

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of General Services

(2) I.D. Number (Governor's Office Use)

008-003

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REVIEW COMMITTEE

IRRC Number: 2304

(3) Short Title

General Conditions of the Contract

(4) PA Code Cite

4 Pa. Code Chapter 63

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary Benefield Seiverling
(717) 772-2749

Secondary Contact: Gary F. Ankabrandt
(717) 783-1982

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation sets forth a portion of the contract documents between the Department of General Services and its contractors for construction projects.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

71 P.S. §§61-63, 66, 158, 188, 631.1, and 638.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Repeal of the regulation will permit flexibility and allow the Department to modify construction contract provisions as necessary to met individual project requirements.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Department of General Services, construction contractors and the public will benefit by removing the contract terms from a regulatory context. The Department will be able to revise contract terms to keep current and, ideally, to get the best deal for the Commonwealth.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effect except that interested parties will be required to obtain current standard contract terms from the Department of General Services rather than refer to the Pa. Code. (However, the contract terms which now appear in the Pa. Code are not current.)

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Not applicable. The regulation will be repealed. Therefore, no compliance required.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A 30-day public comment period followed the publication of the proposed regulation at 32 Pa.B. 5277 (October 26, 2002). No public comments were received.

The IRRC commented.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs or savings. The Department of General Services provides the contract to contractors for signature.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs or savings.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There will be some savings in administrative time and expenses. The Department of General Services would incur significant time and expense if it was required to proceed with the regulatory process each time that it wanted to revise its contract terms. The estimated cost is \$18,000.00/yr. if the regulations not repealed and the Department decides to change its contract terms twice a year and it is required to pursue the regulatory process.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	18,000	18,000	18,500	19,000	19,500	20,000
Total Savings	18,000	18,000	18,500	19,000	19,500	20,000
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

No costs associated with the repeal.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There will be some savings in administrative time and expense. The Department of General Services would incur significant time and expense if it was required to proceed with the regulatory process each time that it wanted to revise its contract terms. The estimated cost is \$18,000.00/yr. if the regulations not repealed and the Department decides to change its contract terms twice a year and it is required to pursue the regulatory process.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None, the regulation must be repealed so a nonregulatory alternative can be followed.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

No competitive advantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Should be repealed immediately.

(31) Provide the schedule for continual review of the regulation.

Not applicable. Regulation to be repealed.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved
Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF GENERAL SERVICES
(Agency)

LEGAL COUNSEL Mary B. ...

DOCUMENT/FISCAL NOTE NO. 8-3

DATE OF ADOPTION: _____

BY: David J. Gery

TITLE: DEPARTMENT OF GENERAL SERVICES
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]

9.15.04

Date of Approval

EXEC: (Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF GENERAL SERVICES
[4 Pa. Code Chapter 63]
General Conditions of Contract

STATUTORY AUTHORITY

The Department of General Services (the "Department") acting under Sections 506, 2401.1 and 2408 of the Administrative Code of 1929 (71 P.S. §§186, 631.1, and 638) and Executive Order 1996-1 "Regulatory Review and Promulgation" (4 Pa. Code §§1.371-1.382), and Section 201 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §1201), deletes its "General Conditions of Contract" regulations found at 4 Pa. Code Chapter 63.

PURPOSE

Since the general contract conditions are established by regulation, they do not allow for flexibility. These provisions must be customized by the Department for individual projects as required. The Department has substantially modified these general conditions of contract in the years since 1975 without amending the regulations. Since the regulatory contract terms are not the Department's current General Conditions of Contract, this Chapter is being deleted.

Notice of proposed rulemaking was published at 32 Pa.B. 5277 (October 26, 2002). Publication was followed by a 30-day public comment period during which the Department did not receive any comments. The Senate State Government Committee and the House State Government Committee had no comments. The Independent Regulatory Review Commission (IRRC) submitted one comment to the proposed rulemaking on March 10, 2003.

SUMMARY OF COMMENT TO PROPOSED RULEMAKING AND RESPONSE

The IRRC recommended that the Department review other chapters of Title 4 of the Pennsylvania Code to identify and delete any references to provisions of Chapter 63 of Title 4 that are being deleted and thus will be obsolete, such as the cross reference in 4 Pa. Code §68.61.

The Department concurs with that recommendation and has determined that §68.61 is the only cross reference in Title 4 that will become obsolete as a result of this repeal. However, this cross reference is not the only aspect of §68.61 that is obsolete. The entire section has been superseded by the subsequent enactment of 62 Pa.C.S. §3701, and many of the other provisions in Chapter 68 of Title 4 are also obsolete and no longer used. Chapter 68 contains provisions concerning contractor compliance with affirmative action and nondiscrimination obligations. The Department plans to develop and propose comprehensive rulemaking to update Chapter 68 including the obsolete cross reference in §68.61. Therefore, the Department is issuing this final form rulemaking to delete the General Conditions of Contract regulations without any changes to previously published proposed rulemaking. With this final form rulemaking, the Department is immediately repealing the obsolete "General Conditions of Contract" regulations in Chapter 63. The Department will then deal with §68.61 of Title 4 in a broader proposed rulemaking to update Chapter 68.

FISCAL IMPACT

The final form rulemaking relieves the Department of the administrative time and expense the Department would incur if it was required to proceed with the regulatory process each time that it wanted to revise its contract terms. The estimated cost is \$18,000 a year if the regulations were not repealed and the Department decides to change its contract terms twice a year and is required to pursue the regulatory process.

PAPERWORK REQUIREMENTS

The repeal will impose no new or different paperwork requirements.

REGULATORY REVIEW

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on March 6, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing the final-form rulemaking, the Department has considered the comment that it received from the IRRC and has responded as stated above. No other comments were received.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a(j.2)), the final-form rulemaking was approved by the House State Government Committee on _____, 2004, and by the Senate State Government Committee on _____, 2004. Under section 5.1(e) of the Regulatory Review Act, the IRRC met on _____, 2004, and approved the final-form rulemaking.

EFFECTIVE DATE

This final-form rulemaking is effective as of this publication in the *Pennsylvania Bulletin*.

ADDITIONAL INFORMATION

Individuals who need information about the final-form rulemaking should contact Mary Benefield Seiverling, Senior Counsel, Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125.

FINDINGS

The Department finds that:

- (1) Public notice of intention to promulgate administrative regulations amended by this order has been given under Section 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§7.1 and 7.2.
- (2) The final-form rulemaking adopted by this order is necessary and appropriate for the performance of the Department's duties under the Administrative Code of 1929.

ORDER

The Department, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 4 Pa. Code, are amended by deleting the text of Chapter 63 and inserting the headings as set forth in Annex A.
- (b) The Secretary shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.
- (c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.



Donald T. Cunningham, Jr.
Secretary

Fiscal Note: 8-3. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE II. CONSTRUCTION

CHAPTER 63. (Reserved)

(Editor's Note: The Department is deleting the text of Chapter 63, which appears in 4 Pa. Code pages 63-1--63-58, serial pages (235033)--(235090).)

§§ 63.1--63.3. (Reserved).

§ 63.11. (Reserved).

§ 63.12. (Reserved).

§§ 63.21--63.23. (Reserved).

§§ 63.31--63.50. (Reserved).

§§ 63.61--63.64. (Reserved).

§§ 63.71--63.74. (Reserved).

§§ 63.81--63.84. (Reserved).

§§ 63.91--63.93. (Reserved).

§§ 63.101--63.107. (Reserved).

§§ 63.111--63.113. (Reserved).

§ 63.121. (Reserved).

§ 63.122. (Reserved).

§§ 63.131--63.134. (Reserved).

§§ 63.141--63.143. (Reserved).

§§ 63.151--63.153. (Reserved).

§§ 63.161--63.163. (Reserved).

§§ 63.171--63.197. (Reserved).

§ 63.201. (Reserved).

§ 63.211. (Reserved).

CHAPTER 63. GENERAL CONDITIONS OF THE CONTRACT**CONTRACT DOCUMENTS**

- Sec.
63.1. Definitions.
63.2. Execution, correlation, intent and interpretations.
63.3. Copies furnished and ownership.

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63.12. Administration of contract.

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63.33. Supervision and construction procedures.
63.34. Surveys and laying out work.
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63.41. Progress schedule.
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63.44. Use of site.
63.45. Cutting and patching of work.
63.46. Cleaning up.
63.47. Communications.
63.48. Indemnification.
63.49. Approval of source of material.
63.50. Testing.

INSURANCE

- 63.121. Contractor's liability insurance.
- 63.122. Property insurance.

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- 63.131. Change orders.
- 63.132. Claims for additional cost or time.
- 63.133. Minor changes in the work.
- 63.134. Field orders.

UNCOVERING AND CORRECTION OF WORK

- 63.141. Uncovering of work.
- 63.142. Correction of work.
- 63.143. Acceptance of nonconforming work.

TERMINATION OF THE CONTRACT

- 63.151. Termination by the contractor.
- 63.152. Termination by the Department.
- 63.153. Contractor's default.

SUSPENSION OF WORK

- 63.161. Suspension of work due to unfavorable conditions.
- 63.162. Suspension of work for convenience of the Department.
- 63.163. Suspension of work and fault of contractor.

MISCELLANEOUS CONDITIONS

- 63.171. Photographs.
- 63.172. Project sign.
- 63.173. Foundations for mechanical equipment.
- 63.174. Sanitary facilities.
- 63.175. Hoisting facilities.
- 63.176. Separate building costs.
- 63.177. Temporary ventilation.
- 63.178. Interruption of existing services.
- 63.179. Operations and maintenance instructions and manuals.
- 63.180. Work beyond limit of contract.

63-3

Contract bond—Shall be executed by one or more surety companies legally authorized to do business in the Commonwealth for the faithful performance, payment of labor and material and maintenance as required by the Department and in accordance with the Public Works Contractors' Bond Law of 1967 (8 P. S. §§ 191—202).

Contract documents—Shall consist of the agreement, notice to bidders, the instructions to bidders, the bid proposal, the contract bond, the conditions of the contract (general special, supplementary and other conditions), the drawings, the specifications, and all bulletins and addenda issued prior to execution of the agreement, and all modifications thereto, and all rules, regulations and instructions of the Department issued by the Department pursuant to § 63.32(d) (relating to review of contract documents). A modification is a written amendment to the contract signed by both parties, a change order, a written order for a minor change in the work issued by the Department pursuant to § 63.143 (relating to acceptance of nonconforming work). A modification may be made only after execution of the contract.

Contractor for general construction—The contractor holding a separate contract for general construction work.

Director of construction—The administrative head of the Construction Division of the Department, is vested with the responsibility for project construction in accordance with the contract documents.

Electrical contractor—The contractor holding a separate contract for electrical construction work.

Heating ventilating contractor—The contractor holding a separate contract for heating, ventilating and air conditioning construction work.

Institution—The particular facility of the Requesting Agency where the project shall occur.

Plumbing contractor—The contractor holding a separate contract for plumbing construction work.

Project—The total of work to be performed under this and other separate prime contracts as designed by the professional.

Requesting agency—The Department, Board, Commission, State Agencies, State Colleges and Universities, State Aided Colleges and Universities or Land Grant University of the Commonwealth or any other public body requesting the project which includes the work covered by the contract.

Secretary—The administrative head of the Department of General Services.

Work—Includes all labor necessary to produce the construction required by the contract documents, and all material and equipment incorporated or to be incorporated in such construction.

§ 63.2. Execution, correlation, intent and interpretations.

(a) The contract documents shall be signed in not less than triplicate by the Department and contractor. All drawings shall be signed by the Department and

dance with any schedule agreed upon. Such interpretations shall be consistent with and reasonably inferable from the contract documents, and may be effected by Field Order as provided in § 63.134 (relating to field order).

§ 63.3. Copies furnished and ownership.

(a) Unless otherwise provided in the contract documents, the contractor will be furnished, free of charge by the professional or the Department, ten complete sets of drawings and specifications if the contract amount is \$500,000 or less; 15 sets if the contract amount is in excess of \$500,000. If additional sets are required for any project, the professional shall be reimbursed the amount of the additional costs incurred for such additional number at \$.08 per square foot of blue print and \$10 per set of specifications.

(b) All drawings, specifications and copies thereof furnished by the professional are and shall remain the property of the Department. They are not to be used on any other project, and with the exception of one contract set for each party to the contract, are to be returned to the Department on request at the completion of the work.

PROFESSIONAL

§ 63.11. Definition.

(a) The professional is the architect or engineer retained by the Department and is the person or organization identified as such in the agreement and is referred to as the professional throughout the contract documents as if singular in number. The term professional means the architect or engineer or his authorized representative or consultant.

(b) The Professional Services Agreement is the contract between the Department and its professional which represents the entire and integrated agreement between them.

§ 63.12. Administration of contract.

(a) The professional shall provide administration of the construction contracts including performance of the functions hereinafter described.

(b) The professional, or an authorized and qualified representative, shall visit the site at least biweekly during periods of active construction, review the progress of the work and take such action as in his judgment is necessary or appropriate to achieve the requirements of the contract drawings and specifications in the work of the construction contractors, including advising the Department's inspectors as to particular matters to watch and guard against. It shall also be the duty of the professional to have his consultants visit the site periodically during their respective phases of the work at such intervals as may reasonably be deemed necessary by the Department and the professional, to review the respective phases of the work in order to achieve the requirements of the contract.

completion to the Department prior to approving the contractor's application for final payment. The professional shall execute a completion certificate.

(k) The professional at the time of substantial completion shall collect from the contractors all shop drawings, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, written guarantees and related documents required by the contract.

(l) If the Department and professional agree that more extensive representation is required the professional shall provide one or more full time project representatives to assist the professional in fulfilling his responsibilities including those set forth in § 63.12(b) (relating to administration of contract).

(m) The duties, responsibilities, and limitations of authority of the professional as the Department's representative during construction as set forth in these general conditions will not be modified or extended without written consent of the Department and the professional, which written consent will be shown to the contractor.

(n) The professional will not be responsible for the acts or omissions of any contractor, or any subcontractor, or any of their agents or employees, or any other persons performing any of the work.

(o) In case of the termination of the employment of the professional, the Department shall appoint a new professional against whom the contractor makes no reasonable objection, whose status under the contract documents shall be that of the former professional; provided, however, that the decision of whether or not to appoint a new professional shall be at the sole discretion of the Department, but subject to the aforesaid proviso. Any dispute in connection with such appointment shall be subject to arbitration.

(p) Nothing contained in the contract documents shall create any contractual relationship between the professional and the contractor.

THE DEPARTMENT

§ 63.21. Definition.

The Department is the Department of General Services of the Commonwealth of Pennsylvania or any authorized representative and is referred to throughout the contract documents as if singular in number.

§ 63.22. Information and services required of the Department.

(a) The Department will, upon reasonable request, furnish base lines, bench marks, reference points and instructions which it may deem to be necessary. The contractor need not proceed with the work until he has received such requested data from the Department. Any work done before the points and instructions are given by the Department shall be done at the contractor's risk. The contractor shall furnish, free of charge, all stakes and such temporary structures as may be necessary for making and maintaining points and lines and furnish the profes-

shall be performed at such contractor's risk and liability. Notification to the Department of such deficiency so that remedial steps may be taken before damage or delay occurs in the manner mandated above is, and shall be, the responsibility of such contractor. No additional compensation shall be made by the Department to any contractor affected by this failure.

§ 63.33. Supervision and construction procedures.

The contractor shall provide continuous supervision and direction of work embraced in the contract documents by a duly authorized and competent superintendent who shall be acceptable to the Department. The contractor shall be solely responsible for all construction means, methods, techniques, safety precautions, sequences and procedures and for coordinating all portions of the work under the contract. The Department may demand of the contractor the dismissal of any person employed by the contractor who is incompetent or guilty of misconduct. The Department may withhold payments on all estimates which are or may become due, or the Department may suspend the work at the expense of the contractor until such orders are complied with.

§ 63.34. Surveys and laying out work.

(a) The working drawings shall be used for all dimensions in laying out the work under this contract.

(b) The contractor shall employ a competent engineer satisfactory to the Department to lay out the work from the initial points of instruction as given by the Department and he shall take as a basis the figures on the plans, and shall lay out all intersections, all building lines at corners and centers, test and check all elevations and levels, locate levels and plumb lines of walls, beams and columns and other parts of the construction as the work progresses. All work of every description shall be laid out by the contractor, who will be held solely responsible for its correctness, and all expenses in connection with this work shall be paid for by the contractor.

(c) The work may be checked by the Department and, in the event that any disagreement cannot be reconciled, its decision shall be final.

§ 63.35. Labor and materials.

(a) Unless otherwise specifically noted, the contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the work.

(b) Contractor shall furnish such equipment as is considered necessary for the proper prosecution of the work in an acceptable manner and at a satisfactory rate of progress. The equipment used on any portion of the work shall be such as not to endanger the lives of the operators or any persons in the vicinity of the equipment nor cause damage to adjacent property or highways. Any damages resulting

ate modification. If the contractor performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rules or orders, and without such written notice to the Department, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

§ 63.39. Superintendent.

The contractor shall employ a competent superintendent and necessary assistants acceptable to the Department who shall be in constant attendance at the project site during the progress of the work. The superintendent shall represent the contractor and all communications given to the superintendent shall be confirmed in writing.

§ 63.40. Responsibility for those performing the work.

The contractor shall be responsible to the Department for the acts and omissions, of all his employes and all subcontractors, their agents and employes, and all other persons performing any of the work under a contract with the contractor.

§ 63.41. Progress schedule.

(a) Immediately upon receipt of notice of the award of a contract, the contractor for general construction on the project shall furnish to each separate prime contractor within 14 days a schedule of the proposed prosecution of the work under his contract. Each separate prime contractor shall submit to the contractor for general construction within 28 days after issuance of the notice of award of the contract, a schedule of the proposed prosecution of the work under his respective contract. The contractor for general construction shall then submit to the professional and the Department within 42 days after issuance of the notice of award of his contract, a complete and comprehensive progress chart signed by all prime contractors indicating their approval, and showing in detail to the satisfaction of the Department and the professional, the proposed coordinated dates for the performance of each phase of the work under every contract on the entire project, commencing with a date within 5 days from the date of issuance of notice of award of contract, and ending on or before the contract completion date. In the event that a new completion date is authorized by the Department, a revised progress chart signed by all prime contractors indicating their approval shall be furnished promptly by the contractor for general construction.

(b) The contractor shall complete portions of the work in such order of time as may be stated in the specifications or as required in the progress chart as approved by the Department. The Department may require the contractor to supply additional forces, equipment, tools and materials; or provide for an increase in working hours; or increase the number of working days per week in order to keep up with said progress chart at no additional cost to the Department. If the

documents, the contractor shall resubmit them in the manner last marked for correction. When shop drawings are noted "approved" for compliance with contract documents by the professional, the contractor shall have ten sets of final shop drawings or catalog data printed and furnished to the professional. Where no special drafting is involved, such as cuts of standard equipment, catalog cuts, and other matter so printed in quantity, the printed matter may be submitted instead of the transparencies.

(e) The contractor shall review, stamp with his approval and submit, with reasonable promptness in orderly sequence so as to cause no delay in the work or in the work of any other contractor, all shop drawings and samples required by the contract documents or required subsequently by the professional for modifications. Shop drawings and samples shall be properly identified as specified, or in such manner as the professional may require. If the shop drawings show variations from the contract requirements because of standard shop practice or other reason, the contractor shall make specific mention of such variations in his letter of submission, in order that, if accepted, suitable action may be taken for proper adjustment by way of increase or decrease in the contract; otherwise the contractor will not be relieved of the responsibility for executing the work in complete conformity with the contract even though the shop drawings, samples or catalog data have been approved.

(f) By approving and submitting shop drawings and samples, the contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each shop drawing and sample with the requirements of the work and of the contract documents.

(g) The professional will review and approve shop drawings and samples within 25-calendar days so as to cause no delay, but only for conformance with the design concept of the project and with the information given in the contract documents. The professional's approval of a separate item shall not indicate approval of an assembly in which the item functions.

(h) The contractor shall make any corrections required by the professional and shall resubmit the required number of corrected copies of shop drawings or new samples until approved, which resubmission shall be acted upon by the professional within 15-calendar days of his receipt thereof. The contractor shall direct specific attention in writing, on resubmitted shop drawings to revisions other than the corrections requested by the professional on previous submissions.

(i) The professional's approval of shop drawings or samples shall not relieve the contractor of responsibility for any deviation from the requirements of the contract documents unless the contractor has informed the professional in writing of such deviation at the time of submission and the professional and the Department have given written approval of the specific deviation, nor shall the professional's approval relieve the contractor from responsibility for errors or omissions in the shop drawings or samples.

lavatory, tub and similar fixtures used as a protection during shipment and installation; contractor shall promptly remove from the premises all excess excavated material that is on the premises as a result of his excavation, provided such material is not required elsewhere on the project for fill to attain elevations shown on the drawings; contractor shall at his own cost and expense pick up, move and deposit at a location or locations on the premises designated by the contractor for general construction all discarded material and rubbish resulting from his work other than as described above.

(b) The contractor for general construction shall be responsible for general broom cleaning at his own cost and expense in addition to the specific cleaning provided in subsection (a) of this section applicable to each separate prime contractor. The contractor for general construction shall, at least once weekly, remove from the premises all discarded material and rubbish described in subsection (a) of this section resulting from the work of all contractors and assure that the building, premises, and surrounding streets are clean and free of such materials. The surfaces which are to be finished shall have all plaster, mortar and other surplus materials removed before painting, varnishing and other finishing is begun. Before the acceptance of the project by the Department at the final inspection, all visible finished surfaces and materials shall be thoroughly cleaned or retouched by the responsible prime contractor at his own cost and expense and shall be left in a clean and unblemished condition.

(c) If the contractor fails to clean up, the Department may assign the work to another contractor and the cost thereof shall be charged to the contractor as provided in § 63.188 of this Title (relating to Department's right to carry out the work).

§ 63.47. Communications.

The contractor shall forward all communications required by the contract documents to the Director of Construction of the Department.

§ 63.48. Indemnification.

(a) The contractor shall indemnify and hold harmless the Department and the professional and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

(b) In any and all claims against the Department or the professional or any of their agents or employees by any employee of the contractor, any subcontractor

§ 63.62. Subcontractual relations.

All work performed for the contractor by a subcontractor shall be pursuant to an appropriate agreement between the contractor and the subcontractor (and where appropriate between subcontractors and sub-subcontractors) which shall contain provisions that:

(1) Preserve and protect the rights of the Department and the professional under the contract with respect to the work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.

(2) Require that such work be performed in accordance with the requirements of the contract documents.

(3) Require submission to the contractor of applications for payment under each subcontract to which the contractor is a party, in reasonable time to enable the contractor to apply for payment in accordance with §§ 63.101—63.107 (relating to payments and completion).

(4) Require that all claims for additional costs, extensions of time or otherwise with respect to subcontracted portions of the work shall be submitted to the contractor (via any subcontractor or sub-subcontractor where appropriate) in the manner provided in the contract documents for like claims by the contractor upon the Department.

(5) Require that each subcontractor or supplier fully warrants and guarantees for the benefit of the Department as purchaser the effectiveness, fitness for the purpose intended, quality, and merchantability of any item provided or installed by such subcontractor.

(6) Require that the subcontractor is without privity of contract to the Department and that he agrees by signing the subcontract that he neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any others.

(7) Obligate each subcontractor to specifically consent to all provisions of § 63.62 (relating to subcontractual relations).

§ 63.63. Payments to subcontractors.

(a) The contractor shall pay each subcontractor, upon receipt of payment from the Department, an amount equal to the percentage of completion allowed to the contractor on account of such subcontractor's work. The contractor shall also require such subcontractor to make similar payments to his subsubcontractors.

(b) Each subcontractor shall be entitled to and shall be paid in accordance with the reduction of the percentage for completion in accordance with § 63.105(c) (relating to payments withheld) to the full extent applicable except for reasonable cause shown directly related to this contract.

(c) If the Department fails to issue a certificate for payment for any cause which is the fault of the contractor and not the fault of a particular subcontractor,

(c) The work shall be conducted so as not to interfere with the work of other contractors. If any part of a contractor's work depends for proper execution or results upon work being done by another contractor, or such other contractor's subcontractor, not under contract to him, he shall inspect and promptly report to the Department any interference, defects, or delays in the work done or being done by the other contractors or its subcontractors. The Department may, if requested by the contractor, establish the sequence of the work in order to secure completion of the various portions of the work in general harmony or the Department may order suspension of the work in accordance with §§ 63.161—63.163 (relating to changes in the work) until such time as proper sequence of the work is established, or both. In the event that any contractor shall not complete the various portions of the work in general harmony and another contractor shall be caused damage or injury by the failure to so act in harmony, the contractor damaged or injured shall have the right to settle by agreement or arbitration such claim or disputes in accordance with the provisions of § 63.84 (relating to disputes or actions between contractor). The Department however, shall not be liable to any contractor for any increased costs or damages resulting from the defective work, interferences, or delays of other contractors.

§ 63.73. Cutting and patching under separate contracts.

(a) The contractor shall do all cutting, fitting or patching of his work that may be required to fit it to receive or be received by the work of other contractors shown in the contract documents. The contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Department.

(b) Any costs caused by defective or ill-timed work shall be borne by the contractor responsible therefor.

§ 63.74. Department's right to clean up.

If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by § 63.46 (relating to cleaning up), the Department may clean up and charge the cost thereof to the several contractors as the Department shall determine to be just.

DISPUTES

§ 63.81. Professional's and other interpretations.

(a) In the event of a dispute with the professional's interpretation under § 63.12(e) and (f) (relating to administration of contract) or of any other claim, dispute, question or other matter arising between the parties to this contract or any breach thereof, the disputed item shall be immediately referred in writing to the district engineer and the Director of Construction of the Department for its

§ 63.83. Arbitration.

(a) All claims against the Department arising out of this contract which have not previously been resolved at a construction conference and the subsequent pre-claim hearing may be referred to the Board of Arbitration of Claims created by act of May 20, 1937 (P. L. 728, No. 193) (72 P. S. § 4651 et seq.), in the manner and under the terms and conditions provided therein. The timely submission of such claim to a construction conference and a preclaim hearing in accordance with the provisions of §§ 63.81 and 63.82 (relating to disputes), respectively, shall be a condition precedent to the referral of such claim to arbitration under the provisions of this section.

(b) Such claim must be filed with the Board of Arbitration of Claims within 6 months after the date on which the party making such claim has received the decision rendered at the preclaim hearing, or within 6 months after the 40th day after such preclaim hearing was held, should no decision be forthcoming.

(c) The contractor shall carry on the work and maintain the progress schedule during any arbitration proceedings, unless otherwise agreed by him and the Department in writing.

§ 63.84. Disputes or actions between contractors.

(a) Should the contractor, either himself or by his subcontractor or subcontractors or their respective agents, servants or employes, cause damage or injury to the property or work of any separate contractor or contractors, or by failing to perform his work (including the work of his subcontractor or subcontractors) hereunder with due diligence, delay any separate contractor or contractors who shall suffer additional expense or damage thereby, the parties involved in such dispute shall settle by agreement or arbitrate said claim, dispute or disputes by referring same to the American Arbitration Association and said dispute or disputes shall be determined pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. The Department will not be a party to disputes or actions between contractors concerning such expense or damage, and such disputes shall not be subject to the arbitration provided for in § 63.83 (relating to arbitration). It is agreed by all parties that disputes or actions between contractors concerning the additional expense or damage hereinbefore mentioned shall not delay completion of the work which shall be continued by the parties, subject to the rights hereinbefore provided. It is agreed by the parties to this contract (the Department as promisee and the contractor as promissor) that the intent of this clause is to benefit the other prime contractors on the subject or related projects and to serve as an indication of the mutual intent of the Department and the contractor that this clause raise such other prime contractors to the status of third party beneficiaries only as to the terms and conditions of §§ 63.71— 63.74 (relating to separate contracts) and this section. The contractor

§ 63.92. Progress and completion.

(a) All time limits stated in the contract documents are of the essence of the contract.

(b) The contractor shall begin the work on the date of commencement as defined in § 63.91(b) (relating to definitions). He shall carry the work forward expeditiously with adequate forces and shall complete it no later than the contract completion date.

§ 63.93. Delays and extensions of time.

(a) If the contractor is delayed at any time in the progress of the work by any act or neglect of the Department or the professional, or by any employe of either, or by any separate contractor employed by the Department or by changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the contractor's control, or by delay authorized by the Department pending arbitration, or by suspension of work as provided in §§ 63.161 and 63.162 (relating to suspension of work), or by any cause which the Department determines may justify the delay, then the contract time shall be extended by the approval of an extension of time for such reasonable time as the Department may determine in accordance with § 63.93(b) (relating to delays and extension of time).

(b) All claims for extensions of time shall be made to the Department in writing on the Department's form for request for extension of time with supporting information attached. The requests shall be submitted no more than 30 days from the beginning of the initial occurrence of the delay; otherwise the contractor's right to an extension of time shall be waived. In the case of continuing delays, no definite number of days need be included in the request for extension of time as submitted in accordance with the above limitation period. A continuing delay shall under this contract be defined as a delay continuing for more than 20 days. Within ten days from the end of a continuing delay period, contractor shall submit to the Department a statement of the exact number of days of delay for which it seeks an extension together with all additional information needed to substantiate the request for extension of time. This additional information will be considered as part of the original request for extension of time if such original request was timely filed.

(c) If no schedule or agreement is made stating the dates upon which written interpretations as set forth in §§ 63.12(e) and (f) (relating to administration of contract) shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until thirty days after written demand is made for them, and not then unless such claim is reasonable.

(d) This does not exclude the recovery of damages by either party under other provisions of the contract documents.

equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the contractor or such other person.

§ 63.104. Monthly estimate for payment.

(a) If the contractor has made application for payment under § 63.103 (relating to progress payments), the professional will, within seven days after the receipt of the application, process the monthly estimate for payment to the Department, with a copy to the contractor, for such amount as he determines to be properly due, or state in writing his reasons for withholding the monthly estimate as provided in § 63.105(a) (relating to payments withheld).

(b) The certification of a monthly estimate for payment by the professional, will constitute a representation by the professional to the Department, based on his observations at the site as provided in § 63.12(d) (relating to administration of contract) and the data comprising the monthly estimate for payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the contract documents, subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests required by the contract documents, to minor deviations from the contract documents correctable prior to completion, and to any specific qualifications stated in his monthly certificate; and that the contractor is entitled to payment in the amount certified. In addition, the professional's approval of the monthly estimate for payment will constitute a further representation that the conditions precedent to the contractor's being entitled to final payment as set forth in § 63.107(b) (relating to substantial completion and final payment) have been fulfilled. However, by issuing a monthly estimate for payment, the professional shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work, or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the contractor has used the moneys previously paid on account of the contract sum.

(c) After the professional has approved the monthly estimate for payment, the Department shall make payment in the manner provided in the agreement.

(d) No monthly estimate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the requesting agency shall constitute an acceptance of any work not in accordance with the contract documents.

§ 63.105. Payments withheld.

(a) The Department and the professional may decline to approve an application for payment and may withhold the monthly estimate in whole or in part if in the opinion of the professional he is unable to make representations to the Depart-

(e) When upon final inspection items of work cannot be reasonably completed because of seasonal considerations, such as bituminous paving, landscaping, and so on, or such items or facilities which the Department agrees to except until a subsequent date, or if the Department holds up the final estimate for any unreasonable length of time, the Department agrees to release payment to the contractor less twice the dollar value of items on the punch-list as mutually agreed upon by the Department and the contractor, and less one and one-half times the dollar value of uncompleted parts of items of the type described herein.

§ 63.106. Failure of payment.

If the professional or the Department should fail to approve any estimate for payment, or any part thereof through no fault of the contractor, within 10 working days, exclusive of Saturdays, Sundays or any Federal or State legal holidays, after receipt by the Department of the contractor's application for payment, such failure of approval of any estimate or any part thereof shall be determined as to the issue of fault within 14 days, exclusive of Saturdays, Sundays or any Federal or State legal holidays, of a written request directed to the Secretary of the Department for an immediate preclaim hearing. The determination of the preclaim committee shall be binding on all parties as to whether or not the contractor may stop work or whether a new payment procedure may be established by change order to comply with the determination or such remedy as the committee may determine or both; provided however that the failure to approve any particular estimate shall not constitute a basis for denying payment of future estimates without proper cause. Contractor may not be entitled to stop work in any event unless the Department exercises its rights for the work stoppage as provided in §§ 63.161—63.162 (relating to suspension of work). Under this subparagraph after a decision has been rendered by the preclaim committee, the claim may be referred to the Board of Arbitration of Claims as per § 63.83 (relating to arbitration).

§ 63.107. Substantial completion and final payment.

(a) When the contractor determines that the work or a designated portion thereof acceptable to the Department is substantially complete, the Department's representative and the contractor shall prepare for submission to the professional and the Department a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the contractor to complete all work in accordance with the contract documents. When the professional and the Department on the basis of an inspection determine that the work is substantially complete, the professional will then prepare a certificate of substantial completion, which shall establish the date of substantial completion, shall state the responsibilities of the contractor for maintenance, heat and utilities, and shall fix the time within which the contractor shall complete the items listed therein, such time to be within the contract time unless extended pursuant to

tification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(f) The making of final payment shall constitute a waiver of all claims by the Department except those arising from one of the following:

- (1) Unsettled claims.
- (2) Faulty or defective work or material.
- (3) Failure of the work or material to comply with the requirements of the contract documents.
- (4) Terms of any special guarantees required by the contract documents.

(g) The acceptance of final payment by the contractor shall constitute a waiver and a release of all claims by the contractor except those previously made in writing in accordance with these contract documents and still unresolved.

PROTECTION OF PERSONS AND PROPERTY

§ 63.111. Safety precautions and programs.

The contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required under his portion of the work and maintained during the term of the contract.

§ 63.112. Safety of persons and property.

(a) The contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all of the following:

- (1) All employees on the work, and all other persons who may be affected thereby.
- (2) All the work and all materials and equipment to be incorporated therein, whether in storage on site or off site, under the care, custody or control of the contractor or any of his subcontractors or subsubcontractors.
- (3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain as required by existing conditions and progress of the work, until the acceptance of the completion of his portion of the project, all reasonable safeguards for safety and protection, including posting danger signs, and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

(c) If, and when the use of explosives and other hazardous materials or equipment is necessary for the prosecution of the work, the contractor shall

(2) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability coverage.

(3) Claims for damages because of bodily injury, sickness or disease, or death, of any person other than his employees, and claims insured by usual personal injury liability coverage.

(4) Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

(b) The insurance required by subsection (a) shall be written for not less than any limits of liability specified in the contract documents specified in subsection (d), or required by law, and shall include contractual liability insurance as applicable to the contractor's obligations under § 63.49 (relating to approval of source of material).

(c) Certificates of insurance acceptable to the Department shall be filed with the Department prior to commencement of the work. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least 15 days' prior written notice has been given to the Department.

(d) The Contractor's Comprehensive General Liability Insurance and Automobile Liability Insurance required by § 63.131(b) (relating to change orders) shall be in an amount not less than \$500,000 for injuries, including accidental death, to any one person and subject to the same limit for each person, and in an amount not less than \$1 million on account of one occurrence. The Contractor's Property Damage Liability Insurance shall be in an amount not less than \$500,000 for any one accident, subject to an aggregate of not less than \$1 million. The contractor shall either:

(1) Require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractors' Comprehensive General Liability, Automobile Liability, and Property Damage Liability Insurance of the type and in the same amounts as specified in this subsection.

(2) Insure the activity of his subcontractors in his own policy.

(e) The contractor's and his subcontractors' liability insurance shall include adequate protection against the following special hazard: blasting \$300,000.

§ 63.122. Property insurance.

(a) The contractor, during the progress of the work, and until final acceptance by the Department upon completion of the entire contract, shall maintain insurance on all insurable work included in the contract against loss or damage by fire and lightning and those perils covered by the extended coverage endorsement, in the names of the Department and the contractor as their respective interests may appear, in full insurable value thereof as shall fully protect the interests of the Department and the contractor, subcontractors, and subsubcontractors. The contractor shall submit to the Department for its approval all items deemed to be uninsurable.

(d) If none of the methods set forth in subsection (c) is agreed upon, the contractor, provided he receives a change order, shall promptly proceed with the work involved on a force account basis for which payment shall be made in the following manner:

(1) *Labor.* Hourly wage rate for all labor and foremen in direct charge of the specific operation shall be taken from the total column of the prevailing wage determination provided with the contract documents or applicable thereto. No other fringe benefits are allowed except those included in the total wage column. A total of 15% is permitted for contractor's overhead, general superintendence and profit on this total rate. The following additional labor costs shall be added without the 15% markup:

(i) Employer's contributions for Social Security at the percentages legally required.

(ii) Unemployment taxes and contributions at the percentages legally required.

(iii) Workmen's Compensation Insurance at the policy percentage rate.

(iv) Contractor's Public Liability Insurance at policy rates, including additional blasting and explosive coverage when needed.

(v) Additional bond costs directly attributable to performance of a change order as may be allowed.

(2) *Materials.* For all materials used the contractor shall receive the actual cost of such materials, including freight charges as shown by original receipted bills, or photostatic copies thereof, to which shall be added a sum equal to 10%.

(3) *Equipment.* For any machinery, trucks or equipment, exclusive of teamsters or operators or both, except small tools and equipment for which no rental is allowed, which it may be deemed necessary to use, the Department will allow the contractor the cost of renting such machinery, trucks or equipment, which shall include fuel and lubricants, as are actually used in the performance of the work, including reasonable rental of such machinery, trucks or equipment, to which shall be added a sum equal to 10%.

(4) *Subcontractors.* Force-account work may be performed by a subcontractor only when:

(i) The contractor has obtained approval of the subcontractor from the Department, as hereinafter provided.

(ii) The work has been performed by the subcontractor in strict compliance with the general conditions covering force-account work. In such event, the contractor shall receive the cost of any such subcontract to which shall be added a sum equal to 10%.

(5) *Foregoing payments.* The foregoing payments shall be received by the contractor as exclusive payment in full for all work done on a force-account basis, and shall be accepted to cover all general superintendence, use of small tools and equipment for which no rental is allowed, camp, job and general overhead, expenses and anticipated profit. The contractor's representative and

or property, in which case the contractor shall proceed in accordance with § 63.113 (relating to emergencies). No such claim shall be valid unless so made. If the Department and the contractor cannot agree on the amount of the adjustment in the contract sum or the contract time, it shall be determined by the Department. Any determination to change the contract sum or contract time, resulting from such claim, shall be authorized by change order.

(b) No claims for increased costs, charges, expenses, or damages of any kind, unless otherwise provided in the general conditions, shall be made by the contractor against the Department for any delays or hindrances from any cause whatsoever, including but not limited to strikes, walkouts or work stoppages during the progress of any portion of the work; provided, that the Department in its discretion, may compensate the contractor for any such delays by extending the time for completion of the work as provided in the contract, and any such extension shall constitute the exclusive remedy as between the parties; except as provided by § 63.162(a) (relating to suspension of work for convenience of Department).

§ 63.133. Minor changes in the work.

The Department shall have authority to order minor changes in the work not involving an adjustment in the contract sum or an extension of the contract time and not inconsistent with the intent of the contract documents. Such changes may be effected by written field order as provided in § 63.134 (relating to field orders) or by other written order. Such changes shall be binding on the Department and the contractor.

§ 63.134. Field orders.

The Department may issue written field orders which interpret the contract documents in accordance with § 63.2(f) (relating to execution) or which order minor changes in the work in accordance with § 63.133 (relating to minor changes in the work) without change in contract sum or contract time. The contractor shall carry out such field orders promptly.

UNCOVERING AND CORRECTION OF WORK

§ 63.141. Uncovering of work.

(a) If any work should be covered contrary to the request of the Department or professional, it must, if required by the Department or professional, be uncovered for its observation and replaced, at the contractor's expense.

(b) If any other work has been covered which the Department or professional has not specifically requested to observe prior to being covered, the Department or professional may request to see such work and it shall be uncovered by the contractor. If such work be found to be in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the Department. If such work be found not in accordance with the

(g) The obligations of the contractor under this section shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the contract documents or otherwise prescribed by law.

§ 63.143. Acceptance of nonconforming work.

If the Department prefers to accept nonconforming work, it may do so instead of requiring its removal and correction, in which case a change order shall be issued to reflect an appropriate reduction in the contract sum, or, if the amount is determined after final payment, it shall be paid by the contractor.

TERMINATION OF THE CONTRACT

§ 63.151. Termination by the contractor.

If the work is stopped for a period of 30 days under an order of any court or other public authority having jurisdiction, through no act or fault of the contractor or a subcontractor or their agents or employees or any other persons performing any of the work, including separate contractors as provided under §§ 63.71—63.74 (relating to separate contracts), or if the work should be stopped for a period of 30 days by the contractor for failure to issue a certification of the estimate for payment as provided in § 63.106 (relating to failure of payment) or for failure to make payment thereon as provided in § 63.106 (relating to failure of payment), providing that the contractor is entitled to payment under this contract, then the contractor may, upon seven days' written notice to the Department, terminate the contract and recover from the Department payment for all work performed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit or damages, but not including any anticipatory profits for work which has not been performed.

§ 63.152. Termination by the Department.

(a) The Department shall have the right at any time and for any reason, to terminate this contract. In such case, the contractor shall be paid, and shall accept payment, for that portion of the entire contract actually performed to the date of termination, excluding, however, any loss of anticipated profits. Disputes as to the sum then payable to the contractor shall be settled by arbitration as provided in §§ 63.81—63.84 (relating to disputes).

(b) Such termination shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims which the Department may have against the contractor. Upon receipt of such notice from the Department, the contractor shall immediately discontinue all work and the placing of all orders for materials and equipment, facilities and supplies in connection with the performance of this contract, and proceed to cancel promptly all existing orders and terminate work under all subcontractors so far as such orders and work are chargeable to this contract; provided, however, that he shall take

terminate the employment of the contractor and take possession of the site of all materials, equipment, tools, construction equipment and machinery thereon owned by the contractor and may finish the work by whatever method it may deem expedient. In such case the contractor shall not be entitled to receive any further payment until the work is finished, at which time the contractor shall be paid any excess remaining, in accordance with subsection (b). However, such discretion of default rests with the Department alone and no party, whether bound by contract to the Department or attempting to raise a third party relationship, which this contract specifically precludes, has standing to raise the failure of the Department to exercise its discretion if default is the basis of a claim against the Department.

(b) If the unpaid balance of the contract sum exceeds the cost of finishing the work, including compensation for the professional's additional services and any other damages which the Department has incurred in accordance with the contract, such excess shall be paid to the contractor. If such costs exceed such unpaid balance the contractor or the surety or both shall pay the difference to the Department.

SUSPENSION OF WORK

§ 63.161. Suspension of work due to unfavorable conditions.

(a) If, in the reasonable judgment of the Department, the contractor is taking undue risk of damage to any part of a structure or installation by proceeding with the work during unfavorable weather or other conditions, which is not for the joint benefit of the owner and contractor or for the sole benefit of the Department, then the Department may suspend the work temporarily, either wholly or in part for such periods as may be necessary on account of unsuitable weather or other conditions unfavorable for the safe and proper prosecution of the work. In case of such suspension a proper extension of time will be allowed as provided herein but no allowance will be made to the contractor for any expense of damages resulting therefrom. It shall be clearly understood that the failure of the Department to suspend the work shall not relieve the contractor of his responsibility as specified.

(b) The Department has the right to require a suspension of the work if in its opinion the unforeseen conditions warrant such stoppage. When the Department directs resumption of the work, the contractor shall resume full operations within a period of ten days after date of written notice to do so. The Department shall not be held liable for any damage or anticipated profits on account of the work being stopped. Any work done by the contractor during the period of suspension shall be his responsibility and he shall receive no payments therefor unless the construction is subsequently resumed and the work done during the intervals of suspension can be utilized in the resumed work. Suspensions of work as outlined above shall not in themselves operate to extend the contract date of completion.

tractor, no extension of time shall be given and no allowance will be made for the expense of the contractor on account of idle equipment or forces during the terms of such suspension.

MISCELLANEOUS CONDITIONS

§ 63.171. Photographs.

The contractor for general construction, at his own cost and expense, shall furnish photographs of at least two views of each building showing the progress of work each month, and at the final completion of the project. Photographs shall be 8 inches by 10 inches, glossy prints unmounted. Two copies of each photograph shall be delivered to the Department inspector, who will forward them to the Director of Construction for distribution.

§ 63.172. Project sign.

The contractor for general construction, at his own cost and expense, shall erect at a prominent location as selected by the Department, a 6-foot by 8-foot sign, well braced, and supported by four inches by four inches posts identifying the project under construction. Sign board may be constructed from weatherproof plywood, hardboard, or other smooth face material that will weather and remain intact throughout the job. A three-inch wood border shall frame the sign. The sign shall be placed with eight-foot dimension horizontal. The base color of the sign shall be white weatherproof flat paint with red border. Lettering shall be in fast blue block letters and shall conform to the following:

THE DEPARTMENT OF GENERAL	
SERVICES	(4 inch letters min.)
(MILTON J. SHAPP) GOVERNOR	(3 inch letters min.)
(RONALD G. LENCH) SECRETARY	(3 inch letters min.)
PROJECT NO. D.G.S. (789-6)	(3 inch letters min.)
(PHYSICAL EDUCATION BUILDING)	(4 inch letters min.)
(INDIANA STATE COLLEGE)	(3 inch letters min.)
(HARRY A. JOHNSON)	
(ARCHITECT)	(3 inch letters min.)
(JOHN R. DOE) . . . (GENERAL	
CONTRACTOR	(3 inch letters min.)
(JONES CORP.) . . . HEATING	
CONTRACTOR	(3 inch letters min.)
(JOHN B. SMITH) . . . PLUMBING	
CONTRACTOR	(3 inch letters min.)
(GEORGE BLACK) . . . ELECTRICAL	
CONTRACTOR	(3 inch letters min.)

(iii) Recirculating toilets.

(iv) Combustion toilets.

(4) These shall be kept in working order by the plumbing contractor and in a clean and sanitary condition by the contractor for general construction.

§ 63.175. Hoisting facilities.

The contractor for general construction shall erect, maintain and operate at his own expense, hoisting facilities, with a minimum of one ton capacity, for his own use. Separate contractors requiring hoisting facilities shall schedule and make arrangements with the contractor for general construction on the project for the use of his facilities. Any equipment weighing more than one ton in one piece or so bulky that it cannot be handled on the hoist platform shall be hoisted by other means and at the expense of the contractor requiring it. All hoisting facilities will comply with the safety regulations of the Department of Labor and Industry.

§ 63.176. Separate building costs.

When more than one building or structure is on a project, each successful separate contractor shall submit a cost breakdown for each building or structure.

§ 63.177. Temporary ventilation.

The contractor shall provide temporary ventilation to remove from the structure any excessive humidity in enclosed portions of the work, and any dangerous or noxious fumes or particles suspended in the air, and resulting from his construction operations so that the work may be carried on without interruption and under correct conditions including required dryness for installation of the various materials. Temporary equipment used shall produce no hazard to the work or to any person in or near it. The contractor shall furnish all such equipment, pay all costs for it and for its operation including fuel and power supplies during operation both in and out of normal working hours, and shall remove it when no longer required.

§ 63.178. Interruption of existing services.

Whenever it becomes necessary to interrupt existing services in use by the Institution, such as sewer, water, gas and steam lines, and electric service, the contractor responsible for the work shall continue his work on a 24-hour basis until work is completed and the service restored. Before beginning such work, the contractor shall apply in writing to and receive approval in writing from the authorities of the Requesting Agency and the resident inspector of the Department to establish a time when interruption of the service will cause a minimum of interference with the activities of the Requesting Agency.

the acceptance by the Department or the professional or any of their agents or employes; nor any certificate approved for payment of money; nor any payments for, nor acceptance of the whole or any part of the work by the Department, nor any extension of time, nor any possession taken by the Department or its employes shall operate as a waiver of any portion of the contract or any power herein reserved by the Department or any right to damages; nor shall any waiver of any breach of the contract be held to be a waiver of any other or subsequent breach.

§ 63.182. Expanded breakdown of bids.

Contractor shall submit to the Department on forms of the Department, within ten days after award of contract, a complete breakdown of his bid. Failure to comply will cause contract payments to be withheld until this breakdown information is submitted.

§ 63.183. Law of the place.

The contract shall be governed by the law of the Commonwealth.

§ 63.184. Successors and assigns.

This contract shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns, but it may not be assigned by the contractor without the express written consent of the Department, first had and obtained.

§ 63.185. Written notice.

(a) Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or deposited in the Post Office postpaid, addressed to the contractor at his place of business as set forth in this contract.

(b) Wherever the term "Notice" is used, such notices to be effective shall be in writing and, if to the Department, shall be mailed by certified or registered mail, postage and fees prepaid, or shall be delivered to the Director of Construction, the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120.

§ 63.186. Claims for damages; legal relations and responsibilities.

(a) Should either party to the contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claims shall be made in writing, to such other party within a reasonable time after the first observance of such injury or damage.

(b) Contracts covered by these specifications are not to be construed as being made for the benefit of any person or political subdivision not a party to this contract, nor shall this contract be construed to authorize any person or politica

(1) All expenses incurred in the collection, packing and delivering of samples or materials or equipment to the job site shall be paid for by the contractor.

(2) The Department shall pay the costs of transporting samples from job sites to laboratory and testing of same, except where otherwise noted in the general conditions, specifications, or called for on the contract drawings.

(3) Approved samples to be incorporated in the building shall be returned to the job site by the testing laboratory.

(4) Rejected samples may be reclaimed at the testing laboratory by the contractor.

(b) If after the commencement of the work, the Department determines that any work requires special inspection, testing or approval which subsection (a) does not include, the Department will, by written authorization, instruct the contractor to order such special inspecting, testing or approval, and the contractor shall give notice as in subsection (a). If such special inspection or testing reveals a failure of the work to comply with the requirements of the contract documents or with respect to the performance of the work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the contractor shall bear all costs thereof, including the professional's additional services made necessary by such failure; otherwise the Department shall bear such costs, and an appropriate change order shall be issued.

(c) Required certificates of inspection, testing or approval shall be secured by the contractor and promptly delivered by him to the Department.

(d) If the professional wishes to observe the inspections, tests or approvals required by this section, he shall do so promptly and, where practicable, at the source of supply.

(e) Neither the observations of the professional in his administration of the construction contract, nor inspections, tests or approvals by persons other than the contractor shall relieve the contractor from his obligations to perform the work in accordance with contract documents.

§ 63.191. Advertising.

No advertising will be permitted on any of the work area, or adjacent thereto, except as approved by the Department.

§ 63.192. Arranging work.

Contractor shall arrange his work to the satisfaction of the Department so as not to interfere with the normal operation of the Requesting Agency.

dimension and performance, with a statement as to cost involved and submitted to the Department within 120 days after notice of award of contract; otherwise the specified items shall be installed. The determination submitted in writing by the Department to the contractors under this provision shall be final and conclusive. If the contractor refuses, or fails to proceed as directed by the Department, the Department will declare the contractor in default as provided in § 63.153(a) (relating to contractor's default).

(b) The plumbing, heating, ventilating and electrical contractors will include as part of their respective bids the connection of equipment by model number as provided in the specifications. If a different unit or model number is substituted as an equal," then the prime contractor requesting the substitute item shall pay the difference in cost for the connection between the specified model and the substituted item.

MINIMUM WAGES

§ 63.201. Prevailing minimum wage predetermination.

(a) The contractor is hereby notified that the contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1—165-17).

(b) In compliance with the Pennsylvania Prevailing Wage Act, the prevailing minimum wage predetermination is hereto attached and made part hereof as approved by the Secretary of Labor and Industry.

PENNSYLVANIA HUMAN RELATIONS COMMISSION
Contract Compliance Division
Applications for Pre-Qualification
to bid and perform work under the
Contract Compliance Regulations, 16 Pa. Code Ch. 49

Issuing State Agency _____

Address _____

Telephone _____

Submitted by:

Contractor _____

(Business Name)

Business Address _____

Project or Facility Location _____

Telephone _____

Corporation, partnership or sole proprietor (state which)

Nature of business conducted _____

Identity of unions with whom the contractor has an agreement

Address of union _____

Telephone _____

The contractor is operating under:

- 1. Philadelphia Plan 2. Pittsburgh Plan
- 3. Any other order, decree or conciliation agreement
- 4. None of the above

If number 3 is checked, the contractor shall attach to this form a copy of the order, decree or conciliation agreement.

8. (a) A construction contractor will submit a progress report (PHRC-CCD-3 or EEO-1) on a monthly basis for the first three months after construction begins and thereafter, upon request, for the life of the project.

(b) A non-construction contractor shall attach to this form PHRC-CCD-1 or EEO-1.

(c) During the term of the contract, Contractor shall agree to the following:

(1) Contractor shall not discriminate against any employe, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age or sex.

Contractor shall take affirmative action to ensure that applicants are employed, and that employes or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Contractor shall post in conspicuous places, available to employes, agents applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

(2) Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.

(3) Contractor shall send each labor union or worker's representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

(4) It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

(5) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, or this non-discrimination clause, Contractor shall then employ and fill vacancies through other non-discriminatory employment procedures.

(6) Contractor shall comply with the Contract Compliance Regulations, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

(7) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to § 49.35 of these Regulations. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

(8) Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employes.

**EQUAL EMPLOYMENT OPPORTUNITIES IN CONTRACTS
for the COMMONWEALTH OF PENNSYLVANIA
NON-DISCRIMINATION CLAUSE**

Notice to: Contractor(s), Subcontractor(s), Supplier(s), Vendor(s) and Labor Organization(s)
To: _____

You are hereby given notice that the undersigned holds a contract in the Commonwealth of Pennsylvania and has agreed under the Non-discrimination Clause of such contract to the terms set forth in 16 Pa. Code Chapter 49, Contract Compliance Regulations Section 49.101(d) setting forth clauses (1) through (11).

The contract held by the undersigned is number _____
and is with _____
a contracting agency of the Commonwealth. Pursuant to clause (1) of such non-discrimination clauses the subject matter of the contractor's undertakings to insure equal employment opportunities to applicant for employment without discrimination because of religious creed, race, color, sex, age, ancestry or national origin, includes, but is not limited to:

"Recruitment, employment, job assignment promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training."

Contractor

Date

Certified Mail No. _____

PHRC-CCD-5

Repeal Analysis Form

<p>(1) Agency</p> <p>Department of General Services</p>	<p>(2) I.D. Number (Governor's Office Use)</p> <p align="center">8-3</p>
<p>(3) Short title</p> <p>General Conditions of the Contract</p>	
<p>(4) PA Code Cite</p> <p>4 Pa. Code Chapter 63</p>	<p>(5) (Reserved)</p>
<p>(6) Type (check one)</p> <p> <input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Final </p>	<p>(7) Is a 120 Day Emergency Certification attached?</p> <p align="center"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </p>
<p>(8) Briefly explain in clear and nontechnical language the regulation:</p> <p>The Chapter sets out a portion of the standard contract terms used by the Department for construction of public works projects.</p>	
<p>(9) Briefly explain why this regulation is proposed for repeal:</p> <p>These provisions are only a portion of the contract documents. Each Department construction contract must be modified to match the individual project. Contract terms established by regulation do not allow for any flexibility. The Department has substantially modified these contract terms since they were promulgated as regulations in 1975.</p>	
<p>(10) Please list the proposed schedule for repeal noting any public comment periods:</p> <p>Since the regulatory terms are not the current Department of General Services' contract terms, this regulation should be repealed immediately.</p>	
<p>(11) State any costs and/or savings associated with the repeal:</p> <p>There will be some savings in administrative time and expense. The Department of General Services would incur significant time and expense if it was required to proceed with the regulatory process each time that it wanted to revise its instructions to bidders. The estimated cost is \$18,000/yr. if the regulation is not repealed and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process.</p>	



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DEPARTMENT OF GENERAL SERVICES
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
PHONE: (717) 787-5599
FAX: (717) 787-9138

Robert Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

**Re: Repeal of Department of General Services Regulations
4 Pa. Code Chapter 63 (General Conditions of Contract)**

Dear Mr. Nyce:

Enclosed is a final-form regulation that will repeal regulations containing the general conditions of contract. This regulation was published as proposed rulemaking at 32 Pa.B. 5277 on October 26, 2002.

When the general contract conditions are established by regulation, they do not allow for flexibility. These provisions must be customized by the Department for individual projects as required. The Department has substantially modified these general conditions of contract in the years since 1975 without amending the regulations. Since the regulatory contract terms are not the Department's current General Conditions of Contract, this Chapter is obsolete and is being deleted.

This final-form regulation, which amends by deletion *Pennsylvania Code*, Title 4, Chapter 63 (General Conditions of Contract) is submitted for review pursuant to the Regulatory Review Act.

The Department of General Services will provide your Commission with any assistance required to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Benefield Seiverling".

Mary Benefield Seiverling
Senior Counsel

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 8-003
 SUBJECT: General Conditions of Contract
 AGENCY: DEPARTMENT OF GENERAL SERVICES # 2304

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 DEPARTMENT OF GENERAL SERVICES
 SEP 24 2004

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/24/04	<i>Norman Anderson</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
9/24/04	<i>Marianne Spyranski</i>	
9/24/04	<i>S. Landes</i>	SENATE COMMITTEE ON STATE GOVERNMENT
9/24/04	<i>Marcia Ernst</i>	
9/24/04	<i>Steph J. Alf</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)