



*Emergency*

WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East  
Charleston, West Virginia  
25305

JOHN D. ROCKEFELLER IV  
GOVERNOR

CHARLES L. MILLER  
COMMISSIONER

June 6, 1984

Honorable A. James Manchin  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Manchin:

Pursuant to Chapter 29A, Article 3, Section 15 of the West Virginia Code, 1931, as amended, enclosed please find three (3) copies of emergency amendments, additions, and deletions to Series III of the West Virginia Department of Highways' Rules and Regulations, and three (3) copies of a Statement of Emergency.

The text of the amendments, additions, and deletions of these emergency regulations along with the reasons for such amendments, additions, and deletions are attached.

Also attached is the fiscal note required for these emergency regulations.

We wish to promulgate these regulations as of this date, June 6, 1984, which are to become effective as of this filing date. Please publish this filing in the State Register at your earliest opportunity and stamp and return one copy to this office.

I hereby certify that the enclosed pages of amendments, additions, and deletions are true and accurate copies of Series III that are to be filed as emergency regulations.

Sincerely yours,

*Fred Van K... for*  
Charles L. Miller  
Commissioner

CLM:Sh

ATTEST:

*[Signature]*

Executive Secretary -  
Planning Manager

Enclosures

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE June 6, 1984  
Administrative Law Division

## STATEMENT OF EMERGENCY

Under Chapter 29A, Article 3, Section 15, an emergency exists when the promulgation of a rule is necessary to prevent substantial harm to the public interest. These amendments, additions, and deletions to Series III are necessary to efficiently and properly administer contracts for the construction and maintenance of highways.

These regulations will protect the public interest by prescribing certain requirements in determining irregular bid proposals; adopting contract provisions mandated by the United States Congress; provide for the protection of rivers, streams and impoundments, and regulate partial payments for material and final payments for completed work.

These regulations are designed to protect the public interest until such time as permanent rules and regulations can be developed.

Reasons for Changes/Amendments/Additions/Deletions to Series III  
West Virginia Department of Highways Administrative Rules and Regulations

Section 2.01 - General Purposes

The word Legislative is added because the Department of Highways intends to enforce the rules and regulations.

Section 3.07 - Irregular Proposals

The word (may) was changed to (will) to require rejection of a proposal for any of the listed reasons.

- (i) - The last portion of the sentence in paragraph (i) is deleted since the proposal document now contains the contractor's bond form which may be detached.
- (v) - Adds a provision requiring the bid bond to be signed and properly executed.
- (vi) - Adds a provision requiring the proposal to be notarized.
- (vii) - Adds a provision requiring the contractor to indicate a proposed goal for Disadvantaged and Women Business Enterprise Utilization when called for by the Department of Highways.

Section 4.01 - Consideration of Proposals

(Last paragraph and i., ii., iii.) - These provisions are added to provide guidelines for considering a contractor's Disadvantaged Business Enterprise-Women Business Enterprise plan when awarding contracts.

Section 6.03 - Conformity with Plans and Specifications

(2nd paragraph) - This paragraph was revised to refer to Sections 7.03(1) and 7.07.

(3rd paragraph) - Was added to require a sum of \$200.00 be added to each adjusted price for nonconforming material to cover the Department's cost in administering the supplemental agreement.

Section 7.10 - Use of Domestic and Foreign Steel

This Section was added to comply with the provisions of the Surface Transportation Assistance Act of 1982 as passed by the Congress of the United States and became effective January 6, 1983.

Section 8.02 - Permits, Licenses and Taxes (Page 73)

The last paragraph is deleted as this provision is a part of the Motor Vehicle Laws of the State of West Virginia, and is administered by the Department of Public Safety and other appropriate enforcement agencies.

Section 8.05 - Federal-Aid Provisions (Pages 74, 75)

(Last Paragraph) - The last paragraph is added to reflect a change in Form PR-1273 requested by the Federal Highway Administration by letter dated October 4, 1977.

Section 8.08 - Railway-Highway Provisions (Pages 76 thru 79)

This section adds provisions requiring the contractor to conform to various railroad specifications and insurance requirements.

Section 8.21 - Protection of Rivers, Streams, and Impoundments  
(Pages 89 thru 93)

This Section adds provisions requiring the contractor to provide and maintain a pollution control plan conforming to the manual entitled "West Virginia Department of Highways Erosion and Sediment Control," and Materials Procedure 642.03.50.

Section 10.07 - Payment for Material on Hand (Page 129)

This section is revised to require payment for off-site locations and in the vicinity of the project locations to be submitted within 90 days of the cut-off date of the estimate.

Section 10.08 - Acceptance and Final Payment (Pages 130 thru 132)

This section is revised to provide for automatic acceptance of the final estimate when the contractor does not return the estimate within 30 days of receipt or does not request an extension of the review period to a maximum of 90 days. It also limits the period for the contractor to file a claim to 120 days after execution of the final estimate.

Section 10.09 - Price Adjustment of Asphalt (Pages 132 thru 134)

Due to the rapid fluctuation in the price of asphalt, this Section is added to provide an adjustment, either plus or minus, in the compensation for certain contract items containing asphalt.

Section 10.10 - Price Adjustment of Fuels (Pages 134 thru 137)

Due to the rapid fluctuation in the price of fuels, this section is added to provide an adjustment, either plus or minus, in the compensation for certain contract items which consume large quantities of fuel.

Section 11.05 - Use of United States-Flags Vessels (Pages 143 thru 145)

This Section is added to advise the contractor the requirements of Public Law 664 as specified in Part 381, Title 46, Code of Federal Regulations pertaining to the use of United States-Flag Vessels.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

COMMISSIONER OF HIGHWAYS

CHAPTER 17-2A

SERIES III

(1982)

Subject: Construction and Reconstruction of State Roads

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Section 1. General

1.01. Scope. -- These rules and regulations relate to the construction and reconstruction of state roads.

1.02. Authority. -- These rules and regulations are issued under authority of West Virginia Code, Chapter 17, Article 2A, Section 8 (1) and (2) and Chapter 17, Article 4, Section 19.

1.03. Filing Date. -- These rules and regulations were filed with the Office of the Secretary of State on the 16th day of December, 1982.

1.04. Effective Date. -- These rules and regulations are promulgated on the 16th day of December, 1982, and become effective on the 1st day of January, 1983.

Section 2. Plans and Specifications for the Construction and Reconstruction of State Roads

2.01. General Purposes. -- This series of regulations is promulgated pursuant to Chapter 29A, Article 1, Section 2(c) to provide interpretative rules to make specific the Procedures in Legislative and Interpretative rules to make specific the Procedures in

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quantities in numerical figures in the column provided for that purpose and the total amount of the Proposal obtained in adding the products of the items. All figures shall be in ink or typed. In case of discrepancy between the unit price and its extensions, the unit price will govern.

The Proposal must be signed in ink by the bidder or his qualified and authorized agent; by one or more bidders or officers of each firm represented in a joint venture; by one or more officers of a corporation, duly qualified and authorized to act for and on behalf of the corporation; or by all partners or their individually qualified and authorized agents in case of a partnership.

The Proposal must contain the name and post office address of an individual bidder, the name and post office address of each individual or firm represented in a joint venture, the name and business address of a corporation and its corporate officials, or the name and post office address of each member of a partnership.

3.07. Irregular Proposals. -- Proposals will be considered irregular and may will be rejected for any of the following reasons:

- i. If the Proposal is on a form other than that furnished by the Department; ~~or if the form is altered or any part thereof is detached.~~ Department or if the form is altered.

- ii. If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
- iii. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award. This does not exclude a bid limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that any selection of awards will be made by the Department.
- iv. If the Proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate bid pay items.
- v. Failure to return-the-bid-bond-en-the-sign, properly execute or return the bid bond on the official form furnished by the Department, unless a certified or cashier's check is provided in lieu thereof in accordance with 3.08.
- vi. Failure to sign, or properly execute, the Preposal-or-bid-bond: or notarize the Proposal.



- vii. Failure to indicate a proposed goal in Section C, Item 4 of the Notice contained in the Proposal, when a Department determined goal is indicated in paragraph 5 of the Special Provision for Disadvantaged and Women Business Enterprise Utilization.

If Proposals for more than one project are issued to a bidder, which projects individually would be within the bidder's qualification established as provided in section 3.01, but a combination of more than one, considering also the work under Contract and incomplete, would be in excess of his qualification, the right is reserved to consider only such Proposal or Proposals, as, in the opinion of the Commissioner, are most advantageous to the Department.

Proposals containing Special Provisions for Disadvantaged and Women Business Enterprise utilization will be considered as follows:

- i. When the low bidder's goal submitted in Section C, Item 4 - Contractor's Goal for DBE/WBE Participation, of the Notice contained in the project proposal, meets or exceeds the contract DBE/WBE goals, and the Department considers the amount of the bid to be reasonable, such bidder will be the successful bidder.
- ii. When the low bidder's goal submitted in Section C, Item 4 - Contractor's Goal for DBE/WBE Participation, of the Notice contained in the project proposal, does not meet the DBE/WBE contract goal and the Department considers the amount of the bid

to be reasonable, the bid will be  
accepted if he or she can show that  
good faith efforts were made prior to  
the bid to meet the contract goals.

- iii. When the low bidder cannot satisfy the  
Department that good faith efforts have  
been made, then this bid may be rejected  
and the second low bid will be evaluated  
in the same manner. This procedure will  
continue, evaluating bids in ascending  
order, until either the contract DBE/WBE  
goal is attained or good faith efforts  
can be verified and that bid will be  
accepted provided the amount thereof is  
considered reasonable by the Department.

Should the Engineer determine the materials, or the finished product do not conform to the Specifications or the Plans, he will then make a determination if the work will be accepted and remain in place in accordance with 7.03(1) and 7.07. In this event, the Engineer will document the basis of acceptance by contract modification which will provide for an adjusted payment. All nonconforming material or construction judged to be inadequate for the use intended shall be either reworked or removed and replaced at no expense to the Department.

Each supplemental agreement containing an adjusted price will also have added the sum of Two Hundred Dollars to each adjusted price, for the Department's administration costs, to be deducted from monies due the Contractor.

Materials furnished by the Department will be delivered or made available to the Contractor at the points specified in the Contract.

The cost of handling and placing all materials after they are furnished to the Contractor shall be considered as included in the contract price for the item in connection with which they are used.

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

7.09. Silence of Specifications. -- The apparent silence of the Specifications, Supplemental Specifications, Plans and Special Provisions as to any detail, or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only material and workmanship of acceptable quality are to be used.

7.10. Use of Domestic and Foreign Steel. -- The purpose of this special provision is to prescribe that the use of steel for this project be in compliance with the provisions of Section 165 of the Surface Transportation Assistance Act of 1982, and the applicable provisions of Title 23 CFR Section

635.410, as amended, entitled "Buy America Requirements".

When the contractor desires to utilize foreign steel for any of the applicable items contained in this project, he shall comply with the aforementioned provisions in addition to all other provisions contained in the contract.

To be considered domestic in character, all manufacturing processes must occur in the United States of America.

The Contractor, if he desires to utilize foreign steel, shall submit his bid for furnishing domestic steel on the normally prescribed bidding forms. In addition, the Contractor shall submit an alternate bid for furnishing foreign steel on the "Form for Use of Foreign Materials" contained in Section F (1) of the Notice.

These provisions do not prevent the minimal use of foreign steel, provided the cost of materials (less installation) does not exceed one tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater.

In addition to the requirements of 4.02 - Award of Contract, the award of the contract, if awarded, will be made to the bidder who submits the lowest total bid for the contract based on furnishing domestic steel unless such bid exceeds the lowest total bid received for the contract based on furnishing foreign steel by more than 25 percent, and further provided that the requirements of 7.01 - Source of Supply and Quality

Department of Highways  
WV Adm. Reg. 17-2A  
Series III

Section 7.10

Requirements, have been applied. The more stringent of either  
this special provision or of 7.01(2) - Preference for Domestic  
Aluminum, Glass and Steel Products shall apply.

Section F(1): FORM FOR USE OF FOREIGN MATERIALS (FEDERAL AID ONLY)

In order to assure compliance with the provisions of Section 165 of the Surface Transportation Assistance Act of 1982, and the applicable provisions of Title 23 CFR Section 635.410, as amended, entitled "Buy America Requirements," I(we) hereby certify that my (our) bid is based upon furnishing domestic steel unless otherwise indicated on the following form.

Bid is based on furnishing domestic steel with alternate foreign steel

	Domestic	Foreign
Item _____		
Furnished Price _____		
Erection, Place- ment & Other Costs _____		
Item _____	Subtotal _____	Subtotal _____
Item _____		
Furnished Price _____		
Erection, Place- ment & Other Costs _____		
Item _____	Subtotal _____	Subtotal _____
Item _____		
Furnished Price _____		
Erection, Place- ment & Other Costs _____		
Item _____	Subtotal _____	Subtotal _____
Subtotal, All Steel Items	_____	_____
Other Contract Items	_____	_____
Total Bid	_____	_____

List contract item numbers for which foreign steel is proposed for use. \_\_\_\_\_

Furnished price is the total cost incurred outside the United States including applicable duties, transportation to project site and additional inspection cost that may be incurred.

NOTE: Submit additional sheets if necessary.



~~All motor-driven vehicles used by the Contractor, his employees, or a sub-contractor shall bear the proper West Virginia motor vehicle license tags.~~

8.03. Patented Devices, Materials, and Processes. -- If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Department, any affected third party, or political subdivision from any claims for infringement by reasons of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Department for any costs, expenses, and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

8.04. Restoration of Surfaces Opened by Permit. -- The right to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time, is hereby expressly reserved by the Department for the proper authorities of the municipality in which the work is done, and the Contractor shall not be entitled to any damages either for the digging up of the street or for any delay occasioned thereby.

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the Department. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the highway. The Contractor shall, when ordered by the Engineer, make in an acceptable manner all necessary repairs due to such openings and such necessary work will be paid for as "Extra Work", or as provided in these Specifications, and will be subject to the same conditions as original work performed.

8.05. Federal-Aid Provisions. -- When the United States Government pays any portion of the cost of a project, the Federal Laws and the Rules and Regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal Agency.

Such inspection shall in no sense make the Federal Government a party to the Contract and will in no way interfere with the rights of either party hereunder.

When Form PR-1273 (Rev. 9-75) is a part of the Contract, add the following to vi. RECORD OF MATERIALS, SUPPLIES AND LABOR (Page 5 of Form PR-1273):

5. The report on Form PR-47 is not required when the original contract amount is less than \$500,000.00.

When Form PR-1316 (Rev. 7-75) is a part of the Contract,  
add the following to viii. RECORD OF MATERIALS, SUPPLIES AND  
LABOR (Page 6 of Form PR-1316):

4. The report on Form PR-47 is not required when the  
original contract amount is less than \$500,000.00.

8.06. Sanitary Provisions. -- The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction. He shall not create, commit, or maintain a public nuisance.

8.07. Public Convenience and Safety. -- The Contractor shall at all times so conduct his work as to assure the least possible obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under section 5.05.

The Contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the Engineer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to

possible obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under section 5.05.

The Contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the Engineer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Contract.

The Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

8.08. ~~Railway-Highway-Provisions.---If-the-Plans-require-that-materials-be-nailed-across-the-tracks-of-any-railway,-the-~~

~~Department will make arrangements with the railway for any new crossings required or for the use of any existing crossings. If the Contractor elects to use crossings other than those shown on the Plans, he shall make his own arrangements for the use of such crossings.~~

All work to be performed by the Contractor in construction on the railroad right-of-way shall be performed in a manner satisfactory to the Chief Engineer of the railway and at such times and in such manner as not to unnecessarily interfere with the movement of trains or traffic upon the track of the railway company. The Contractor shall use all care and precaution in order to avoid accidents, damage, or unnecessary delay or interference with the railway company's trains or other property.

8.08. Railway-Highway Provisions. -- The Contractor shall, in addition to all other clauses and covenants to this Contract and related documents, be governed by the following provisions when performing any operations adjacent to or within the existing right of way of Railroad(s).

The Department will reimburse the Railroad for the cost of all engineering services rendered on the project.

All work to be performed by the Contractor shall be performed in a manner agreeable to the Railroad's Chief Engineer or his authorized representative. The Contractor shall at all times use all reasonable care and diligence to cooperate with officials of the Railroad in order to avoid accidents, damages or unnecessary delay to, or interference

with trains of the Railroad.

The Contractor shall perform no work upon the Railroad's tracks and shall not place or operate any equipment, nor place any material closer than 10 feet from the centerline of the nearest track without first obtaining authority from the Railroad's Chief Engineer or his authorized representative. This also applies to any equipment working, or presenting the possibility of being worked, in such a position that failure of the same, with or without load, will obstruct the track.

The Contractor shall submit to the Railroad's Chief Engineer, with a copy to the Department, information regarding methods and procedures for performing work, i.e., plans and specifications for shoring and sheeting, and for protective shields covering all railroad facilities. The Contractor shall obtain Railroad approval before commencing said work.

The Contractor shall bear all cost of protecting railroad traffic affected by his operations and shall give the Railroad's Chief Engineer or his authorized representative at least 48 hours advance notice of the Contractor's need for protective services. The Railroad will furnish such protective services and use personnel, and devices that, in the opinion of the railroad, are required to promote safety and insure continuity of railroad traffic during the Contractor's operations. The Railroad will promptly bill the Contractor for such protective services.

The Contractor shall promptly reimburse the Railroad upon receipt of the bill for the services rendered in connection with the project. The cost for furnishing railroad protective services shall be incidental to the items in the Contract and no separate payment shall be made. The Department will withhold final payment to the Contractor until the Department has proof that such bills have been paid.

If the Contractor desires a temporary grade crossing of the Railroad's tracks, to use an existing private grade crossing, or to use an existing public grade crossing with unlicensed construction equipment, the Contractor shall make such arrangements, in writing, with the Railroad. If required by the Railroad, the Contractor shall execute the regular form of private grade crossing agreement and pay all construction, maintenance, removal or other costs.

(1) Insurance - The Contractor shall secure and provide, until all work under the terms of the project are satisfactorily completed and accepted, the following types of insurance in the amounts and form as hereinafter set forth.

(a) Contractor's Public Liability Insurance - With respect to the operations he performs, this insurance shall provide a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence, and for damage to or destruction of

property, including the loss of use thereof, in any one occurrence. A signed copy of the policy shall be provided to the Railroad.

(b) Contractor's Protective Public Liability Insurance - With respect to the

operations performed by subcontractors, the Contractor must carry in his own behalf this insurance providing a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined for damages arising out of bodily injuries to or death of all persons in any one occurrence, and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. A signed copy of the policy shall be provided to the Railroad.

(c) Railroad Protective Liability Insurance -

With respect to the operations he or any of his subcontractors perform, the Contractor must provide in the name of the Railroad a policy providing a limit of \$2,000,000 per occurrence bodily injury or death and property damage combined. Said insurance shall be furnished with an aggregate of \$6,000,000 applying separately to each annual period. The original copy of the policy shall be provided to the Railroad.

The Contractor shall remove from the Railroad's property all equipment, surplus material, and other debris and shall leave the property in a condition satisfactory to the Railroad's Chief Engineer or his authorized representative.



certificate and payment in accordance therewith, from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

8.21.. Protection of Rivers, Streams, and Impoundments. --

(1) ~~-Erosion and Siltation Control-~~ -- The Contractor shall exercise every reasonable precaution throughout the life of the Project to prevent silting of rivers, streams, and impoundments such as lakes, reservoirs, etc. -- Construction of drainage facilities as well as performance of other contract work which will contribute to the control of siltation shall be carried out in conjunction with earthwork operations or as soon thereafter as is practicable.

- Prior to suspension of construction operations for any appreciable length of time, the Contractor shall shape the top of earthwork in such a manner as to permit the runoff of rainwater and shall construct earth berms along the top edges of embankments to intercept runoff water. -- The berm -

construction shall not be permitted to decrease the stability of the embankment section. -- Temporary slope drains shall be provided to carry runoff from embankments which are located in the immediate vicinity of rivers, streams, and impoundments. -- The slope drains shall be located at approximate 500-ft. -- intervals and shall be stabilized by paving or covering with waterproof materials. -- Preventive measures taken under this paragraph shall be adequate to control any runoff or erosion products from adjacent cut slopes. -- Should such preventive measures fail and an appreciable amount of material begins to erode into a river, stream or impoundment, the Contractor shall act immediately to bring the siltation under control.

The erosion control measures shall be continued until the permanent drainage facilities have been constructed and until the project is accepted.

Unless otherwise approved in writing by the Engineer, construction operations in rivers, streams, and impoundments shall be restricted to those areas where channel changes are shown on the Plans and to those areas which must be entered for the construction of temporary or permanent structures. -- Rivers, streams, and impoundments shall be promptly cleared of all falsework, piling, debris, or other obstructions placed therein or caused by the construction operations.

Excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or so near to rivers, streams, or impoundments that it will be washed away by high water or runoff.

Frequent fording of live streams with construction equipment will not be permitted; therefore, temporary bridges or other structures shall be used whenever an appreciable number of stream crossings are necessary. Unless otherwise approved in writing by the Engineer, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and temporary or permanent structures.

The location of all material pits, other than commercially operated sources, and all waste areas shall be subject to the approval of the Engineer, and construction operations in these areas shall be so scheduled and conducted that during and after completion of the work, erosion will not result in water pollution.

(2) Pollution - The Contractor shall exercise every reasonable precaution throughout the life of the project to prevent pollution of rivers, streams, or impoundments. Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage, and other harmful waste shall not be discharged into or alongside of rivers, streams, impoundments or into natural or man-made channels leading thereto. The Contractor shall also comply with the applicable regulations of the Department of Natural Resources and other statutes relating to the prevention and abatement of pollution.

8.21. Protection of Rivers, Streams, and Impoundments. --

Pollution Control Quality: The Contractor shall provide and maintain a pollution control plan detailing the methods of sampling and testing of waters on the project. This pollution control plan shall conform to all requirements of the Specifications, MP 642.03.50 and the manual entitled "West Virginia Department of Highways Erosion and Sediment Control".

(1) Erosion and Siltation Control - The Contractor shall exercise every reasonable precaution throughout the life of the Project to prevent silting of rivers, streams, and impoundments such as lakes, reservoirs, etc. Construction of drainage facilities as well as performance of other contract work which will contribute to the control of siltation shall be carried out in conjunction with earthwork operations or as soon thereafter as is practicable.

The manual entitled "West Virginia Department of Highways Erosion and Sediment Control, April 1, 1972", as amended, is hereby made a part of the Contract as a guide to follow for erosion and sediment control. Where any provision of said manual is in conflict with any special erosion and sediment control provision set out and contained in the Proposal and/or in the Plans for this project, the Proposal and/or Plans shall prevail. Delete the penultimate paragraph on page III-37 of the manual.

The Contractor shall determine prior to the initiation of work, the quality of the water in the existing rivers, streams, impoundments or other natural or man-made channels in the project limits, and the water quality of the receiving rivers, streams, impoundments or other natural or man-made channels. Subsequent to initiation of work, should the quality of the water not meet the limits prescribed herein, the Contractor shall take immediate action to initiate, improve or repair whatever measures are necessary to bring the water quality within the limits specified. If the quality of water has not been determined prior to initiation of work, the quality of the rivers, streams, impoundments or other natural or man-made channels will be determined where applicable at a point above or below the limits of construction and these values used to determine pre-existing quality.

The Contractor shall monitor the surface water being received by the project and within the project and the receiving streams to determine the quality of the water both prior to and during construction. The quality of surface water affected by construction shall meet the requirements of MP 642.03.50.

Prior to suspension of construction operations for any appreciable length of time, the Contractor shall shape the top of earthwork in such a manner as to permit the runoff of rainwater and shall construct earth berms along the top edges

of embankments to intercept runoff water. The berm  
construction shall not be permitted to decrease the stability  
of the embankment section. Temporary slope drains shall be  
provided to carry runoff from embankments which are located in  
the immediate vicinity of rivers, streams, and impoundments.  
The slope drains shall be located at approximate 500-ft.  
intervals and shall be stabilized by paving or coverings with  
waterproof materials. Preventive measures taken under this  
paragraph shall be adequate to control any runoff or erosion  
products from adjacent cut slopes. Should such preventive  
measures fail and an appreciable amount of material begins to  
erode into a river, stream or impoundment, the Contractor shall  
act immediately to bring the siltation under control.

The erosion control measures shall be continued until the  
permanent drainage facilities have been constructed and until  
the project is accepted.

Unless otherwise approved in writing by the Engineer,  
construction operations in rivers, streams, and impoundments  
shall be restricted to those areas where channel changes are  
shown on the Plans and to those areas which must be entered for  
the construction of temporary or permanent structures. Rivers,  
streams, and impoundments shall be promptly cleared of all  
falsework, piling, debris, or other obstructions placed therein  
or caused by the construction operations.

Excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or so near to rivers, streams, or impoundments that it will be washed away by high water or runoff.

Frequent fording of live streams with construction equipment will not be permitted; therefore, temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary. Unless otherwise approved in writing by the Engineer, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and temporary or permanent structures.

The location of all material pits, other than commercially operated sources, and all waste areas shall be subject to the approval of the Engineer, and construction operations in these areas shall be so scheduled and conducted that during and after completion of the work, erosion will not result in water pollution.

(2) Pollution - The Contractor shall exercise every reasonable precaution throughout the life of the Project to prevent pollution of rivers, streams, or impoundments. Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage, and other harmful waste shall not be discharged into or alongside of rivers, streams, impoundments or into natural or man-made channels leading thereto. The quality of the surface

waters affected by construction shall meet the requirements of the West Virginia Administrative Regulations - State Water Resources Board, developed in accordance with the West Virginia Code, Chapters 20-5 and 20-5A.

(3) Basis of Payment - Except when pay items are specifically described, and furnished as pay items in 642, Temporary Project Water Pollution Control, (West Virginia Department of Highways Standard Specifications Road and Bridges, Adopted 1982), the water pollution and erosion and siltation control requirements set forth herein shall be at the expense of the Contractor.

8.22. Plant Pest Regulations. -- The indiscriminate movement of nursery stock, hay or straw mulch, equipment and soil samples into and out of West Virginia constitutes a potential hazard to State and National Agriculture. Therefore, it shall be the responsibility of the prime Contractor to comply with all applicable State and Federal Plant Pest Regulations in the fulfillment of this contract.

Information regarding these regulations may be obtained from Plant Pest Control Division, West Virginia Department of Agriculture, Charleston, West Virginia 25305, or United States Department of Agriculture, Agriculture Research Service, Plant Pest Control Division, P. O. Box 1257, Roanoke, Virginia, 24001.



be held, handled and delivered by the State Treasurer in the same manner, as is provided in (ii) and (iii) above, for the original security or securities deposited.

10.07. Payment for Material on Hand. -- Partial payment may be made to the extent of the delivered costs of material to be incorporated into the work, provided the material meets the requirements of the Plans and Specifications when delivered in the vicinity of the project or at approved off-site locations. In any event, partial payment for material on hand will not exceed the bid price. Such material shall be stored in acceptable storage places, and the Contractor shall furnish evidence of payment for material stored at off-site locations prior to payment for this material by the Department. -- Evidence of payment for material delivered in the vicinity of the project must be furnished within 90 days of the cut-off date of the estimate on which this material was first paid. -- the delivered cost of the material within 90 days of the cut-off date of the estimate on which this material was paid.

10.08. Acceptance and Final Payment. -- When the project has been accepted, as provided in section 6.16, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. -- After approval of such final estimate by the Contractor, he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the contract. --

10.08. Acceptance and Final Payment. -- When the project has been accepted, as provided in section 6.16, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. Before final payment is made, the Contractor shall execute the Statement of Acceptance on the back of the final estimate. After the Contractor executes such final estimate or if the Contractor fails or declines to execute the final estimate within 30 days after receipt, the Department will consider the estimate approved and accepted and he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the Contract. Upon written request from the Contractor received within 30 days of his receipt of the final estimate, the time for review and execution of the final estimate will be extended up to 60 additional calendar days. No time beyond the original 30 days allowed for this review will be considered for interest payment under the provisions in the following paragraphs. Should the Contractor desire to reserve the right to file a claim with the State Court of Claims for any sum or compensation not included in the final estimate, growing out of the Contract, then a Reservation of Right stipulating the nature, each item and the amount claimed shall be added at the end of the acceptance statement. This claim must be filed with the State Court of Claims within 120 days of execution of the final

estimate. The acceptance of final payment by the Contractor shall be considered a release in full of all claims against the West Virginia Department of Highways, State of West Virginia arising out of said project, except for any claim reserved at the end of the acceptance statement on the back of the final estimate.

approving authority to be due and owing to the Prime Contractor and set forth on the final estimate document, and the approving authority makes an offer to pay the amount of the final estimate to the said Prime Contractor, then the Prime Contractor shall not be entitled to receive any interest on the amount set forth in the said final estimate, but shall only be entitled to the payment of interest at the rate of six per centum per annum on the amount of money finally determined to be due and owing to the said Prime Contractor, less the amount of the final estimate that the approving authority had originally offered to pay to the said Prime Contractor."

10.09. Price Adjustment Of Asphalt. -- Because of the uncertainty in estimating the costs of petroleum products that will be used during the life of this contract, adjustment in compensation for certain contract items is provided for as follows:

The contract items listed in the Proposal in the Table of Materials to be Adjusted for Price at the Time of Placement will be adjusted in accordance with the Department's index for asphalt cement. This index will be determined from the average Suppliers' Posted Price, FOB, per ton of asphalt cement from the following locations as published in Platt's Oilgram Price Service.

Ohio (Southern)  
Philadelphia/New York  
St. Louis

If the posted price for a specific location is indicated as a range with both a low and a high figure, the price at this location to be utilized in calculating the index will be the average of these two figures. If Platt's Oilgram discontinues publishing price information for a specific location, the Department will substitute the price at the closest point thereto which is Published in Platt's Oilgram.

The bidding index ( $I_b$ ) as determined above is published elsewhere in the proposal. The price adjustment for the specified material at the time of placement will be based on an index determined from prices published in Platt's Oilgram for the first Monday\* of the month in which the work is done. When the ratio of the price index at placement ( $I_p$ ) divided by the price index at bidding ( $I_b$ ) is less than 0.95 or greater than 1.05, the portion of the contract unit price which reflects the cost of the specified material will be adjusted for the change in accordance with the following formula:

$$Pa = \left[ \left( \frac{I_p}{I_b} \right) - 1.00 \right] \times C \times Q$$

where:

Pa = Price Adjustment

Ip = Price Index at Time of Placement

Ib = Price Index for Bidding

$C$  = Adjustable Material Cost per Unit of Contract Item Bid

$Q$  = "As Constructed" Quantity

\*If Monday falls on a holiday or the prices are otherwise not published for that date, the Index ( $I_p$ ) will be based on prices in the next edition of Platt's Oilgram in which these prices are listed.

Adjustments in compensation for any period may be either plus or minus. If  $I_p$  is greater than  $I_b$ , the adjustment will be plus. If  $I_b$  is greater than  $I_p$ , the adjustment will be minus.

The price index for determining price adjustments for all work performed after the contract completion date, as revised by approved time extensions, will be determined as follows:

The price index for each month ( $I_p$ ) shall be the price index for the month in which the contract completion date (as extended) falls, or the price index for the month in which the work was performed, whichever is less.

10.10. Price Adjustment Of Fuels. -- Because of the uncertainty in estimating the costs of fuels that will be used during the life of this contract, adjustment in certain contract items is provided for as follows:

Product price quotations for bulk gasoline, Regular, and for fuel oil No. 2 (diesel fuel), as published by the Bureau of Labor Statistics on the first Friday after the first Monday of

the month will be utilized to establish the contract base price as well as the monthly base price thereafter.

Base prices applicable to this contract are contained in the contract documents under NOTICE TO BIDDERS entitled Base Prices For Fuels and Items to be Adjusted for Price of Fuels.

Each month the Engineer will be furnished with the current monthly base prices (Mbp) for gasoline and diesel fuel. When the ratio of the monthly base price (Mbp) divided by the contract base price (Cbp) is less than 0.95 or greater than 1.05, adjustments for fuel will be made in accordance with the following formula:

$$Pa = \left[ \left( \frac{Mbp}{Cbp} \right) - 1.00 \right] \times Cbp \times Q$$

where:

Pa = Price adjustment

Mbp = Monthly Base Price

Cbp = Contract Base Price

Q = Gallons of fuel used in items of work performed during the estimate period, calculated in accordance with this Special Provision.

Adjustments in compensation for any period may be either plus or minus. If Mbp is greater than Cbp, the adjustment will be plus. If Cbp is greater than Mbp, the adjustment will be minus.

The adjustments in compensation for petroleum fuels used for the listed items will be made on the separate items on the

basis of the average fuel requirements for processing a unit of  
the item as shown in the following table:

COST ADJUSTMENT FACTORS FOR FUEL USAGE

<u>Class</u>	<u>Item of Work</u>	<u>Units</u>	<u>Diesel</u>	<u>Gasoline</u>
1	Unclassified Excavation; Borrow Excavation	Gals./Cubic Yd.	0.39	0.18
2	Aggregates	Gals./Ton*	0.62	0.40
3	Bituminous Concrete	Gals./Ton	2.43	0.78
4	Portland Cement Concrete Pavement	Gals./Cubic Yd.	0.28	0.90
5	Structures; Structural Concrete; Structure, Rock and Wet Excavation; Culverts & Storm Drains	Gals./\$1000	12.00	14.00
6	Miscellaneous	Gals./\$1000	12.00	12.00

\* Where the pay item for aggregate is in cubic yards,  
conversion to tons for the purpose of fuel price adjustment  
will be made on the basis that one cubic yard equals 1.75  
tons.

Fuel requirements for the items listed above include the  
total of both diesel and gasoline.

The gallons of fuel for price adjustment (Q) will be  
determined by multiplying the factors listed above by the  
amount of acceptable work performed on the separate items  
during an estimate period.



Any difference between the checked final quantity and the sum of quantities shown on the monthly estimates for any item will be adjusted by the following formula:

$$\text{FA} = (\text{FCQ} - \text{PRQ}) \times \text{EA}$$

where:

FA = Final Adjustment (dollars)

FCQ = Final Checked Quantity

PRQ = Total Quantity Previously Reported on Monthly Estimates

EA = Total Adjustment Shown on Monthly Estimates (dollars)

The monthly base price for determining price adjustments for all work performed after the contract completion date, as revised by approved time extensions, will be the monthly base price (Mbp) at the time of the contract completion date (as extended) or at the time the work was performed, whichever is less.

The final adjustment will consider any error(s) that may have been made in the computation of monthly adjustments.

#### Section 11. Miscellaneous Provisions

11.01. Common Carrier Rates. -- The common carrier rates and taxes thereon which are current on the date of opening the bids shall be considered as applicable to all items subject to transportation charges thereunder.

If such rates or taxes are thereafter increased by public authority on any materials entering into and forming a part of

or any other materials produced at and furnished from established and recognized commercial plants, together with the delivery of such materials to the site of work by means of vehicles owned or operated by such plants or by recognized commercial hauling companies, shall not be considered as subcontracting under these provisions.

Except as hereinafter stated, all hauling of materials from roadside production sources, or from railroad or water delivery points, to batching plants, mixing plants, or directly to their place of use in the road, and all hauling of materials from batching plants and mixing plants to their place of use in the road, unless done by the Contractor's own equipment or by recognized hauling companies, shall be considered as subcontracting under these provisions.

If batching plants or mixing plants are set up at rail or water delivery points and materials in part supplied to such plants by rail or water transportation companies, the remaining materials required at such batching or mixing plants may be hauled to such plants without such hauling being considered as subcontracting.

11.05. Use of United States-Flags Vessels. -- The purpose of this specification is to advise the contractor of the requirements of Public Law 664 as further specified in Part 381, Title 46, Code of Federal Regulations.

The contractor shall utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

The contractor shall furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described above to both the West Virginia Department of Highways (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D. C. 20230.

In addition, if it becomes evident that foreign material shipments may occur on this project, the contractor at the earliest practical time shall furnish the West Virginia Department of Highways, in writing, advance notice of such potential shipments. Information in said notice shall include:

- a. Project number
- b. Project location

c. Prime contractor (Name and address)

d. Type of materials involved

The contractor shall insert the substance of the provisions herein in all subcontracts issued pursuant to this contract.

Section 12. Disqualification and Suspension of Prequalified Contractors

12.01. General Purposes. -- This section of rules and regulations provides procedures regarding the Department of Highways' disqualification and suspension of prequalified contractors in instances where there is cause to believe that a prequalified contractor is not complying with laws or regulations that pertain to the competition for or the performance of contract work for the Department.

12.02. Definitions. --

(1) Suspension - An exclusion or bar from contracting with or bidding on contracts let by the Department for a temporary period of time, pending the completion of an investigation or legal or disqualification proceedings.

(2) Disqualification - The debarment of a contractor by the revocation of the contractor's Certificate of Qualification that is necessary for contracting with or bidding on contracts let by the Department for a specified period of time.