

PART I

**GENERAL
PROVISIONS**

GENERAL PROVISIONS

GP-SECTION 1 DEFINITIONS AND TERMS

GP-1.01 GENERAL

Portions of Part III Technical Requirements of these Standard Specifications for Construction and Materials are written in the Active Voice writing style.

Wherever in these General Provisions or in other Contract Documents the terms or abbreviations are used, the meaning shall be as provided herein.

GP-1.02 ORGANIZATIONAL STRUCTURE

The Maryland Department of Transportation is composed of the following Administrations:

- (i) Maryland Port Administration
- (ii) Maryland Transit Administration
- (iii) State Highway Administration
- (iv) Maryland Aviation Administration
- (v) Motor Vehicle Administration
- (vi) Maryland Transportation Authority; and
- (vii) Office of the Secretary

GP-1.03 ORGANIZATIONAL DEFINITIONS

Administration—The word "Administration" shall mean any one of the Administrations within the Maryland Department of Transportation, as listed in GP-1.02.

Administrator—The chief executive officer of an Administration.

Department—The word "Department" shall mean the Maryland Department of Transportation.

Engineer—Any person designated by the Administrator or the procurement officer, acting directly or through his duly authorized representative, such representative acting within the scope of the particular duties assigned to him or of the authority given him.

Inspector—The authorized representative of the procurement officer assigned to make detailed inspection of any or all portions of the work, or materials therefore.

Procurement Officer—Any person authorized by a State agency in accordance with law or regulations to formulate, enter into, or administer Contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

Secretary—The chief executive officer of the Maryland Department of Transportation.

GP-1.04 ABBREVIATIONS

AAN	American Association of Nurserymen
AAPA	American Association of Port Authorities
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air-Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	American Transit Association
AWWA	American Water Works Association
AWS	American Welding Society
AWPA	American Wood Preservers Association

AGC	Associated General Contractors of America
BOCA	Building Officials Conference of America
COMAR	Code of Maryland Regulations
CRSI	Concrete Reinforcing Steel Institute
EI	Edison Electric Institute
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration, U.S. Department of Transportation
FCC	Federal Communications Commission
FHWA	Federal Highway Administration, U.S. Department of Transportation
FRA	Federal Railway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards, General Services Administration
FTA	Federal Transit Administration
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineers Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
IRT	Institute for Rapid Transit
MBMA	Metal Building Manufacturers' Association
NCHRP	National Cooperative Highway Research Program
MSMT	Maryland Standard Method of Tests (as developed by the State Highway Administration)
MdMUTCD	Maryland Manual on Uniform Traffic Control Devices
NBFU	National Board of Fire Underwriters
NBS	National Bureau of Standards
NEC	National Electric Code
NESC	National Electric Safety Code
NEMA	National Electrical Manufacturers' Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
RLMI	Reflector and Lamp Manufacturers' Institute
SAE	Society of Automotive Engineers
SAWP	Society of American Wood Preservers
SSPC	Society for Protective Coatings
UL	Underwriters Laboratories, Incorporated
QPL	Qualified Products List

GP-1.05 DEFINITIONS

Award—The decision by a procurement agency to execute a purchase agreement or Contract after all necessary approvals have been obtained.

Bid—A statement of price, terms of sale, and description of the supplies, services, construction or construction-related services offered by a bidder to the State in response to an Invitation for Bids.

Bid Bond—See Proposal Guaranty.

Bid Form—The approved form on which an Administration requires bids to be set forth and submitted.

Bidder—A person formally submitting a bid for the work contemplated, acting directly or through a duly authorized representative.

Board—The Board of Public Works of the State of Maryland.

Business—A corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

Calendar Day—Every day shown on the calendar, Saturdays, Sundays and holidays included.

Change Order—A written order signed by the responsible procurement officer, directing a Contractor to make changes which the changes clause of a Contract authorizes the procurement officer to order with or without the consent of the Contractor. *TC-1.03 shall also apply.*

Construction—The process of building, altering, repairing, improving or demolishing any structure, building, or other improvement to real property.

Contract—Any agreement entered into by a procurement agency for the acquisition of supplies, services, construction, construction related services, architectural services or engineering services.

Contract does not include:

- (1) Collective bargaining agreements with employee organizations or agreements creating employer-employee relationships, as defined in Article 64A, Section 15A(a)(3), Annotated Code of Maryland.
- (2) Medicaid, Medicare, Judicare, or similar reimbursement contracts which user eligibility and cost are set by law or regulation.

Contract Documents—The written agreement executed between an Administration and the successful bidder, covering the performance of the work and furnishing of labor, equipment and materials, by which the Contractor is bound to perform the work and furnish the labor, equipment and materials, and by which the Administration is obligated to compensate him therefore at the mutually established and accepted rate or price. The Contract Documents shall include the Invitation for Bids, Notice to Contractors, Instructions to Bidders, Proposal, Contract Forms and Bonds, General Provisions, Specifications, Supplemental Specifications, all Special Provisions, all Technical Provisions, all Plans and Notices to Proceed, also any written Change Orders and Supplemental Agreements that are required to complete the construction of the work in an acceptable manner, including authorized extension thereof

Contract Drawings—See definition of "Plans".

Contract Item (Pay Item)—An item of work specifically described and for which a price, either unit or lump sum, is provided. It includes the performance of all work and the furnishing of all labor, equipment, and materials, described herein or described in any Supplemental Specifications or Special Provisions.

Contract Modification—Any written alteration in the Specifications, delivery point, date of delivery, Contract period, price, quantity, or other provision of any existing Contract, whether accomplished in accordance with a Contract Provision, or by mutual action of the parties to the Contract. It includes change orders, extra work orders, supplemental agreements, Contract amendments, or reinstatements.

Contractor—Any person having a Contract with a procurement agency. Contractor does not include an employee with an employment Contract, or an employee organization with a collective bargaining agreement.

Day—Calendar day unless otherwise designated.

Invitation for Bids—Any document, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and small procurement procedures including requests for quotations.

Materials—Any substances specified for use in the construction of the project and its appurtenances.

Notice to Contractors—The advertisement for Bids for all required work or materials. Such advertisement will indicate the location and

magnitude of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of bids.

Notice to Proceed—A written notice to the Contractor of the date on or before which he shall begin the prosecution of the work to be done under the Contract.

Payment Bond—Security as stated in COMAR 21.06.07.01B as a guarantee that Contractor will pay in full all bills and accounts for materials and labor used in the work, as provided by law.

Performance Bond—Security as stated in COMAR 21.06.07.01B, guaranteeing complete performance of the Contract.

Person—Any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

Plans—The official drawings issued by the Administration as part of the Contract Documents, including those incorporated in the Contract Documents by reference.

Proposal—The response by an offeror to a request for proposals issued by a procurement agency to obtain goods or labor. The response may include but is not limited to an offeror's price and terms for the proposed Contract, and description of technical expertise, work experience and other information as requested in the solicitation. As used herein the word "proposal" means "bid".

Proposal Guaranty—The security, in the form stated in COMAR 21.06.07.01B, designated in the Proposal, to be furnished by the offeror as a guaranty of good faith to enter into a Contract with the State, if the work of constructing the improvement is awarded to him.

Resident Business—A business whose principal office or principal base of operations is located in the State.

Responsible Bidder or Offeror—A person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability that shall assure good faith performance.

Responsive Bid—A bid submitted in response to an Invitation for Bids that conforms in all material respects to the requirements contained in the Invitation for Bids.

Specification—A written description of functional characteristics, or the nature of a construction item to be procured. It may include a

statement of any of the user's requirements and may provide for inspection, testing, or preparation of a construction item before procurement.

State—The State of Maryland acting through its authorized representative.

Subcontract—Any agreement entered into by the Contractor or a subcontractor for a portion of the construction or any other part of the work in connection with, and under the terms of, the Contract.

Subcontractor—Any person undertaking a portion of the construction or any other part of the work under the terms of the Contract, by virtue of an agreement with the Contractor or a subcontractor who, prior to such undertaking has received the approval of the Administration. Subcontractor does not include an employee with an employment contract, or an employee organization with a collective bargaining agreement.

Superintendent—The executive representative of the Contractor authorized to receive and execute instructions from the procurement officer, and who shall supervise and direct the construction.

Supplemental Specifications—Additions and revisions to the Standard Specifications. Generally include new or improved procedures, construction items or materials developed subsequent to the publication of Standard Specifications.

Surety—The corporate body bound with and for the Contractor, for the full and complete performance of the Contract, and for the payment of all debts pertaining to the work. When applying to the Bid Bond, it refers to the corporate body which engages to be responsible in the execution by the bidder of a satisfactory Contract.

Third Tier Contracting—The process in which the Contractor subcontracts a portion of the Contract to a subcontractor who in turn subcontracts a portion of the Contract to a third party. This latter action is termed entering into a third tier Contract.

Work—Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the Contract.

GP-SECTION 2 BIDDING REQUIREMENTS AND CONDITIONS

GP-2.01 BID IRREVOCABLE

Unless otherwise provided in the Invitation for Bids, bid prices are irrevocable for 90 days following bid opening.

GP-2.02 CONTENTS OF BID FORMS

All papers included in, bound thereto or attached to the bid form are necessary parts thereof and shall not be detached, separated or altered. The Plans, Specifications, Supplemental Specifications, referred to in the Specifications, and all other Contract Documents will be considered a part of the bid form whether attached thereto or not.

GP-2.03 INTERPRETATION OF QUANTITIES IN BID SCHEDULE

Where designated as estimated quantities, the quantities in the prepared bid schedule are approximate only. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the Contract and as provided in GP-4.04, Variations in Estimated Quantities.

GP-2.04 SITE INVESTIGATION

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, and confirmation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the State, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating

properly the difficulty or cost of successfully performing the work. The State assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the State.

GP-2.05 TAXES-RESPONSIBILITY FOR PAYMENT, EXEMPTIONS, FORMS TO FILE, ETC.

- (a) The Contractor is responsible for, and by submitting a bid agrees to pay, all retail sales, income, real estate, sales and use, transportation and special taxes applicable to and assessable against any materials, equipment, processes and operations incident to or involved in the construction. The Contractor is responsible for ascertaining and acquainting himself with such taxes and making all necessary arrangements to pay same.
- (b) The Contractor shall indicate its Federal Tax Identification or Social Security number on the face of each invoice billed to the Administration.
- (c) The Administration or the Comptroller of the Treasury may withhold any payment under this Contract until the Contractor and any subcontractors performing any duties under this Contract have paid all State taxes or other obligations due the State of Maryland. The taxes or other obligations shall be resolved either by set-off of the amount due the Contractor against the amounts due the State or by direct payment.

GP-2.06 PREPARATION OF BID

On Administration Contracts the Contractor may elect to submit his bid on forms generated in the development of his bid as specified in TC-2.02 Preparation of Bid.

- (a) The bidder shall submit his bid upon the blank forms furnished by the Administration. The bidder shall specify a price in dollars and cents for each pay item given, and shall show the products of the respective unit prices and quantities written in figures in the column provided for that purpose, together with the total amount of the bid obtained by adding the amounts of the several items.
- (b) The bid form(s) shall be filled out legibly in ink or typed. The bid, if submitted by an individual, shall be signed by the individual. If submitted by a partnership, the bid shall be signed

by such member or members of the partnership an have authority to bind the partnership. If submitted by a corporation or other business entity, the same shall be signed by an officer with his or her position stated below the signature line. Such signature shall constitute the Contractor's representation and warrant that the signing party has Contractor's authorization to do so, binding the Contractor to the bid and to the Contract. All bids shall be signed in ink. All erasures or alterations shall be initialed by the signer in ink.

- (c) **Bid Samples and Descriptive Literature.** If the Invitation for Bids requires the bidder to furnish samples or descriptive literature, it shall be submitted with the bid, unless the Invitation for Bids provides otherwise.
- (d) Offerors shall identify those portions of their proposals which they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials should not be disclosed by the State under the Maryland Public Information Act, Section 10-611 et seq. of the State Government Article of the Annotated Code of Maryland.
- (e) Foreign Corporations – Pursuant to the Corporations and Associations, Title 7 of the Annotated Code of Maryland, corporations not incorporated in the State shall register with the State Department of Assessments and Taxation, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

GP-2.07 PROPOSAL GUARANTY

- (a) No bid will be considered for any Contract in excess of \$100,000 unless accompanied by a guaranty in an amount not less than 5 percent of the amount bid, or such amount as may be specified elsewhere in the bid documents and made payable to the State of Maryland.
- (b) Acceptable forms of security for bid guaranty shall be:
 - (1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
 - (2) A bank certified check, bank cashier's check, bank treasurer's check, or trust account;

- (3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State of Maryland; or
- (4) Cash or other securities—if submitted pursuant to COMAR 21.06.07.01.

GP-2.08 DELIVERY OF BIDS

Each bid must be submitted in a sealed envelope plainly marked to indicate its contents. When sent by mail, the sealed bid must be addressed to the Administration at the address and in care of the official in whose office the bids are to be received. All bids shall be filed prior to the time and at the place specified in the Notice to Contractors. Bids received after the time for opening of bids will be treated in accordance with the provisions of GP-2.12.

GP-2.09 COMMUNICATIONS AND INTERPRETATIONS PRIOR TO BID OPENING

Any information regarding the requirements or the interpretation of any provision of the General Provisions, Special General Provisions, Specifications or any part of the bidding documents shall be requested, in writing, from the procurement officer, and delivered no later than 10 days prior to the scheduled date of bid opening. Responses to questions or inquiries having any material effect on the bids shall be made by written addenda, or by written notice sent to all prospective bidders. **DO NOT MAKE VERBAL INQUIRIES.**

Any verbal interpretations or oral pre-bid statements made by State employees or their representatives shall not be binding upon the State.

GP-2.10 AMENDMENTS TO INVITATIONS FOR BIDS

- (a) **Form.** Each amendment to an Invitation for Bids shall be in writing and identified as such.
- (b) **Acknowledgements.** Unless otherwise provided, the bidder shall acknowledge receipt of all amendments.

GP-2.11 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

- (a) **Procedure.** Bids may be modified or withdrawn by written notice delivered to and received in the office designated in the Invitation for Bids before the time and date set for bid opening. Written notice of modification or withdrawal may be delivered by hand delivery, overnight carrier, or by US Postal mail. Any notice addressed in this subsection must be received before the time and date set for bid opening.
- (b) **Disposition of Bid Security.** If a bid is withdrawn in accordance with this regulation, the bid security, if any, shall be returned to the bidder.

GP-2.12 LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATION

- (a) **Policy.** Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late. Any request for withdrawal or request for modification received after the time and date set for opening of bids at the place designated for opening is late.
- (b) **Treatment.** A late bid, late request for modification, or late request for withdrawal may not be considered. Late bids will be returned to the bidder unopened. Upon written approval of the Office of the Attorney General, exceptions may be made when a late bid, withdrawal, or modification is received before Contract award, and the bid, withdrawal, or modification would have been timely but for the action or inaction of State personnel directing the procurement activity or their employees.

NOTE: Provision GP-2.12(b) does not apply to Federal Aid projects.

GP-2.13 OPENING AND RECORDING OF BIDS

- (a) **Opening and Recording.** Bids and modifications shall be opened publicly, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. This information also shall be recorded at the time of bid opening. The bids shall be tabulated

or a bid abstract made. The opened bid shall be available for public inspection at a reasonable time after bid opening but in any case before Contract award except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in COMAR 21. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available at a reasonable time after bid opening but in any event before Contract award regardless of any designation to the contrary at the time of bid opening.

- (b) **Confidential Data.** The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Confidential, proprietary information, and trade secrets furnished by a bidder or offeror may be disclosed to another State agency if there is a need for the information and may not be disclosed outside of State government except as provided by the Public Information Act or other applicable laws of this State.

GP-2.14 MISTAKES IN BIDS

- (a) **Mistakes Discovered Before Opening.** A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in GP-2.11.
- (b) **Confirmation of Bid.** If the procurement officer knows or has reason to conclude that a mistake may have been made, the bidder may be required to confirm the bid. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn upon written approval of the Office of the Attorney General if any of the following conditions are met:
 - (1) If the mistake and intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

- (2) A bidder may be permitted to withdraw a low bid if:
- (a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (b) The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- (c) **Mistakes Discovered After Award.** Mistakes may not be corrected after award of the Contract except when the procurement officer and the head of a procurement agency makes a determination that it would be unconscionable not to allow the mistake to be corrected. Changes in price are not permitted. Corrections shall be submitted to and approved by the Office of the Attorney General.

GP-2.15 MINOR IRREGULARITIES OR INFORMALITIES

- (a) **General.** Minor irregularities or informalities in bids, as defined below, may be waived if the procurement officer determines that it shall be in the State's best interest. The procurement officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency where it is to the State's advantage to do so.

When at any public opening of bids, a bid appears to be irregular, as herein specified, this fact may be announced when read. Said bid shall be read as other bids and then referred to the procurement officer for consideration and appropriate action thereon in accordance with these General Provisions, Law and Regulation.

A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid or proposal from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to other bidders or offerors. The defect or variation in the bid or proposal is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured and the intent and meaning of the entire bid or proposal is clear.

GP-2.16 CANCELLATION OF INVITATIONS FOR BIDS

- (a) Before opening of bids a solicitation may be canceled in whole or in part when the State determines this action is fiscally advantageous or otherwise in its best interest.
- (c) When a solicitation is canceled before bid opening, the bids shall be returned to the vendors submitting them and notice of cancellation shall be included.

GP-2.17 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS

- (a) Any bid may be rejected in whole or in part when it is in the best interest of the State to do so.
- (b) Reasons for rejection of a bid may include but are not limited to:
 - (1) The bid is not responsive i.e., it does not conform in all material respects to the solicitation.
 - (2) Unreasonable price;
 - (3) The bidder submitting the bid is determined to be nonresponsible. A determination of nonresponsibility may be made for, but is not limited to, any of the following reasons:
 - (a) Bidder debarred or ineligible and period of debarment or ineligibility not expired.
 - (b) The unit prices contained in a bid are unbalanced.
 - (c) Evidence of collusion among bidders.
 - (d) Inadequate quantity and/or quality of experience, plant, equipment, financing, manpower or other resources required to perform the Contract.
 - (e) Bidder's workload which, in the judgement of the Administration, might hinder or prevent the prompt completion of the subject work if awarded.
 - (f) Default by the bidder on other Contracts.

- (g) Failure to pay or satisfactorily settle all reasonable and just bills due for labor and material on prior or current Contracts.
 - (h) The same person has an interest in more than one bid on a Contract exclusive of being named by another bidder as a subcontractor.
 - (i) Failure to perform satisfactorily on other Contracts awarded, and the conditions leading to unsatisfactory performance remain unresolved.
 - (j) Any other reason affecting the bidder's ability to perform, or record of business integrity.
 - (k) Bidder not otherwise qualified and eligible to receive an award under applicable laws and regulations.
- (4) The bidder or offeror fails to supply information to the procurement officer promptly, after notification from the procurement officer that such information is required in connection with a determination to be made pursuant to this GP-2.17.

GP-2.18 REJECTION OF ALL BIDS

- (a) After opening of bids or proposals but before award, all bids or proposals may be rejected in whole or in part when the procurement officer, with the approval of the agency head or his designee, determines that this action is fiscally advantageous or otherwise in the State's best interest.
- (b) A notice of rejection of all bids shall be sent to all vendors that submitted bids, and bids which have been opened shall be retained by the Administration.

GP-2.19 BID EVALUATION AND AWARD

- (a) **General.** The Contract is to be awarded to the responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and is either the lowest bid price or lowest evaluated bid price.
- (b) **Determination of Lowest Bidder.** Bids shall be evaluated to determine which bidder offers the lowest cost to the State in

accordance with the evaluation criteria set forth in the Invitation for Bids.

Except as otherwise provided under GP-2.14 Mistakes in Bids:

- (1) The unit price will govern in the event of a discrepancy between the unit price bid and the extended price (product of unit price multiplied by the quantity).
- (2) The sum of the extended prices will govern in the event of a discrepancy between the total lump sum bid and the extended prices.
- (3) The written words will govern in the event of a discrepancy between the prices written in words and the prices written in figures.
- (4) If a unit price has been omitted, the unit price will be determined by dividing the extended price by the quantity.

The Administration reserves the right to make the award by item, or groups of items, or total bid if it is in the best interest of the State to do so unless the bidder specifies in his bid that a particular or progressive award is not acceptable.

- (c) **Award.** Upon determination of the lowest bidder, review of the bid for responsiveness, and satisfaction that the bidder is responsible, the Contract may be awarded to that bidder. A Contract may be awarded to a bidder offering a higher quality item than that designated in the Invitation for Bids if that bidder is also the lowest responsive and responsible bidder.

GP-2.20 TIE BIDS

On Administration Federal Aid Contracts, the preference to in-State Contractors does not apply.

- (a) **Definition.** Tie bids are responsive bids from responsible bidders that are identical in price, terms and conditions and which meet all the requirements and evaluation criteria set forth in the Invitation for Bids.
- (b) **Award.** In the instance of tie bids, the award shall be made in accordance with COMAR 21.05.02.14. If identical low bids are received from an in-State and out-of-State bidder, the award shall be made to the in-State bidder. If identical low bids are received

from in-State bidders or from out-of-State bidders, a drawing shall be conducted, and a witness shall be present to verify and certify the result.

GP-2.21 RESIDENT BUSINESS PREFERENCE

- (a) When awarding a Contract by competitive sealed bidding, if the State in which a nonresident firm submitting the lowest responsible bid is located gives a competitive advantage to its resident businesses, a procurement agency may give an identical competitive advantage to the Maryland firm submitting the lowest responsive and responsible bid in order to determine Contract award.
- (b) A competitive advantage may include:
 - (1) A percentage preference;
 - (2) An employee residency requirement;
 - (3) Any other provision that favors a nonresident firm over a Maryland firm.
- (c) This provision GP-2.21 shall not apply if it conflicts with any Federal grant or regulation affecting this Contract.

GP-2.22 MULTIPLE OR ALTERNATE BIDS

Unless multiple or alternate bids are requested in the solicitation, these bids may not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder.

GP-2.23 BID PROTESTS

A bid protest must be in writing and filed with the procurement officer. Oral objections, whether or not acted on, are not protests.

- (a) **Time for Filing.**
 - (1) A bid protest shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier.

- (2) A protest based on alleged improprieties in the solicitation which are apparent before the bid opening or the closing date for receipt of initial proposals shall be filed before the opening date or the closing date for receipt of initial proposals.

(b) Content of Written Protest.

- (1) Name and address of protestor.
- (2) Bid or Contract number.
- (3) Reasons for protest.
- (4) Supporting exhibits, evidence or documents to support claim. If not available within filing time, indicate expected availability date.
- (5) Mark envelope "protest".

Bid protests will be resolved pursuant to COMAR 21.10.02.

GP-SECTION 3 AWARD AND EXECUTION OF CONTRACT

GP-3.01 AWARD OF CONTRACT (See GP-2.19)

Written notice of award shall be sent to the successful bidder. A Notice of Award may be rescinded at any time prior to execution of the Contract by the Administrator.

GP-3.02 RETURN OF PROPOSAL GUARANTY

All proposal guaranties, except those of the three lowest bidders, will be returned immediately following opening and the review of the proposals. The guaranty of the three lowest bidders will be returned following the execution of the Contract and approval by the Board, if required. The Contractor has the right to substitute a bid bond for other bid security at any time prior to return of the proposal guaranty.

GP-3.03 PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

- (a) Acceptable security for performance and payment shall be as stated in COMAR 21.06.07.01B.
- (b) **Performance and Payment Bonds.** A performance and payment bond is required for all construction Contracts in excess of \$100,000 each in the amount equal to at least 100 percent of the Contract price. The bonds shall be delivered by the bidder to the Administration no later than the time the Contract is to be executed. If the bidder fails to deliver the required bonds, his bid shall be rejected, his bid security shall be enforced, and award of the Contract may be made to the next lowest responsive and responsible bidder.
 - (1) The required performance bond shall be in the form specified in COMAR 21.07.02.10, Exhibit A.
 - (2) The required payment bond shall be in the form specified in COMAR 21.07.02.10, Exhibit B.

GP-3.04 EXECUTION OF CONTRACT

- (a) The Contract shall be effective only upon receipt by the Administration of the proper, executed Contract form, and performance and payment bonds (if required), approval by the Board of Public Works, (if required), and execution of the Contract by the Administration.
- (b) After a Notice of Award, as provided in GP-3.01, has been issued to a bidder, the Administration shall forward the formal Contract form and the appropriate forms for the payment and performance bonds (if any) to the bidder for execution. The bidder will execute the Contract form and return same, together with fully executed payment and performance bonds (if any), to the Administration within 10 days after receipt of same. After receipt of properly executed Contract form and payment and performance bonds, (if any), the Administration will execute the Contract within 60 days and forward the bidder a copy; provided, however, that the Board has approved the Contract if such approval is required. If the Administration fails to execute the Contract and the period of irrevocability has expired, the bidder may, as its sole remedy, withdraw its bids.

GP-3.05 FAILURE TO EXECUTE CONTRACT

Failure of the bidder to execute the Contract and file acceptable security as defined in GP-3.03 within the time aforesaid shall be just cause for the annulment of the award and the forfeiture of the proposal guaranty which shall become the property of the State of Maryland, not as a penalty but in liquidation of damages sustained. Award may then be made to the next lowest responsive, responsible bidder or the work may be readvertised and constructed under Contract or otherwise, as the Administration may decide.

**GP-SECTION 4
SCOPE OF WORK****GP-4.01 INTENT OF CONTRACT**

- (a) The Contractor shall (within specified tolerances) perform all work in accordance with the lines, grades, typical cross sections, dimensions, and other data shown on the Plans or as modified by written orders including the furnishing of all materials, implements, machinery, equipment, tools, supplies, transportation, labor, and all other things necessary to the satisfactory prosecution and completion of the project in full compliance with the Contract requirements.
- (b) The documents composing the Contract Documents are intended to be complementary, and to describe the construction and completion of the work. Anything mentioned in the Specifications and not shown on the Contract drawings, or shown on the Contract drawing and not mentioned in the Specifications shall be of like effect as if it is shown or mentioned in both.
- (c) Omissions from the drawings or Specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and Specifications or which are customarily performed shall not relieve the Contractor from performing such omitted or misdescribed details of work, but they shall be performed as if fully and correctly set forth and described in the drawings and Specifications.

GP-4.02 GENERAL PROVISIONS CONTROLLING

In the event of a conflict between these General Provisions and any other provision of the Contract Documents, these General Provisions shall prevail unless such other provision expressly provides to the contrary.

GP-4.03 ENTIRE CONTRACT

The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral.

GP-4.04 VARIATIONS IN ESTIMATED QUANTITIES

On Administration Contracts, in addition to GP-4.04 Variations in Estimated Quantities, TC-7.08 Estimated Items shall apply.

Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than 25 percent above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within 10 days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion date as in his judgement the findings justify.

GP-4.05 DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before such conditions are disturbed, notify the procurement officer in writing of:
 - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or
 - (2) Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily

encountered and generally recognized as inherent in work of the character provided for in this Contract.

The procurement officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

- (b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; provided however, the time prescribed therefore may be extended by the State.
- (d) No claim by the Contractor for an equitable adjustment here under shall be allowed if asserted after final payment under this Contract.

GP-4.06 CHANGES

- (a) The procurement officer may unilaterally, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:
 - (1) In the Specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the State-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written order or an oral order including a direction, instruction, interpretation or determination from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

- (c) Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- (d) Subject to paragraph (f), if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly. Provided, however, that except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective Specifications for which the State is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective Specifications.
- (e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under (a) above or the furnishing of written notice under (b) above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice under (b) above.
- (f) Each Contract modification or change order that affects Contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the Contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.
- (g) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

GP-4.07 NEGOTIATED PAYMENT PROVISION

If the Contractor is entitled to an equitable adjustment, the Contractor shall be allowed to add the following maximum percentages for overhead and profit to his costs for labor and materials:

- (a) Twenty percent may be added by the Contractor for overhead and profit for work performed by his own forces.
- (b) Fifteen percent may be added by the subcontractor for overhead and profit for work performed by the subcontractor; the Contractor may add an additional 5 percent of the subcontractor's costs for labor and materials.
- (c) The provisions of paragraphs (a) and (b) above apply only to price adjustments negotiated prior to completion of the added or changed work and do not apply to work performed on a force account basis as provided for in Section GP-9.02 (*On Administration Contracts TC-7.03 Force Account shall apply*) or GP-4.04 Variations In Estimated Quantities.

GP-4.08 UNAUTHORIZED WORK

Work done contrary to or regardless of the instructions of the procurement officer; work done beyond the lines and grades shown on the Contract Drawings, or as given; or any extra work done without written authority will be considered as unauthorized and at the expense of the Contractor and will not be measured or paid for. Work so done may be ordered removed and/or replaced at the Contractor's expense.

GP-4.09 FINAL CLEAN UP

Upon completion of the work specified in the Contract and before final payment will be made, the construction area and all other adjoining areas, other than those owned by him, occupied by the Contractor during the construction of said Contract shall be cleaned of all surplus and discarded materials, spilled materials, excess materials left deposited on the permanent work as a result of the Contractor's operations, false work, and rubbish and temporary structures and buildings, that were placed thereon by the Contractor. The adjoining areas mentioned above, outside the normal pay limits for seeding, will be reshaped, seeded and mulched, or otherwise restored as directed by the procurement officer at the Contractor's expense.

GP-4.10 WARRANTY OF CONSTRUCTION

On Administration Contracts GP-4.10 Warranty of Construction does not apply unless otherwise specified in the Contract Documents.

- (a) In addition to any other warranties at law or set out elsewhere in this Contract, the Contractor warrants for one year after final acceptance of the work, that work performed under this Contract conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. With respect to any part of the work which the State takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the State takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to State owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.
- (b) The State shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.
- (c) Should the Contractor fail to remedy any failure, defect, or damage described in (a) above within a reasonable time after receipt of notice thereof, the State shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.
- (d) In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the State, be enforced by the Contractor for the benefit of the State. In such case if the Contractor's warranty under (a) above has expired, any suit directed by the State to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the State. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

- (e) If directed by the procurement officer, the Contractor shall require any such warranties to be executed in writing to the State.
- (f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair or any defects of material or design furnished by the State nor for the repair of any damage which results from any such defect in State furnished material or design.
- (g) The warranty specified herein shall not limit the State's rights under GP-5.13 Acceptance clause of this Contract.

GP-SECTION 5 CONTROL OF WORK

GP-5.01 AUTHORITY OF THE PROCUREMENT OFFICER

- (a) The procurement officer shall decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the rate of progress of said work; all questions which may arise as to the interpretation of any or all Plans and Specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor.
- (b) The procurement officer shall determine the amount and quantity of work performed and materials which are to be paid for under the Contract.
- (c) The procurement officer shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to carry out provisions of the Contract.

GP-5.02 CONFORMITY WITH CONTRACT REQUIREMENTS

All work performed and all materials furnished shall be in conformity with the Contract requirements.

In the event the procurement officer finds the materials or the finished product in which the materials are used or the work performed are not in reasonably close conformity with the Contract requirements and have

resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

In the event the procurement officer finds the materials or the finished product in which the materials are used are not in conformity with the Contract requirements but that acceptable work has been produced, he shall then make a determination if the work shall be accepted. In this event, the procurement officer will document the basis of acceptance by a change order which will provide for an appropriate adjustment in the Contract price. Any action taken pursuant to this paragraph may not result in an increase of the Contract price.

GP-5.03 DISCREPANCIES IN THE CONTRACT DOCUMENTS

In the event the Contractor discovers any discrepancies in the Contract Documents, he shall immediately notify the procurement officer. The procurement officer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract. For governing order of Contract Documents, see TC-3.01.

GP-5.04 COOPERATION BY CONTRACTOR

The Contractor will keep available on the project site at all times one complete set of Contract Documents.

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the procurement officer and his inspectors in every way possible.

The Contractor shall assign to the Contract as his agent, a competent superintendent capable of communicating in English and capable of reading and thoroughly understanding the Contract Documents and thoroughly experienced in the type of work being performed, who shall receive instructions from the procurement officer or his authorized representatives. The superintendent shall have full authority to execute the order or directions of the procurement officer without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of work sublet. Said superintendent shall be on the project site at all times when the work is in progress.

GP-5.05 COOPERATION WITH UTILITIES

It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances or the operation of moving them.

The Contractor shall have responsibility for notifying all affected utility companies prior to the necessity of performing any work on their utilities and shall cooperate with them in achieving the desired result. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.

GP-5.06 COOPERATION BETWEEN CONTRACTORS

- (a) Separate Contractors on adjoining or overlapping work shall cooperate with each other as necessary. Such cooperation shall include:
 - (1) Arrangement and conduct of work;
 - (2) Storage and disposal of materials, etc., by each in such manner as to not unnecessarily interfere with or hinder the progress of the work being performed by other Contractors. Contiguous work shall be joined in an acceptable manner.
- (b) The Administration and Department shall have the right, at any time, to Contract for and perform other work on, near, over or under the work covered by this Contract. In addition, other work may be performed under the jurisdiction of another Administration or State agency. In such cases, when a dispute arises among Contractors, the procurement officer will decide which of the procurement officers will have jurisdiction over said dispute. The Contractor shall cooperate fully with such other Contractors and carefully fit his own work to such other work as may be directed by the procurement officer.
- (c) The Contractor agrees that in the event of dispute as to cooperation the procurement officer will act as referee. The Contractor agrees to make no claims against the Administration for any inconvenience, delay or loss experienced by them because of the presence and operations of other Contractors.

GP-5.07 AUTHORITY AND DUTIES OF INSPECTORS

Inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to revoke, alter or waive any requirements of the Contract, nor is he authorized to approve or accept any portion of the complete project. He is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the Contract. He shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the procurement officer. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.

The inspector shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the work by the latter. Any advice, instruction, direction or other order which the inspector may give the Contractor shall not be construed as binding the procurement officer in any way, or releasing the Contractor from fulfilling all of the terms of the Contract.

Where there is disagreement between the Contractor (or his representative) and the inspector, such as refusal by the Contractor to use properly approved material, performing work not in compliance with Plans and Specifications, and/or refusing to suspend work until problems at issue can be referred to and decided by the procurement officer, the inspector will immediately direct the procurement officer's attention to the issues of disagreement. If the Contractor still refuses to make corrections, comply or suspend work, the procurement officer will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the work and explaining the reason for such shutdown. As soon as the inspector is advised of the delivery of the shutdown order, the inspector shall immediately leave the site of the work and any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

GP-5.08 INSPECTION OF WORK

All materials and each part or detail of the work shall be subject at all times to inspection by the procurement officer or his authorized representative, and the Contractor will be held strictly to the materials, workmanship, and the diligent execution of the Contract. Such inspection may include mill, plant or shop inspection, and any material furnished under the Contract is subject to such inspection. The procurement officer,

or his representative, shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the procurement officer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standards required by the Contract. Should the work thus exposed or examined prove acceptable, adjustments in Contract time and price will be made pursuant to Section GP-4.06 for the uncovering or removing, and the replacing of the covering or making good of the parts removed. Should the work so exposed or examined prove unacceptable, the uncovering, or removing and replacing, shall be at the Contractor's expense.

When the United States Government or any railroad, corporation or other agency is to pay a portion of the cost of the work covered by this Contract, their respective representatives shall have the right to inspect the work.

GP-5.09 REMOVAL OF DEFECTIVE WORK

All work and materials which do not conform to the requirement of the Contract will be considered unacceptable, unless otherwise determined acceptable under the provisions in GP-5.02.

Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Specifications or shall be remedied otherwise in an acceptable manner authorized by the procurement officer.

Upon failure on the part of the Contractor to comply promptly with any order of the procurement officer, made under the provisions of these General Provisions the procurement officer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor under this Contract.

GP-5.10 LOAD RESTRICTIONS

- (a) The Contractor shall comply with all State and local requirements pertaining to speed, size and weight of motor vehicles.

- (b) The Administration may indicate in the Contract load restrictions on any road or structure within the vicinity of the project.
- (c) The Contractor shall take into account any and all posted bridges, the crossing of which might be contemplated by the work on the Contract. No loads in excess of posted limits will be allowed in the prosecution of the work on any Contract, unless the required permits are obtained from the appropriate State and local governmental agencies.
- (d) The Contractor shall consider possible detrimental effects of operating heavy paving and grading equipment contiguous to retaining walls, pipe culverts, arches, forms for concrete work as well as construction existing prior to this Contract.
- (e) The procurement officer shall have the right to limit passage of heavy equipment (plus loads) when such passage or usage is causing apparent or visible damage to embankments, paving, structures or any other property.
- (f) Within the Baltimore City limits, the Department of Transit and Traffic of the City of Baltimore has jurisdiction for oversize and overweight vehicle movements. Permits are obtainable from the Transit and Traffic Department.

GP-5.11 MAINTENANCE OF WORK DURING CONSTRUCTION

- (a) The Contractor shall maintain the work during construction and until acceptance. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times.
- (b) Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such water and such drainage shall be diverted or removed when necessary to prevent damage to excavation, embankments, surfacing, structures or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been removed.

- (c) All cost of maintenance work during construction and before final acceptance shall be included in the price bid and the Contractor will not be paid additional amount for such work, except as otherwise provided.
- (d) In the event that the Contractor's work is ordered shutdown for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided herein, and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contract has been declared in default.
- (e) On projects where traffic flow is maintained, the Contractor shall be responsible for repair of all traffic damages to the work, either partially or totally completed, until such time as the work is accepted by the procurement officer. Responsible, as used here, shall mean the responsibility for restoration, and the cost thereof unless otherwise expressly provided for in the Special Provisions.

GP-5.12 FAILURE TO MAINTAIN ENTIRE PROJECT

On Administration Contracts GP-5.12 Failure to Maintain Entire Project does not apply; TC-4.02 shall apply.

Failure on the part of the Contractor, at any time, to comply with the provisions of GP-5.11 above, will result in the procurement officer's immediately notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the procurement officer will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from monies due the Contractor.

GP-5.13 ACCEPTANCE FOR MAINTENANCE

- (a) **Partial Acceptance for Maintenance.** If at any time during the performance of the work the Contractor substantially completes a unit or portion of the work, he may request the procurement officer to make final inspection of that unit. If the procurement officer finds upon inspection that the unit has been satisfactorily completed in compliance with the Contract, he may accept that unit as being completed and the Contractor may be relieved of further maintenance responsibility for that unit. Generally, partial acceptance for maintenance will only be considered when the

Administration feels that such action is in the public interest. Such partial acceptance for maintenance shall in no way void or alter any of the terms of the Contract.

- (b) **Final Acceptance for Maintenance.** Upon due notice from the Contractor of presumptive completion of the entire project, the procurement officer shall make a construction inspection and if at such inspection all construction provided for and contemplated by the Contract is found completed, such inspection shall constitute the final inspection and the procurement officer shall make the acceptance for maintenance as of that date, and the Contractor shall be notified of such acceptance in writing. After acceptance for maintenance the Administration will assume responsibility for maintenance except where otherwise provided by the Contract.
- (c) If, however, at any construction inspection any work in whole or in part is found unsatisfactory, the procurement officer shall give the Contractor the necessary instructions as to the work required for final completion and acceptance for maintenance. The Contractor forthwith shall comply with and execute such instructions. Upon completion of such work, another inspection shall be made which shall constitute the final inspection if the said work is found to have been completed satisfactorily. In such event, the procurement officer shall make the acceptance for maintenance and the Contractor shall be notified as aforesaid. After final acceptance for maintenance, the Administration will assume responsibility for maintenance except where otherwise provided by the Contract.
- (d) Unless otherwise provided in this Contract, acceptance by the State shall be made as promptly as practicable after completion and inspection of all work required by this Contract, or that portion of the work that the procurement officer determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, such gross mistakes as may amount to fraud or the State's rights under any warranty or guarantee or any claims or counter claims reserved by the State.

GP-5.14 FILING OF CLAIM BY CONTRACTOR

Unless a shorter period is prescribed by law or elsewhere in this Contract,

- (a) The Contractor shall file a written notice of claim for extension of time, equitable adjustment, extra compensation, damages, or any other matter (whether under or relating to this Contract) with the

procurement officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier.

- (b) Contemporaneously with or within 90 days of the filing of a notice of a claim, but no later than the date that final payment is made, a Contractor shall submit the claim to the appropriate procurement officer. The claim shall be in writing and shall contain:
 - (1) An explanation of the claim, including reference to all Contract provisions upon which it is based;
 - (2) The amount of the claim;
 - (3) The facts upon which the claim is based;
 - (4) All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and
 - (5) A certification by a senior official, officer, or general partner of the Contractor or subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the Contract adjustment for which the person believes the Administration is liable.
- (c) The claim shall also contain itemized supporting data for the elements of cost the Contractor claims to have incurred or it will incur. This data shall be in sufficient detail to permit analysis by the Administration of material, labor, equipment, subcontract and overhead costs as well as profit and shall include all work covered by the claim, whether deleted, added, or changed. Subcontract cost shall be supported by similar detailed data.
- (d) A notice of claim or a claim that is not filed within the prescribed time shall be dismissed.

GP-5.15 DISPUTES

- (a) This Contract is subject to the provisions of Title 15, Subtitle 2, State Finance and Procurement Article (Dispute Resolution) of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).

- (b) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- (c) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.

A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed either as to liability or amount, it may be converted to a claim, for the purpose of this clause.

- (d) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General.
- (e) When a claim cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.
- (f) The Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of the claim.
- (g) The procurement officer shall render a written decision on all claims within 180 days of receipt of the Contractor's written claim, unless the time is extended by mutual agreement of the parties. If a decision is not issued within 180 days, the procurement officer shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State.
- (h) The procurement officer's decision shall be final and conclusive unless the Contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

- (i) Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the procurement officer's decision.

GP-SECTION 6 CONTROL OF MATERIAL

GP-6.01 GENERAL

All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of the materials, the Contractor shall notify the procurement officer in writing of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.

GP-6.02 STORAGE AND HANDLING OF MATERIALS

Materials shall be so stored as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way or project site may be used for storage purposes and for the placing of the Contractor's plant and equipment; such storage areas must be restored to their original condition by the Contractor at his expense. Any additional space required must be provided by the Contractor at his expense.

Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.

GP-6.03 UNACCEPTABLE MATERIALS

- (a) Materials represented by samples taken and tested in accordance with the specified tests and failing to meet required values shall be considered to be defective regardless of prior tests or approvals.
- (b) Unless otherwise allowed by the procurement officer as set forth below, defective materials shall be removed from the site with any tags, stamps or other markings implying conformance with Specifications removed or obliterated.

- (c) Where defects can be corrected, the Contractor may propose such corrective action as he deems appropriate to the procurement officer. The procurement officer may approve the corrective action but in so doing does not assume responsibility for the success thereof. Retests will be made to determine the acceptability of the material after corrective measures have been taken. No person other than the procurement officer may change any provision of the Specifications or the Contract without written authorization.
- (d) The cost of replacing, correcting and/or removal of defective material will be the responsibility of the Contractor.
- (e) The cost of repairing or replacing other materials damaged by the installation, correction and/or removal of defective materials will be the responsibility of the Contractor.

GP-6.04 ADMINISTRATION FURNISHED MATERIAL

The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Administration. Materials furnished by the Administration will be delivered or made available to the Contractor at the point or points specified in the Special Provisions. The cost of handling and placing all materials, after they are delivered to the Contractor, shall be considered as included in the Contract price for the item in connection with which they are used.

The Contractor shall be held responsible for all material delivered to him, and deductions will be made from any monies due him to make good any shortages and deficiencies, from any cause whatsoever, and for any damage which may occur after such delivery, and for any demurrage charges.

In cases where materials are supplied by the Administration and incorporated in the Contract work by the Contractor, materials inspection and acceptance will not be prerequisite for acceptance of the final product as the product pertains to these items.

GP-SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

GP-7.01 COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- (a) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- (b) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- (c) It shall comply with all Federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract, including the provisions of COMAR Title 21 that are applicable to construction Contracts and which are incorporated herein by reference; and
- (d) All requirements set forth in Federal assistance instruments applicable to this Contract shall be satisfied. Therefore, to the extent that the requirements which are specified in the assistance instrument conflict with regulations adopted under COMAR Title 21, the former shall control.

GP-7.02 PERMITS AND LICENSES

- (a) The Contractor shall procure at his own expense such permits, licenses, insurance and governmental approval as may be necessary in order to comply with Federal, State and local laws, ordinances and regulations in performance of the work. He shall further give all notices necessary and incidental to the due and lawful prosecution of the work.
- (b) Federal permits, from the U.S. Corps of Engineers, Environmental Protection Agency, and/or United States Coast Guard, for erection of structures in tidal waters will be obtained by the Administration and the Contractor shall comply with the requirements of such permits. Any required Federal permits,

however, desired by the Contractor for temporary structures such as docks, piers, anchorages, etc., must be applied for and obtained by the Contractor.

GP-7.03 PATENTED DEVICES, MATERIALS, AND PROCESSES

If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner and a copy of such agreement shall be filed with the Administration; if no such agreement is made or filed as noted, the Contractor and the surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, materials or process, or any trademark or copyright, and shall indemnify, protect and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgement for patent, trademark or copyright infringement, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

GP-7.04 FEDERAL PARTICIPATION

When the United States Government pays all or any portion of the cost of a project, the work shall be subject to the inspection of the appropriate federal agency. Such inspection shall in no sense make the federal government a party to this Contract, and will not interfere, in any way, with the rights of either party hereunder.

GP-7.05 CONSTRUCTION SAFETY AND HEALTH STANDARDS

It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards and regulations (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standard Act, (83 Stat. 96) and under any construction safety and health standards and regulations promulgated by the

Commissioner of Labor and Industry in accordance with the Maryland Occupational Safety and Health Act, of the Labor and Employment Article, Title 5 of the Annotated Code of Maryland (as the same may be amended from time to time).

The Contractor and each subcontractor shall permit inspection without delay and at any reasonable time on any premises where the work is being performed by a federal or state inspector authorized to investigate compliance with the above mentioned federal and state statutes and regulations.

The Contractor further agrees to correct any violations found to exist during such inspection within a reasonable time after the issuance of any citation, unless he contests the validity thereof through the appropriate administrative and judicial process.

GP-7.06 PUBLIC CONVENIENCE AND SAFETY

The Contractor at all times shall conduct the work in such a manner as to ensure the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be provided for. Equipment and/or materials stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the procurement officer. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of the project. Existing Department facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Existing mailboxes shall be maintained or reset in positions accessible to the public and to mail deliveries during construction and subsequent to construction in their final locations in a satisfactory condition. On Department facilities occupied by railroad tracks, temporary platforms for the entrance and exit of passengers to and from the railway cars shall be provided and maintained in an approved manner by the Contractor. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. All footways, gutters, sewer inlets and portions of the project adjoining the work under construction shall not be obstructed more than is absolutely necessary. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus.

GP-7.07 DETOURS

Detours may be indicated in the Contract Documents, or at the Contractor's request traffic may be detoured over approved routes along existing roads when acceptable to the procurement officer. Detours over existing State roads will be designated, marked and maintained by the appropriate Administrations. All other detours will be the responsibility of the Contractor.

GP-7.08 BARRICADES AND WARNING SIGNS

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other Department facilities closed to vehicular traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.

The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the Manual on Uniform Traffic Control Devices, or as directed.

The Contractor shall furnish, erect and maintain warning and direction signs in the number required by the procurement officer and at locations designated by the procurement officer throughout the limits of the project. For street and highway type traffic, the signs shall conform in every respect to the requirements of the Manual on Uniform Traffic Control Devices (MdMUTCD) for Streets and Highways. Signs must be freshly painted and adequately reflectorized before being placed on any project. No work may be performed or begun unless an adequate number of signs of the proper category are in place.

In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular traffic the Contractor shall, at the direction of the procurement officer provide suitable substantial traffic barriers to the extent determined by the procurement officer.

GP-7.09 FLAGGING OF MOTOR VEHICLE TRAFFIC

For all construction Contracts requiring the flagging of motor vehicles licensed for operation on the highways of Maryland, said flagging shall be conducted as specified in the Manual on Uniform Traffic Control Devices for Streets and Highways.

GP-7.10 MAINTENANCE OF TRAFFIC

Unless otherwise noted in the Special Provisions, it shall be the Contractor's responsibility to maintain pedestrian and vehicular traffic safely, adequately and continuously on all portions of existing facilities affected by his work. In addition to existing facilities undergoing improvement, this also applies to crossroads, approaches, crossovers, and entrances affected or made necessary by his work.

GP-7.11 PRESERVATION AND RESTORATION OF PROPERTY

- (a) The Contractor shall not enter upon public or private property (outside of the right-of-way or project area) for any purpose without obtaining permission and he shall be responsible for the preservation of all public and private property, trees, monuments, signs and markers, and fences thereon, and shall use every precaution necessary to prevent damage or injury thereto. All Department signs and markers that are affected by the work shall be carefully removed when grading operations begin and delivered to the procurement officer. The Contractor shall take suitable precaution to prevent damage to underground or overhead public utility structures; shall protect carefully from disturbances or damages all land monuments and property marks until the procurement officer has referenced their location; and shall replace them as directed by the procurement officer.
- (b) The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work, resulting from any act, omission, neglect or misconduct in his manner or method of executing said work, or at any time due to defective work or materials, and said responsibility shall not be released until the work shall have been completed and accepted. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or at

consequence of the nonexecution thereof on the part of the Contractor, he shall restore, at his own expense, such property to a condition similar to, or equal to, that existing before such damage or injury, in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or make good such damage or injury, the procurement officer may, upon 48 hours notice, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any monies due or which may become due the Contractor under this Contract.

GP-7.12 LAND, AIR, AND WATER POLLUTION

- (a) The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time as required by the Contract Documents. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design; that are needed prior to installation of permanent pollution control features; or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- (b) The Contractor's attention is directed to the fact that temporary pollution control may include control measures outside the right-of-way or project site where such work is necessary as a direct result of project construction. The procurement officer shall be kept advised of all such off-site control measures taken by the Contractor. This shall not relieve the Contractor of the basic responsibilities for such work.
- (c) In case of failure on the part of the Contractor to control erosion, pollution or siltation, the procurement officer reserves the right to employ outside assistance or to use his own forces to provide the necessary corrective measures. All expenses incurred by the procurement officer in the performance of such duties for the Contractor shall be withheld from monies becoming due to the Contractor.
- (d) Contractors and suppliers must submit evidence to the Administration that the governing Federal, State and local air pollution criteria will be met. This evidence and related documents will be retained by the Administration for on-site evaluation.

GP-7.13 RESPONSIBILITY FOR DAMAGE CLAIMS

- (a) The Contractor shall indemnify and save harmless, and shall require that each subcontractor shall indemnify and save harmless the State and all of its representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the improvement, or on account of any act or omission by the said Contractor or subcontractor, or as a result of faulty, inadequate or improper temporary drainage during construction, or on account of the use, misuse, storage or handling of explosives, or on account of any claims or amounts recovered for any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the Workmen's Compensation Laws, or any other State or local law, bylaw, ordinance, regulation, order or decree whether by himself or his employees or subcontractors. The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect or misconduct, in the manner or method of executing said work satisfactorily or due to the nonexecution of said work or at any time due to defective work or materials and said responsibility shall continue until the improvement shall have been completed and accepted.
- (b) The Contractor shall conduct his operations upon the right-of-way of any railroad company fully within the rules, regulations and requirements of the railroad company. The Contractor shall be responsible for acquainting himself with such requirements as the railroad company may demand.
- (c) The Contractor shall be held responsible for any accidents that may happen to the railroad company as a result of his operations.
- (d) The Contractor shall not be held responsible for any claims arising from accidents incurred because of any traffic and/or general use permitted during the time the project or any section thereof is open to traffic under the terms of GP-7.15 except from accidents which are attributable to his negligence.

GP-7.14 LIABILITY INSURANCE

On Administration Contracts, in addition to GP-7.14 Liability Insurance, TC-5.01 Insurance shall apply.

Prior to the start of work on this Contract, the Contractor shall submit to the procurement officer a certificate of insurance indicating that he carries comprehensive general public liability and property damage insurance in the amounts specified elsewhere in the Contract. ***On Administration Contracts the Contractor shall submit to the procurement officer a certificate of insurance prior to the execution of the Contract.***

The Contractor may require each subcontractor to carry comprehensive general public liability and property damage insurance in amounts sufficient to cover the subcontractor's exposure under the Contract, and may require proof of coverage prior to the start of work on each subcontract.

GP-7.15 USE AND POSSESSION PRIOR TO COMPLETION

On Administration Contracts in addition to GP-7.15 Use and Possession Prior to Completion, TC-4.03 Use and Possession Prior to Completion shall apply.

The Administration shall have the right to take possession of or use any completed or partially completed part of the work. Such possession of or use shall not be deemed an acceptance of any work not completed in accordance with the Contract. While the Administration is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to that portion of the work in possession of the Administration, other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the Administration delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of completion will be made and the Contract shall be modified in writing accordingly.

GP-7.16 CONTRACTOR'S RESPONSIBILITY FOR WORK

- (a)** Except as herein elsewhere provided, until final acceptance of the work by the Administration, the Contractor shall have the charge and care thereof and shall take every reasonable precaution against injury or damage to any part thereof by the action of the elements, or from any other cause, whether rising from the execution or from the nonexecution of the work. The Contractor, except as herein elsewhere provided, shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof. Material lost or structures damaged as a result of faulty temporary drainage during

construction or the action of the elements shall be replaced or repaired by the Contractor at no cost to the Administration. The Contractor shall make good or replace at his own expense and as required any Administration furnished material which may be broken, lost through fire, theft, or otherwise damaged, or in any way made useless for the purpose and use intended subsequent to delivery to the Contractor by the Administration and prior to final acceptance of the work even though such breakage, damage, loss or uselessness may result from causes beyond the control of the Contractor.

- (b) In case of suspension of work for any cause whatever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the work, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at his expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under this Contract, and shall take adequate precautions to protect new growth and other important vegetative growth against injury.

GP-7.17 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

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

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.

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

GP-7.18 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Administrator, procurement officer or other authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

GP-7.19 NO WAIVER OF LEGAL RIGHTS

The Administration shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor from showing that the work or materials do not in fact conform to the Contract. The Administration shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Administration, or any representative of the Administration, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Administration, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages.

The waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

GP-7.20 NONDISCRIMINATION IN EMPLOYMENT**(a) Compliance with State Law and Regulations****(1) State Law**

The Contractor agrees:

- (a)** Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in

nature and extent so as reasonably to preclude the performance of such employment;

- (b) To include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
- (c) To post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

(2) Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such sanctions as it may determine to be appropriate, including but not limited to:

- (a) Withholding of payment to the Contractor under the agreement until the Contractor complies, and/or
- (b) Cancellation, termination or suspension of the Agreement in whole or in part.

(b) Compliance with Federal Law

Contractors providing materials, equipment, supplies, or services to the State under this Contract herewith assure the State that they are conforming to the provisions of the Civil Rights Act of 1964 and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

The Contractor shall comply with all applicable Federal laws pertaining to nondiscrimination in employment.

GP-7.21 SANCTIONS UPON IMPROPER ACTS

In the event the Contractor, or any of its officers, partners, principals or employees, is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Contract, the Contract may, in the discretion of the Department, be terminated for default under GP-8.08.

Section 16-203 of the State Finance and Procurement Article of the Annotated Code, and COMAR 21.08.01, which relate to Contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Contract by reference.

Section 11-205 of the State Finance and Procurement Article and COMAR 21.08.03 relating to collusion for purposes of defrauding the State are incorporated into this Contract by reference.

Section 16-101 of the State Finance and Procurement Article and COMAR 21.08.04 relating to debarment for offenses other than bribery are incorporated into this Contract by reference.

GP-7.22 NONHIRING OF EMPLOYEES

No official or employee of the State of Maryland, or any unit thereof, as defined under State Government Article, § 15-102 of the Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the party contracting with the state.

GP-7.23 CHOICE OF LAW

The Parties hereby agree that:

- (a) This Contract was made and entered into in Maryland, and under the laws of Maryland.
- (b) The law of Maryland shall govern the resolution of any issue arising in connection with this Contract, including, but not limited to, all questions concerning the validity of this Contract; the capacity of the parties to enter therein; any modification or amendment thereto; and the rights and obligations of the parties hereunder.

GP-7.24 CONTINGENT FEE PROHIBITION

- (a) The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any

person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

- (c) For breach or violation of this warranty, the Administration shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

GP-7.25 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS

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

GP-7.26 COST AND PRICE CERTIFICATION

- (a) The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
 - (1) A negotiated Contract, if the total Contract price is expected to exceed \$100,000 or a smaller amount set by the procurement officer.
 - (2) A change order or Contract modification, expected to exceed \$100,000 or a smaller amount set by the procurement officer.

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

**GP-7.27 CORPORATE REGISTRATION AND TAX
PAYMENT CERTIFICATION**

Corporations are required to execute a certification of corporation registration and tax payment in the form included in the Contract Documents.

GP-7.28 BUY AMERICAN STEEL ACT

The Provisions of COMAR 21.11.02 pertaining to implementation of the "Buy American Steel" Act (Subtitle 3 of Title 17 of the State Finance and Procurement Article of the Annotated Code of Maryland) are incorporated in this Contract by reference.

**GP-7.29 MINORITY BUSINESS ENTERPRISE AND
AFFIRMATIVE ACTION**

- (a) This Contract is subject to Executive Order 01.01.170.15, December 9, 1970; amended by Order 01.01.1976.05, July 9, 1976 (Code of Fair Practices), and COMAR 21.11.04 Contractor's Affirmative Action Plan Review/Approval and Compliance Monitoring Process-DOT. This Contract is also subject to the applicable provisions of Title 14, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland; COMAR 21.11.03 Minority Business Enterprise Policies; and provisions of COMAR 11.01.10 which incorporate by reference the current revision of the Minority Business Enterprise Program. Copies of the Minority Business Enterprise Program may be obtained from the Department of Transportation Office of Minority Business Enterprise, P.O. Box 8755, BWI Airport, Maryland 21240. This Contract is also subject to all applicable Federal and State laws and regulations pertaining to Minority Business Enterprise and Affirmative Action.
- (d) To the extent any of the above laws or regulations are applicable to this Contract they are specifically incorporated herein.

- (e) **Third Tier Contracting.** Two conditions must be met before an Administration may approve a third tier contracting arrangement which may be entered into to meet an MBE goal.
- (1) The Administration awarding the Contract must be satisfied that there is no way except by third tier contracting that an MBE goal can be achieved; and
 - (2) The Contractor must request from the Administration in writing, prior to the award of the Contract, that approval be granted for each third tier Contract arrangement. The request must contain specifics as to why a third tier contracting arrangement should be approved.

An Administration approving a third tier Contract should do so in writing, setting forth the parameters of the Contract. All records of the Contract will be maintained by the Administration granting approval.

Third tier contracting to meet an MBE goal is to be considered the exception and not the rule.

GP-7.30 PREVAILING WAGE CONTRACTS FOR PUBLIC WORKS

- (a) The Provisions of Subtitle 2 of Title 17 of the State Finance and Procurement article of the Annotated Code of Maryland and COMAR 21.11.11 pertaining to Prevailing Wage for Public Works are incorporated in construction Contracts of \$500,000 or more by reference.
- (b) When all or a portion of the cost of a project is funded by the U.S. Government, and the cost of the project exceeds \$2,000 the minimum wage rates and benefits paid to workmen under the Contract shall be those prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 USC 276a to a-7) and Regulations (29 CFR, Part 5) promulgated thereunder. Davis-Bacon rates applicable to this agreement, if any, are specified elsewhere in the Contract Document.

GP-7.31 SMALL BUSINESS PROCUREMENTS

If the solicitation for bid indicates that this procurement has been designated for small business preferences, the appropriate provisions of COMAR 21.11.01 pertaining to small business preferences shall apply and are incorporated herein by reference.

GP-7.32 FINANCIAL DISCLOSURE

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

GP-7.33 POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with the provisions of the Election Law Article, §§ 14-101 et. Seq. of the Annotated Code of Maryland which require that every person that enters into Contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year under which a person receives in the aggregate \$100,000 or more, shall on or before February 1 of the following year file with the State Administrative Board of Election Laws certain specified information to include disclosure of political contributions in excess of \$500 to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, and incorporated municipality, or their agencies, and shall cover the preceding two calendars years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the six-month period ending January 31; and (b) August 5, to cover the six-month period ending July 31.

GP-7.34 CONFLICT OF INTEREST LAW

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any Contract or other matter in which he, his spouse, parent, minor child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee is a party, or to which any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of State Government Article, Title 15 of the Annotated Code of Maryland.

GP-7.35 PRE-EXISTING REGULATIONS

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

GP-7.36 RETENTION OF RECORDS

- (a) The Contractor shall retain and maintain all records and documents, including, but not limited to, cost or pricing data, relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or his designee at all reasonable times.
- (b) The Contractor shall include the provisions of paragraph (a) in every subcontract.

GP-SECTION 8 PROSECUTION AND PROGRESS

GP-8.01 SUBCONTRACTING

On Administration Contracts in addition to the provisions of GP-8.01 Subcontracting, TC-5.03 Subcontracting and Subcontractors shall apply.

Except as may be provided elsewhere in the Contract, the Contractor to whom a Contract is awarded shall perform with his own organization and with the assistance of workmen under his immediate supervision, work of a value of not less than 50 percent of the total original value of the Contract.

No portion of the Contract shall be subcontracted, assigned or otherwise disposed of except with the written consent of the procurement officer. Any assignment, subcontract or other disposition of all or part of this Contract without the express written consent of the procurement officer shall be null and void. Consent to subcontract, assign or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor or surety of any responsibility for the fulfilling of all the requirements of the Contract.

The Contractor shall incorporate by reference or otherwise include these General Provisions in every subcontract issued pursuant to or under this Contract, and shall require that the same reference or inclusion be contained in every subcontract entered into by any of its subcontractors.

GP-8.02 NOTICE TO PROCEED

On Administration Contracts in addition to GP-8.02 Notice To Proceed, TC-5.02 Notice To Proceed and Project Schedule shall apply.

After the Contract has been executed, the Administration will, within the time limit specified by the Administration elsewhere in the Contract Documents, issue to the Contractor a "Notice to Proceed" and this notice will stipulate when the Contractor is expected to begin work. The specified Contract time shall begin on the date stipulated in the Notice to Proceed or, if an earlier start is authorized in the Notice to Proceed, on the day work (other than the erection of the inspection office, construction stakeouts and mobilization) actually starts. Work done prior to receipt of the Notice to Proceed is unauthorized and will not be measured or paid for.

GP-8.03 PROSECUTION OF THE WORK

- (a) The Contractor shall begin work promptly within the time specified by the procurement officer and shall notify the procurement officer at least 48 hours before starting work.
- (b) After the work has once been started, it shall be prosecuted continuously on all acceptable working days without stoppage until the entire Contract is complete.
- (c) Should the prosecution of the work for any reason be discontinued, the Contractor shall notify the procurement officer of his intention to stop and shall also notify the procurement officer at least 24 hours in advance of resuming operations. Said notification shall be confirmed in writing.

GP-8.04 PROGRESS SCHEDULE

- (a) Within 30 days after Notice to Proceed, the Contractor shall furnish the procurement officer a "Progress Schedule" showing the proposed order of work and indicating the time required for the completion of the work. Said progress schedule shall be used to establish major construction operations and to check on the progress of the work. The Contractor shall submit revised progress schedules as directed by the procurement officer. ***On Administration Contracts the Progress Schedule shall be submitted in conformance with TC-5.02 Notice to Proceed and Project Schedule.***
- (b) If the Contractor fails to submit the progress schedule within the time prescribed, or the revised schedule within the requested time, the procurement officer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedules or may terminate the Contract for default.
- (c) If, in the opinion of the procurement officer, the Contractor falls significantly behind the approved progress schedule, the Contractor shall take any and all steps necessary to improve his progress. This may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plants, or all of them. The procurement officer may also require the Contractor to submit for approval supplemental progress schedules detailing the specific operational changes to be

instituted to regain the approved schedule, all without additional cost to the Administration.

- (d) Failure of the Contractor to comply with the requirements of the procurement officer under this provision shall be grounds for determination by the procurement officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination, the procurement officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with GP-8.08 of these General Provisions.

GP-8.05 LIMITATIONS OF OPERATION

The Contractor shall conduct the work at all times in such a manner and in such sequence as will assure the least interference with the public.

GP-8.06 CHARACTER OF WORKMEN, METHODS, AND EQUIPMENT

The Contractor shall employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by the Contract.

Workmen must have sufficient skill and experience to perform properly the work assigned to them. All workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

Any person employed by the Contractor or by any subcontractor who, in the opinion of the procurement officer, does not perform his work in a proper manner or is intemperate or disorderly shall, at the written request of the procurement officer, be removed forthwith by the Contractor or subcontractor employing such foreman or workman, and shall not be employed again in any portion of the work without the approval of the procurement officer.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the procurement officer may withhold estimates which are or may become due on the Contract until a satisfactory understanding has been reached.

Equipment to be used on the work shall meet the requirements of the work and produce a satisfactory quality of work. The procurement officer may order the removal and require replacement of any unsatisfactory equipment.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he demonstrates to the satisfaction of the procurement officer will accomplish the Contract work in conformity with the requirements of the Contract.

When the Contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the procurement officer in writing. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, he may request authority from the procurement officer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the procurement officer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substituted method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the procurement officer may direct. No change will be made in basis of payment for the construction items involved nor in Contract time as the result of authorizing a change in methods or equipment under these provisions.

GP-8.07 SUSPENSION OF WORK

On Administration Contracts, in addition to GP-8.07 Suspension of Work, TC-4.04 Suspension of Work shall apply.

- (a) The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the State.
- (b) If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this Contract, or by his failure to act within the time specified in this

Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or for which an equitable adjustment is provided for or excluded under any other provisions of this Contract.

No claim under this clause shall be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the procurement officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and,
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

GP-8.08 TERMINATION FOR DEFAULT-DAMAGES FOR DELAY-TIME EXTENSIONS

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, the State may, by written notice to the Contractor, terminate his right to proceed with the work, or the part of the work as to which there has been delay. In this event the State may take over the work and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the State resulting from his refusal or failure to complete the work within the specified time.

- (b) If fixed and agreed liquidated damages are provided in the Contract and if the State so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned the State in completing the work.
- (c) If fixed and agreed liquidated damages are provided in the Contract and if the State does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- (d) The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
 - (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a Contract with the State, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and,
 - (2) The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the Contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgement, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.
- (e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to the clause. If, in the

foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of the State, the Contract shall be equitably adjusted to compensate for the termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes".

- (f) The rights and remedies of the State provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- (g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

GP-8.09 LIQUIDATED DAMAGES

Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion.

For each day that any work shall remain uncompleted beyond the time specified elsewhere in the Contract, the Contractor and/or his surety shall be liable for liquidated damages in the amount provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time for completion of work as granted by approved change orders.

GP-8.10 TERMINATION FOR CONVENIENCE OF THE STATE

- (a) The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the procurement officer shall determine that such termination is in the best interest of the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) After receipt of Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:

- (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by Notice of Termination;
- (4) Assign to the State in the manner, at the times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (6) Transfer title and deliver to the State, in the manner, at the times and to the extent, if any, directed by the procurement officer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the State;
- (7) Use its best effort to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) may not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the State to the

Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the procurement officer may direct;

- (8) Complete performance of such part of the work as may not have been terminated by the Notice of Termination; and
 - (9) Take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest. The Contractor shall submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the State to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the State shall accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- (c) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination Claim, in the form and with certification prescribed by the procurement officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within the one year period or authorized extension thereof. However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after the one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed or any extension thereof, the procurement officer may determine, on the basis information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- (d) Subject to the provisions of paragraph (c), the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.
- (e) In the event of the failure of the Contractor and the procurement officer to agree as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):
- (1) For completed supplies or services accepted by the State (or sold or acquired as provided in paragraph (b)(7) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
 - (2) The total of:
 - (a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (e)(1) hereof;
 - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the termination portion of the Contract

(exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (a) above); and

- (c) A sum, as profit on (a) above, determined by the procurement officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (d) The reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this Contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e)(1) and (a) above, the fair value, as determined by the procurement officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to paragraph (b)(7).

- (f) Costs claimed, agreed to, or determined pursuant to (c), (d), (e) and (i) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this Contract.
- (g) The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes", from any determination made by the procurement officer under paragraph (c), (e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to

request extension of such time, he shall have no such right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (d), (e), or (i) hereof, the State shall pay to the Contractor the following:

- (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer; or,
 - (2) If an appeal has been taken, the amount finally determined on such appeal.
- (h) In arriving at the amount due the Contractor under this clause there shall be deducted:
- (1) All unliquidated advance or other payments or account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
 - (2) Any claim which the State may have against the Contractor in connection with this Contract; and
 - (3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the State.
- (i) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.
- (j) The State may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever, in the opinion of the procurement officer, the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the

State upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date as determined by the procurement officer by reason of the circumstances.

- (k) Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this Contract, preserve and make available to the State at all reasonable times at the office of the Contractor but without direct charge to the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, photographs, microphotographs, or other authentic reproductions thereof.

GP-8.11 SUCCESSFUL TERMINATION OF CONTRACTOR'S RESPONSIBILITY

A Contract will be considered as successfully fulfilled when the work has been completed in accordance with the terms of the Contract; when final acceptance has occurred; when final payment has been authorized; when all of the obligations of the Contractor and his surety have been complied with; and when final payment has been made.

GP-SECTION 9 PAYMENT

On Administration Contracts, GP-Section 9 Payment does not apply; TC-Section 7 Payment shall apply.

GP-9.01 SCOPE OF PAYMENT does not apply; TC-7.04 Scope of Payment shall apply.

Payment to the Contractor will be made for the actual quantities of Contract items performed in accordance with the Plans and Specifications

and if, upon completion of the construction, these actual quantities show either an increase or decrease from the quantities given in the bid schedule, the Contract unit prices will still prevail, except as provided in GP-4.04 Variations in Estimated Quantities.

The payment of any partial estimate or of any retained percentage except by and under the approved final estimate and voucher, in no way shall affect the obligation of the Contractor to repair or renew any defective parts of the construction or to be responsible for all damages due to such defects.

When requested in writing by the Contractor and approved by the procurement officer, payment allowance will be made for nonperishable material to be incorporated in the work delivered and stockpiled at the work site or other approved site. Material for which payment has been made, wholly or partially, shall not be removed from the worksite or other approved site.

Payment to the Contractor under this section for materials on hand in no way will be construed as acceptance by the Administration of title to the material. Title shall remain with the Contractor until the project has been completed and accepted in accordance with GP-5.13.

Contractor shall indicate his Federal Tax Identification or Social Security Number on the face of each invoice billed to the State.

On Contracts in excess of \$25,000, the Contractor prior to receiving a progress or final payment under this Contract, shall first certify in writing that he has made payment from proceeds of prior payments, and that he will make timely payments, from the proceeds of the progress or final payment then due him, to his subcontractors and suppliers in accordance with his contractual arrangements with them and State Finance and Procurement Article, §17-106. This certification may be required by the procurement officer for Contracts of \$25,000 or less.

The Contractor shall also obtain from each subcontractor a certification that it has made payment from proceeds of prior payments to any of its lower tier subcontractors, and will make timely payments to its lower tier subcontractors and suppliers in accordance with its contractual arrangements with them. This certification is not required from subcontractors who have no lower tier subcontracts. These certifications may be required by the procurement officer for contracts of \$25,000 or less.

In addition to any other remedies provided by law or this Contract, any Contractor or subcontractor of any tier who fails to make payment as required by the certification set forth in the above paragraphs within thirty

(30) days from the date such payments is due shall be obligated to include with such payment interest at the rate of 10 percent per annum from the date the payment was due to the date the payment was actually made to the subcontractor or lower tier subcontractor.

GP-9.02 FORCE ACCOUNT WORK *does not apply; TC-7.03 Force Account shall apply.*

When the Contractor is required to perform work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the Administration and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the Administration may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:

- (a) **Labor.** For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work.
- (b) **Materials.** For materials accepted by the procurement officer and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth).
- (c) **Equipment.** For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the procurement officer, the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Special Provisions. For the purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.
- (d) **Materials and Supplies Not Incorporated in the Work.** For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the procurement officer, the Contractor shall receive the actual cost of such materials and supplies used. The Contractor shall receive a reasonable allowance for materials used but not expended in the performance of the work.
- (e) **Subcontractors.** The Contractor shall receive the actual cost of work performed by a subcontractor. Subcontractor's cost is to be

determined as in (a), (b), (c), and (d) above, plus the fixed fee for overhead and profit allowance computed as in (g).

- (f) **Superintendence.** No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- (g) **Contractor's Fixed Fee.** The procurement officer and the Contractor shall negotiate a fixed fee for force account work performed pursuant to this GP-9.02 by his forces and by his subcontractors, as compensation for overhead and profit for the work performed. Failure of the Contractor and the procurement officer to negotiate a fixed fee consistent with applicable cost principles in COMAR 21.09.01, shall be treated as a dispute pursuant to GP-5.15 and the Contractor shall proceed diligently with the performance of the force account work to completion. The Contractor's fixed fee shall include an amount equal to the sum of 65 percent of (a) which shall include, but not be limited to the following:
 - (1) Compensation for all costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining agreement or other employment Contract generally applicable to the classes of labor employed in the work.
 - (2) Bond premiums, property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work.

In addition, the Contractor's fixed fee may include an amount not to exceed 20 percent of (b) and 5 percent of (d), and 5 percent of (e) with the exception of that portion chargeable to equipment as defined above.

- (h) **Compensation.** The compensation as set forth above shall be received by the Contractor as payment in full for change order work done on a force account basis. At the end of each day, the Contractor's representative and the procurement officer shall compare records of the cost of work as ordered on a force account basis.
- (i) **Statements.** No payment will be made for work performed on a force account basis until the Contractor furnishes the procurement

officer duplicate itemized statements of the cost of such force account work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such laborer, or foreman.
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (3) Quantities of materials, prices and extensions.
- (4) Transportation of materials.
- (5) Payments of items under (i)(1) shall be accomplished by copies of certified payrolls. Under (i)(2) original receipted invoices for rentals must be provided if requested by the procurement officer. Paragraphs (i)(3) and (i)(4) shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost. Any request for payment under this Section shall be submitted in the order outlined by the above.

GP-9.03 PROGRESS PAYMENTS *does not apply; TC-7.05 Progress Payments shall apply.*

(a) Current Estimates.

- (1) **Lump Sum Contracts.** If requested by the Administration, the Contractor shall furnish an acceptable breakdown of the lump sum Contract price showing the amount included therein for each principal category of the work. Said breakdown shall be in such detail so as to provide a basis for estimating monthly progress payments.
- (2) **Monthly Estimates.** Each month the Administration will pay the Contractor for the Contract value of the work satisfactorily performed during the preceding calendar month, including authorized extras and additions less 5 percent. The 5 percent of the total Contract value retained

by the Administration will not be released until final payment (unless partially released in a semi-final payment). Current estimates will be based upon the procurement officer's estimate of quantity (including materials and/or equipment complete in place) satisfactorily performed. In the instance of lump sum items, the procurement officer's estimate shall be the proper fraction of the lump sum items satisfactorily performed during the preceding month. All quantities, estimates and fractions will be reasonably accurate approximations and are subject to correction (a) in subsequent current estimates, (b) in any semi-final estimate and, (c) in final payment. Any and/or all partial payments may be withheld in the event current requirements of the Specifications have not been complied with by the Contractor. Should either the procurement officer or the Contractor be of the opinion that any estimates, quantities and/or fractions (either as to an individual current estimate or accumulations thereof) do not represent a reasonably accurate approximation of actual work, then details questioned shall be reviewed and then any corrections adjusted for in the next current estimate.

- (3) **Escrow Accounts For Retained Funds.** The Contractor may elect to have retained funds paid to an escrow agent who may invest the funds in an approved interest-bearing account which, upon completion of the Contract, will be paid to the Contractor to the extent to which the Contractor is entitled. The Contractor's election to use the escrow account procedure must be indicated on the Contract Documents, and the escrow agreement must be in a form and under terms approved by the Administration. The Contractor shall forfeit his right to the use of the escrow account if he refuses or fails to indicate an election prior to execution of the Contract.

NOTE: This provision GP-9.03(a)(3) shall not apply if it conflicts with any Federal grant or regulation affecting this Contract.

(b) Semi-Final Estimate Payments.

- (1) Upon completion of the project and the acceptance by the Administration of the project for maintenance, the Administration, at the Contractor's request and with consent of surety, will pay the Contractor, within 30 calendar days of said request, what is hereby known as a semifinal estimate payment. Such a semifinal estimate payment will be based

upon (a) quantities the Administration has computed and set up as proposed final quantities and (b) a reasonably accurate estimate for those quantities for which the Administration has not yet completed computations. The quantities which the Administration sets forth as proposed final quantities shall be so designated. To arrive at the amount of semi-final estimate payment there shall be deducted from the apparent estimated value of the Contract (a) total of all amounts previously paid to the Contractor as current estimates and (b) sums deemed chargeable against the Contractor properly deductible, including liquidated damages, and as a retainage, a sum not less than 1 percent the total value of the Contract.

- (2) In cases where there has been substantial completion of the project and there are remaining only inconsequential or minor work items such as painting, seeding, mulching, or planting to be completed and such items cannot be completed for an extended period of time because of seasonal or weather conditions, there shall be made a semi-final inspection and if the work completed is found by the Administration to be satisfactory, then there is deemed to be partial acceptance on the entire project except for the uncompleted work items. Upon the above referred to partial acceptance, the Administration, within 30 days from such partial acceptance, upon request of the Contractor and with consent of surety, shall pay to the Contractor, what is hereby known as a partial semi-final estimate payment. Such a semi-final estimate payment will be based upon (a) quantities the Administration has computed and set up as proposed final quantities and (b) a reasonably accurate estimate for those quantities for which the Administration has not yet completed computations. The quantities which the Administration sets forth as proposed final quantities shall be so designated. To arrive at the amount of semi-final estimate payment, there shall be deducted from the apparent estimated value of the Contract (a) total of all amounts previously paid to the Contractor as current estimates, and (b) sums deemed chargeable against the Contractor properly deductible, including liquidated damages, and as a retainage, a sum equal to 1 percent of the total value of the Contract. (Said retainage is not to be less than \$2,000).
- (3) If all retained funds have not been paid to an escrow agent, as provided for in GP-9.03(a)(3), the Administration shall, upon payment of the semi-final estimate, place the remaining retainage in an interest-bearing escrow account, as designated and on such terms and conditions as specified

by the procurement officer. At the time of final payment, any retainage due, and any interest accrued on the retainage due from the time of payment of the semi-final estimate, shall be paid to the Contractor.

GP-9.04 FINAL ACCEPTANCE AND FINAL PAYMENT *does not apply; TC-7.06 Final Acceptance and Final Payment shall apply.*

- (a) When the Contractor has completed a Contract, and it has been accepted for maintenance in accordance with the provisions of GP-5.13, the Administration will promptly proceed:
 - (1) To make any necessary final surveys;
 - (2) To complete any necessary computation of quantities; and
 - (3) To submit to the Contractor, within 60 days after final completion and acceptance of the project by the procurement officer for maintenance, for his consideration, a tabulation of the proposed final quantities. This tabulation shall be accompanied by a statement setting forth: (a) the additional work performed under change orders and/or supplemental agreements; (b) the authorized extension of time; (c) the number of days which have been charged against the Contractor as having been used to complete the Contract, and (d) any deductions, charges or liquidated damages which have been made or imposed.
- (b) The Contractor shall then have a period of 10 calendar days, dating from the date upon which he received the aforementioned tabulation from the Administration, in which:
 - (1) To decide whether or not he will accept final payment upon such a basis, and
 - (2) To notify the Administration, in writing, of his decision. The Contractor may request an additional period up to 10 calendar days in which to notify the Administration of his decision. In the event the Contractor notifies the Administration that he protests final payment on such a basis, that notification shall outline the reason(s) for said protest.
- (c) Upon receipt of a notification of acceptance as provided for in paragraph (b) above, the Administration shall prepare the final estimate and final payment forms and submit them to the

Contractor. These forms shall show all data noted in paragraph (a) above, together with deductions for all prior payments. The Contractor shall execute these forms and return them to the Administration within 30 calendar days from the date they are received for execution and payment. If such signed forms are not received by the Administration within the specified time, the Administration will prepare duplicate forms for execution and payment. Such action by the Administration shall be deemed to constitute acceptance and final payment.

- (d) If, under the provisions of paragraph (b) above, the Contractor notifies the Administration of his protest and nonacceptance of the data submitted to him, the Administration shall pay the Contractor a semi-final estimate, or an additional semi-final estimate in the event a semi-final estimate has already been paid based upon the data noted in paragraph (a) above, with deductions for all prior payments. A retainage equal to 1 percent of the total value of the Contract shall be withheld by the Administration. The acceptance of such semi-final estimate, or additional semi-final estimate, shall not be considered as a waiver on the part of the Contractor of his right to pursue his protest and press for acceptance and final payment.
- (e) In the event the Contractor does not accept the data submitted to him as described in paragraph (a) above and/or has outstanding a claim filed in accordance with GP-5.14, the procurement officer and the Contractor shall confer at mutually convenient times and endeavor to reconcile all points of disagreement expeditiously. If such reconciliation is accomplished, the Administration will promptly proceed with acceptance and final payment on the reconciled basis and in accordance with the provisions of paragraph (c) above. If reconciliation is not accomplished within 30 days, the decision of the procurement officer shall be reviewed by the Administrator and appropriate legal counsel. After review by the Administrator, the decision of the procurement officer is deemed to be the final action. The procurement officer shall furnish a copy of the final decision to the Contractor by certified mail, return receipt requested. This decision may be appealed by the Contractor to the Maryland State Board of Contract Appeals. This must be done by filing a written notice of appeal to the Appeals Board within 30 days from the date of the final decision. Failure to provide timely notification to the procurement officer shall constitute a waiver by the Contractor of his right under the Disputes Clause and final payment may be made by the Administrator based on the procurement officer's recommendation.

- (f) All prior partial estimates and payments shall be subject to correction at the time of acceptance and final payment and if the Contractor has been previously overpaid, the amount of such overpayment shall be set forth in the Final Payment forms and the Contractor hereby agrees that he will reimburse the Administration for such overpayment within six months of receipt of such advice, and his surety will not be granted release from obligations under the terms of the Contract until reimbursement has been made in full.
- (g) Payment for the full apparent value of the Contract thus determined shall become due and payable to the Contractor within ninety (90) days after acceptance of the project by the procurement officer for maintenance, as hereinafter provided. As a condition precedent to final payment, the Contractor shall be required to execute a general release of all claims against the Administration arising out of, or in any way connected with, this Contract.
- (h) In accordance with § 7-222 of the State Finance and Procurement Article of the Annotated Code of Maryland, certification must be obtained from the Comptroller of the Treasury, and the Employment Security Administration, that all State taxes have been paid prior to release of final payment on a construction Contract. The check will be processed and mailed only after notification is received from both departments that no State tax is owed.

GP-9.05 LATE PAYMENTS *does not apply*; TC-7.07 Late Payments shall apply.

- (a) Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- (b) A proper invoice shall include: a description of the items or services provided; the date the goods were received or the inclusive dates the services were rendered; the Contract prices(s); retention, if any; the basis for the billing; the Contract or purchase order number; the Contractor's Federal Tax Identification Number

or Social Security Number; the name and address of the proper invoice recipient.

- (c) In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date of the amount on which the interest is claimed to have accrued. Interest may not be claimed for more than one year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or on an amount due under a Contract remaining unpaid for any period prior to July 1, 1983, or if a claim has been filed under State Finance and Procurement Article, Title 15 of Subtitle 2 of the Code.
- (d) For the purposes of this Contract an amount will not be deemed due and payable if:
 - (1) The amount invoiced is inconsistent with the Contract.
 - (2) The proper invoice has not been received by the person or office specified in the Contract.
 - (3) The invoice or performance under the Contract is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract.
 - (4) The item or services have not been accepted.
 - (5) The quantity of items delivered is less than the quantity invoiced.
 - (6) The items or services do not meet the quality requirements of the Contract.
 - (7) The Contract provides for progress payments, and the proper invoice for the progress payment has not been submitted pursuant to the schedule contained in the agreement.
 - (8) The Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met.
 - (9) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the procurement officer or by the Contract concerning performance under the Contract and compliance with its provisions.