

# NEW YORK STATE THRUWAY AUTHORITY ADDENDUM NO. TA (09) TO THE STANDARD SPECIFICATIONS OF MAY 1, 2008

The Standard Specifications of May 1, 2008 by the New York State Department of Transportation are to be considered as, and shall form a part of, the agreement. All work contemplated under this contract is to be covered by, and be in conformance with, the Standard Specifications of May 1, 2008 as modified by this Addendum, the Contract Proposal or the Contract Plans. Also, the bidder's attention is directed to the fact that the New York State Thruway Authority, acting through its duly authorized officers, is the contracting party herein and the specifications referenced above shall be read accordingly.

All Special Notes bound in this Proposal shall be incorporated. If a conflict exists between the special specifications and/or provisions set forth in this Proposal and the specifications and/or provisions set forth in the New York State Department of Transportation's "Standard Specifications" of May 1, 2008, those in the Proposal shall govern.

**Make the following change to the *Standard Specifications of May 1, 2008*:**

## TABLE OF CONTENTS

*Pages 1 - 13:* **SUBSTITUTE** or **ADD** the following sections:

- 102-01 Location of Thruway Division Offices
- 102-08 Standard Clauses for All New York State Thruway Authority and New York State Canal Corporation Construction Contracts and Federally-Funded Procurement Contracts (Appendix A), Supplemental Title VI Provisions (Civil Rights Act) (Appendix A-1) and Supplemental Title VI Provisions (Civil Rights Act) (Appendix A-2)
- 104-11 Removal and Replacement of Bridge Identification Plaques, Milepost Plate and Overhead Route Signs
- 105-22 Non-Revenue Pass Plates
- 108-01 Start and Progress of Work
- 108-07 Official Shutdown Period
- 108-08 Work During Official Shutdown Periods
- 109-11 Recovery of Monies by the Authority

## Section 100

### GENERAL PROVISIONS

#### SECTION 101 – ABBREVIATIONS AND DEFINITION OF TERMS

##### 101-01 ABBREVIATIONS OF TERMS.

*Page 15:* **DELETE** the abbreviations DCED, DCES, and DCETS and their respective expressions and **SUBSTITUTE** "the Chief Engineer of the New York State Thruway Authority or a designated representative" wherever those abbreviations or titles appear within the specifications.

*Page 15:* **ADD** the following abbreviations: "HMA - Hot Mix Asphalt Concrete; NEC - National Electric Code; NYSTA/CC – New York State Thruway Authority and/or New York State Canal Corporation; PCC - Portland Cement Concrete; UL. - Underwriters' Laboratories; and U.S.C.G - United States Coast Guard."

##### 101-02 DEFINITIONS OF TERMS.

*Page 17:* **ADD** "Acceptance Testing. Testing, conducted by the Engineer, to measure the degree of compliance to the Contract Documents."

**Page 17: Addenda; DELETE** the definition and **SUBSTITUTE** “This TA Addendum and any supplemental additions, deletions and modifications to the provisions of the Standard Specifications published by NYSDOT, adopted by the New York State Thruway Authority, and listed on the front cover of this Contract Proposal.”

**Page 17: ADD “Advertisement.** The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.”

**Page 17: Approved List;** the “Materials Bureau” referenced shall be the New York State Department of Transportation Materials Bureau.

**Page 17: ADD “Assistant Division Director Engineering Services.** An employee of the New York State Thruway Authority, under the direction of the Division Director, who has been delegated the responsibility for supervision of the Division Construction Supervisor.”

**Page 17: ADD “Authority.** The New York State Thruway Authority, its employees and its designated representatives.”

**Page 17: ADD “By Others.** The term “by others” refers to a person, firm, or corporation other than the Contractor or its surety, or persons, firms or corporations in a contractual relationship with the Contractor or the surety, such as a Subcontractor, supplier, fabricator or consultant at any tier. “By others” shall include the Authority or other public body.”

**Page 17: Chief Engineer; DELETE** the definition and **SUBSTITUTE** “The Chief Engineer of the New York State Thruway Authority or his/her designated representative.”

**Page 17: Commissioner; DELETE** the definition and **SUBSTITUTE** “The Chairman of the New York State Thruway Authority or his/her designated representative. The designated representative of the Chairman of the New York State Thruway Authority is the Chief Engineer of the New York State Thruway Authority.”

**Page 18: Contract Limits; ADD** the following: “If Contract Limits are not specified in the Contract Documents, the Contract limits shall be the limits within which all work is performed, including advanced signing and detours included in the Contract.”

**Page 18: ADD “Corporation.** The New York State Canal Corporation, its employees and its designated representatives.”

**Page 19: Department; DELETE** the definition and **SUBSTITUTE** “The New York State Thruway Authority/Canal Corporation”. The Authority maintains a website at [www.nysthruway.gov](http://www.nysthruway.gov).”

**Page 19: Departmental Engineering Geologist; DELETE** the definition and **SUBSTITUTE** “An Engineering Geologist in the employ of the New York State Thruway Authority or its designated inspection agency, acting at the request of the Chief Engineer authorized to perform the duties required under these specifications.”

**Page 19: Departmental Geotechnical Engineer; DELETE** the definition and **SUBSTITUTE** “A Geotechnical Engineer in the employ of the New York State Thruway Authority or its designated inspection agency, acting at the request of the Chief Engineer, authorized to perform the duties required under these specifications.”

**Page 19: ADD “Department of Engineering.** The New York State Thruway Authority Department of Engineering - consisting of the Offices of: Design, Construction Management, Transportation Planning and Environmental Services, Capital Program Development and Contracts Management.”

**Page 19: Director, Construction Division; DELETE** the definition and **SUBSTITUTE** “The Director of the Office of Construction Management of the New York State Thruway Authority”.

**Page 19: Division; DELETE** the term and definition in its entirety.

**Page 19: Engineer OR Engineer-In-Charge; DELETE** the definition and **SUBSTITUTE** “The Project Engineer representing the New York State Thruway Authority having direct supervision of the execution of the contract under the direction of the Thruway Division Director.”

**Page 19: Field Change Payment (FCP); DELETE** the term “Field Change Payment (FCP)” and **SUBSTITUTE** “Field Change Order (FCO)”.

**Page 20: Final Agreement; DELETE** the definition and **SUBSTITUTE** “Agreement between the New York State Thruway Authority and the Contractor, stating the total cost of the work done by the Contractor. This document, which may also be referred to as a “Final Supplemental Agreement”, provides a final tabulation of the net increases or decreases in the Contract.”

**Page 20: Geotechnical Engineering Bureau; DELETE** the definition and **SUBSTITUTE** “The New York State Thruway Authority employee, or its designated inspection agency or representative, having responsibility for providing Geotechnical Engineering Services including laboratory testing of earthwork materials.”

**Page 21: Materials Bureau; DELETE** the definition and **SUBSTITUTE** “The New York State Thruway Authority employee, or its designated inspection agency or representative, with responsibility for the quality assurance program for materials to be used on the contract, directed to secure samples, conduct tests and maintain records as prescribed for this contract.”

**Page 21: ADD “Median.** That portion of a divided highway separating the traveled way. The median includes the median shoulders.”

**Page 21: ADD “Milepost.** Location marker/delineators on the Mainline Thruway and Spurs (New England Thruway, Cross Westchester Expressway, Garden State Parkway Connection, Interstate 84, Berkshire Spur, and the Niagara Thruway) and/or at overhead bridge sites. Milepost locations are approximate, having been initially referenced to centerline mileage, and shall not be utilized for measurement. Interchange ramps and roadways do not have location markers.”

**Page 21: ADD “Notice to Proceed.** Written notice to the Contractor to begin Work.”

**Page 22: Partial or Monthly Contract Payments; DELETE** “prescribed by Subdivision 7, Section 38 of the Highway Law.” **ADD** the following: “The Authority shall, once in each month and on such days as it may fix, make an estimate of the quantity of work done and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Contractor the moneys due in accordance with Public Authorities Law Section 2880, as detailed in 21 NYCRR Part 109 (Prompt Payment).”

**Page 22: Region; DELETE** the term and definition in its entirety.

**Page 22: Regional Director; DELETE** the definition and **SUBSTITUTE** “Chief Engineer of the NYSTA, or a designated representative.”

**Page 22: ADD “Regional Materials Engineer (RME)”** and **SUBSTITUTE** “The Engineer or Engineer-In-Charge” wherever this title appears.

**Page 22: ADD “Roadside.** A general term including: (1) The areas between the outside edges of the shoulders and the right-of-way boundaries, (2) The unpaved median areas between inside shoulders of divided highways, and (3) Areas within interchanges.”

**Page 23: ADD “Samples.** Physical examples of materials, equipment or workmanship submitted to the Engineer by the Contractor to establish a standard which the Contractor is required to meet.”

**Page 23: ADD “Shop Drawings.** Drawings, diagrams, illustrations, schedules, test data, performance charts, cuts, brochures and other data, which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor for submission to the Engineer by the Contractor as an illustration of a portion of the work.”

**Page 23: State; DELETE the definition and SUBSTITUTE “When used, means the New York State Thruway Authority.”**

**Page 23: ADD “Superintendent.** The Contractor’s authorized representative responsible for and in charge of the Work. The Superintendent shall be authorized to receive all communications from the Engineer.”

**Page 24: ADD “Thruway Director, Office of Construction Management.** The Director, Office of Construction Management, Department of Engineering of the New York State Thruway Authority, or a designated representative, assists the Chief Engineer with Programmatic Quality Assurance and development of Policy.”

**Page 24: ADD “Thruway Division.** A geographic section of the Thruway and Canal system used to designate or identify the location of the proposed work. There are four (4) such Thruway Divisions and their limits are generally described as follows:

**A. New York Division.** That portion of the Thruway South of Milepost 76.5 in Ulster County including the entire Garden State Parkway connection, the New England Thruway (I-95) from NE 0.17 through NE 15.01, the entire Cross Westchester Expressway (I-287), and all of I-84.

**B. Albany Division.** That portion of the Thruway between Milepost 76.5 in Ulster County and Milepost 197.9 in Montgomery County, including the Berkshire Spur from B 0.00 to B 24.28. Also, the Champlain Canal between Waterford (intersection with the Erie Canal) and Whitehall (north end of Lock C-12), the Erie Canal between Waterford (intersection with the Champlain Canal) and east end of Lock E-10, and the Erie Canal, from east end of Lock E-10 to west end of Lock E-16.

**C. Syracuse Division.** That portion of the Thruway between Mileposts 197.9 in Montgomery County and Milepost 350.6 in Ontario County. Also, the Erie Canal, from west end of Lock E-16 to Sylvan Beach (Oneida Lake), the Erie Canal, from Sylvan Beach (Oneida Lake) to Cayuga/Seneca County line at Montezuma; and the entire Oswego Canal from Three Rivers Point to Lake Ontario, and the Erie Canal, from Cayuga/Seneca County line to Wayne/Monroe County line; Cayuga/Seneca Canal, from the south end of Cayuga Lake and Seneca Lake to intersection with Erie Canal at Montezuma.

**D. Buffalo Division.** That portion of the Thruway West of Milepost 350.6 including the Niagara Thruway (I-190) N 0.00 through N 21.1. Also, the Erie Canal, from Wayne/Monroe County line to Tonawanda (500’ west of the Webster Street Bridge).”

**Page 24: ADD “Thruway Division Construction Supervisor.** An employee of the New York State Thruway Authority, under the direction of the Assistant Division Director Engineering Services, who has been delegated the responsibility for supervision of the Engineer.”

**Page 24: ADD “Thruway Division Director.** The ranking staff employee of the Thruway Authority in a Thruway Division.”

**Page 24: ADD** “**Thruway Division Traffic Supervisor.** An employee of the New York State Thruway Authority, under the direction of the Division Director, who has the responsibility for safety and control of all vehicular traffic on the Thruway.”

**Page 24: ADD** “**Unbalanced Bid.** A bid containing lump sum or unit bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question.”

## **SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**

### **102-01 LOCATION OF REGIONAL OFFICES.**

**Page 24: DELETE** this section in its entirety and **SUBSTITUTE** the following:

“**102-01 LOCATION OF THRUWAY DIVISION OFFICES.** Buffalo Division - 455 Cayuga Road, Suite 800, Cheektowaga, New York 14225-0121; Syracuse Division - Suite 250, 2<sup>nd</sup> Floor, 290 Elwood Davis Road, Liverpool, New York 13088-0308; New York Division - 4 Executive Blvd., Suffern, NY 10901; Albany Division and Thruway Headquarters- 200 Southern Boulevard, Albany, New York 12209-2098”.

### **102-02 EXAMINING THE CONTRACT DOCUMENTS AND THE WORK SITE.**

**Page 25: DELETE** the first paragraph and **SUBSTITUTE** “Detailed plans of the work, standard sheets, and contract proposals may be examined at the Thruway Headquarters, 200 Southern Boulevard, Albany, NY 12209, or at the Thruway Division Offices.”

**Page 26: ADD** the following after the second paragraph: “Inquiries prior to the receipt of bids regarding any discrepancy, error, omission, intent or meaning of the Contract Documents shall be directed to an Authority designated contact named in the Proposal. Only amendments shall be considered binding. Oral responses shall not be used to modify the Contract Documents.”

**Page 26: C. Subsurface Information; ADD** the following to the end of the third paragraph: “If no Quality Designations are given, Quality Level D shall be assumed.”

### **102-04 PROPOSAL CONTENT.**

**Page 27: DELETE** “three (3) decimal positions” in the first paragraph and **SUBSTITUTE** “two (2) decimal positions”.

### **102-06 BID DEPOSIT.**

**Page 28: DELETE** this section in its entirety and **SUBSTITUTE** the following:

#### **“102-06 BID DEPOSIT.**

Bids must be secured with either a bid bond or a bid deposit. A Bid Bond must be in the amount of 25% of the total bid and must be on the Authority’s Bid Bond Form (TA-44117) which is included in the Proposal. A Bid Deposit must be a certified check or cashier’s check made payable to the New York State Thruway Authority or the New York State Canal Corporation in the amount specified in the bid proposal. (Bidders must also submit a Statement of Surety’s Consent with the bid.) The retention and disposition of such bid bond or certified check or bank cashier's check by the Authority shall be pursuant to and in conformity with Section 38(2) of the Highway Law, as amended.

Bidders are advised that the Thruway Authority has determined, in the exercise of its discretion, that if the apparent low bidder has submitted a certified check or cashier's check with their bid, they will not be permitted to bond their bid. The second low bidder, if they have submitted a certified check or cashier's

check will be permitted to bond their bid as a matter of right; the Thruway Authority form TA-4426 is to be used for this purpose and may be obtained from the Contracts Unit at Authority Administrative Headquarters only.”

## **102-08 STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS.**

*Pages 29-33:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

### **“102-08 STANDARD CLAUSES FOR ALL NEW YORK STATE THRUWAY AUTHORITY AND NEW YORK STATE CANAL CORPORATION CONSTRUCTION CONTRACTS AND FEDERALLY-FUNDED PROCUREMENT CONTRACTS (APPENDIX A).**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (“the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party and its agents, successors and assigns, other than the Thruway Authority (“Authority”) or Canal Corporation (“Corporation”), whether a contractor, licensor, licensee, lessor, lessee or any other party):

- 1. NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority’s/Corporation’s written consent are null and void.
- 2. COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$50,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.
- 3. WORKERS’ COMPENSATION AND DISABILITY BENEFITS.** This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the State Workers’ Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers’ Compensation Act endorsement must be included.
- 4. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law §220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in State Labor Law §230, then, in accordance with §239 thereof, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the New York State Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with subdivision 3-a of Section 220 of the New York State Labor Law shall be a condition precedent to payment by the Authority/Corporation of any Authority/Corporation approved sums due and owing for work done on the project.

**6. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority/Corporation a non-collusive bidding certification on the Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority/Corporation will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that:

(i) the Contractor shall timely inform an appropriate Authority/Corporation official, in writing, that said records should not be disclosed; (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's/Corporation's right to discovery in any pending or future litigation.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this contract the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Authority/Corporation contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.
- (b) At the request of the Authority/Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- (c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The Authority/Corporation will consider compliance by a Contractor or its subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Authority/Corporation shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law, and if such duplication or conflict exists, the Authority/Corporation may waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining thereto.

**12. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**13. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

**15. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority/Corporation.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; otherwise, the bid may not be considered responsive. Under

bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority/Corporation.

**18. NON-PUBLIC PERSONAL INFORMATION.** The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Authority which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

**19. OBSERVANCE OF LAWS.** The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

**20. NO WAIVER OF PROVISIONS.** The Authority's/ Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

**21. ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

#### **SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT) (APPENDIX A-1)**

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

**1. COMPLIANCE WITH REGULATIONS.** The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**2. NONDISCRIMINATION.** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**3. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

**4. INFORMATION AND REPORTS.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

**5. SANCTIONS FOR NONCOMPLIANCE.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
- (b) Cancellation, termination or suspension of the contract, in whole or in part.

**6. INCORPORATION OF PROVISIONS.** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT) (APPENDIX A-2)**

The New York State Thruway Authority, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written Department solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

#### **102-09 STANDARD CLAUSES FOR NON FEDERAL-AID NEW YORK STATE CONTRACTS.**

**Page 33: Subsection A. MacBride Act Fair Employment Principles; DELETE** the last paragraph and **SUBSTITUTE** "The MacBride Fair Employment Principles, found elsewhere in this Proposal, shall be completed and returned with the Contractor's bid."

**Page 33: Subsection B. Omnibus Procurement Act, ADD** the following: "Additional Thruway Authority requirements regarding the Omnibus Procurement Act can be found elsewhere in this proposal."

## 102-12 D/M/WBE UTILIZATION.

*Page 42:* Subsection C. Eligibility, Part 2. M/WBE Eligibility, **DELETE** “[www.empire.state.ny.us](http://www.empire.state.ny.us)” and **SUBSTITUTE** “<http://nylovesmwbe.ny.gov/cf/search.cfm>”.

*Page 44:* Subsection F. Requests For Waiver, **DELETE** “Office of Construction Civil Rights Unit” and **SUBSTITUTE** “Authority’s Compliance Unit within the Office of Construction Management”.

## 102-14 FORM OF CONTRACT AND BID BOND.

*Page 47:* **DELETE** the information contained therein and **SUBSTITUTE** “The form of contract and bid bond, if given, shall be those found in this proposal.”

## 102-15 SAMPLE FORM OF BID BOND.

*Page 47:* **DELETE** the information contained therein and **SUBSTITUTE** “The Bid Bond (TA-44117) contained in this Proposal shall apply.”

## 102-17 SAMPLE FORM OF ITEMIZED PROPOSAL/JURAT.

*Page 50:* **DELETE** the information contained therein and **SUBSTITUTE** “The Itemized Proposal contained within this Proposal shall apply.”

## SECTION 103 – CONTRACT AWARD AND EXECUTION

### 103-01 CONTRACT AWARD.

*Page 55:* **ADD** the following after the second paragraph:

“The following are examples of reasons that are considered sufficient for the disqualification of a Bidder and the rejection of its Proposal:

1. Submission of more than one Proposal for the same work from an individual, firm, partnership, corporation, or combination thereof, under the same or different names. Reasonable grounds for believing that any individual, firm, partnership, corporation, or combination thereof, is interested in more than one Proposal for the work contemplated may cause the rejection of all Proposals in which such individual, firm, partnership, corporation, or combination thereof, is interested.
2. Evidence of collusion among Bidders. Participants in such collusion will not be permitted to submit bids for future work of the Authority until reinstatement as a qualified Bidder by the Chief Engineer.
3. Uncompleted work which, in the judgment of the Authority, might hinder or prevent the prompt completion of this Contract, if awarded.

A Contractor may at any time, upon at least fifteen (15) days written notice, withdraw its bid on a date sixty (60) days after bid opening or thirty (30) days after the properly executed contract documents have all been received by the Authority, whichever is later. The bid bond, bid deposit, and/or performance bond shall remain in effect until such period of written notice has expired provided the contract has not been approved by the Office of the State Comptroller in the interim. The Contractor and the Authority may agree in writing to extend the date upon which the bid may be withdrawn if the contract has not been approved by the Office of the State Comptroller.”

**Page 55:** ADD the following between the fourth and fifth paragraphs:

“Contract award on a joint venture proposal will place upon the joint participants complete liability, jointly and individually, for contract performance.

Contracting corporations, which are chartered in a state other than New York, as well as individuals or firms doing business under fictitious names, are required to register with the NYS Department of State authorizing them to do business in New York, before they can be awarded a contract.”

**Page 56:** DELETE the last paragraph beginning with “In lieu of...” and ending with “the Contractor.”

## **103-02 EXECUTION OF CONTRACT.**

**Page 56:** ADD the following after the second paragraph:

“When a joint bidder returns a signed contract for a joint venture proposal to the Chief Engineer, a certified copy of a resolution of the board of directors of each participating corporation must be included that clearly indicates the work to be performed by both parties. The resolution must authorize the joint venture with the other party participant(s) for the specific contract. Each corporation must also submit a copy of its corporate powers. The participants in any joint venture must make the designation in writing, addressed to the Chief Engineer.

The designations are as follows:

1. The name of the person who will be in charge of the project for the joint Contractors. This person must have complete authority to speak for and bind the joint Contractors in all matters relating to the contract. It is this person to whom all notices, orders, directions, and determinations concerning the project may be given by the Chief Engineer. Notices orders, directions, or determinations given to this designated person, or to one of the joint Contractors, will be considered to have been given to all parties.

No change in the person designated to be in charge of the project will be recognized by or be binding upon the New York State Thruway Authority, until the participants in the joint venture give written notice of such change. In the event of the inability or unwillingness to serve, death or disability of the person in charge of the project, it is the responsibility of the joint Contractors to advise Chief Engineer, in writing, over their joint signatures, of such inability or unwillingness to serve, death or disability within 24 hours after the occurrence, and then to designate a successor.

2. A mailing address for the receipt of all estimates, acceptance and final settlement certificates, payments, notices, orders, directions, and determinations for the performance of the work. The mailing address will be considered the joint Contractors' address and any communications directed to such address will be considered to have been received by the joint Contractors.

All checks for the payment of estimates and the final settlement certificate will be made to the order of the joint Contractors in the same form in which they have signed the contract and will be mailed to the designated mailing address.

Change of the mailing address will not be recognized by or be binding upon the New York State Thruway Authority, until written notice, signed by the joint Contractors, has been received by the Chief Engineer.

If the contract, together with the Surety Bonds and the Insurance Certificate(s) providing adequate insurance coverage, as provided in Section 107-06, is not properly executed and returned, the proposal guarantee will be forfeited to the New York State Thruway Authority as liquidated damages.”

#### **103-04 CANCELING AWARD.**

*Page 57:* **ADD** the following : “A Contractor may at any time, upon at least fifteen (15) days written notice, withdraw its bid on a date sixty (60) days after bid opening or thirty (30) days after the properly executed contract documents have all been received by the Authority, whichever is later. The bid bond, bid deposit, and/or performance bond shall remain in effect until such period of written notice has expired provided the contract has not been approved by the Office of the State comptroller in the interim. The Contractor and the Authority may agree in writing to extend the date upon which the bid may be withdrawn if the contract has not been approved by the Office of the State Comptroller.”

#### **103-06 SAMPLE FORM OF CONTRACT AGREEMENT.**

*Page 58:* **DELETE** the entire section and **SUBSTITUTE** the following: “A Sample New York State Thruway Authority/Canal Corporation Agreement is included elsewhere in this Proposal.”

#### **103-07 SAMPLE FORM OF FAITHFUL PERFORMANCE BOND.**

*Page 62:* **ADD** the following: “New York State Thruway Authority forms will be supplied to the apparent low bidder. These forms are materially the same as the NYSDOT form.”

#### **103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND.**

*Page 65:* **ADD** the following: “New York State Thruway Authority forms will be supplied to the apparent low bidder. These forms are materially the same as the NYSDOT form.”

### **SECTION 104 - SCOPE OF WORK**

#### **104-02 CHANGES, CONTINGENCIES, EXTRA WORK AND DEDUCTIONS.**

*Page 67:* **DELETE** the second sentence of the first paragraph and **SUBSTITUTE** “Whenever the Authority determines that from any unforeseen cause the terms of any contract should be altered to provide for changes, contingencies, extra work, or the deletion of work an order-on-contract or field change order may be issued to the Contractor who shall promptly proceed with the performance of the work and the furnishing of the materials and equipment necessary for its accomplishment in accordance with the pertinent specifications.”

*Page 67:* **DELETE** “Section 697 *Field Change Payment*” in the second paragraph and **SUBSTITUTE** “the Field Change Order item”.

#### **104-04 SIGNIFICANT CHANGES IN THE CHARACTER OF WORK.**

*Page 70:* **ADD** the following to **Subsection D. Composite Items**: “If Earthwork Summary Sheets are not included in the contract, significant change for unclassified excavation and trench and culvert excavation shall be determined in accordance with Subsections 104-04.B and 104-04.C.”

#### **104-06 NOTICE AND RECORDKEEPING.**

*Page 71:* **Subsection B. Time Related Disputes;** **DELETE** the first two sentences of the second paragraph and **SUBSTITUTE** “Beginning the week following the date written notice was provided of a time related dispute, the Contractor shall compile and submit records on a weekly basis for the preceding week.”

## **104-08 MAINTAINING TRAFFIC.**

*Page 72:* **ADD** the following to **Subsection A. Closing of Highway**: “As per §107.01 of the Thruway Regulations, the Thruway Authority’s Executive Director, or his designee, may order that the Thruway system, or any portions thereof, be closed to all or part of the public for such time as in his judgment may be necessary.”

*Page 72:* **DELETE** **Subsection B. Use of Restricted Highway** and **SUBSTITUTE** the following:

**“B. Restricted Highway.** The Thruway, during periods of construction, cannot be designated a “Restricted Highway” pursuant to Section 104A of the Highway Law and Section 1625 of the Vehicle and Traffic Law. The Contractor is, therefore, advised that the provisions of Section 401(7)(f) of the Vehicle and Traffic Law relating to registration of special purpose construction vehicles shall apply to all such vehicles engaged in work under this contract, whether owned, leased or rented.”

*Page 79,* **ADD** the following:

### **“104-11 REMOVAL AND REPLACEMENT OF BRIDGE IDENTIFICATION PLAQUES, MILEPOST PLATE AND OVERHEAD ROUTE SIGNS.**

Bridge identification plaques, Bridge Identification Numbers (B.I.N.), Milepost Plates, and Overhead Route Signs attached to bridge superstructures shall be protected during Contractor’s operations or removed, stored and remounted after construction is completed, without any additional cost to the Authority.”

## **SECTION 105 - CONTROL OF WORK**

### **105-01 ENGINEER’S AUTHORITY.**

*Page 79:* **ADD** the following: “Unless otherwise directed, all communications with the Authority shall be sent to the Engineer. Where communications are directed to persons other than the Engineer, a clear copy, including all attachments, shall be sent to the Engineer.”

### **105-12 LOAD RESTRICTIONS.**

*Page 87:* **ADD** the following: “Only New York State legal loads are allowed on the Thruway. Special Hauling Permits, required for special or occasional overweight and/or oversize loads exceeding NYS legal limits, are issued at the discretion of the Authority and only under special conditions and for use at designated times and locations.

Application should be made to the New York State Thruway Authority Special Hauling Unit, Albany Headquarters, (518) 436-2793 at least 72 hours in advance. The Special Hauling Unit will fax the Contractor a NYS Thruway Special Hauling Permit Application. The Contractor must complete the application and fax it to the Authority’s Special Hauling Unit at (518) 449-3198. The fax should include a cover sheet with the following information:

- Contract Number
- Award and Completion dates of the Contract
- Thruway entry and exit points

The Special Hauling Unit will review the information for accuracy. If the application is approved, the special hauling permit will be assigned a number and any applicable restrictions will be noted. The permit will be faxed to the Contractor along with a cover letter addressed to the attention of “Toll Personnel”. The cover letter must accompany the Special Hauling Permit when presented at the tollbooth by the Contractor’s driver.

No fee will be charged to the Contractor.

Any changes to the permit will require notification and approval of the local Division Traffic Office. This Office may be reached by calling 1-866-691-8282 and asking for the Traffic Duty Officer. This office is open 24 hours a day, 7 days a week.

Design approval of any shop drawing (e.g. steel erection procedures) does not constitute approval of a Special Hauling Permit. Notice of movement of any permitted oversized and/or overweight vehicle must be given at least 24 hours in advance of the scheduled move. Receipt of an Authority issued Special Hauling Permit does not constitute issuance of a permit for highways under NYSDOT or other jurisdictions, and vice versa.”

#### **105-14 DISPUTED WORK AND DISPUTE RESOLUTION.**

**Page 88: Subsection B. Time Related Disputes; ADD** the following to the end of the last paragraph: “Disputes regarding Contract Extensions of Time shall be directed to the Chief Engineer.”

**Page 89: Subsection D. Review Time Periods for Disputes; ADD** the following to the end of the second paragraph: “Copies of this notice of dispute shall also be provided to the Director, Office of Construction Management and to the Office of the Chief Engineer.”

**Page 89: Subsection D. Review Time Periods for Disputes; DELETE** Parts 1, 2 and 3 and **SUBSTITUTE** the following:

“The Commissioner Review Stage of the Disputed Work Provisions, the administration of which has been delegated by the Thruway Authority Chairman to the Chief Engineer of the Thruway Authority, does not exist as a third chance to convince the NYSTA of the merits of the dispute; it is intended to provide a mechanism whereby work may continue under protest, the contract will be completed, and the Contractor’s claims will be properly qualified, quantified, and documented for a later resolution. These aims are accomplished as follows: an evaluation is made of the documentation submitted in the appeal; the work is directed to continue, either declaring the disputed work to be extra to the contract, or otherwise, fully defining the dispute and the documentation required criteria for possible settlement during the Contract Close Out Process or as a claim in accordance with law and the provisions of the Contract. The Commissioner Review Stage determination regarding Disputed Work is administratively binding but does not diminish the Contractor’s rights.

Documentation presented at each Dispute stage must stand on its own merits. The process is self correcting, providing Contractors an opportunity to provide proofs or documentation noted as lacking in the prior stage for the subsequent stage. The Disputed Work process is not progressively administered, each stage is assumed to be complete. Therefore, an appeal of the denial of a prior stage would be expected to include a narrative explaining the dispute, documentation of timely notice and verified documentation of costs, and explanation as to why the prior denial may be in error or incomplete with new information validating the Contractor’s position in the dispute. Should a Contractor, who feels a Disputed Work determination is unsatisfactory or in error, locate additional factual information they believe would alter a prior Disputed Work determination, the Office of Construction Management may reopen the matter on its original basis and/or merit at any time prior to the completion of the Final Supplemental Agreement by the Engineer.”

**Page 89: Subsection D. Review Time Periods for Disputes; DELETE** “Regional Director” wherever it appears and **SUBSTITUTE** “Thruway Division Director”.

**Page 90: Subsection E. Required Content of Dispute Submission, Part 2.b; DELETE** “or a CPM specification, if applicable.”

**Page 92: Subsection H. Contract Closeout Process; DELETE this subsection in its entirety and SUBSTITUTE the following:**

**“H. Administrative Construction Contract Settlement Procedure.** In an attempt to reach mutually satisfactory resolutions to contract disputes between the Authority and its construction Contractors, the Authority affords the Contractors a final opportunity to meet and discuss their unresolved disputes with the General Counsel and the Chief Engineer or their representatives. The Administrative Construction Contract Settlement Procedure, described below, is not a fourth stage of disputed work. This procedure provides an opportunity to address disputes and other matters of equity that do not necessarily fit neatly within the bounds of the Disputed Work clauses of the General Specifications, as modified and adopted by the Authority. Contractor presentations should include any new facts and findings, and should be directed to illustrate why the Disputed Work determinations at the project and review levels were not justified.

In this procedure, after Acceptance, but before Final Payment, the Contractor makes a written request to the Chief Engineer for a meeting to discuss those matters that remain unresolved, which have exhausted the formal disputed work process during the contract life. The Contractor must submit an Agenda for the meeting with this request. At the meeting, the Contractor shall present information on each issue on their Agenda. Representatives of the Department of Engineering and Legal Department will attempt to resolve the issues with the Contractor within the framework of the contract. Any subsequent contract modification is subject to approval by the State Comptroller and any other shareholders to the Contract. The Contractor will be notified of the Authority’s final position in writing. If any dispute or claim, or portion thereof, remains unresolved following the meeting(s) and the payment of the final agreement, the Contractor may file a claim in accordance with law and the provisions of the Contract.”

**105-16 SHOP DRAWING APPROVAL.**

**Page 93: ADD the following:**

“The Contractor shall review, redline and approve-stamp shop drawings and samples from its suppliers prior to submission to the Engineer. By approving and submitting shop drawings and samples, the Contractor represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that he has checked and coordinated each shop drawing and sample with the requirements of the Contract Documents. Shop Drawings will be reviewed and approved by the Engineer (or the Thruway Authority or its agent). The reviewer cannot verify field dimensions. All substitutions and/or deviations must be noted including a proposed credit. Any deviation from the requirements of the Contract Documents, unless the Contractor has informed the Chief Engineer of the deviation in a separate writing at the time of submission and received written approval of the specific deviations, is unacceptable. If inadvertently "approved", that approval will be invalid. Once approved, the Contractor is responsible to submit a reproducible set of shop drawings for inclusion in the final project records.

Any waiver of specifications or contract requirements is exclusively for the Authority’s benefit and purposes, and as such is subject to revocation without requirement for advance notice or statement of cause. Also, approval or disapproval of requests for waivers will be transmitted without statement of reason or cause, and shall not be subject to administrative review or appeal under the contract.

Prior to final payment, the contractor shall provide the Thruway with the original approved shop drawings and complete two sets of final signature approved shop drawings in the Tag Image File Format (tiff) on separate compact discs. Tiff images shall be CCITT group IV, 2D compression minimum 200dpi.”

## **105-20 OPENING HIGHWAY TO TRAFFIC PRIOR TO ACCEPTANCE.**

*Page 94:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

“Opening sections of the Project to traffic prior to completion may be desirable or may be necessary due to conditions inherent in the work, changes in the Contractor’s work schedule, or conditions or events unforeseen at the time the Project was bid. Such openings shall be made only when so directed by the Engineer. Under no condition shall such openings constitute acceptance or a part thereof, or a waiver of any provisions of the Contract.

The Contract Documents indicate, insofar as possible, which sections of the highway are to be opened prior to completion. The Contractor shall make no claim for and shall have no right to additional compensation or extension of contract time for opening sections of the Project to traffic as indicated in the Contract Documents, or resulting from partial acceptance or changes in the Contractor’s work schedule, or for reasons that are due to the fault of the Contractor or any other party, including utilities.

Additional compensation or extension of contract time for completion of other items of work on sections of the Project opened to traffic for reasons other than those indicated in the preceding paragraph will be made as provided in the contract or in a Supplementary Agreement.

If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may so notify the Contractor in writing and establish therein a reasonable period of time in which the work is to be completed. If the Contractor is dilatory, or fails to make a reasonable effort toward completion in this period of time, the Engineer may then order all or a portion of the Project opened to traffic. On such sections which are so ordered to be opened, the Contractor shall conduct the remainder of its construction operations so as to cause the least obstruction to traffic, and shall make no claim for and shall have no right to additional compensation or extension of contract time.

On sections of the Project opened to traffic whether indicated in the Contract Documents or not, traffic control and maintenance of the roadway shall be in accordance with Section 619.”

## **105-21 CIVIL RIGHTS MONITORING AND REPORTING.**

*Page 94:* **DELETE** the first paragraph and **SUBSTITUTE** the following:

“The Contractor shall use the current version of the Authority approved civil rights reporting documentation on all contracts. The Contractor shall submit complete, accurate data to the Authority for each month, not later than the 15<sup>th</sup> of the following month, using the Authority approved civil rights reporting format. Data shall be current through the end of the last full payroll week for that month, or as otherwise approved by the Engineer to coordinate with contract payment submittals.”

*Page 97,* **ADD** the following:

### **“105-22 NON-REVENUE PASS PLATES.**

Non-revenue pass plates will be furnished for the use of the General Contractor’s and approved subcontractor’s equipment and vehicles, and for suppliers’ vehicles while making deliveries to the project. In no case will free passage on the Thruway be granted beyond the Interchanges bracketing the project, or from the Interchange near the Contractor’s place of business to the job site, unless such place of business shall be located between the same two interchanges as the job site. The use of these pass plates shall be in accordance with the conditions of the individual authorization. General conditions are given below:

- A. Pass plates are not for commuting and no privately owned vehicles shall be parked on the Thruway. For purposes of this section, a privately owned vehicle is defined as any vehicle not covered by the prime contractors insurance.

- B. Pass plates shall be used on working days only.
- C. Pass plates shall be presented to the toll collector whenever entering a toll lane. Unmanned emergency lanes at toll plazas will not be opened to permit unrestricted entry or exit by Contractor's or supplier's vehicles.
- D. The General Contractor shall maintain a log identifying the vehicle to which each pass plate is assigned.
- E. Pass plates shall remain with the assigned vehicles at all times while the vehicle is on the Thruway. Under no circumstances shall the Contractor leave pass plates at the Toll Plaza.
- F. Vehicles leaving the Thruway beyond the pass plate limits without a pass plate or entering or leaving the Thruway at a Toll Station beyond the pass plate limitations will be charged for the trip in accordance with the normal toll rates and regulations. The Contractor will not be reimbursed for tolls after pass plates have been issued.
- G. The General Contractor will be held responsible for the use and return of all pass plates. The General Contractor shall report any lost or stolen pass plates to the Engineer stating the specific pass plate lost or stolen and shall be responsible for any unauthorized use of the pass plate prior to such notification.
- H. The misuse of the pass plates will constitute cause for revocation of this privilege and the Contractor will not be reimbursed for tolls. In accepting pass plates the Contractor agrees that revocation for reasons of misuse shall not constitute grounds for claim.
- I. Upon completion of the contract, the Contractor shall return all pass plates issued for the project or shall account for all unreturned pass plates by identifying the vehicles to which the pass plates were last issued. Final acceptance of the contract cannot be processed until all pass plates have been accounted for. When an uncompleted work agreement is entered into, pass plates must be accounted for prior to return of the deposit.
- J. An administrative charge of \$50.00 will be deducted from monies owed to the Contractor for each pass plate not returned to the Authority upon completion of the work.

Contractors should make a written request to the Engineer for the number of pass plates required for the project upon receipt of notification of the pre-award conference. Additional pass plates will be available later upon request.”

## **SECTION 106 - CONTROL OF MATERIAL**

### **106-01 SOURCES OF SUPPLY.**

*Page 97:* **DELETE** “notify the Deputy Chief Engineer (Structures) of” in the first line of the first paragraph and **SUBSTITUTE** “submit to the Engineer.”

### **106-04 MATERIAL CERTIFICATION AND APPROVED LIST.**

*Page 99:* **ADD** the following after the last paragraph: “The Contractor is hereby notified that for Thruway Authority Federally Aided Projects, the New York State Department of Transportation is the Thruway Authority’s Agent for all off-site materials quality assurance services, except granular materials, asphalt concrete and Portland cement concrete plant inspection. Materials quality assurance will be in accordance with the Department’s standard specifications and quality assurance procedures and the acceptance/rejection decisions under the Contract have been fully delegated to the Department as the Thruway Authority’s Agent.

Reference is herein made to “MATERIALS INSPECTION MANUAL” issued by the New York State Department of Transportation, Materials Bureau, which presents a brief outline of procedures used by the New York State Department of Transportation in determining the acceptability of materials arriving at project sites. The Materials Inspection Manual is available on the NYSDOT website.”

#### **106-09 EQUIVALENTS.**

*Page 100:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

“Whenever products are specified by the name, trade name, make or catalog number or any manufacturer or supplier, the intent is not to limit competition but to establish a standard of quality which the Thruway Authority has determined to be necessary. Contractor’s may recommend alternate products, but shall have the burden of proving at his own cost and expense to the satisfaction of the Thruway Authority that a proposed product is equal to a stipulated reference product. If the Contractor fails to comply with the provisions of this subsection, or if it is determined that the proposed product is not equal to that named, the Contractor shall supply the product named.

The Contractor shall have no claim for an extension of time or for damages due to time required by the Thruway Authority to consider a product proposed by the Contractor or because the Engineer disapproves of such a product. Where optional materials or methods are specified, or where "or equal" submissions are approved, the Contractor shall make all adjustments to contingent work necessary to accommodate the option he selects, all at his own expense.

Where the phrase “**No Substitutions Allowed**” or similar wording appears in a specification, the Authority has determined that the specified product is required and no equivalents will be considered by the Authority.”

#### **106-11 BUY AMERICA.**

*Page 101:* **DELETE** “Section 146 of the State Finance Law” in the first line of the first paragraph and **SUBSTITUTE** “Section 2877-a of the Public Authorities Law.”

### **SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

#### **107-05 SAFETY AND HEALTH REQUIREMENTS.**

*Page 104:* **DELETE** Subsection C. **Emergency Contact Person** in its entirety and **SUBSTITUTE** the following:

“**C. Emergency Call Out List.** The Contractor shall provide the Authority, at the time of the preconstruction meeting, with a list of a minimum of four (4) responsible personnel, available on a 24 hour basis, for call out if conditions arise that require the Contractor’s attention at the construction site. In addition to providing on- and off- hour phone numbers, all persons on the Call Out List shall be equipped with telephone call activated paging devices which display the call back number, or other approved paging devices. Any person on the Emergency Call Out List shall have the authority to promptly call out personnel and resources necessary to respond to an emergency and protect the public. The Call Out List shall also include field office and main office telephone numbers and be updated as changes occur.”

**Page 105: Subsection F. Restricted Areas; ADD** the following after the first sentence of the first paragraph:

“The nature of and materials used in this protection measure shall be at the Contractor’s discretion subject to approval by the Engineer; the cost of the protection measures shall be included under the various items of this contract.”

**Page 105: ADD** the following to **Subsection F. Restricted Areas**:

“Work areas at structures shall be completely fenced to protect the public and prevent unauthorized entry, to the satisfaction of the Engineer. In addition, positive protection shall be provided during non- working hours in areas where and when rail tubes and/or posts are removed to assure that individuals on the structure will not fall through the rail opening to the area below.”

**Page 105: Subsection H. Fall Protection; DELETE** the first paragraph and **SUBSTITUTE** the following:

“**H. Fall Protection.** The Contractor shall provide fall protection for all workers, in full compliance with 29 CFR 1926, and ensure that its workers use all the necessary safety devices attendant thereto. Should a Contractor utilizing scaffolding / platforms / ladders fail to adhere to the legal provisions and intent of both OSHA and the Labor Law (Section 240), work will be suspended until full compliance is reinstated and an OSHA or NYS Labor Department Inspector has inspected the work site and deemed it to be in full compliance with Labor Law/OSHA Standards. Contractor personnel failing to utilize safety equipment, methods, and procedures as required by the Labor Law and OSHA shall be immediately removed from the project. No exception to these requirements can, or will be tolerated or permitted. The minimum fall protection requirements include the following:”

**Page 110: DELETE Subsection O. Equipment Safety Procedures** in its entirety and **SUBSTITUTE** the following:

“**O. Equipment Safety Procedures (Vehicle Operations, etc.).** The following provisions relating to vehicle and equipment operation, in conjunction with the Contract Documents, will be strictly enforced by the Engineer during all phases of construction for this project. Any necessary modification shall be as approved by the Authority. The final responsibility for the installation of adequate safety precautions, and for the protection of the traveling public and Contractor’s personnel, shall rest with the Contractor. The Contractor shall include their proposed equipment safety procedures in the project Safety and Health Plan.

1. **General.** The following applies to vehicles and motorized equipment traveling on the Thruway and shall apply to all work on the project, including but not limited to, the activities of all Subcontractors, Manufacturers, Fabricators, Material Suppliers, independent truckers and owner-operators.
  - Truck tailgates shall be kept clean at all times.
  - Vehicle and equipment light lenses and reflectors will be cleaned as often as necessary during operations.
  - Fire extinguishers provided on vehicles shall be in good working order at all times and operators shall be familiar with their use.
  - When a vehicle is parked on the shoulder, the door adjacent to the Thruway pavement shall not be left open. An open vehicle door shall never be allowed to project over the Thruway pavement.
  - Operators shall never pull up beside another vehicle on the roadway. Instead the operator should pull onto the shoulder away from the pavement either in front or behind the other vehicle. Conversations should be held on the side of the stopped vehicles away from the pavement.

## 2. Moving Equipment

- All Contractor vehicles and/or equipment shall be furnished with amber radial lights and double amber flashing lights or be followed by a vehicle displaying an amber radial light and simultaneous flashing directional signals.
- All work operations, including paving, rolling, grading, supplying of material, and traveling of supervisory personnel, shall always be in the direction of normal traffic unless noted otherwise in the Contract or approved by the Engineer.
- Contractor vehicles or equipment that are to be moved between separate work sites during daylight hours may travel on the Thruway Mainline pavement if:
  - a) The vehicles or equipment have rubber tires; and
  - b) The vehicles or equipment are capable of maintaining a highway speed in excess of 40 mph.
- Contractor vehicles or equipment that are to be moved between separate work sites during daylight hours may travel on the shoulder if **all** of the following conditions are met:
  - a) The vehicles or equipment have rubber tires;
  - b) The vehicles or equipment are capable of maintaining a highway speed in excess of 25 mph;
  - c) The maximum distance for transporting the vehicle or equipment is no more than 2 (two) miles;
  - d) The shoulder is wide enough to accommodate the vehicle or equipment;
  - e) The vehicle or equipment using the shoulder does not encroach upon the travel lane;
  - f) There are no impediments within the two-mile transport limit that would decrease the width of the shoulder.
- If any of the aforementioned conditions cannot be met, the vehicle or equipment to be moved between the work sites shall be hauled on a trailer.
- When traveling in convoy, a space of at least 900 feet shall separate successive vehicles.
- Contractor vehicles or equipment to be transported on the Thruway during twilight hours or after dark shall be capable of maintaining a highway speed in excess of 65 mph or shall be hauled on a trailer.”

## 3. Work Zone

- A stopped or slow moving truck on the pavement shall never be used as the first warning a motorist receives of a work area restriction ahead.
- Vehicles and/or equipment shall never be parked on opposite shoulders nor shall workers be allowed to occupy these areas at the same time. An escape area must always be provided for emergency use.
- A closed lane is a refuge for disabled vehicles or emergencies. Hazards such as pavement removals or excavated shoulders etc. shall be delineated in accordance with the Traffic Control plans and/or section 619, during non-work hours.

#### 4. **Parking Equipment**

- Contractor equipment, when not in use, and materials awaiting installation shall be properly stored, stockpiled, and sited in a protected location (i.e. behind a physical barrier or in such a manner that horizontal clearance of at least 30' is provided from the outside edge of the traveled way) and shall not constitute a traffic hazard nor interfere with drainage courses. Materials or equipment shall not be left in front of or within the deflection distance behind guide rail and safety appurtenances so as to compromise their performance.
- During the work day, equipment necessary for construction may only be parked in a closed lane or closed shoulder as far as practicable from traffic. If this is not possible, such equipment shall be parked entirely off the pavement and shall display two (2) 18" x 18" red-orange or orange flags.
- Parked vehicles shall display simultaneous flashing directional signals ("4-way flashers"). Single directional flashing lights shall not be displayed by parked vehicles.
- No loading and unloading of equipment, material, or men shall be permitted in the mall unless it is a protected work site.
- At the end of each work day, all Contractors' equipment and any extraneous traffic protection devices shall be removed from closed traffic lanes, shoulders and other sites and placed in protected locations.

#### 5. **Operating in the Work Zone**

- Equipment shall be under the full control of the operator at all times and shall not be operated in a reckless manner.
- A spotter shall guide the backing of any vehicle or equipment with restricted visibility to the rear. This rule applies in any location where workers on foot, pedestrians, private vehicles or similar hazards may be present.
- If the operator loses visual contact, the vehicle shall immediately be brought to a full stop until visual contact with the spotter is reestablished.
- Vehicles or equipment shall not be backed onto Thruway pavement. If the operations require such a procedure, it shall be done only within a protected work zone.

#### 6. **Work Operations.** The following rules apply to work operations:

- Truck tailgates shall be closed when not in use. The tailgate may be flat to accommodate an operation, but may never hang below a horizontal position.
- A spotter shall guide the backing of any vehicle or equipment with restricted visibility to the rear. This rule applies in any location where workers on foot, pedestrians, private vehicles or similar hazards may be present.
- If the operator loses visual contact, the vehicle shall immediately be brought to a full stop until visual contact with the spotter is reestablished.
- Dump truck boxes may be raised only under the control of a spotter, unless the vehicle is in an area clearly marked to be free of overhead wires and safe for dumping.

- Dump truck boxes shall be lowered prior to moving, except when dumping into a paver or similar operations, under the control of a spotter.
  - All equipment shall comply with electrical safety requirements, and shall operate under the control of a spotter, whenever working within 17 feet of an overhead line. The distance shall be measured as the actual distance between the overhead line and the nearest point on the vehicle.
7. **Entering and Leaving Work Zones.** The operations of loading and unloading of materials, equipment and men shall only be conducted in closed lanes and shoulders. To minimize the hazard to the traveling public, the Contractor's operations shall be governed by the following requirements:
- When approaching a work area, operators shall reduce the speed of the vehicle and indicate by directional signals intent to drive out of the traffic stream and into the work area. Flashing signals shall be kept on while parked within the work zone.
  - No vehicle or equipment shall be stopped or parked where it will interfere with the visibility of any sign.
  - All trucks re-entering the traffic stream from the work areas, except when exiting the downstream end of a closed lane, shall have the assistance of traffic observer.
  - All trucks re-entering the pavement from the shoulder, shall attain a reasonable speed before pulling onto the pavement, after making sure that no vehicle is approaching in the lane. Approaching vehicles shall be allowed to pass.
  - Trucks shall not re-enter the traffic stream from a median shoulder less than 10 feet wide.
8. **Violations.** If, in the opinion of the Engineer, the operating rules of the contract are not being fully adhered to by the Contractor or his Subcontractors:
- Liquidated damages shall be deducted from any money due the Contractor, not as a penalty but as liquidated damages; until the violation or violations are corrected to the satisfaction of the Engineer. Unless otherwise stated in the Contract Documents:
    - a) Multiple violations in any calendar day, or part, thereof, and/or multiple violations consisting of the same violation remaining uncorrected for multiple calendar days, shall be assessed with a like number of liquidated damage charges, and
    - b) The amount of such liquidated damages shall be the amount per calendar day specified in Table 108-1, Schedule of Liquidated Damages.
  - Any operator found in violation of the above rules by the Engineer or his/her representative will be removed from the project immediately, and will not be allowed to work on any Authority project for a minimum of one (1) year.
9. **U-Turns.** U-Turns are prohibited on the Thruway with the following exception. Drivers with non-revenue pass plates (where required) and possessing a U-Turn Authorization permit may U-Turn construction vehicles and equipment at designated crossovers listed in this Proposal. Vehicle operation shall be in accordance with the conditions of the individual permit Authorization. General conditions are given below:

- Vehicles and equipment that will U-Turn shall be in compliance with all Federal and State rules and regulations and equipped with a rotating amber beacon which shall be visible from all directions for a minimum of 1000 feet during daylight. Strobe lights will not be allowed. If visibility of the amber beacon is blocked by a portion of the vehicle or equipment, additional beacons shall be provided.
- When a designated Crossover is to be used for Contract operations, the Contractor shall install a Driveway Entrance assembly on both right and left shoulders of the traveled way consisting of a W2-2 48" x 48" Intersection Warning sign supplemented with a NYW5-16 36" x 18" Driveway Entrance plaque with the legend "TRUCKS". All sign panels shall be black on fluorescent orange. The Driveway Entrance assemblies shall be installed approximately 1000 feet upstream of the U-Turn. All signs shall be covered or removed and stored when not in use.
- For daily stationary lane closures, U-Turns shall not be made between 1.5 miles before and 1 mile after a work zone if the work zone includes the closure of the right lane of a two-lane roadway. U-Turns may be permitted from and into the work zone when the work zone is in the leftmost lane(s) and a designated crossover exists within the limits of the work zone.
- Any damage to median areas, shoulders and designated U-Turns caused by the Contractor's equipment shall be repaired as directed by and to the satisfaction of the Engineer at no expense to the Thruway Authority.
- U-Turns are prohibited within Toll Plazas. The driver must exit the Toll Plaza, turn around on the local road system, and then reenter the Thruway.
- Application for U-Turn Authorization and Non-revenue Pass Plates should be made through the Engineer (after award) or the Division Construction Office (pre-award).

**Page 113: Subsection R. Confined Spaces; ADD** the following after the last paragraph:

"Work operations in confined space and permit-required confined space as defined in 29 CFR 1910, Section 146 are particularly hazardous. These operations shall be specifically addressed in the Contractor's comprehensive Project Specific Safety and Health Plan and, in the case of permit-required spaces, a supplemental plan detailing the permit-required space program that the Contractor will follow and of any hazards confronted or created in permit-required spaces. These plans shall be submitted for review prior to the start of work. Indicated confined spaces are not intended to limit or define Contractor or Subcontractor regulatory compliance requirements. In addition to confined spaces indicated on the drawings, other confined spaces may be present or created by the work of this contract. The Contractor shall furnish, at no additional cost to the Thruway Authority, personnel and equipment to allow the Engineer to enter confined space and permit-required confined space in compliance with in 29 CFR 1910, Section 146."

**Page 114: Subsection S. Fire and Explosion Prevention; ADD** the following after the last paragraph:

"The Contractor is advised that the storage of any flammable materials beneath, or within the proximity of any structure, at any time, is strictly forbidden by the NYSTA. Failure to comply will result in the Engineer stopping all work until all such materials are removed to a satisfactory site or off the project".

## 107-06 INSURANCE.

*Page 114:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

### “107-06 INSURANCE.

**A. General.** The Contractor must procure prior to commencement of work under this Agreement, and maintain until this Agreement is completed and the New York State Thruway Authority (the Authority) has accepted all work performed thereunder, insurance of the kinds and in the amounts specified by the Authority herein, covering all operations under this Agreement, whether performed by the Contractor or its subcontractors, in accordance with the following conditions:

1. All insurance required by this Agreement shall be obtained at the sole cost and expense of the Contractor.
2. All insurance required by this Agreement shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Authority, with an A.M. Best rating of “A-” or better.
3. All insurance required by this Agreement shall be primary to any the Authority insurance policy or the Authority self-insurance program, which shall be excess and non-contributory.
4. The Contractor shall require that any approved subcontractors carry insurance with the same limits and provisions set forth herein, except for the Owners/Contractors Protective Liability Policy.
5. The Contractor shall furnish the Authority with Certificate(s) of Insurance on ACORD Form 25 (2001/08), accompanied by the Authority Supplemental Insurance Certificate (Form TA-W51343-9), for each insurance carrier involved. Such Certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with the Authority insurance requirements set forth herein. The Contractor shall furnish the Authority with a copy of each Endorsement required herein. For work to be performed within New York State, proof of Workers Compensation and Disability Benefits Insurance shall be submitted on the appropriate forms as listed in Sections B.7 and B.8.
6. All policies, by specific endorsement, shall provide for written notice to the Authority no less than thirty (30) days prior to the cancellation, non-renewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by certified mail to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.
7. If insurance policies utilized for Authority projects contain deductibles, they must be declared as such with applicable levels on the Certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. Insurance policies with deductibles in excess of \$50,000 will require review and approval by the Authority. Additional security or other requirements may be imposed at the sole discretion of the Authority.
8. Insurance policies with Self-Insured Retentions (SIR’s) of up to \$50,000 will generally be accepted when the SIR program is administered by a third party administrator and a complete description of the program is provided to the Authority’s Office of Investments and Asset Management. Self-Insured Retention programs in excess of \$50,000 must receive prior approval and meet additional security requirements. The Authority, at its sole discretion, reserves the right to require the Contractor to provide additional collateral or to reject the use of an SIR by the Contractor. The Contractor will be solely responsible for all claims expenses and loss payments within the retention limit.

9. The Contractor shall provide certified copies of all declarations pages or of the insurance policies themselves, upon request by the Authority, within twenty (20) days of such request.
10. Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Contractor's obligation to maintain such insurance.
11. Failure to maintain the required insurance and provide proof of such coverage to the Authority may, in the Authority's sole discretion, result in termination of this Agreement, or in delay or stoppage of payments.
12. If the Contractor fails to maintain the required insurance, the Authority shall have the right, but not the obligation, to purchase said insurance at the Contractor's expense. The Contractor agrees that all premiums, costs, and expenses associated with such purchase, or the recovery of those purchase amounts by the Authority, shall be deducted from the Contractor's payments under this Agreement, or by any other lawful means, including deduction from any current or future agreement with the Authority.
13. By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect the Contractor and such coverages and limits shall not be deemed a limitation on the Contractor's liability under the indemnities granted to the Authority under any provision of this Agreement.
14. The Contractor and its subcontractors shall waive all rights against the Authority and its agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy, and Business Auto Policy, and Umbrella policy, as required.
15. The Contractor shall provide a copy of these Authority Insurance Requirements to its insurance producer(s) and insurance carrier(s).

**B. Coverages.** The specific types and amounts of insurance that the Contractor must provide pursuant to this Agreement are as follows:

1. **Commercial General Liability Insurance.** The Contractor shall maintain a combination of Commercial General Liability (CGL), with no less than the following limits and coverages:

<u>Agreement value:</u>	<u>Occurrence</u>	<u>Aggregate</u>
Under \$10 Million (See Section B.)	\$1,000,000	\$2,000,000
\$10 Million - \$25 million	\$5,000,000	\$5,000,000
\$25 Million - \$50 million	\$10,000,000	\$10,000,000
Over \$50 Million	\$25,000,000	\$25,000,000

- Products/Completed Operations Aggregate: \$2,000,000
- Personal/Advertising Injury Liability: \$1,000,000
- Fire Damage Legal Liability: \$100,000
- Medical Expense: \$5,000

CGL Insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability.

If the activity involves construction work near railroad stations, yards, or tracks, the exclusion for explosion, collapse and underground work (XCU) must be deleted.

If the activity involves construction or demolition near railroad stations, yards, or tracks, the General Liability policy must delete the exclusion of coverage for work done within 50 feet of railroad property.

The General Aggregate shall apply separately to the subject matter (Project) of the Agreement, and the Contractor shall provide an appropriate Project Endorsement, using ISO Form CG 25 03 11 85 or its equivalent, to the Authority for this purpose.

The Authority shall be included as an Additional Insured, using ISO Additional Insured Endorsement CG 20 10 11 85 or its equivalent, under the CGL policy and the Umbrella policy, as required. This includes, but is not necessarily limited to the parties listed in the Special Note entitled *Additional Insured Parties*. Failure to list a firm, organization or municipality, etc. does not eliminate the requirement to provide such coverage.

2. **Commercial Umbrella Liability Insurance** The Contractor shall maintain Commercial Umbrella Liability Insurance (Umbrella) on a “follow form” basis with a limit of no less than \$3,000,000 for each occurrence and aggregate for agreements over \$1,000,000 and less than \$10,000,000.
3. **Owners/Contractors Protective Liability Insurance.** The Contractor shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy written on a project basis for the benefit of the Authority, its officers, agents, and employees, and the People of the State of New York, with respect to all operations under this Agreement by the Contractor or its subcontractors, including in such coverage any omissions and supervisory acts of the Authority, its officers, agents, and employees. The New York State Thruway Authority shall be the named insured in the OCP Policy, which shall be promptly furnished to the Authority. OCP policy limits shall be no less than: \$1,000,000 per occurrence/\$2,000,000 aggregate.
4. **Builders’ Risk Insurance.** For all building construction projects, the Contractor shall provide a Builders’ Risk Insurance policy covering all risks in completed value form. Such policy shall cover the total value of the work performed, as well as the value of any equipment, supplies, and/or material for the project that may be in storage (on or off the site) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tool of their agents and employees, staging towers and forms, and property of the Authority held in their care, custody and/or control. Such policy shall name as insured’s the Authority, and the Contractor. The Builders’ Risk policy shall contain the following endorsements:

The Authority and Contractor shall be named as loss payee for the Work in order of precedence as their interest may appear.

5. **Railroad Protective Liability Insurance.** In the event that any work to be performed under the Agreement involves railroad property or railroad right-of-way, the Contractor shall provide and maintain a Railroad Protective Liability (RRP) Policy in the amounts required by the respective railroad.
  - The policy must name the Railroad as the Named Insured. No Additional Insured’s will be listed on the policy (see requirements for the deletion of the 50’ Railroad Exclusion on the Commercial General Liability policy).
  - Evidence of Railroad Protective Liability Insurance must be provided on the ACORD 25 insurance certificate form, a detailed Binder pending issuance of the ACORD 25 certificate, or on an ISO-RIMA or equivalent form approved by the Railroad and meet any other requirements as specified by the Railroad and or the Authority.

- Definition of “physical damage to property” must be amended to mean direct and accidental loss of or damage to “*all property of any Named Insured and all property in any Named Insured’s care, custody or control*”.

6. **Business Auto Liability Insurance.** The Contractor shall maintain Business Automobile Liability coverage, with no less than a \$1,000,000 Combined Single Limit, which shall cover liability arising out of the Contractor’s use of any motor vehicle, whether owned, leased, hired, or non-owned.

If the Agreement involves removing hazardous waste from the Project site, or the Project involves environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

7. **Workers’ Compensation Insurance.** For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Workers’ Compensation Law.

If the Agreement involves work on or near a shoreline, a U.S. Longshore and Harbor workers’ Compensation Act Endorsement must be provided.

Evidence of Workers’ Compensation coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:

- a. C-105.2 – Certificate of Workers’ Compensation Insurance.
- b. U-26.3 – Certificate of Workers’ Compensation Insurance from the State Insurance Fund.
- c. GSI-105/SI-12 – Certificate of Workers’ Compensation Self Insurance

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

8. **NYS Disability Benefits Insurance.** For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Disability Benefits Law.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:

- a. DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
- b. DB-155 – Certificate of Disability Self Insurance.
- c. CE-200 – Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits.)”

#### **107-07 PROTECTION OF UNDERGROUND FACILITIES.**

**Page 117: Subsection E. Quality Level Designations; ADD** the following: “If Quality Level Designations are not shown in the Contract Documents, Quality Level D shall apply.”

#### **107-08 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.**

**Page 118: Subsection C. Restoration; ADD** the following:

- “8. Any damage to delineators, milemarkers, and safety appurtenances to remain caused by the Contractor’s operations shall be repaired or replaced at no expense to the Thruway Authority. Any delineators,

milemarkers or safety appurtenances which have been moved to facilitate any operation shall be reset in their original location. Unless otherwise shown in the Contract Documents, the cost of any necessary resetting shall be included in the price bid for all items of work; no separate payment will be made.”

## **107-09 DAMAGE**

**Page 120: Subsection D. Prompt Response to Claims by the Public; DELETE** the last five (5) sentences, beginning with “The Contractor shall promptly address” and ending with “utilize other remedies”, and **SUBSTITUTE** the following:

“The Contractor shall promptly address all damage claims of the public and, if not paid directly, claims shall be promptly turned over to the Contractor’s insurance company without prejudicing the validity of the claim. There should be an interval of no more than ten (10) working days between receipt of a written claim by the Contractor and receipt by the insurance company. The Contractor shall notify the Authority when the claim is either turned over to the insurance company or paid directly. The insurance company is expected to investigate, determine and adjust such claims promptly and fairly with notice to the Authority as an additional named insured.

If the insurance company denies a claim, the Contractor must make sure that the insurance company provides the Authority with an explanation of its investigation and conclusion. A denial by the insurance company does not relieve the Contractor of its responsibility to comply with contract provisions. If the Authority determines that the Contractor has performed responsibly in accordance with the contract provisions, which includes documentation of performance of an acceptable schedule of patrols, the Contractor will have no further responsibility under the Contract. The Authority will monitor claims by the public. If the Contractor fails to comply with this process or denies a claim without proper cause and justification, the Authority will settle the claim to the claimant's satisfaction at the Contractor’s expense including Authority administrative expenses (\$250 minimum).”

## **107-10 MANAGING SURPLUS MATERIALS AND WASTE.**

**Page 120: Subsection B. Spoil; DELETE** the second and third sentences in the second paragraph, beginning with “Excess soil and rock and spoil may be disposed” and ending with “for any individual contract”, and **SUBSTITUTE** the following:

“Potential embankment slope flattening areas and/or spoil areas, which may be used for disposal of excess soil and rock and spoil on Thruway right of way, are shown on or listed in notes on the Contract Plans and/or in the Contract Proposal. Disposal of excess soil and rock and spoil in any other areas of the Thruway right of way, without the written permission of the Division Director or a designee, is prohibited. The Authority makes no assurance that appropriate spoil areas within the right of way will be available for this contract.”

## **SECTION 108 - PROSECUTION AND PROGRESS**

### **108-01 START AND PROGRESS OF WORK.**

**Page 125: DELETE** this section in its entirety and **SUBSTITUTE** the following:

#### **“108-01 START AND PROGRESS OF WORK.**

**A. General Requirements.** No on-site work may be performed until the contract is awarded. The Thruway Authority may issue a Thruway Work Permit, for Contractor employees, to make field measurements before award of the contract is received. Unless otherwise indicated in the Schedule and Suspension of Work requirements, or if written consent to begin at a later date is given by the Chief Engineer or his/her Agent, the Contractor must commence operations within 10 days of the award of this

contract. The Contractor shall notify, in writing, the Chief Engineer and the appropriate Division Director, as well as any parties designated by the Authority, ten (10) days prior to starting or stopping work. The Contractor will be required to give the proper municipalities and utility companies at least 48 hours' notice before doing any work which may interfere with the operations of their utilities.

1. **Pre-Award Project Schedule.** At the Pre-Award meeting, or within such time as determined by the Thruway Division Director, the successful low bidder must furnish to the Engineer, a project schedule showing the order in which the Contractor proposes to carry on the work, the date on which it will start the major items of work and activities to be performed (including but not limited to excavation, drainage, paving, structures, mobilization, etc.) and the critical features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same, considering seasonal weather limitations; and phase duration or milestone events, if applicable. The chart shall be in a suitable scale to indicate graphically the total percentage of work scheduled to be completed at any time. The Authority may also require that this Pre-Award Schedule include a time and money curve.
2. **Obligation to Progress the Project.** The Contractor shall employ and supply a sufficient force of workers, materials and equipment and shall prosecute the work with such diligence so as to maintain the rate of progress indicated on the progress schedule to prevent work stoppage and ensure completion of the project within the contract time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely the Contractor's obligation and shall not be charged to the Authority unless provided for in other provisions of the contract.
3. **Failure to Submit Project Schedule.** If the Contractor fails to submit a progress schedule within the time period described or any revision or update when required, the Engineer may withhold approval of progress payment estimates pursuant to Article 8 of the contract until such time as the Contractor submits the required progress schedule.

## **B. Detailed Requirements**

1. **Schedule Requirements.** The construction of the project shall be planned and recorded with a conventional Critical Path Method (CPM) schedule in the form of an activity on node diagram based on the principles defined by the 2004 issue of the Construction Planning & Scheduling Manual published by the Associated General Contractors of America. An activity on arrow diagram or Gantt chart may be used in conjunction with a CPM, if approved by the Engineer. The schedule shall be used by the Contractor for coordination and monitoring of all work under the contract including all activities of subcontractors, vendors, and suppliers. The cost of preparing the CPM schedule, including updating monthly shall be included in the total amount bid for all contract items.

The Contractor shall, within 30 calendar days after the award, submit a complete Schedule of Operations to the Engineer, fully describing the intended progress of the work and showing in detail how the work will be completed within the time limit specified in the contract, including completion of the intermediate phases as required to provide the number of open traffic lanes specified by the dates specified. This submission shall be in electronic format created using the latest version of the project scheduling software required as part of the Engineer's Office computer system. Additionally, a PERT chart styled hard copy printout shall also be provided to the Engineer. The purpose of this requirement is to insure adequate planning and execution of the work.

A Pre-Award and/or a Pre-Construction meeting will be held with the successful low bidder. At this meeting, it is expected that the successful low bidder will furnish, and be prepared to discuss, their complete Schedule of Operations, in CPM format. While not fulfilling Mobilization Item requirements, a 60 calendar day, preliminary schedule of proposed Contractor activities may be submitted at this meeting to enable the beginning of Contract work preparation such as material

orders, preparation of working drawings, and mobilization of equipment while the CPM schedule is being prepared. The Contractor's Schedule will be used by the Engineer for coordinating Thruway Operations, evaluating progress of the work, comparing the work performed to the Contract time and phasing requirements, monitoring and coordinating the work of all related contracts, and to assign necessary resources for inspection and administration of the contract.

For "Incentive/Disincentive", "A+B Projects" or other forms of contract where project completion and/or phase completion is utilized to determine payments, no contract work items may be pursued on the project unless the complete Schedule of Operations has been submitted to and found acceptable by the Engineer. Any delay due to Contractor failure to submit an acceptable schedule is a non-excusable delay.

2. **Schedule Submittal.** As stated above, the Contractor must, within 30 calendar days after the award, submit a complete Schedule of Operations to the Engineer. Acceptance of the Contractor's Schedule as meeting the requirements of this subsection and the Mobilization Item shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Contractor of providing sufficient materials, equipment and labor to guarantee completion of the project in accordance with the contract proposal, plans and specifications. Nor shall acceptance be construed to modify or amend the agreement or the date of completion therein. Schedules deviating from the Schedule and Suspension of Work requirements of the contract are unacceptable, unless the Contractor has made application in a separate writing and received written approval of the requested change, and if such a schedule is inadvertently "approved" that "approval" will be invalid. Contractor requests for alternative scheduling to that outlined on the Plan Staging/Phasing and the Schedule and Suspension of Work requirements in this proposal, will be entertained as a request for a waiver of specifications. Bids shall be based upon the scheduling and phasing in the bidding documents.
3. **Technical Requirements for the Schedule.** The Schedule of Operations must be prepared in the Critical Path format utilizing Activity Nodes with identification numbers, arrows and pertinent symbols to fully describe the activities and their duration, the progress of the work and the order in which the Contractor proposes to carry on the work, the date on which it will start the major items of work (including but not limited to excavation, drainage, paving, structures, mobilization, soil erosion and sediment control, etc.), the critical features (including procurement of materials, plant and equipment) and the contemplated dates for completion of the same. No activity duration shall be longer than 15 work days. The NYSTA requires that the progress schedule, at a minimum, include the following items: (a) activities required for the performance of all items of work, including sequence and interdependence; (b) seasonal weather limitations; (c) time and money curve, and (d) all phase duration or milestone events, holidays and shutdown periods shall be shown as applicable.

The scheduled activities are to be described so that the work is easily identifiable and the progress of each activity can be measured. For each activity, the Contractor shall identify the trade or entity performing the work, the duration of the activity in days worked, the resources involved by trade, the equipment involved, the location of the work and the total dollar value. The Contractor shall also provide the works days per week, holidays, number of shifts per day, number of hours per shift, and major equipment to be used for each activity. If requested by the Engineer, the Contractor shall furnish production rates or other information needed to verify the reasonableness of the activity duration. Allowance for time lost to seasonal weather conditions such as precipitation and temperature, shall be included in the planning and scheduling of all activities.

4. **Schedule of Submittals (TA-4010).** In addition of the Schedule of Operations, within thirty (30) calendar days of the contract award, the Contractor must also submit a Schedule of Submittals (TA-4010) required under the contract. Submittals include shop drawings, working drawings, coordination drawings, required permits, erection/demolition plans, product data, samples, quality assurance and quality control submittals (i.e. design data, test reports, certificates, manufacturer's

instructions, or field reports) and information submittals. No portion of the work requiring a shop drawing or sample submission may be started until the appropriate submission has been approved by the Engineer. This schedule of submittals shall be coordinated with the list of subcontracts, and the Schedule of Operations, arranged in chronological order by dates required by the construction schedule and show a scheduled submission date for each submittal, identifying the earliest activity affected by each of the submittals (time allowance for reviews, any resubmittals, ordering, manufacturing, fabrication, and delivery must be included when establishing scheduled dates). This schedule of submittals shall be updated and revised monthly and/or with each schedule submission, to reflect the actual progression of the work. Failure to submit a revised Schedule of Submissions, as requested by the Engineer, shall constitute non-compliance in accordance with the provisions of the contract.

5. **Contingency within the Schedule.** Any contingency within the Schedule, i.e. a difference in time between the project's early completion and required contract completion date, and "float" in the approved CPM Construction Schedule belongs to the project and not to any party to the contract.
6. **Float Manipulation Not Permitted.** The Contractor shall not sequester "float" through such strategies as calendar manipulation, or extending durations to fill up available float time.
7. **Schedule Maintenance and Required Updating.** During the time of the contract, the Contractor is required to maintain an "as-built" schedule updated and revised monthly reflecting the actual progression of the work, showing actual dates of activities started and completed, the percent of work completed to date on each activity started but not yet completed, the current allocation of staff resources and major equipment and the status of critical materials showing actual progression of the work vs. the approved schedule. The schedule of actual progression shall be available to the Engineer at all times. The Contractor shall also provide updated activity number sorts, total float early start sorts, a 60 day look-ahead bar chart, and a narrative report. The narrative report shall include a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and mandated contract dates, and the explanation of corrective action taken or proposed. Failure to submit an "as-built" schedule and monthly schedule updates, or updates as requested by the Engineer, shall constitute non-compliance in accordance with the provisions of the contract.

The Engineer will conduct periodic reviews of the updated schedule at progress or other meetings. This review, which may address slippage, remedies, revisions, and other relevant issues, may result in the need for submission of revised schedules. The Contractor's appropriate field and scheduling personnel must attend this review.

If, in the opinion of the Engineer, the specified work falls behind that schedule, the Contractor shall take such actions as necessary to improve its progress. If the Contractor is behind schedule any month, the Contractor shall indicate what measures it will take in the next thirty (30) days to put the work back on schedule so as to meet the contract completion date specified in the contract. The Contractor shall not be entitled to any additional compensation unless provided for in other provisions of the contract on account of the requirements to put the work back on schedule. In preparing the revised schedule, the Contractor shall consider increasing its work force, construction plant and equipment, or the number of work shifts, etc. If the Engineer finds the proposed plan not acceptable, he/she may require the Contractor to submit a new plan. The Authority may request that progress meetings be held by the Contractor at least on a monthly basis and be attended by the Engineer who shall monitor the Contractor's progress and performance.

8. **Changes to the Approved Project Schedules.** The CPM Construction Schedule must accurately reflect the manner in which the Contractor intends to proceed with the project and shall incorporate the impact of delays and Orders-on-Contracts when these factors can be accurately determined. All changes made to the schedule, i.e. the addition of activities, changes in logic or changes in the activity durations shall be submitted in writing and shall be subject to approval by the Engineer before

inclusion in the CPM Construction Schedule. To initiate changes to the approved schedule, the Contractor must meet with the Engineer and provide the information necessary to prepare a revised (updated) Activity on Node Diagram. No revision to any contract milestones, or contractually mandated schedule provision will be permitted without written authorization from the Engineer.

9. **Compliance with the Schedule.** The Contractor will be required to proceed with the construction in a sequence that is consistent with the "Schedule of Operations" or to submit a revised schedule. Should the Contractor or any Subcontractor fail to maintain progress according to schedule or cause delay to another Contractor or Subcontractor, that Contractor or Subcontractor shall provide such additional manpower, equipment, additional shifts, or other measures as directed to bring the operations back on schedule.

The Contractor shall employ and supply a sufficient force of workers, materials and equipment and shall prosecute the work with such diligence so as to maintain the rate of progress indicated on the approved schedule to prevent work stoppage and ensure completion of the project within the contract time. Any additional or unanticipated costs or expenses required to maintain the schedule shall be solely the Contractor's obligation and shall not be charged to the Thruway Authority unless provided for in other provisions of the contract. In the Event a notice is received of a change to the contract which is likely to cause or is causing delays, the Contractor shall notify the Engineer, in writing, within 10 calendar days of the effect, if any, of such change, or extra work, or suspension or other conditions upon the Project Construction Schedule and shall state in what respects, if any, the Approved CPM Construction Schedule should be revised with the reasons therefore. The reasons for these revisions must be succinct, comprehensive, and factual to merit consideration."

## 108-02 COMPLETION DATE

*Page 126:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

"Unless an extended time for completion has been granted, the completion of all work under this Contract shall be accomplished on or before the specified completion date for the entire project and the work shall be completed on the intermediate phases as required to provide the number of open traffic lanes specified by the dates specified. In order to comply with this requirement, the Contractor must employ sufficient forces of labor, materials, and equipment to progress the work in an expeditious manner. The Contractor's attention is directed to the fact that multi-shift operations may be required. Also, the Contractor may elect to work at night in order to complete work by the specified phase or project completion dates. If night work operations are requested, the Contractor shall seek the Authority's guidance. Unless otherwise stated in the Contract Documents, when electing to work at night, work shall be in accordance with Section 619-3.19 Nighttime Operations. The cost of furnishing any or all labor, protective measures, lighting and equipment necessary to accomplish the nighttime work operations to the satisfaction of the Engineer shall be included in the total sum bid for the Basic Work Zone Traffic Control."

## 108-03 FAILURE TO COMPLETE WORK ON TIME

*Page 127:* **Subsection B. Liquidated Damages;** **DELETE** the third sentence "Liquidated Damages will not apply to contracts containing no work within the roadway limits."

*Page 128:* **ADD** the following subsections:

**C. Failure to Complete Stage/Phase on Time.** Should such be a term and condition of the Contract, the amount specified in the proposal for "liquidated damages" shall be calculated, as specified, and deducted from any money due the Contractor, as long as work shall remain uncompleted for a stage/phase after the date specified in the contract for an intermediate completion.

**D. Failure to Complete Stage/Phase/Contract Prior to Official Shutdown per the Contract.** Unless otherwise specified, if traffic is not returned to its normal lanes in accordance with Section 108-07 Official Shutdown Period by the 30<sup>th</sup> day of November, the Contractor shall not cease work on any items required for the safe return of traffic to its normal lanes in preparation for an Official Shutdown and the onset of winter weather conditions and Authority snow and ice control maintenance. In addition, the Contractor shall take all measures available, both ordinary and extraordinary (e.g., temporary surfacing, use of winter concreting methods, erection of heated work enclosures, use of precast concrete elements, etc.) to progress stage/phase/contract completion, until Thruway or Local traffic is returned to its normal lanes and an Official Shutdown is able to be instituted (See section 108-07). Any additional efforts or temporary works, as may be necessary are solely the Contractor's responsibility; they shall be subject to approval by, and performed at no additional cost to the Thruway Authority. For each calendar day that any work shall remain uncompleted for a stage/phase/Contract prior to an official shutdown, the amount per calendar day specified in the proposal for "liquidated damages" shall be deducted from any monies due the Contractor.

**E. Damages Due to Other Non-Performance.** If, in the opinion of the Engineer, specific conditions of the Contract are not being fully adhered to by the Contractor or his Subcontractors (e.g. the work area is not maintained in accordance with the Thruway Traffic Plan, the Schedule and Suspension of Work Restrictions), all remedies under the contract will be addressed. In addition to other remedies, special specifications and/or special notes may stipulate that liquidated damages be deducted from any money due the Contractor, not as a penalty but as liquidated damages; until the violation or violations are corrected to the satisfaction of the Engineer. Unless otherwise stated in the contract documents:

- (1) Multiple violations in any calendar day shall be assessed with a like number of liquidated damage charges, and
- (2) the amount of each assessed liquidated damages shall be the amount per calendar day specified in Table 108-1, Schedule of Liquidated Damages."

#### **108-05 SUBLETTING OR ASSIGNING THE CONTRACT.**

*Page 129:* **ADD** the following to the first paragraph:

"Subcontractors will not be approved by the New York State Thruway Authority until such time as they are registered with the New York State Department of State. In no event shall the Contractor perform work amounting to less than 30 percent of the original total Contract price, including specialty items, with its own organization.

#### **108-07 SEASONAL SHUT-DOWN.**

*Page 131:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

##### **"108-07 OFFICIAL SHUTDOWN PERIOD.**

An official shutdown period may be shown in the Contract Documents, or be part of the Contractor's alternative scheduling, or part of an application for an Extension of Time into the next construction season.

This shutdown shall be a period estimated to be a minimum of two months or longer, generally between November and April; during which all field construction activities are to be suspended (only Field Office Work is permitted). During an Official Shutdown Period, unless otherwise shown on the Contract Documents, the traveled way shall:

1. Have full lane and shoulder capacity restored, without crossovers, lane restrictions or diversions. Shoulders shall be paved.
2. Be smooth, free from defect or distress, and free of surface irregularities and depressions that hold or retain water.

3. Be well drained with all drainage facilities and ditches fully open and operative to adequately drain the traveled way and the remainder of the right-of-way areas.
4. Be fully delineated by pavement markings, signs, delineators, and guiding devices. Use of cones, barrels, or barricades for delineation during an official shutdown during winter months is unacceptable unless required in the Contract Documents.
5. Have roadside obstacles and hazards protected by either intact existing or newly constructed safety appurtenances.
6. Materials or equipment shall not be left in front of or within the deflection distance behind guide rail and safety appurtenances so as to compromise their performance.

**NOTE:** All the above being provided for the safety and convenience of the traveling public during the shutdown period, also:

7. All temporary or permanent erosion control shall be in place for any disturbed areas; any seeded areas mulched with cellulose mulch that have not established a vegetative cover shall be protected by the addition of a layer of hay mulch.
8. The work site shall be in a clean and orderly condition, and all rubbish, unusable and waste material resulting from operations shall be removed from the site.
9. Recycled and/or virgin bulk or other materials awaiting installation shall be properly stored, stockpiled, and sited or protected so that they shall not constitute a traffic hazard nor interfere with drainage courses.

During an official shutdown period, the Authority will assume responsibility for minor roadway surface maintenance, snow and ice control, and respond to all incidents within the Contract Limits, just as is done outside of the Contract Limits. However, repair of major failures in the traveled way and any activities related to work performed or completed by the Contractor shall remain the Contractor's responsibility. The establishment of an official shutdown period shall not be cause for change in the Contractor's insurance requirements nor shall there be any change in liability for the Contractor's actions or negligence. The start of an official shutdown period shall be subject to a field acceptance by the Engineer assuring that the traveled way, within the Contract Limits, will safely carry traffic throughout the shutdown period and the work site is in proper condition to be left unattended for the shutdown period."

**Page 131:** **ADD** the following:

**"108-08 WORK DURING OFFICIAL SHUTDOWN PERIODS.**

Although an Official Shutdown Period is defined as a period during which all field construction activities are suspended, the performance of specific work may be allowed or even required during such periods by the Schedule and Suspension of Work Section or by Contractor request, as approved by the Chief Engineer. During this time, the Contractor shall not interfere with the operations of the Thruway Authority, and all Thruway or Local traffic must be safely maintained by the Contractor (see §108-07) in its normal lanes and all conditions for the Official Shutdown shall be maintained at all times. No lane closures or other interference with traffic may be instituted during an Official Shutdown Period without the advance permission of the Chief Engineer.

If, in the opinion of the Engineer, any of the contract requirements assuring that the traveled way, within the Contract Limits, will safely carry traffic are not fully adhered to by the Contractor or their Subcontractors, no payment will be made for the Basic Work Zone Traffic Control item and liquidated damages, if any, will also be assessed for that day or days until the violation or violations are corrected to the satisfaction of the Engineer. If the Basic Work Zone Traffic Control item is not included in the proposal, the deduction for

violation of these contract requirements shall be in accordance with table 619-6, Basic Work Zone Traffic Control Non-Payment, as amended by this Addendum, for each day that the violation occurs. This amount shall be deducted from monies otherwise due the Contractor.

In making application for any waiver of specifications or contract requirements, the Contractor agrees that any waiver granted by the Authority is exclusively for the Authority's benefit and purposes, and as such is subject to revocation without requirement for advance notice or statement of cause. Also, approval or disapproval of requests for waivers will be transmitted without statement of reason or cause, and shall not be subject to administrative review or appeal under the contract. Any additional efforts or temporary works, as may be necessary to progress work during an Official Shutdown Period are solely the Contractor's responsibility; they shall be subject to approval by, and performed at no additional cost to the Thruway Authority."

## **SECTION 109 – MEASUREMENT AND PAYMENT**

### **109-02 COMPENSATION FOR ALTERED QUANTITIES.**

*Page 131: Subsection B. Minor Items; **DELETE** the first paragraph and **SUBSTITUTE** "For Minor Items, as defined in §101-02 Definitions of Terms, payment will be made for extra work at the contract unit bid price, except for any extra work that is considered a Significant Change in accordance with §104-04C Minor Items."*

### **109-04 PARTIAL PAYMENTS.**

*Page 132: **ADD** the following:*

"For documentation purposes, this payment is converted into and paid for as a specific quantity of that Item (ton, feet, each, etc.), per the Item's specification."

### **109-05 EXTRA WORK AND TIME RELATED COMPENSATION.**

*Page 138: Subsection D. Time Related Dispute Compensation, Part 1.d *Extended Field Office Costs*; **DELETE** "overhead and profit" in the second sentence and **SUBSTITUTE** "and overhead."*

*Page 138: Subsection D. Time Related Dispute Compensation, Part 3.a; **DELETE** "109-05D.1.e" and **SUBSTITUTE** "109-05D.1.f".*

*Page 138: Subsection D. Time Related Dispute Compensation, Part 3.b; **DELETE** "109-05D.1.f" and **SUBSTITUTE** "109-05D.1.g".*

### **109-06 CONTRACT PAYMENTS.**

*Page 139: **DELETE** "\$50,000" in the first paragraph and **SUBSTITUTE** "\$100,000".*

*Also, **DELETE** the second sentence of the fourth paragraph and **SUBSTITUTE** "If the contract is funded by monies from the New York State Department of Transportation, separate payment may be made by both the State of New York and the New York State Thruway Authority .*

*Also, **DELETE** the last paragraph and **SUBSTITUTE**:*

"The following Contractor submittals covering the current estimate period must be submitted to and checked by the Engineer for the Engineer's certification that payment can be made:

- a. If Form AAP-21c is not being used, a notarized Affidavit of Payment to Subcontractors, NYSTA Form TA 44118 (or notarized NYS HC 258 form); required for every estimate after the Contractor has received their first payment.
- b. Certified payrolls for the Prime and each Subcontractor.

The Contractor's attention is called to the fact that processing of progress payments is contingent upon Contractor documentation of compliance with all Contract requirements. Forms listed below may be required and shall cover the period since the last reporting period. Specific forms and schedule will be stipulated at the pre-award or pre-construction meeting: TA 1017-9 Employment Utilization Reports (Contractor, Each Sub, Composite; No Negative Reports Required), TA 1023-9 Subcontractor Payment, and TA 1046-9 Weekly Training Progress Report. In addition the following reporting shall reflect up-to-date status: TA 1022-9 D/M/WBE Utilization, TA 1024-9 Workforce and Training Utilization Plan, TA 1041-9 Training Report, TA 1058 Actual Utilization Plan for all Subcontractors, TA 1064-9 Contractor's Annual EEO Report.

No completed quantity will be included in the progress payment unless all required documentation for the installation is received in a timely fashion. Failure by a Subcontractor to provide certified payrolls and/or required documentation for the performance of their work items will make those work items ineligible for inclusion in the Prime Contractor's progress payment.

No direct payment will be made for any of the work described and specified under the caption "GENERAL NOTES" or for any work described and specified under the caption "SPECIAL NOTES" unless specifically stated in the note. The cost there of shall be included in the prices bid for the various Contract Items.

The value of the Engineer's Office and the Mobilization Item are not included in the calculation of the work done for determining eligibility for the first progress payment.

The Department of Engineering has determined that it will require an audit period of thirty (30) days for all progress billings. All payments made under this contract will be processed in conformation with Public Authorities Law §2880, as detailed in 21 NYCRR Part 109 (Prompt Payment), which requires the Authority to make payment on highway construction projects within certain time frames. If the Authority unjustifiably fails to pay within the prescribed time, it may be required to pay interest for each day in excess of the prescribed time."

## **109-09 FINAL ACCEPTANCE AND FINAL PAYMENT.**

*Page 140:* **DELETE** Subsection B. Final Acceptance in its entirety and **SUBSTITUTE** the following:

**"B. Final Acceptance** Items in the contract will only be accepted, in place, at the time of the Final Contract Inspection by the New York State Thruway Authority, providing they were of satisfactory quality at the time of construction and are still of satisfactory quality at the time of the final inspection. The following three (3) inspections will be made in addition to the normal inspections to ensure that all Contract requirements are met and that the Work is complete and acceptable. The purpose of each of these inspections is to furnish the Contractor a written list of Contract exceptions, omissions, and deficiencies so that the work can be progressed to timely completion in accordance with the Contract documents.

1. **Detailed Inspection.** The Detailed Inspection will be made when the Work is substantially complete. A copy of the detailed inspection list will be furnished to the Contractor. When this inspection progresses over any length of time, copies of the list will be furnished as the inspection progresses so that the Contractor may proceed with the required Work without delay.

2. **Final Inspection.** The Contractor will be advised of the date and time of final inspection. A copy of the final inspection list containing all incomplete or unsatisfactory items and the time allowed to complete the Work will be furnished to the Contractor.
3. **Joint Inspection for Physical Completion.** The joint inspection for physical completion will be made by the Engineer accompanied by the Contractor and the representatives from the Authority to verify completion of the exception items listed in the final inspection list. The verification of the completeness of all the exception items will enable the "Acceptance" by the Chief Engineer. The purpose of having the "Acceptance Date" is to establish and record a date when all physical work of a contract is completed in accordance with contract requirements and to provide for the date of commencement of any guarantee period and a firm date in the consideration of the liquidated damages.

Prior to the final acceptance of the work by the Chief Engineer or a designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance."

**Page 141:** DELETE Subsection D. Final Payment in its entirety and SUBSTITUTE the following:

**"D. Final Payment.** The provisions of Article 10 of the Contract Agreement shall apply. All payments made under this contract will be processed in conformation with Public Authorities Law §2880, as detailed in 21 NYCRR Part 109 (Prompt Payment) per §109-06. The Department of Engineering has determined that it will require an audit period of sixty (60) days for a final billing. In order for the Authority to process the final supplemental agreement and the final payment in an expeditious manner, Contractors are advised of the following general procedure:

Following the completion of all required work and a final inspection by the Authority, the Contractor shall be responsible for providing the following documents and submissions to the Engineer. The Contractor shall have a period of 30 calendar days to submit such documentation to the Engineer:

- Final documentation to support any Outstanding Claims and Disputes filed during the progress of the work;
- Extra Work Cost Accounts;
- Final Supplemental Agreement (TA 4108A,B, & D), w/ or w/o signature;
- Final Labor Affidavits (TA 44115-9);
- Wage Rates Subcontractor (TA 44105-9);
- Approved Reproducible Shop Drawings;
- Material Certifications;
- Certified Payrolls;
- Tax Clearance for "Foreign" (out of State) Corporations or entities;
- D/M/WBE Payment Report (TA 1023) (Note - The TA 1023 report is provided to the NYSTA OEOC until all payments are complete. Status at this time should reflect all paid contract quantities) Final Actual Utilization Plan for All Subcontractors (TA 1058, for FA Projects use TA 1058F).

The above list is general, every item may not be applicable to every contract and other documents and submissions may be required to properly process the Final Supplemental Agreement. Any time taken by the Contractor beyond the 30 calendar day period after Final Inspection to satisfy or furnish the above information may delay the approval of the Final Supplemental Agreement and the subsequent Final Payment process. The Final Supplemental Agreement must be approved by the State Comptroller before the Final Payment process can begin."

**Page 141:** DELETE Subsection E. Acceptance of Final Payment in its entirety and SUBSTITUTE the following:

**“E. Acceptance of Final Payment.** The acceptance by the Contractor, or by anyone claiming by or through the Contractor, of the final payment shall constitute and operate as a release to the Authority from any and all claims of any liability to the Contractor for anything theretofore done or furnished for or relating to or arising out of the work done thereunder, and for any prior act, neglect, or default on the part of the Authority or any of its officers, agents, or employees unless the Contractor serves a detailed and verified statement of claim upon the Authority not later than 40 days after delivery of such final payment. Such statement shall specify the items and details upon which the claim will be based and any such claim shall be limited to such items. Should the Contractor refuse to accept the final payment it shall constitute a waiver of any right to interest thereon.

Notwithstanding the provision of the Court of Claims Act or of any other statute, the Contractor expressly understands and agrees that no action shall lie or be maintained by the Contractor, or anyone claiming by or through the Contractor, against the Authority upon any claim arising out of or based upon this contract or by reason of any act or omission or requirement of the Authority or its agents, unless such action shall be commenced within six months after delivery of the final payment. No payment to the Contractor by the Authority shall limit or qualify any defense, claim or counterclaim otherwise available to the Authority relating to this contract.”

**Page 141:** ADD the following:

**“109-11 RECOVERY OF MONIES BY THE AUTHORITY.**

Whenever it is provided in the Contract Documents that the Contractor shall pay or return monies for any reason, or that the Authority or Engineer may charge against the Contractor certain costs, assessments, or fines, or that the Authority can recover any sum for any reason from the Contractor, the Authority may offset the monies from amounts otherwise due to the Contractor. It is understood that the Authority may determine, in its sole discretion that any monies are due the Authority, and upon such determination it has available to it any monies due or that may become due the Contractor under the Contract and any other contracts between the Contractor and the Authority.

Such other contracts shall include joint ventures in which the Contractor is a participant but only to the extent of its participation. The right to offset against the Contractor as herein provided is in addition to and does not affect the right of the Authority to seek recovery against the Contractor or surety under the Contract, bonds, or as otherwise allowed by the law.”

**Section 550  
STRUCTURES**

**SECTION 555 - STRUCTURAL CONCRETE**

**Page 339:** Section 555-3.02 Falsework; ADD the following requirements:

“The Engineer’s review of Falsework Plans submitted by the Contractor shall not relieve the Contractor of his responsibility to provide for the safety and health of his employees, or to provide structurally sound, adequate falsework.”

**Page 339:** Section 555-3.03 Forms; ADD the following to the first paragraph :

“The Engineer’s review of form work plans submitted by the Contractor shall not relieve the Contractor of responsibility for attaining satisfactory results.”

## Section 600 INCIDENTAL CONSTRUCTION

### SECTION 606 - GUIDE RAILING

*Page 505: Section 606-2.08 Resetting Guide Railing, Median Barrier, Anchorage Unit Assemblies and End Assemblies, ADD the following:*

“Should plans call for resetting any corrugated beam guide rail and/or corrugated beam median barrier installed without support bolts, the Contractor shall supply and install new support bolts as per the appropriate Standard Sheets. The cost of furnishing and installing these support bolts shall be included in the unit price bid for the appropriate item for resetting guide rail or median barrier.”

*Also, ADD the following:*

“**606-2.15 Beam Lengths.** Corrugated rail panels shall be 13 feet 6 inches in length, and box beam sections shall be 18 feet in length unless otherwise specified.”

*Page 507: Section 606-3.01 General; ADD the following:*

“**G. Non-standard Post Spacings.** Non-standard post spacings may become necessary when connecting a new guide rail system to an existing guide rail system or fixed object (including existing bridge rail transitions), when connecting two existing guide rail systems, or to avoid cross culverts, drainage inlets, etc.. Non-standard post spacing is acceptable if the guidelines below are followed:

- (1) A non-standard post spacing shall not be located within a guide rail transition, bridge rail transition, end assembly or attenuator.
- (2) A maximum of two panels with non-standard post spacing shall be allowed at any location within a run of new or reset guide rail.
- (3) A non-standard post spacing shall never be greater than the normal post spacing of the rail system being utilized for the connection. Any non-standard post spacing must be less than the standard post spacing but more than half the standard spacing. If a space less than the following is required, an adjacent section shall also be cut creating two (2) adjacent, non-standard sections of similar size:
  - Box Beam Guide Rail/Median Barrier – 3’
  - Corrugated Beam Guide Rail/Median Barrier – 6’-3”
  - Heavy Post Blocked Out Corrugated Beam Guide Rail/Median Barrier – 3’-2”
- (4) Special field cut and drilled (not burned) sections will be required.
- (5) The cost of this work, including furnishing and installing any additional posts, blockouts, hardware, field galvanizing, etc. shall be included in the unit price bid for the appropriate guide rail/median rail item.”

**H. Grading into Rail Systems.** Guide rail, median barrier, and concrete barrier systems within 30 feet of the traveled way shall be installed such that the slope between the traveled way and the system is 1V:10H or flatter (1V:6H for cable systems). If the contract calls for work between the traveled way and existing rail, these slope rates shall not be exceeded. Earthwork required to meet these criteria shall be paid under their appropriate items.”

## **Section 700 MATERIALS AND MANUFACTURING**

### **SECTION 723 - LIGHTING**

#### **723-60 ANCHOR BOLTS**

*Page 979:* **DELETE** the **MATERIALS REQUIREMENTS** and **SUBSTITUTE** the following:

**“MATERIALS REQUIREMENTS.** Anchor bolts shall meet the requirements of ASTM A325 or ASTM A449. Hex nuts, hardened washers and plate washers as described or shown on the Contract Drawings shall be supplied for each anchor bolt. Hex nuts shall be Heavy Hex conforming to ASTM A563, Grade DH or ASTM A194, Grade 2H. Hardened washers shall be ASTM F436. Plate washers shall be ASTM A36 steel. The nuts, washers and anchor bolts shall be galvanized in accordance with the requirements for Type II or Type V galvanizing as stated in Section 719-01, Galvanized Coatings and Repair Methods. The anchor bolt dimensions shall be as shown on the plans.”

#### **729-12 TRUCK-MOUNTED IMPACT ATTENUATORS**

*Page 1026:* **DELETE** this section in its entirety and **SUBSTITUTE** the following:

##### **“729-12 TRUCK- MOUNTED AND TRAILER- MOUNTED IMPACT ATTENUATORS**

**SCOPE.** This specification covers the material and performance requirements for truck mounted impact attenuators (TMA) or trailer mounted impact attenuators (TTMA) mounted on the rear of work vehicles, barrier vehicles and shadow vehicles. Impact attenuators are defined by NCHRP 350 as a Category III device.

**MATERIALS REQUIREMENTS.** TMA and TTMA shall be NCHRP 350 approved. TMA and TTMA meeting the requirements of NCHRP 350 Test Level 3 are also acceptable as a Test Level 2 device. TMA and TTMA meeting the requirements of NCHRP 350 Test Level 2 are acceptable only as Test Level 2 devices. Approach ends of TMA and TTMA shall have impact attenuator markings in accordance with the MUTCD.

**BASIS OF APPROVAL.** Manufacturers or material suppliers desiring to have products considered for inclusion on the Approval List shall prepare and submit copies of drawings, specifications, test reports, and Federal Acceptance Letters to the Director of the Materials Bureau. The review process requires a minimum of 30 calendar days. Upon approval, the name of the manufacturer and the product will be placed on the Approved List.

**BASIS OF ACCEPTANCE.** Test Level 2 or Test Level 3 TMA and TTMA will be accepted on the basis of the product appearing on the Approved List and a material certification that the product is the same as the one appearing on the Approved List and that it conforms to this specification.”