

Regulatory Analysis Form

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REVENUE COMMISSION

(1) Agency

Department of General Services

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

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: Gary F. Ankabrandt
(717) 783-1982

Secondary Contact: Nora L. Doyle
(717) 783-3925

(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, 631.1, and 638.

Repeal Analysis Form

(1) Agency Department of General Services	(2) I.D. Number (Governor's Office Use) 8-3
(3) Short title General Conditions of the Contract	
(4) PA Code Cite 4 Pa. Code Chapter 63	(5) (Reserved)
(6) Type (check one) <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Final	(7) Is a 120 Day Emergency Certification attached? Yes <input checked="" type="checkbox"/> No
(8) Briefly explain in clear and nontechnical language the regulation: The Chapter sets out a portion of the standard contract terms used by the Department for construction of public works projects.	
(9) Briefly explain why this regulation is proposed for repeal: 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.	
(10) Please list the proposed schedule for repeal noting any public comment periods: Since the regulatory terms are not the current Department of General Services' contract terms, this regulation should be repealed immediately.	
(11) State any costs and/or savings associated with the repeal: 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.	

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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 meet 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.

Not applicable. Regulation to be repealed.

(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 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.

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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						
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						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue						

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

No costs associated with the repeal.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
None.

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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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FEB 07 2008
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Copy below is hereby approved as to form and legality.
Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)
MAR 15 2008
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)
DOCUMENT/FISCAL NOTE NO. _____
DATE OF ADOPTION: _____
BY: CHIEF COUNSEL
TITLE: Secretary of General Services
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[Signature]

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

BY: [Signature]
FEB 07 2008
DATE OF APPROVAL

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

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

Repeal of 4 Pa. Code Chapter 63, "General Conditions of Contract"

PREAMBLE

The Department of General Services (the "Department") acting under the authority conferred upon it by 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 (4 Pa. Code §§1.371-1.382), and as required by 45 P.S. §1201 hereby gives public notice of its intentions to repeal its "General Conditions of Contract" regulations found at 4 Pa. Code Chapter 63.

Purpose of Repeal of Regulation

The Department's "General Conditions of Contract" are set forth in regulations at 4 Pa. Code Chapter 63. 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 are required. The Department of General Services 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 regulation must be repealed immediately.

Fiscal Impact

There will be some savings in administrative time and expense. The Department 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 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 [1 P.S. §745.5(a)], the Department submitted a copy of the proposed repeal to the Independent Regulatory Review Commission (IRRC), the Chairperson of the House State Government Committee, and

PREAMBLE, CONTINUED

the Chairperson of the Senate State Government Committee on October 9, 2002 1997. In addition to submitting the proposed repeal, 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, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to the proposed repeal, it will notify the Department within ten (10) days of the close of the Committee's comment period. The notification shall specify the regulatory review criteria which had not been met by the repeal. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of a regulation, by the Department, the General Assembly, and the Governor of objections raised.

Statutory Authority

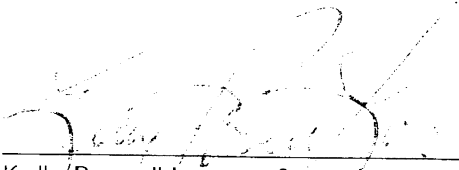
The Department's authority to repeal regulations is contained in Sections 506 and 2401.1 of the Administrative Code of 1929 [71 P.S. §186 and §631.1].

Effective Date

The regulation should be repealed immediately upon closure of the public comment period, the regulatory review process and subsequent publication in the *Pennsylvania Bulletin*.

Public Comment/Contact Person

Written comments concerning the Department's proposed repeal of its "State Art Commission" regulations shall be submitted to Gary F. Ankabrandt, Assistant Chief Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, Pennsylvania 17125. Written comments must be received within thirty (30) days of this publication of notice of proposed rule making in the *Pennsylvania Bulletin*.



Kelly Powell Logan, Secretary
Department of General Services

ANNEX A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

SUBPART C. CONSTRUCTION AND PROCUREMENT

ARTICLE II. CONSTRUCTION

CHAPTER 63. [GENERAL CONDITIONS OF CONTRACT] Reserved.

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

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63.2. Execution, correlation, intent and interpretations.
63.3. Copies furnished and ownership.

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- 63.61. Definitions.
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- 63.71. Department's right to award separate contracts.
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- 63.81. Professional's and other interpretations.
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- 63.91. Definition.
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PROTECTION OF PERSONS AND PROPERTY

- 63.111. Safety precautions and programs.
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- 63.121. Contractor's liability insurance.
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CHANGES IN THE WORK

- 63.131. Change orders.
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UNCOVERING AND CORRECTION OF WORK

- 63.141. Uncovering of work.
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- 63.151. Termination by the contractor.
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- 63.161. Suspension of work due to unfavorable conditions.
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- 63.171. Photographs.
- 63.172. Project sign.
- 63.173. Foundations for mechanical equipment.
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- 63.181. No estoppel or waiver of legal rights.
- 63.182. Expanded breakdown of bids.
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- 63.184. Successors and assigns.
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- 63.201. Prevailing minimum wage predetermination.

FLOODPLAIN MANAGEMENT

- 63.211. Floodplain management criteria.

Cross References

This chapter cited in 4 Pa. Code § 68.61 (relating to nondiscrimination clause; compliance prequalification).

CONTRACT DOCUMENTS

§ 63.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Biweekly—Shall refer to and mean an event occurring every 2 weeks.

Consultant—The retained specialist of the several branches of the architectural and engineering professions retained by the professional for the performance of his specialty as required.

Contract—Contract documents form the contract. The contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The contract may be amended as defined in § 63.141 (relating to uncovering of work).

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

signed and sealed by the professional, including the licensed consultant's signature and seal for their part of the work. If the contractor during the submission of the bid or in the course of construction finds any conflict, error or discrepancy on or between the approved drawings and specifications, such conflict, error or discrepancy shall be immediately referred to the Department and clarified or rectified by the Department in writing before submission of the bids or proceeding with the work.

(b) By executing the contract, the contractor represents that he has visited the site and by careful personal examination satisfied himself as to the contract documents and the physical condition of the locality under which the work is to be performed and correlated his observations with the requirements of the contract documents. The contractor shall not at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall he claim any misunderstanding with regard to the nature, conditions, or character of the work to be done under the contract, and he shall assume all risks resulting from any changes in the conditions which may occur during the progress of the work except as provided in § 63.131(a) (relating to change orders).

(c) The contract documents are complementary, and what is required by any one shall be binding as if required by all. The intention of the documents is to include all labor, materials, equipment and other items as provided in § 63.35(a) (relating to labor and materials) necessary for the proper execution and completion of the work. It is not intended that work not covered under any heading, section, branch, class or trade of the specifications shall be supplied unless it is required elsewhere in the contract documents or is reasonably inferable therefrom as being necessary to produce the intended results. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

(d) The organization of the specifications into divisions, sections and articles, and the arrangement of drawings shall not control the contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

(e) Where the work is shown in complete detail on only half or a portion of a drawing or there is an indication of continuation, the remainder being shown in outline, the work drawn out in detail shall be understood to apply to other like portions of the structure. On all work of a remodeling nature or installation within present buildings, the actual situation at the site controls any information given which may affect the quantity, size and quality of materials required for a satisfactorily completed contract, whether or not such information is indicated on the drawings or within the specifications.

(f) Written interpretations necessary for the proper execution or progress of the work, in the form of drawings or otherwise, will be prepared by the professional and issued with reasonable promptness by the Department and in accor-

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

drawings and specifications. In addition to the above biweekly visits to the project site, the professional shall be required to attend any and all project site conferences that may be necessary to clarify the contract documents, the requirement of which shall be at the determination of the Department. The professional shall not be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work.

(c) The professional shall at all times have access to the work, wherever it is in preparation and progress. The contractor shall provide the facilities for such access so the professional may perform his functions under the contract documents.

(d) Based on such observations and the contractor's applications for payment, the professional will approve payment on the Department's form of certificate in such amounts, as provided in § 63.104 (relating to monthly estimate for payment).

(e) The professional will be, in the first instance, the interpreter of the requirements of the contract documents and the judge of the performance thereunder. The professional will, within a reasonable time, render such interpretation as he may deem necessary for the proper execution of progress of the work.

(f) All interpretations by the professional shall be consistent with the intent of the contract documents. In his capacity as interpreter he will exercise his best efforts to insure faithful performance by both the Department and the contractor and will not show partiality to either. Further reference should be made to §§ 63.81—63.84 (relating to disputes) for disputes under the contract.

(g) The professional is authorized to reject work which does not conform to the contract documents and to direct any or all construction contractors to stop work or any portion thereof, or to require special inspection or testing of the work as provided in § 63.190(b) (relating to tests) whenever in the professional's reasonable opinion such action is necessary or advisable to insure the proper implementation of the contract documents. However, neither the professional's authority to act under this subsection nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the professional to the contractor, or any subcontractor, any of their agents or employees, or any other person performing any of the work.

(h) The professional will review shop drawings and samples as provided in § 63.43 (relating to shop drawings and samples).

(i) The professional will prepare specifications and drawings necessary for the Department to authorize change orders in accordance with § 63.131 and will have authority to order minor changes in the work as provided in § 63.133 (relating to minor changes in the work).

(j) The professional shall participate in inspections to determine the dates of substantial completion and final completion and shall concur in the report of final

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-

sional or the Department such facilities and materials for giving said lines and points as they may require. The contractor must carefully preserve bench marks, reference points and stakes in case of destruction or removal. Contractor will be charged with resulting expenses and shall be responsible for any mistakes that may be caused by their dislocation.

(b) The Department shall secure and pay for easements for permanent structures or permanent changes in existing facilities with right of access thereto, and if such easements are insufficient for the erection of temporary construction facilities and storage of materials, the contractor shall provide such easements and space as may be necessary.

(c) Information or services under the Department's control shall be furnished by the Department.

(d) The Department shall issue to the contractor all the rules, regulations and instructions currently in effect and hereinafter promulgated by the Department all of which rules, regulations and instructions are incorporated herein by reference thereto as if fully set forth herein.

(e) The foregoing are in addition to other duties and responsibilities of the Department enumerated herein.

§ 63.23. Errors and discrepancies in plans or specifications.

If the contractor in the course of the work finds any discrepancy between the plans or specifications and the physical condition of the locality, or any errors in plans or specifications or in the layout as given by the points and instructions, it shall be his duty immediately to inform the Department in writing, and the Department, after consulting with the professional, will promptly clarify the discrepancy and notify the contractor in writing. Any work undertaken after the discrepancy has been discovered and prior to clarification by the Department will be done at the contractor's risk.

CONTRACTOR

§ 63.31. Definition.

The contractor is the person or organization identified as such in the agreement and is referred to throughout the contract documents as if singular in number. The term contractor means each separate prime contractor or his authorized representative.

§ 63.32. Review of contract documents.

The contractor shall carefully study and compare the contract documents and physical conditions of the job site and shall report to the Department in writing any error, inconsistency or omission he may discover or should have discovered before commencing performance. Any work undertaken by such contractor subject to such error, inconsistency or omission prior to such written notification

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

from the operation of such equipment to any person or property will be the full responsibility of the contractor in accordance with §§ 63.121—63.122 (relating to insurance).

(c) The contractor shall at all times enforce good order and conduct among his employes. Every employe shall be fitted or skilled in the performance of work assigned to him. Any laborer or mechanic employed in this contract, shall have been a resident of the Commonwealth for at least 90 days prior to his employment. Any violation shall be considered sufficient cause for the Department to direct that the contractor remove such person or persons from the payroll and they shall not be reemployed without the written consent of the Department.

§ 63.36. Warranty.

(a) The contractor warrants to the Department and the professional that all materials and equipment furnished under this contract shall be new, unless otherwise specified, and that all work shall be of good quality, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards may be considered defective or nonconforming. If required by the professional or the Department, the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Where there is a substitution of material or equipment in accordance with § 63.197 (relating to standards of quality), the contractor warrants that such installation, construction, material, or equipment will perform the function for which it was specified. Contractor explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by him. Contractor shall assign, deliver and transfer to the Department all warranties required under the contract or to which the contractor is entitled from his suppliers, materialmen and subcontractors.

(b) The warranty provided in this section shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the contract documents.

§ 63.37. Taxes.

The contractor shall pay all sales, consumer, use and other similar taxes required by law.

§ 63.38. Permits, fees and notices.

(a) The contractor shall secure and pay for all permits, licenses and certificates necessary for the proper execution and completion of his work.

(b) The contractor shall give all notices and comply with all applicable laws, ordinances, regulations, rules and orders of any public authority bearing on the performance of the work. If the contractor observes that any of the contract documents is at variance therewith in any respect, he shall promptly notify the Department in writing, and any necessary changes shall be adjusted by appropri-

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 employees and all subcontractors, their agents and employees, 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

contractor shall refuse or fails to proceed as directed by the Department, the Department may declare the contractor in default as herein provided.

(c) The Department shall have the right to use or permit the requesting agency to use or occupy any completed or partially completed portions of the work, whether or not the time may have expired for completing the entire work or said portions of work, but such use or occupancy shall not be deemed an acceptance of the work so taken or used, or any portion thereof. Prior, however, to such use or occupancy, an inspection shall be made by the Department of the completed work to determine if it is in conformity with the contract, and any subsequent damage thereto due merely to the use and occupancy of the completed portion, will not be the responsibility of the contractor.

§ 63.42. Drawings and specifications at the site.

The contractor shall maintain at the site for the Department and the use of the professional one copy of all drawings, specifications, bulletins, addenda, approved shop drawings, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other operating and maintenance data, change orders, and other modifications, in good order and marked daily by the contractor to record all approved changes made during construction. These shall be turned over to the professional by the contractor at the time of the substantial completion of the contract for the purpose of assembling and correlating said material for use by the Department.

§ 63.43. Shop drawings and samples.

(a) "Shop drawings" are drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data and other data which are prepared by the contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the work.

(b) Samples are physical examples furnished by the contractor to illustrate materials, equipment or workmanship, and to establish standards by which the work will be judged.

(c) Contractors shall submit all necessary shop drawings or catalog data to the professional in accordance with a priority schedule established by the professional and the contractors, which priority schedule shall be determined on or before the second regular job conference.

(d) When drafting is required, transparent reproductions of shop drawings (one of each drawing) shall be submitted by the contractor during the checking period prior to the required submittal and within 105 days after the initial job conference, in order to enable the professional to make corrections in pencil, reproduce them for his records, and return for correction the original shop drawing tracings. Contractor shall include in his submittal one line-print of each transparency for the professional to keep as a record. Until shop drawings have received the professional's approval as being in compliance with the contract

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.

(j) No portion of the work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the professional. All such portions of the work shall be in accordance with approved shop drawings and samples.

(k) Contractors requiring sleeves and openings for their work in any deck, concrete slab or wall shall furnish to the resident inspector a complete set of location sketch drawings in triplicate showing size and shape of openings. The resident inspector shall make these drawings available to each prime contractor and each prime contractor shall be responsible for reviewing the drawings in order that there will be no interference or conflict in his portion of the work. When this review is finalized, the contractor shall submit these drawings to the resident inspector and professional in final workable form. Sepia reproducible prints of the contract drawings may be obtained from the professional at cost for this purpose.

(l) The general contractor will construct or have built into building walls, partitions and floors all such chases and openings as are required. If the advanced layout drawing are not furnished before the walls, partitions and floors are built, the general contractor will not be held responsible for the construction of these chases and openings, and they shall be constructed at the sole cost and expense of the responsible prime contractor.

(m) All construction pertaining to the cutting of chases and openings shall be done to the entire satisfaction of the Department and the professional. Should the cutting of such chases and openings be required after construction of walls, partitions and floors are completed, the Department may require the work to be performed in such a manner as to result in unmarred work even to the extent of requiring the removal and rebuilding of walls and partitions, all of which shall be at the sole cost and expense of the responsible prime contractor.

§ 63.44. Use of site.

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

§ 63.45. Cutting and patching of work.

The contractor shall do all cutting, fitting or patching required for his work to make its several parts fit together properly, and shall not endanger any work by cutting, excavating or otherwise altering the work, or any part of it.

§ 63.46. Cleaning up.

(a) The contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. Contractor shall promptly remove from the premises all empty cartons, boxes, crates and containers belonging to him, including cleaning and removal of all materials attached to

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,

any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

(c) The obligations of the contractor under this section shall not extend to the liability of the professional, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or the giving of, or the failure to give, directions or instructions by the professional, his agents or employees provided such giving, or failure to give, is the primary cause of the injury or damages.

§ 63.49. Approval of source of material.

Contractor shall submit on Department form, within 45 days of the award of contract, the names and addresses of all manufacturers, producers, or other sources of each item of material or equipment to be used on the job, and shall indicate on the form the quality of such material and equipment, all in accordance with the construction regulations issued by the Department pertaining thereto.

§ 63.50. Testing.

The contractor shall submit samples of materials and equipment for inspection or laboratory tests as shall be required by the Department in accordance with the specifications and § 63.190 (relating to tests) whether verbally reiterated or not.

SUBCONTRACTORS

§ 63.61. Definitions.

(a) A subcontractor is a person or organization who has a direct contract with the contractor to perform any of the work at the site. The term subcontractor is referred to throughout the contract documents as if singular in number and means a subcontractor or his authorized representative. A subsubcontractor is a person or organization who has a direct or indirect contract with a subcontractor to perform any of the work at the site. The term subsubcontractor is referred to throughout the contract documents as if singular in number and means a subsubcontractor or an authorized representative thereof.

(b) Nothing contained in the contract documents shall create any contractual relation between the Department or the professional, and any subcontractor or subsubcontractor, except as provided by the Public Works Contractors' Bond Law of 1967 (8 P. S. §§ 191—202).

§ 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,

the contractor shall pay that subcontractor on demand, made at any time after the certificate for payment should otherwise have been issued, for his work to the extent completed, less the retained percentage.

(d) The contractor shall pay each subcontractor a just share of any insurance moneys received by the contractor under §§ 63.121—63.122 (relating to insurance), and he shall require each subcontractor to make similar payments to the sub-subcontractors.

(e) The Department may, on request and at its discretion, furnish to any subcontractor, if practicable, information regarding percentages of completion certified to the contractor on account of work done by such subcontractor.

(f) Neither the Department nor the professional shall have any obligation to pay, or to see to the payment of, any moneys to any subcontractor except as may otherwise be required by law.

§ 63.64. Subcontractor job conferences.

The contractor shall schedule a job conference with representatives of the subcontractors and the contractor not less frequently than once each 60 days or as required in order that the job progress schedule shall be maintained. Such conferences can be held formally or informally as the contractor may determine to be necessary for the proper progress of the contract.

SEPARATE CONTRACTS

§ 63.71. Department's right to award separate contracts.

(a) The Department reserves the right to award other contracts in connection with other portions of the project under these or similar conditions of the contract.

(b) When separate contracts are awarded for different portions of the project, the "contractor" in the contract documents in each case shall be the contractor who signs each separate contract.

§ 63.72. Mutual responsibility of contractors.

(a) The contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his work with the work awarded by the Department to other contractors.

(b) If any part of the contractor's work depends for proper execution or results upon the work of any other separate contractor, the contractor shall inspect and promptly report to the Department any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the contractor so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his work, except as to defects which may develop in the other separate contractor's work after the execution of the contractor's work.

(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

determination, which determination shall be rendered in writing within a reasonable time, after which the contractor shall proceed with the work.

(b) Such determination by the district engineer and the director of construction of the Department shall be subject to the claims procedure set forth in § 63.82 (relating to claims disputes between the contractor and the Department).

§ 63.82. Claims disputes between the contractor and the Department.

Any claim, dispute, question or other matter arising between the parties to this contract, as set forth in § 63.84 (relating to disputes or actions between contractors), shall be subject to the following procedure for the resolution of same:

(1) Construction conference. Any claim, dispute, question or other matter arising between the parties to this contract or any breach thereof that has been referred to the district engineer and the Director of Construction of the Department, pursuant to § 63.81 (relating to professional's and other interpretations) except such as shall have been waived by the making or acceptance of final payment as provided in § 63.107(f) (relating to substantial completion and final payment), shall be subject to negotiation before a construction conference scheduled by the Construction Division, upon the written demand of either party submitted not later than 30 days after the date of such determination by the district engineer and director of construction of the Department under § 63.81.

(2) Preclaim hearing. All claims, disputes, questions or other matters arising between the parties to this contract, or any breach of said contract between the contractor and the Department which have not previously been resolved at a construction conference shall, upon written demand, then be heard at an informal preclaim hearing by a committee selected by the Secretary of the Department.

(3) No demand for a pre-claim hearing of such claim, dispute, question or other matter shall be made later than 30 days after the date on which the party making the demand has received a decision rendered by the Director of Construction or professional as a result of a construction conference pursuant to paragraph (2), or from the 40th day after such construction conference was held should no decision have been forthcoming. The failure to demand a pre-claim hearing within the appropriate time period shall result in the decision of the Director of Construction of the Department or the professional becoming final and binding upon the Department and the contractor.

(4) Notice of demand for a preclaim hearing shall be filed in writing and directed to the Secretary of the Department. Such notice shall be made within the time limits specified in paragraph (3).

(5) The contractor shall carry on the work and maintain the progress schedule during any proceedings under this section unless otherwise agreed by him and the Department in writing.

§ 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 employees, 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 promisor) 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

agrees that §§ 63.71—63.74 and this section are provided as a benefit to the contractor and that they specifically exclude claims against the Department for delay or other damages.

(b) The contractor agrees that all claims, disputes and other matters in question between prime contractors arising out of, or relating to this contract or the breach thereof as provided in subsection (a) held by a prime contractor pertaining to the project for which the work is performed, shall be settled by agreement or resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement so to arbitrate shall be in consideration of the fact that all other prime contractors agree to this same arbitration provision as provided in each separate prime contract required for the construction of this project, and shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Department will not be a party to this arbitration nor shall such claim or dispute be subject to arbitration as provided for in § 63.82 (relating to claims disputes between the contractor and the Department).

(c) Notice of the demand for arbitration shall be filed in writing with the other prime contractors and with either the Philadelphia or Pittsburgh Regional Office of the American Arbitration Association, and a copy shall be filed with the professional and the Department. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Department shall not be a party to the claim, dispute or other matter in question, but shall be a witness in any arbitration at the request of any party to the arbitration.

TIME

§ 63.91. Definitions.

(a) The contract completion date is the calendar date specified in the contract for the completion of the work.

(b) The date of commencement of the work is the date upon which the initial job conference is held.

(c) The date of substantial completion of the work or designated portion thereof is the date certified by the professional when construction is sufficiently complete, in accordance with the contract documents, and accepted by the Department on behalf of the Requesting Agency providing that such acceptance shall not be unreasonably withheld, so the requesting agency may occupy the work or designated portion thereof for the use for which it is intended.

§ 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.

PAYMENTS AND COMPLETION**§ 63.101. Contract sum.**

The contract sum is stated in the Agreement and is the total amount payable by the Department to the contractor for the performance of the work under the contract documents.

§ 63.102. Schedule of values.

Before the first application for payment, the contractor shall submit to the Department for its approval, a detailed scheduled breakdown sheet indicating a schedule of values of the various portions of the work, including quantities as required by the Department, aggregating the total contract sum, divided so as to facilitate payments to subcontractors in accordance with § 63.63 (relating to payments to subcontractors), prepared in such form as specified by the Department and supported by such data to substantiate its correctness as the Department may require. Each item in the schedule of values shall include its proper share of overhead and profit. This schedule, when approved by the Department, shall be used as a basis for the contractor's applications for payments.

§ 63.103. Progress payments.

(a) During the progress of the work in accordance with the contract documents, the Department will make periodic estimates of the value of the work performed. At least 10 days before each progress payment falls due, the contractor shall submit to the Department an itemized application for payment, on form of the Department, supported by such data substantiating the contractor's right to payment as the Department may require.

(b) If upon the determination of the Department as to reasonableness, payments are to be made on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the contractor of bills of sale or such other procedures satisfactory to the Department to establish the Department's title to such materials or equipment or otherwise protect the Department's interest including applicable insurance and transportation to the site.

(c) The contractor warrants and guarantees that title to all work, materials and equipment covered by an application for payment, whether incorporated in the project or not, will pass to the Department upon the receipt of such payment by the contractor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in §§ 63.101—63.107 (relating to payments and completion) as "liens"; and that no work, materials or equipment covered by an application for payment will have been acquired by the contractor, or by any other person performing the work at the site or furnishing materials and

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-

ment as provided in § 63.104(b) (relating to monthly estimate for payments). The Department and the professional may also decline to approve any applications for payment, or because of subsequently discovered evidence or subsequent inspections, may nullify the whole or any part of any monthly estimate for payment previously issued to such extent as may be necessary in their opinion to protect the Department from loss because of the following:

- (1) Defective work not remedied.
- (2) Claims filed or reasonable evidence indicating probable filing of claims.
- (3) Failure of the contractor to make payments properly to subcontractors or for labor, materials or equipment.
- (4) Reasonable doubt that the work can be completed for the unpaid balance of the contract sum.
- (5) Damages to another contractor, when contractor or surety or insurance company becomes financially irresponsible.
- (6) Reasonable indication that the work will not be completed within the contract time.
- (7) Unsatisfactory prosecution of the work by the contractor.

(b) When the grounds in subsection (a) are removed, payment shall be made for amounts withheld because of them.

(c) In computing the amount payable in accordance with §§ 63.101—63.107 (relating to payments and completion) on any current estimate:

(1) Eight percent of the then total estimates shall be deducted and retained by the Department until 50% of the work called for by the contract documents has been satisfactorily completed and all contract obligations have been met as determined by the Department.

(2) Upon satisfactory completion of 50% of the work called for by the contract documents and the meeting of all contract obligations as determined by the Department, the retainage withheld by the Department shall be reduced to 4% of the total contract sum including all change orders.

(3) Upon satisfactory completion of 80% of the work called for by the contract documents and the meeting of all contract obligations as determined by the Department, the retainage withheld by the Department shall be reduced to 2% of the total contract sum including all change orders.

(4) Upon satisfactory completion of 95% of the work called for by the contract documents, and the meeting of all contract obligations as determined by the Department, the retainage withheld by the Department shall be reduced to 1% of the total contract sum including all change orders.

(d) In no event will the Department reduce retainage when punch-list items remain to be completed in excess amount of the retainage; in such event the Department shall retain twice the estimated cost of completing the punch-list items.

(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

§ 63.93 (relating to delays and extensions of time). The certificate of substantial completion shall be submitted by the professional to the Department and the contractor for their written acceptance of the responsibilities assigned to them in such certificate.

(b) Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final application for payment, the professional, the Department and the Requesting Agency, will promptly make such inspection and, when they find the work acceptable under the contract documents, and the contract fully performed, the professional will promptly approve the final estimate for payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the work has been completed in accordance with the terms and conditions of the contract documents and that the entire balance found to be due the contractor, and noted in said final estimate is due and payable.

(c) Neither the final payment nor the remaining retained percentage shall become due until the contractor submits to the Department:

(1) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Department or its property might in any way be responsible, have been paid or otherwise satisfied.

(2) Statement of surety and the contractor's certificate on forms satisfactory to the Department as to contractor's payment of all claims for labor, materials, equipment rentals and public utility services.

(3) If required by the Department, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the Department.

(d) If any subcontractor refuses to furnish a release or waiver required by the Department, the contractor may furnish a bond satisfactory to the Department to indemnify the Department against any such lien. If any such lien remains unsatisfied after all payments are made, the contractor shall refund to the Department all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

(e) If after substantial completion of the work final completion thereof is materially delayed through no fault of the contractor, and the professional so confirms, the Department shall, upon certification by the professional, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in subsections (c) and (e), and if bonds have been furnished as required in § 63.187 (relating to performance bond and material payment bond) the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the contractor to the Department prior to cer-

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

observe the utmost care, performing such work with experienced men and in accordance with all Federal, State, local, Department and institutional regulations, so as not to endanger life or property. Rock encountered within a minimum of five feet of pipe lines or buildings shall be removed without blasting. All explosives shall be stored in a secure and safe manner, in strict conformity with all State and Municipal regulations and all such storage shall be marked clearly "DANGEROUS-EXPLOSIVES" and shall be in the care of competent watchmen at all times. The contractor shall provide insurance in accordance with the special insurance provision in these "General Conditions" relating to "Blasting."

(d) All damages or loss to any property referred to in subsection (a)(2) and (3) caused in whole or in part by the contractor, any subcontractor, any subsubcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the contractor, except damage or loss attributable to faulty drawings or specifications or to the acts or omissions of the Department or professional or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to the fault or negligence of the contractor.

(e) The contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the contractor's superintendent unless otherwise designated in writing by the contractor to the Department and the professional.

(f) The contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

§ 63.113. Emergencies.

In any emergency affecting the safety of persons or property, the contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the contractor on account of emergency work shall be determined as provided in §§ 63.131—63.134 (relating to changes in the work) for changes in the work.

INSURANCE

§ 63.121. Contractor's liability insurance.

(a) The contractor shall purchase and maintain such insurance as will protect him from claims in paragraphs (1)—(4) which may arise out of or result from the contractor's operations under the contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

(1) Claims under workmen's compensation, disability benefit and other similar employe benefit acts.

(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.

(b) All policies shall be issued by insurance companies known to be financially sound and authorized to conduct such business under the laws of the Commonwealth.

(c) The risk of damage to the construction work due to the perils covered by the such fire policy with extended coverage, as well as any other hazard which might result in damage to the construction work, is that of the contractor and surety, and no claims for such loss or damage shall be recognized by the Department, nor will such loss or damage excuse the complete and satisfactory performance of the contract by the contractor.

(d) Should any surety on the bonds or insurance company providing the required coverage become unsatisfactory to the Department, the contractor must promptly furnish such additional security or insurance coverage as may be required to protect the interest of the Department. The contractor shall, from time to time, furnish the Department, when requested, with satisfactory proof of coverage of each type insurance required. Failure to comply with this provision shall result in the cessation of the work and shall be sufficient grounds to declare the contractor in default under § 63.153(a) (relating to contractor's default).

CHANGES IN THE WORK

§ 63.131. Change orders.

(a) The Department, without invalidating the contract, may order changes in the work within the general scope of the contract consisting of additions, deletions or other revisions, the contract sum and the contract time being adjusted accordingly. All such changes in the work shall be authorized by change order, and shall be executed under the applicable conditions of the contract documents. Contractor agrees that payment under any method noted within subsection (c) or under force account as per subsection (d) shall be the exclusive compensation for such addition, deletion, or other revision to the original contract.

(b) A change order is a written order to the contractor signed by the Department issued after the execution of the contract, authorizing a change in the work or an adjustment in the contract sum or the contract time. The contract sum and the contract time may be changed only by change order. The Secretary is vested with the sole power to approve changes in contract requirements.

(c) The cost or credit to the Department resulting from a change in the work shall be determined in one or more of the following ways in accordance with the current Construction Division Regulations at the option of the Department:

- (1) By mutual acceptance of a lump sum properly itemized.
- (2) By unit prices stated in the contract documents or subsequently agreed upon.
- (3) By cost in conformity with this section.

(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

the resident engineer or inspector shall compare records of extra work done on a force-account basis at the end of each day. All claims for extra work done on a force-account basis shall be submitted to the resident engineer or inspector by the contractor upon certified statements on the Department's forms, to which shall be attached certified payroll records and receipted bills covering the cost of and the freight charges on all materials and equipment used in such work, and said statements shall be filed with the Department during the month following that in which the work was actually performed. Should the contractor refuse to prosecute the work as directed or to submit his claim as required, then the Department may withhold payment of all estimates until the contractor's refusal or failure is eliminated or may declare the contractor in default in accordance with § 63.153 (relating to contractor's default).

(e) If unit prices are stated in the contract documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed change order that application of the agreed unit price to the quantities of work proposed will create a hardship on the Department or the contractor, the applicable unit prices shall be equitably adjusted by change order to prevent such hardship.

(f) Should concealed conditions encountered in the performance of the work, and which are unascertainable from the plans, contract documents, visit to the site and reasonable investigation, be at variance with the conditions indicated by the contract documents; or should unknown physical conditions below the surface of the ground be of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, be encountered; the contract sum shall be equitably adjusted by change order upon claim by either party made within 7 working days after the first observance of the conditions.

(g) If the contractor claims that additional cost or time is involved because of:

(1) Any written interpretation issued pursuant to § 63.2(f) (relating to execution).

(2) Any order by the professional to stop the work pursuant to § 63.12(g) (relating to administration of contract) where the contractor was not at fault.

(3) Any written order for a minor change in the work issued pursuant to § 63.133 (relating to minor changes in work), the contractor shall make such claims as provided in § 63.132 (relating to claims for additional cost or time).

§ 63.132. Claims for additional cost or time.

(a) If the contractor wishes to make a claim for an increase in the contract sum or an extension in the contract time, he shall give the Department written notice thereof in accordance with the requirements of §§ 63.82—63.84 (relating to disputes) but in no case more than 30-calendar days after the occurrence of the event giving rise to such claim. This notice shall be given by the contractor before proceeding to execute the work, except in an emergency endangering life

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

contract documents, the contractor shall pay such costs unless it be found that this condition was caused by a separate contractor employed as provided in §§ 63.71—63.74 (relating to separate contracts), and in that event the Department shall pay the contractor for such costs and require reimbursement of such costs from the responsible separate contractor.

§ 63.142. Coverage of work.

(a) The contractor shall promptly correct all work rejected by the Department or professional as defective or non-conforming or as failing to conform to the contract documents whether observed before or after substantial completion and whether or not fabricated, installed or completed. The contractor shall bear all costs of correcting such rejected work, including the cost of the professional's additional services thereby made necessary.

(b) If, within 1 year after the date of substantial completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the contract documents, any of the work is found to be defective or not in accordance with the contract documents, the contractor shall correct it promptly after receipt of a written notice from the Department to do so, unless the Department has previously given the contractor a written acceptance of such specific condition. The Department shall give such notice promptly after discovery of the condition.

(c) All such defective or nonconforming work under subsections (a) and (b) shall be removed from the site where necessary, and the work shall be corrected to comply with the contract documents without cost to the Department.

(d) The contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

(e) If the contractor does not remove such defective or nonconforming work within a reasonable time fixed by written notice from the Department, the Department may remove it and may store the materials or equipment at the expense of the contractor. If the contractor does not pay the cost of such removal and storage within 10 days thereafter, the Department may upon ten additional days' written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the contractor including compensation for additional professional services. If such proceeds of sale do not cover all costs which the contractor should have borne, the difference shall be charged to the contractor and an appropriate change order shall be issued. If the payments then or thereafter due the contractor are not sufficient to cover such amount, the contractor shall pay the difference to the Department.

(f) If the contractor fails to correct such defective or nonconforming work, the Department may correct it in accordance with § 63.188 (relating to Department's right to carry out the work).

(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

such measures for the protection of the property of the Department as may be directed by the Department. Upon termination of this contract, as provided by this paragraph, full and complete adjustment and payment of all amounts due the contractor arising out of this contract as determined by an audit conducted by or for the Department, shall as soon as practicable after such termination be made as follows:

(1) The Department shall reimburse the contractor for all costs incurred to date of termination including reasonable overhead and expense for plant, made in the performance of this contract less amounts previously paid.

(2) The Department shall also reimburse the contractor for all costs to which the contractor has been subjected or is legally liable for by reason of the termination of this contract, including reasonable costs relating to cancellation of orders, termination of subcontracts, and so on.

(3) The Department shall also reimburse the contractor the reasonable cost of providing protection of the property of the Department as directed by the notice of termination.

(4) The sum total of the payments made under this paragraph shall not exceed the authorized total amount of the contract, less payments previously made.

(5) Title to all property accruing to the Department by reason of the termination of this contract shall immediately vest in the Department and the contractor will execute and deliver to the Department all papers necessary to transfer title.

(6) Coincident with making final payment, the contractor shall furnish the Department with a final release as provided in the contract.

(7) The Department or its representative shall be afforded full access to all books, correspondence and papers of the contractor relating to this contract in order to determine the amount due.

§ 63.153. Contractor's default.

(a) If the contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or he fails to make prompt payment to subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or fails to proceed as directed by the Department, or performs the work unsuitably, or neglects or refuses to remove materials or perform anew said work as may be rejected, or discontinues the prosecution of the work without approval of the Department, or otherwise is guilty of a substantial violation of a provision of the contract documents, then the Department may without prejudice to any right or remedy and after giving the contractor and his surety seven calendar days' written notice,

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.

In accordance with § 63.93(b) (relating to delays and extension of time) requests for extensions of time shall be submitted in writing by the contractor setting forth his reasons therefor. Copies of such requests shall be sent by the contractor to all other prime contractors on the project.

(c) The Department will grant or deny such request for extension of time no sooner than the end of a 10-day period. Should none of the other contractors raise written objections during the 10-day period, the Department will assume such silence as indication of approval and no contractor having remained silent may at a later date claim damages therefor.

§ 63.162. Suspension of work for convenience of the Department.

The Department may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Department, except that this subsection shall not apply under conditions enumerated in subsections § 63.161(a)—(c) (relating to suspension of work due to unfavorable conditions).

(1) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by act of the Department in the administration of the contract, or by its failure to act within the time specified in the contract, or if no time is specified, within a reasonable time, an adjustment shall be made for any increase in the cost of performance of the contract, excluding profit, necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent:

(i) That performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor.

(ii) For which an equitable adjustment is provided for or excluded under any other provision of this contract.

(2) No claim under this section shall be allowed for any costs incurred more than 20 days before the contractor shall have notified the Department in writing of the act or failure to act involved, but this requirement shall not apply as to a claim resulting from a suspension order falling within this section, and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

§ 63.163. Suspension of work and fault of contractor.

Should the contractor fail to comply with the orders of the Department relative to any particular parts of the work, the Department may suspend the work on any or all parts until its orders respecting the particular parts are complied with. In case of such suspension, which shall be considered due to the fault of the con-

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.)

Note: Information shown in parentheses shall be adapted to this project. Contractor shall check with district engineer.

§ 63.173. Foundations for mechanical equipment.

It shall be the responsibility of the heating, plumbing and electrical contractors to furnish and install foundations and supports for all equipment installed under their respective contracts. Foundations and supports shall include isolation mounting for noisy and vibrating equipment. In no event will the Department be liable for any additional costs for equipment foundations. Each contractor shall provide sufficient dowels or anchors in bases as required. Such foundations and supports shall not be those concrete slabs or that integral concrete construction noted and dimensioned on the architectural and structural drawings which are considered the responsibility of the contractor for general construction.

§ 63.174. Sanitary facilities.

(a) Unless sanitary facilities are provided by the requesting agency, the contractor for general construction shall, at his own cost and expense, provide and maintain in a clean and sanitary condition adequate and approved sanitary facilities in accordance with OSHA requirements. All facilities shall be screened against insects. When directed by the Department, the contractor shall dismantle and remove these facilities, clean out pits and disinfect as required. Portable chemical toilets approved by the Pennsylvania Department of Health are acceptable.

(b) As soon as soil lines have been installed inside the building by the plumbing contractor, he shall, at his own cost and expense, install two lavatories and sufficient number of toilets according to the following table:

<i>Number of Employees</i>	<i>Minimum number of facilities</i>
20 or less	1
20 or more	1 toilet seat and 1 urinal per 40 workers
200 or more	1 toilet seat and 1 urinal per 50 workers

(1) Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available.

(2) Job sites, not provided with a sanitary sewer, shall be provided with one of the following toilet facilities unless prohibited by local codes:

- (i) Privies, where their use will not contaminate ground or surface water.
- (ii) Chemical toilets.

(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.

§ 63.179. Operation and maintenance instructions and manuals.

The contractor shall for his or its scope of work carefully compile, during progress of work, operation and maintenance manuals to include methods of care and cleaning of all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment and methods of operations thereof. Descriptions shall give pertinent diagrams, identifying charts, color coding, connections, lubricating instructions, and single-line and detailed wiring diagrams, using manufacturers' printed information where possible; otherwise contractor shall obtain written instructions prepared by subcontractors and sub-subcontractors. Contractor shall include names, addresses and phone numbers of all subcontractors and sub-subcontractors, and of service firms of each mechanical item, for the use of the Requesting Agency after expiration of guarantee period. Before completion of the work, contractor shall submit a rough draft of manual in loose-leaf binder for approval by the Department; after approval and before final payment, contractor shall furnish two corrected bound copies to the professional.

§ 63.180. Work beyond limit of contract.

Site of the work is defined by limit of contract line shown on the drawings. Contractors shall extend their work beyond this line only as may be necessary to satisfy requirements of all permits and to make utility and service connections.

§ 63.181. No estoppel or waiver of legal rights.

Neither the Department nor the professional shall be precluded or estopped by the measurements, estimate or certificate, made or given by any of them or by any of their agents or employees, under any provision or provisions of the contract and subject thereto, at any time, either before or after the completion and acceptance of the work and payment therefor pursuant to any measurements, estimate or certificate, from showing the true and correct amount and character of the work performed and materials and equipment furnished by the contractor; nor from showing at any time, that any such measurements, estimate or certificate is untrue or incorrectly made in any particular; nor that the work or materials, equipment or any parts thereof do not conform to the specifications and the contract. The Department shall have the right to reject the whole or any part of the aforesaid work or materials and equipment should the said measurements, estimate, certificate or payments, be found or be known to be inconsistent with the terms of the contract, or otherwise improperly given; and the Department shall not be precluded or estopped notwithstanding any such measurements, estimate, certificate or payment in accordance therewith from demanding and recovering from the contractor or his surety or both such damages as it may sustain by reason of his failure to comply with the terms of the specifications and the contract, or on account of any over-payments made on any estimate or certificate. Neither

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 political

subdivision, not a party to this contract, to maintain any law suit hereunder, nor shall this contract be construed to constitute the basis for the maintenance of any law suit by any person, other than as provided in § 63.84(a) (relating to professional's and other interpretation) or political subdivision not a party hereto.

§ 63.187. Performance bond and material payment bond.

The Department shall have the right to require the contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising thereunder in such form and amount as the Department may prescribe and with such sureties as may be agreeable to the parties in accordance with the instructions to bidders. The contractor shall deliver the required bonds to the Department not later than ten days after the notice of award of contract.

§ 63.188. Department's right to carry out the work.

If the contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision of the contract, the Department may, after 3 working days' written notice to the contractor and without prejudice to any other remedy it may have, make good such deficiencies. In such case an appropriate change order shall be issued deducting from the payments then or thereafter due the contractor the cost of correcting such deficiencies, including the cost of the professionals's additional services made necessary by such default, neglect or failure. The Department must approve both such action and the amount charged to the contractor. If the payments then or thereafter due the contractor are not sufficient to cover such amount, the contractor shall pay the difference to the Department.

§ 63.189. Royalties and patents.

The contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Department harmless from loss on account thereof, except that the Department shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the contractor has reason to believe that the designing process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Department.

§ 63.190. Tests.

(a) If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the contractor shall give the Department timely notice of its readiness and of the date arranged so the professional may observe such inspection, testing or approval. The contractor shall bear all costs of such inspections, tests and approvals unless otherwise provided.

(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.

§ 63.193. Continued cold weather.

Cold or freezing weather may not be considered an excuse for the stopping of work under this contract. The contractor shall use such methods of temporary protections as may be necessary, including use of temporary heat, to continue the work throughout the winter.

§ 63.194. Federal and A.S.T.M. specifications.

Reference to Federal and A.S.T.M. specifications and designations shall be taken to mean those in effect at the specified date of bid.

§ 63.195. Job conferences.

(a) Job conferences may be held as often as required but shall be held at least biweekly and shall be attended by contractors, or a representative who is authorized to make decisions and representations affecting the contract and its progress on the project, and the District Engineer or Assistant District Engineer or Resident Inspector and the professional. The District Engineer shall advise all concerned of the dates and time of job conferences, which shall be attended whether or not a particular contract may be affected. A failure to attend shall be construed to be a violation of this contract.

(b) Additional conferences as scheduled by the District Engineer shall be held and attended as required.

§ 63.196. Product discrimination.

(a) After notification by the Department, the contractor may not use or permit to be used in the work supplies, equipment or materials manufactured in any state or territory of the United States which does not permit the purchase or use of supplies, equipment or materials manufactured in this Commonwealth in or on the public buildings or other works of the state or territory.

(b) In accordance with the act of July 23, 1968 (P. L. 686, No. 226) (71 P. S. §§ 773.101—773.113), the contractor may not use or permit to be used in the work aluminum or steel products made in a foreign country which is listed in the contract documents as a foreign country which discriminates against steel and aluminum manufactured in this Commonwealth.

§ 63.197. Standards of quality.

(a) Where trade names, catalog numbers and manufacturers of material or equipment are specified, they are mentioned therein for the purpose of establishing a standard of quality, performance and appearance, and for establishing a standard of competitive bidding. Material or equipment as approved by the Department to be equal in quality, performance and appearance to that mentioned in the specifications shall be acceptable, provided that substitute items shall be so certified by the contractor and fully documented as to engineering, construction,

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.

EXHIBIT A**Non-Discrimination Clause: Compliance Pre-Qualification**

The Contract Compliance Regulations require that a "Non-Discrimination Clause" as contained in the Regulations be incorporated in and made a part of Department contract documents. It is the policy of the Department of General Services that the Regulations themselves and Guidelines issued in connection therewith by the Human Relations Commission be considered inherent in Department contracting procedures. It is also the policy of the Department that each bidder-contractor seeking award of a Department contract shall prequalify for such award. For Contract Compliance purposes the contractor will submit annually an executed and notarized document evidencing the bidder-contractor's agreement to conform to the provisions of the Non-Discrimination Clause. The contractor will be required to furnish certain information and reports applicable to Contract Compliance procedures. The form of document is set forth below, and separate copies of the document will be made available to bidder-contractors in order to facilitate compliance with this requirement.

**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.

**APPLICATION FOR PRE-QUALIFICATION OF
COMPLIANCE WITH THE
CONTRACT COMPLIANCE REGULATIONS**

Pursuant to the provisions of Commonwealth Act of July 18, 1935, P. L. 1173, the "Pennsylvania Human Relations Act" of October 27, 1955, P. L. 744, as amended; and the Contract Compliance Regulations, 16 Pa. Code, Ch. 49.

(name of contractor)

the undersigned, in person or by its duly authorized representative, hereby certifies that the contractor shall comply with the aforesaid statutes and regulations, and agrees to the following:

1. Attached hereto, marked Exhibit "A" and made a part hereof is a signed statement of contractor's "Notice of the Nondiscrimination Clause" that the contractor shall send to all subcontractor(s), supplier(s), vendor(s) and labor organization(s) as required under the Contract Compliance Regulations, if the contract is awarded.
2. _____ is the name of the contractor's Equal Employment Policy Officer or designee.
3. It is hereby agreed as part of this application that the following steps will be taken, in good faith, to assure equal opportunity in employment.
 - a. Require that all advertisements for personnel contain the notation "an Equal Opportunity Employer" and that all advertisements be inserted in newspapers having a large general circulation, or other media reaching a large portion of the population in the area and among minority groups.
 - b. Utilize direct and systematic recruitment of personnel through the applicable public and private employe referral sources likely to yield qualified minority group applicants, including but not limited to schools, colleges and minority group organizations.
 - c. Encourage minority group applicants through referral by current employees.
4. It is further hereby agreed as part of this application that, in order to assure nondiscriminatory hiring, the following steps shall be taken:
 - a. All members of contractor's staff authorized to hire and discharge or to recommend such actions are fully cognizant of the contractor's Equal Employment Policy commitments as required by the non-discrimination clause of this contract.
 - b. Cooperation will be actively sought with unions, where applicable, to develop programs to assure qualified minority group persons of equal opportunity for employment and training.
5. It is further hereby agreed, as part of this application that the contractor will make use of apprenticeship and/or other training programs by:
 - a. Assisting minority group members to enter pre-apprenticeship and apprenticeship training programs, and/or
 - b. Actively assisting minority group employees to increase skills to be eligible for upgrading, and/or
 - c. Actively participating in programs for fair and equal consideration of all applicants, such programs having been approved by the Bureau of Apprenticeship and Training of the U. S. Department of Labor, and/or the Pa. Apprenticeship and Training Council, where applicable.
6. It is also agreed that when bids are being solicited, the contractor shall actively solicit bids from minority sub-contractors.
7. It is further agreed that a diligent attempt will be made to obtain qualified minority group representation in all classes of employment on the job and in all phases of the work. Such attempts will be made in conjunction with the labor union where applicable.

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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 employee, 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 employees 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 employees, 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 employees.

(9) Contractor shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

(10) The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Ch. 49.

(11) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

Dated at _____ this _____ day of _____, 19 _____.

Name of contractor

Signature & title of person signing

BY

County of _____

ss:

Commonwealth of _____

being duly sworn, deposes and says that

he is _____ of _____

Name of contractor

and acknowledges that he executed the foregoing statement for the purpose therein contained.

Sworn to before me this _____ day of _____, 19____

Notary public

My Commission Expires

**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

EXHIBIT B

Exhibit B appears at 16 Pa. Code Chapter 49.

FLOODPLAIN MANAGEMENT**§ 63.211. Floodplain management criteria.**

The Department will include in contracts for new construction of or for substantial improvements to Commonwealth-owned structures in areas designated by the Federal government as floodplains the minimum construction standards, including provisions for exceptions and variances, specified in 24 CFR 1910 (relating to criteria for land management and use), as it appears at 41 FR 46975 (October 26, 1976).

Authority

The provisions of this § 63.211 issued under section 506 of the act of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 63.211 adopted February 18, 1977, 7 Pa.B. 487.

[Next page is 64-1.]

63-58

(235090) No. 277 Dec. 97

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

I.D. NUMBER: 8-3
 SUBJECT: Repeal of "General Conditions of Contract"
 AGENCY: DEPARTMENT OF GENERAL SERVICES

TYPE OF REGULATION

- X 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
 REGULATORY COMMISSION
 2002 OCT -9 PM 4:28

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/9	<i>Maurice J. Spyranski</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
10/9	<i>Norman C. Quinn</i>	
10/9	<i>Valerie Keller</i>	SENATE COMMITTEE ON STATE GOVERNMENT
10/9	<i>L. Smith</i>	
10/9	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
10-9	<i>Pam Lubold</i>	ATTORNEY GENERAL
10/9	<i>C. Lu-Brown</i>	LEGISLATIVE REFERENCE BUREAU