the amount of the increase shall not include any amount for increased costs or premiums of bonds unless: (1) DGS requires an increase in the amount of the penal sum of the bond or bonds, (2) the Contractor actually incurs such cost, (3) the surety actually increases the penal sum of the bonds, and (4) DGS receives proof in satisfactory form that the surety has increased the penal sum of the bonds

(6) Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.

(7) The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs (excluding items includable in overhead).

(8) SubContractors. For work done solely by a subcontractor, the SubContractor's costs shall be determined as stated in subsections A(1) through (6) above.

(9) (a) The mark-up allowable to a SubContractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the SubContractor's overhead and five percent (5%) for the SubContractor's profit, based upon the SubContractor's costs of labor, materials, and equipment.

(b) For work performed by a SubContractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the SubContractor's materials, equipment, and labor.

B. Compensation. The compensation as set forth above shall be received by the Contractor as payment in full for the work done on a force account basis. At the end of each day, the Contractor's representative and the Department shall compare records of the cost of work as ordered on a force account basis.

C. Statements. No payment will be made for work performed on a force account basis until the Contractor furnishes the Department duplicate itemized statements of the cost of such force account work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such workmen.
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (3) Quantities of materials, prices, and extensions.
- (4) Transportation of materials.
- (5) Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Payments of items under (3) and (4) above shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation of the material as claimed represent actual cost. The Department may require additional proof as to costs, ownership, title, non-existence of liens, etc., to the same extent as provided in Section 8.01E(2)(a).

D. Any other claims of the Contractor arising from work done on a force account basis that are not expressly addressed in this Section 8.02, including (but not limited to) requests for time extensions, are subject to other applicable provisions of the contract.

### **8.03 CASH ALLOWANCES:**

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his contract sum the entire amount of such specified allowances. The expenditure of these allowances is to be at the Department's direction. However, the allowance expenditure is limited to items properly inferable from the title and description of the allowance. Unexpended balances are to be credited to the State. Compensation payable to the Contractor for expenditure of allowances directed by the Department shall be based on the cost to the Contractor as shown by actual invoices or receipts, and no additional overhead or profit shall be payable to the Contractor for such allowances.

### **8.04 CERTIFICATES OF PAYMENT; RETAINAGE:**

- A. If the Contractor has made application as above, the State shall, not later than the date when such payment falls due, issue to the Contractor a certificate for such amount as it decides to be properly due. In approving such partial payments, there shall be retained five percent (5%) of the estimated amount due until completion and acceptance of all work covered by the contract.
- B. This contract is subject to the provisions of COMAR 21.06.06.02, Escrow of Retainage. If retainage is to be placed in an interest bearing account, the Contractor shall be required to complete the Internal Revenue Service's Form W-9, "Payer's Request for Taxpayer Identification Number."
- C. No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the State, shall be an acceptance of any work or materials not in accordance with this contract.

**8.05 DEDUCTIONS FOR UNCORRECTED WORK:**

If the State deems it inexpedient to correct work not in accordance with the contract, an equitable deduction from the contract price shall be made therefor.

**8.06 PAYMENTS WITHHELD:**

A. The State may withhold payment or, on account of subsequently discovered evidence, nullify or reduce the whole or part of any certificate or payment on account of:

- (1) the cost (measured by the contract value or fair market value, whichever is greater) of completing unfinished or defective work not remedied or deductions or amounts due the State under the contract;
- (2) failure of the Contractor to perform any material contract requirement;
- (3) claims filed or likely to be filed against the State for which the Contractor may be liable to the State;
- (4) failure of the Contractor to make payments properly to subcontractors or suppliers for material or labor (see, however, Section 9.03C) or amounts claimed by the Contractor's surety or insurer under any right of subrogation;
- (5) a reasonable doubt that the contract can be completed for the balance then unpaid;
- (6) damage to another Contractor;
- (7) liquidated damages or other damages or compensation due the State for claims of the State against the Contractor;
- (8) any claim of the State against the Contractor or debt or obligation owed to the State or claimed by the State to be owed by the Contractor to the State arising from any other cause or contract;
- (9) retainage as provided in Section 8.04A;
- (10) failure to maintain as-built drawings as required by Section 2.01(B)(2);
- (11) failure to update schedules properly as required by Section 7.06; and
- (12) the cost of completing unfinished warranty work.

B. The failure of Contractor to complete the construction by the required completion date shall be prima facie evidence of the State's right to withhold liquidated damages after the expiration of the contract time for completion. Nothing in this subsection shall be construed to limit the State's right to withhold an amount equal to liquidated damages prior to the expiration of the contract time as provided in subsection 7.06 O.

**8.07 CORRECTION OF WORK BEFORE FINAL PAYMENT:**

A. The Contractor shall promptly remove from the premises all work failing to conform to the contract, whether or not incorporated in the structure or premises. The Contractor shall promptly replace and re-execute such work in accordance with the contract and without expense to the State and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

B. If the Contractor does not remove such condemned work within a reasonable time, the State may remove it and may store materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal or storage within ten days time thereafter, the State may sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses incurred by the State.

**8.08 FINAL PAYMENT:**

A. (1) Upon completion of the Work, the Contractor shall prepare final payment forms and submit them. (2) The State will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The Department will then reply to the Contractor's request for final payment, informing the Contractor of the amount of final payment considered to be due the Contractor. Such reply shall inform the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by the State and the reasons therefor.

B. Notwithstanding subsection A(1) above, prior to or in the absence of a request from Contractor for final payment, the State may determine under subsection A(2) the amount of the final payment it considers to be due the Contractor.

C. If the Contractor disputes the amount determined by the State to be due him, he shall initiate a claim under the disputes procedures.

D. Acceptance by the Contractor of any payment identified by the State as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against the State arising out of or connected with the contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Officer.

E. No claims by the Contractor may be asserted for the first time after final payment is made by the State.

**8.09 PAYMENT AND INTEREST:**

A. Payment of State Obligations (COMAR 21.07.01.18) - Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

B. A proper invoice or requisition shall include a description of items or services provided; the date the goods were received by the ordering agency/department; or the inclusive dates the services were rendered; the price agreed upon pursuant to the contract; the basis for the billing; the purchase order or contract identification number; the Contractor's Federal Employers Identification Number or Social Security Number; and the name and address of the proper invoice recipient for the Department.

C. For purposes of this contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:

(1) The amount invoiced is consistent with the amount agreed upon by the parties to the contract pursuant to the contractual agreement.

(2) The goods and/or services have been received by the State and the quantity received agrees with the quantity ordered.

(3) The goods and/or services meet the qualitative requirements of the contract and have been accepted by the State, subject to Section 6.09 hereof.

(4) The proper invoice has been received by the party or unit of government specified in the agreement.

(5) The invoice is not in dispute.

(6) If the contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the approved schedule of values.

(7) All conditions for release of retainage have been met.

**8.10 RETENTION OF RECORDS -- AUDITS BY THE STATE:**

A. In accordance with COMAR 21.07.01.21, the Contractor and his subcontractors and suppliers at any tier shall retain and maintain all records and documents relating to this contract for three years after final payment by the State hereunder or any applicable statute of limitations whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.

B. If Contractor or his subcontractors or suppliers at any tier fail to retain for the period of time required by this section original documents used, made, or relating to the preparation or calculation of Contractor's bid to the State or of bids, quotes or estimates of subcontractors or suppliers at any tier, Contractor shall be entitled to no damages, compensation, or equitable adjustments (including time extensions) for any claims based on calculations, assumptions, understandings, or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.

C. In the event a claim is initiated by either party under Section 6.13, Contractor and his subcontractors or suppliers at any tier shall retain such books, papers, records and other documents until expiration of the aforesaid three-year period or until final, unappealable resolution of the claim, whichever is later.

**8.11 CONTRACT COST PRINCIPLES AND PROCEDURES:**

The contract is subject to the applicable contract cost principles and procedures set forth in COMAR 21.09.

**8.12 FINANCIAL DISCLOSURE (COMAR 21.07.01.19):**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**8.13 POLITICAL CONTRIBUTION DISCLOSURE (COMAR 21.07.01.20):**

The Contractor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**SECTION 9 - EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS:**

**9.01 EMPLOYEES AND WORKMANSHIP:**

- A. Qualification of Employees. All Contractor/SubContractor personnel shall be subject to a security background check. Before or after award of the contract, at the sole discretion of the State, those persons found to be unfit to work on State contracts may be excluded from the job site at no additional cost to the State. Only personnel thoroughly trained and skilled in the tasks assigned them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work.
- B. Licensed Employees. When municipal, county, State or federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.
- C. Quantity of Labor. The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the contract.
- D. Work Areas. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits or directions of the Department. Generally, the work area will be the same as the "Limit of Contract" line indicated in the construction documents.
- E. Methods and Quality.
- (1) Whenever the method of the work or manner of procedure is not specifically stated in the contract documents, the best practice shall be followed. Unless the contract documents expressly require stricter standards for application, installation, connection, erection, use, cleaning or conditioning, recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. If any such manufacturer's recommendations are defective, faulty, inaccurate, or negligently made, Contractor shall be responsible for all loss resulting therefrom, including liability for loss incurred by the State.
  - (2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
  - (3) All methods, procedure and results are subject to the approval of the architect and the Procurement Officer as to the quality of the finished result to be obtained; provided that this is not to be interpreted as placing upon the architect or the Procurement Officer any responsibility for management of the Contractor or his work.
- F. Scheduling and Coordination.
- (1) The Contractor shall so schedule and coordinate the work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching and digging necessary to the execution of the work is included.
  - (2) The Contractor shall so schedule the construction performed by each group or trade that each installation or portion of the construction shall member with and join with every other new or old work as required for a complete installation, all according to accepted good construction practice.

- G. Superintendent: The Contractor shall keep full-time on the site, at all times during the progress of the work, a competent superintendent fluent in English and any necessary assistants, all approved by the Department prior to commencement of the work. The Contractor shall submit in writing to the Department the name of the person it intends to employ as superintendent for the execution of this contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the Department and an approval or rejection given in writing. Persons who have previously proven unsatisfactory on work executed for the State of Maryland, or who are without proper qualifications, will not be approved. Should it be necessary to change the superintendent, this procedure will be repeated. A single superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by the Department in writing. The superintendent shall represent the Contractor. All directions given to the superintendent shall be deemed to have been given to the Contractor and shall bind the Contractor. Directions shall be confirmed in writing by the State on written request. Should the superintendent be complained of by the Department for cause (including but not limited to: inexperience; incompetence; negligence; failure to properly superintend, manage, or coordinate the work; threats to State personnel or others; failure to follow contract requirements; and failure to cooperate reasonably with the State), he shall be removed from the work and a new superintendent obtained and approved as described above, at no cost to the State.
- H. Discipline. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ or permit to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law and the State. Employees must not be allowed to loiter on the premises before or after working hours.
- I. Employee Safety. The Contractor shall designate a responsible member of his organization on the work site whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.06. The name and position of the person so designated shall be reported to the Department, with a copy to the architect, by the Contractor prior to commencement of the work.
- J. The Contractor, SubContractors, and agents of both insofar as possible, shall secure labor through the Maryland Job Service of the Maryland Department of Business and Economic Development, except where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by the union. In that case, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland Job Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness and for satisfactory service of any laborer referred to him by the Maryland Job Service.
- K. This contract may be identified, in other parts of the solicitation documents, for inclusion in the hiring agreement program of the Department of Human Resources under Section 13-224 of the State Finance and Procurement Article of the Annotated Code of Maryland. If this contract is so identified, Contractor shall comply with the hiring agreement requirements provide in the solicitation documents.

**9.02 NON-DISCRIMINATION IN EMPLOYMENT (COMAR 21.07.01.08) AND AFFIRMATIVE ACTION:**

- A. Contractor agrees:
- (1) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability;;
  - (2) to include a provision similar to that contained in subsection (1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
  - (3) to post and to cause SubContractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

- B. Contractor shall be subject to and shall comply with all other requirements of 13-219 of SF&P, which are incorporated into and made a part of the contract.
- C. Contractor shall comply with all other applicable Federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.

**9.03 SUBCONTRACTS:**

- A. The Contractor shall, as soon as practicable and before the execution of the contract, notify the architect and the Department in writing, of the names of SubContractors proposed for the principal parts of the work and for such others as the Construction Division or the architect may direct. Contractor shall not employ any subcontractor that is debarred, incompetent, unfit, unsatisfactory, or is otherwise not eligible to conduct business in or with the State.
- B. The Contractor is fully responsible to the State for the acts and omissions of its SubContractors and suppliers at any tier and persons either directly or indirectly employed by them, as well as for the acts and omissions of itself and persons directly employed by it.
- C. Nothing contained in the contract documents shall create any contractual relation between any subcontractor or supplier at any tier and the State, and nothing in the contract documents is intended to make any such entity a beneficiary of the contract between the State and the Contractor. No SubContractor or supplier at any tier shall have or make any claim or cause of action directly against the State.
- D. The Contractor shall not subcontract the contract as a whole or by trades or other portions in an amount of more than 75% of the monetary value of the contract. The remaining 25% shall be executed by the Contractor with labor and materials directly purchased and paid for by the Contractor. Costs of bonds, insurance, overhead, supervision, mobilization, etc., shall not be claimed as a portion of the 25% mentioned above. The execution of work by a subsidiary of the Contractor will not be considered direct employment unless the Procurement Officer agrees otherwise.

**9.04 RELATION OF CONTRACTOR TO SUBCONTRACTORS AND SUPPLIERS:**

- A. The Contractor must bind every subcontractor and supplier and will see that every subcontractor agrees to be bound by the terms of the contract, as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing by the Procurement Officer.
- B. The Contractor must include the following provisions in all subcontracts and supply contracts applicable to the work:
  - (1) SubContractor or supplier agrees to be bound to the Contractor by the terms of the contract between the Contractor and the State, and to assume toward him all obligations and responsibilities that the Contractor, by those documents, assumes toward the State.
  - (2) The SubContractor or supplier agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of these General Conditions.
  - (3) The SubContractor or supplier agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the State, except that the time for making claims by the SubContractor or supplier to the Contractor for extra cost shall be five days.
  - (4) The SubContractor or supplier agrees, upon completion of his work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, to permit simultaneous final payment by the Contractor.
  - (5) The provisions required by 9.06A through D.

- C. (1) Except as provided in (2) below, Contractor shall not be relieved of any obligation to the State under the contract by any action, inaction, delay, default, breach, omission, or neglect, on the part of Contractor's SubContractors and suppliers at any tier or by any defect in their materials, whether the SubContractors, suppliers, or materials were selected or specified by the Department or by the Contractor.
- (2) If the contract or the Department requires the Contractor to furnish a certain product or material and no other, then and only then will the State be responsible for damages and delays caused by a design defect or other defect in the product; provided, however, that in such event the State shall be subrogated to all rights and claims of the Contractor and his SubContractors and suppliers at any tier against the seller, the manufacturer, the designer of the product, and any other entity which may be liable for the defect.
- D. The Contractor also agrees:
- (1) To pay the SubContractor or supplier promptly upon the payment of certificates, if issued under the schedule of values described in Section 8 of these General Conditions, the amount allowed to the Contractor on account of the SubContractor's or supplier's work to the extent of the SubContractor's or supplier's interest therein.
- (2) To pay the SubContractor or supplier, upon the payment by the State, so that at all times the SubContractor's or supplier's total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
- (3) To pay the SubContractor or supplier promptly to such extent as may be provided by the contract documents or the contract between the Contractor and the SubContractor or supplier, if either of these provides for earlier or larger payments than the above.
- (4) To pay the SubContractor or supplier on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time payment is due from the State, whether or not payment is made wholly or in part by the State, unless the State's failure to issue payment wholly or in part is due to the fault or unsatisfactory work or materials of the SubContractor or supplier.
- (5) To pay the SubContractor or supplier an equitable share of any insurance money received by the Contractor on account of damage to the work.
- (6) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the contract between the Contractor and the SubContractor or supplier.
- (7) To give the SubContractor or supplier an opportunity to be present and to submit evidence in any matter involving his rights.
- (8) To fulfill Contractor's obligations under 9-201 et seq., and 9-301 et seq. of the Real Property Article of the Annotated Code of Maryland.
- E. Every subcontractor, supplier, or other entity at any tier furnishing any work, labor, services, materials or supplies to or for use in the project, by virtue of furnishing same shall be bound to and does accept and agree to all terms and provisions of the contract between Contractor and the State.
- F. The State will not be liable to the Contractor for any loss or additional cost suffered as a result of the inability of any subcontractor or supplier at any tier to continue work on the contract as a result of debarment of the subcontractor or supplier under Title 16 or Title 17, Subtitle 2 of SF&P, or regulations adopted thereunder.

- G. Contractor may not withhold from any subcontractor or supplier, wholly or in part, any payment otherwise due and owing to the subcontractor or supplier for labor or material furnished for this contract, on account of any claim of the Contractor against the subcontractor or supplier or any debt owed or claimed to be owed by the subcontractor or supplier to the Contractor to the extent the claim or debt arose out of contracts, disputes, or other transactions between the Contractor and the subcontractor or supplier which did not arise out of this contract between the State and the Contractor.
- H. When the State withholds money from the Contractor under Section 8.06 for delays or other causes, the Contractor may withhold payment from a subcontractor or supplier, on account of the amount withheld by the State from the Contractor, only to the extent that the SubContractor or supplier contributed to the delay or other cause for which the State withheld payment from the Contractor. For example, if the State withholds from the Contractor liquidated damages for delay, the Contractor may withhold payment only from those subcontractors and suppliers who caused or contributed to the delays; all other subcontractors and suppliers shall be paid promptly by the Contractor notwithstanding the State's withholding from the Contractor.
- I. This contract is subject to the provisions of COMAR 21.07.02.05-3, Retainage.

**9.05 PREVAILING WAGE RATES:**

- A. All contracts in the amount of \$500,000 or more shall be subject to the provisions of 17-201, et seq., of SF&P and COMAR 21.11.11, respecting prevailing wages. Where an original contract is in an amount less than \$500,000, this section shall not apply, even where subsequent change orders increase the total contract to be in excess of \$500,000. Wage rates applicable to projects of \$500,000 or more are attached to the specifications. Federal wage rates shall be in effect where applicable.
- B. When prevailing wage rates apply, the Contractor shall submit a copy of his payroll records and the payroll records of each of his SubContractors to the Department of Labor, Licensing and Regulation, Division of Labor and Industry, 1100 North Eutaw Street, Maryland 21201. The Contractor shall also provide to the DGS Inspector a copy of the Contractor's and its subcontractor(s) payroll records. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: name, address and social security number, work classifications, hours straight time and overtime worked each day, total hours worked, rate of pay and gross amount earned. The Contractor shall be responsible for the submission of all subcontractors' payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the SubContractor indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the contract, that the classification set forth for each workman or apprentice conforms with the work he performed and that the Contractor or the SubContractor has complied with the provisions of this section. In the event of any conflict between this Section and Title 17, Subtitle 2 of SF&P, or regulations adopted thereunder, the provisions of Title 17, Subtitle 2 or the regulations will prevail.

**9.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS:**

- A. The Contractor shall provide and maintain work environments and procedures which will:
  - (1) Safeguard the public, workers on the site, and State personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
  - (2) Avoid interruptions of State operations and delays in project completion dates; and
  - (3) Control costs in the performance of this contract.
- B. For these purposes, the Contractor shall:
  - (1) Provide appropriate safety barricades, signs, and signal lights;
  - (2) Comply with the provisions of the Maryland Occupational Safety and Health Act;

- (3) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  - (4) Comply with all requirements of the contract and any additional safety measures the Procurement Officer determines to be reasonably necessary.
- C. Whenever the Department becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public, workers on the site, or State personnel, the Department shall notify the Contractor orally, with written confirmation, and demand immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representatives at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Procurement Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- D. Contractor shall include in all subcontracts a provision imposing on all subcontractors the same obligations to the Contractor as the Contractor has to the State under subsections A through D of this Section 9.06.
- E. (1) This subsection E applies to all contracts in the amount of \$500,000 or greater and to all other contracts determined by the Department to pose higher than normal safety or health risks.
- (2) Before commencing the work, the Contractor shall:
- (a) Submit to the Department a written Employer Safety and Health Program for implementing this clause, following the MOSH "Suggested Employee Safety and Health Program" format and including an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
  - (b) Meet with the Department to discuss and develop a mutual understanding of the overall safety and health program for the project.

**9.07 PROMPT PAYMENT OF SUBCONTRACTORS (COMAR 21.07.02.05-2):**

- A. This contract and all subcontracts issued under this contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A—D, the terms "undisputed amount", "prime Contractor", "Contractor", and "subcontractor" have the meanings stated in COMAR 21.10.08.01.
- B. A Contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the Contractor receives a progress payment or final payment for work under this contract.
- C. If a Contractor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with COMAR 21.10.08.
- D. A Contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A—D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

**9.08 MBE-RELATED LIQUIDATED DAMAGE:**

- A. This contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- B. Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (1). Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$153 per day until the monthly report is submitted as required.
  - (2) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$76 per week per MBE subcontractor.
  - (3) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
  - (4) Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.”