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CONSTRUCTION ORDER GENERAL CONDITIONS

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CONSTRUCTION ORDER GENERAL CONDITIONS

SECTION 1 DEFINITIONS AND INTERPRETATION

Wherever the following terms are used in the Specifications or Plans, the intent and meaning will be interpreted, unless the context otherwise requires, as follows:

110. 1.1 Abbreviations

A.A.S.H.T.O.	-	American Association of State Highway Transportation Officials
A.N.S.I.	-	American National Standards Institute
A.S.A.	-	American Standards Association
A.S.T.M.	-	American Society for Testing Materials
A.W.P.A.	-	American Wood Preservers Association
A.W.S.	-	American Welding Society
B.S.I.	-	British Standards Institution
C.G.S.B.	-	Canadian Government Specification Board
C.S.A.	-	Canadian Standards Association
C.S.P.I.	-	Corrugated Steel Pipe Institute
C.W.B.	-	Canadian Welding Bureau
S.S.P.C.	-	Steel Structures Painting Council

**1.2 Definitions**

Amendment Acknowledgement

The acknowledgement of the bidder to an amendment to the tender by completing the amendment acknowledgement section on the tender signing page.

Bidder

Any person or persons, partnership or corporation submitting an offer for the proposed work.

Construction Order

A written agreement between the Province and the successful bidder by which he, as the Contractor, is bound to perform the proposed work in accordance with the Construction Order plans and specifications, and by which the Province is bound to compensate him at the mutually established and accepted prices and sums.

Contractor

The individual, partnership or corporation undertaking the execution of the work under the terms of the Construction Order and acting directly or through a duly authorized representative.

Contract Price

The total of the products of the estimated quantities and their respective unit prices plus lump sum items and Extra Work included in the Construction Order.

**110. 1.2 Definitions (Cont'd)**Contract Unit Price

Any unit price or lump sum set forth in the Construction Order.

Department

The Department of **Transportation and Government Services** of the Province of Manitoba.

Deputy Minister

The Deputy Minister of The Department.

Director

The Director of a Region or Branch, or their designates acting directly or through properly authorized representative, each representative acting within the scope of the particular duties and authority assigned.

Engineer

A Section Head acting directly or through properly authorized representatives, each representative acting within the scope of the particular duties and authority assigned.

A Section Head is a Department representative classified as a Construction Engineer, Maintenance Engineer/Manager, Technical Services Engineer, Contract Engineer or designate.

Extra Work

Work authorized by an Extra Work Order, performed by the Contractor, payment for which was not included in the Construction Order bid items.

Extra Work Order

An order which authorizes and sets forth the basis of payment for performing Extra Work.

Inspector

The authorized representative of the Engineer assigned to make a detailed inspection of any or all portions of the work.

Minister

The Minister of the Department.

Plant

Tools, materials, equipment and temporary or permanent shops, structures and fixtures located at the Contractor's place of business or brought to or constructed on the site by the Contractor for the performance of the work.

Plans

Drawings or reproductions of drawings pertaining to the work.

**110. 1.2 Definitions (Cont'd)**Province

The Province of Manitoba, Canada.

Roadway

The portion of the highway ordinarily used for vehicular traffic including the shoulders.

Seasonal Shutdown

The period of time when work cannot be performed due to seasonal conditions.

Site

The locations where the work described in the Construction Order is to be carried out, including the point of delivery of materials to be used in the work.

Special Provisions

Special directions, provisions or requirements to the work under consideration and not otherwise thoroughly or satisfactorily detailed or set forth in the standard specifications. Special Provisions set forth the final contractual intent as to the matter involved and shall prevail over specifications and overall plans whenever there is a conflict.

Specifications

The General Conditions, standard Specifications, Special Provisions and requirements approved by the Department pertaining to and necessary for the proper performance of the work.

Structure

Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other fixtures which may be encountered in the work and not otherwise classed herein.

Subcontractor

Any individual, firm or corporation to whom the Contractor sublets any part of the Contract.

Substantial Completion

When a Contract is 97% completed, based on the projected final costs of the Contract.

Substructure

That portion of the structure which is founded in terra firma including that portion of the foundation above the ground line together with wingwalls, backwalls and retaining walls.

Superstructure

That portion of the structure supported by the substructure either integrally with or through a system of bearings.

**110. 1.2 Definitions (Cont'd)**Tender

The written offer on the prescribed forms, to perform the proposed work.

Work

The work, material, equipment, machinery, matters and things required to be done, supplied, furnished or performed which are outlined in the Construction Order, and the carrying out of all the duties and obligations imposed by the Construction Order.

**1.3 Interpretation**

This Construction Order shall inure to the benefit of and be binding on the respective executors, administrators, successors and assigns of the Department and of the Contractor.

Where the Contractor as defined herein consists of more than one person or corporation their liability to perform the covenants herein contained to be performed by the Contractor shall be joint and several.

The words "contractor" and "he" or any derivatives thereof shall have a plural, feminine or neuter meaning where the context so requires.

The words "approved", "directed", "required", "considered necessary", "authorized", "acceptable", "satisfactory", or words of like import, shall mean approved, directed, required, considered necessary or authorized by and acceptable or satisfactory to the Engineer.

This Construction Order has been entered into and shall be governed by and constructed in accordance with the applicable municipal, provincial and federal laws.

**SECTION 2 BIDDING REQUIREMENTS AND CONDITIONS****110. 2.1 Contents of Tender Forms**

The bidder will be furnished by the Department, upon request, with a tender form. This form will state the location and description of the contemplated construction and will show an estimate of the various quantities and kinds of work to be performed or materials to be furnished, with a schedule of items for which bid prices are invited. It will state the time in which the work must be completed, the amount of liquidated damages, the percentage of the bid bond, and the date of the opening of tenders. The tender form will also include any special provisions or requirements which vary from or are not contained in the standard specifications. All papers bound with or attached to the tender form are necessary parts thereof and must not be detached or altered.

The plans, specifications and other documents, designated in the tender form will be considered a part of the tender whether attached or not.

**2.2 Quantities**

The quantities set forth in the tender form are estimated only.

### 110. 2.3 Examination of Plans, Specifications, Special Provisions and Site of Work

Each bidder shall examine carefully the site of the proposed work, the tender, plans, specifications and Special Provisions before submitting a tender. Bidders shall also be responsible to examine any offsite conditions which may affect the work. It is mutually agreed that submission of a bid shall be prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the plans, specifications, supplemental specifications and special provisions.

### 2.4 Preparation of Tenders

Tenders shall be submitted on the form furnished by the Department. Bidders shall show;

- a) a unit price for each item for which a quantity is given,
- b) the product of each estimated quantity and its respective unit price,
- c) a lump sum price for each lump sum item given,
- d) where a unit price or lump sum price is to be nil, it shall be so indicated,
- e) the total amount of the tender by adding the amounts of the various items including the amount set forth therein for extra work.

### 2.5 Alternative Bids

When alternatives are provided for on the tender bid pages, a bidder may submit a bid on one or more of the alternatives. The Department will, in determining the successful bidder, take into consideration all the possible advantages and disadvantages of each alternative.

### 2.6 Changes in Tenders

No change shall be made in the wording of the tender form, or in the items set forth therein. Tenders that contain any omission, erasure, alteration, or item not called for, or that contain proposals submitted in any other form than in the form furnished by the Department may be rejected by the Department as irregular.

When a tender has been submitted to the Department by the Contractor, the Department will accept delivered or facsimile transmitted changes to the information, providing the changes are received prior to the time set for opening of the tenders. A change on the bid page may be submitted by indicating the amount of increase or decrease to the unit price or lump sum price of a bid item and the resulting increased or decreased adjustment to the Total Price. The Contractor shall quote the tender number and description on the letter, when submitting a change on the bid page.

### 2.7 Signing of Tenders

Each tender shall be plainly signed by the bidder and the signature shall be witnessed or sealed. The address of the bidder, his telephone number, and the date on which the tender is signed by him shall also be shown.

## 110. 2.8 Faxed Tenders

The Department will accept facsimile transmitted tenders prior to the time set for tender opening. The faxed tender shall consist of the instruction to bidders page, bid page, signing page and any other page/s where information is required to be submitted. The Department will not be responsible for facsimiles to other than the designated fax number, the confidentiality of faxed tenders or the Contractor's inability to transmit a faxed tender for any reason whatsoever.

## 2.9 Withdrawal of Tenders

A bidder may, without prejudice to himself, withdraw a tender after it has been deposited with the Department provided the request for such withdrawal is received by the Department, in writing or by facsimile, before the time set for opening tenders. The bidder may then submit a revised tender provided it is received prior to the time set for opening tenders.

## 2.10 Tender Amendments

Prior to the date for opening of tenders, the Department may issue amendments to the tender by providing copies of the amendment to each Contractor who has obtained a tender.

The Contractor shall formally acknowledge receipt of all Amendments to a Tender on the Signing Page of the Tender. The amendment acknowledgement section must be completed by inserting each Amendment number and the date of each Amendment in the spaces provided.

Failure to acknowledge receipt of an Amendment by completion of the "Amendment Acknowledgement" section of the Tender, shall cause the Tender to be rejected.

In the event that a bid has already been filed with or mailed to the Department before an Amendment is issued, the Department will accept a faxed acknowledgement of the Amendment, provided that the faxed acknowledgement is received prior to Tender Opening.

## 2.11 Opening of Tenders

Tenders will be opened and read publicly immediately after the time for receiving them.

Tenders received after the time for opening of bids will be returned to the bidder unopened.

## 2.12 Consideration of Tenders

The omission of a unit price/s will not invalidate a tender provided the indicated extension of the item/s does not represent an amount greater than 10% of the Total Price. Where the unit price and the extension of a bid item are not shown and left blank, the tender will be rejected. A tender will also be rejected where a lump sum bid item is left blank.

Any obviously unbalanced tender may be rejected by the Department.

**SECTION 3 AWARD OF CONSTRUCTION ORDER**

110. 3 Award of the Construction Order will be as specified on Page 1 of the Construction Order form entitled "Instruction to Bidders." (See Page 7)



**INSTRUCTION TO BIDDERS**

Construction Order No. \_\_\_\_\_

**SUBMISSION OF OFFERS**

Tenders will be accepted in an envelope or by facsimile, FAX No. (204)\_\_\_\_\_. The Department will not be responsible for facsimiles to other than the designated fax number. Tenders to be mailed or delivered shall be enclosed in an envelope, where possible the special envelope furnished by the Department, which shall be sealed, and addressed to:

MB **Transportation** and Government Services  
 Contract Branch, 16<sup>th</sup> Floor  
 215 Garry Street, Winnipeg, MB R3C 3Z1  
 Phone No. (204)\_\_\_\_\_

Offers will be received up to 12:00 Noon local time on \_\_\_\_\_, 20\_\_\_\_; envelopes shall be plainly marked on the outside as follows

**TENDER FOR:****CONFIRMATION OF FAXED LOW BID**

Upon notification, the low bidder shall submit the original offer form, on which, the Contractor, has placed his signature, duly witnessed or sealed, to the above address within three working days of request by the Department.

**CONSIDERATION OF OFFERS**

The comparison of bids will be based on the correct extension and summation of all items in the offer at prices bid. In the event of a discrepancy between the unit bid price and extension, the unit bid price will govern.

**REJECTION OF OFFERS**

The Minister may reject offers, waive defects, or accept any offer, which he may consider in the best interest of the Province.

**QUALIFICATION OF BIDDER**

Before awarding of Construction Order, the Department may require a bidder to submit the following information:

- (a) Proof that the bidder is incorporated or otherwise authorized to do business in Manitoba and a list of signing officers of the company;
- (b) Proof that the bidder is financially capable of carrying out the terms of the Construction Order;
- (c) Proof that the bidder can be legally bound by a Contract;
- (d) A list showing the number and type of each piece of equipment that the bidder intends to use in the performance of the work;
- (e) A schedule outlining the bidder's plan for proceeding with the various phases of work.

Failure to provide this information may cause the offer to be rejected.

**AWARD OF CONSTRUCTION ORDER**

- (a) The Department will endeavour to award the Construction Order or reject all offers within twenty days of the date on which they were opened. The successful bidder will be notified by letter, mailed to the address shown on the offer, that his bid has been accepted and that he has been awarded the Construction Order.
- (b) If no award is made within twenty days from the opening of offers, a bidder may request in the withdrawal of his offer in writing or by fax. Such withdrawal of an offer will be considered effective on the receipt of the request by the Department. In the event, that the bidder does not request the withdrawal of his offer, he will, upon its acceptance, be under the same obligation to enter into a Construction Order as he was prior to the expiration of the said twenty days. Bidders will automatically be relieved of any obligation to enter into a Construction Order with the Department if no award is made within thirty days of the date on which the offers were opened.

**SIGNING OF CONSTRUCTION ORDERS**

The original offer form on which the Contractor has placed his signature, duly witnessed or sealed, when approved by the Minister or his designate, will be the Construction Order.

Copy No. \_\_\_\_\_

**SECTION 4**    SCOPE OF WORK

## 110. 4.1    Intent of Plans and Specifications

The plans and the specifications shall be part of the Construction Order.

When the Contractor is furnished a plan for the work included in the Construction Order, it shall be his responsibility to check over and compare it with any other plans furnished and with work then in place.

The Contractor shall keep at least one complete set of the plans and Specifications at the site at all times.

Figure dimensions on plans shall be given precedence over scaled ones. In case of an obvious error the dimension most consistent with the Construction Order shall be accepted.

## 4.2    Alterations in Plans

The Department may, from time to time, make alterations in the plans as determined by the Engineer, and these alterations will not be considered as a waiver of any condition of the Construction Order.

## 4.3    Items Covered by Unit and Lump Sum Prices

In addition to covering the cost of the items of work described in the Construction Order, the unit prices and lump sums shall cover the cost of furnishing materials, plant, labour, transportation and incidentals necessary for carrying out the work.

## 4.4    Extra Work

The amount shown for Extra Work shall be included in the total Construction Order price.

The amount shown for Extra Work is only an estimate. The actual amount paid to the Contractor under this item will be based on the actual work done and may be nil, less than or greater than the estimated cost.

No Extra Work will be paid for unless it has been authorized by an Extra Work Order. The Contractor shall perform all authorized Extra Work.

**4.5    Basis of Payment for Extra Work**

When Extra Work is authorized and performed, the Contractor will be paid in accordance with whichever of the following provisions are decided upon:

- (a)    At the rate or rates as set forth in the Construction Order for similar work, or
- (b)    At the rate or rates per unit set out in the Extra Work order, or
- (c)    At the Contractor's actual cost. Actual cost is considered to be the total of;
  - (i)    wages of supervisory staff and employees other than operators of equipment, including overtime payments, plus 30% to cover payments made pursuant to the Workers Compensation Act, Vacation with Pay Act, Unemployment Insurance, Pension Plans, Sick Leave, work breaks and other like employee benefits and payroll costs,

**110. 4.5 Basis of Payment for Extra Work (Cont'd)**

- (ii) the cost of room and board when supplied by the Contractor, for other than operators of equipment, at a standard rate per man-hour,
- (iii) rental of equipment at the rates approved for Department use, of any equipment on or adjacent to the site at the time the Extra Work is carried out. A 10% overhead cost for administration will be added to the rates when the equipment supplied is not owned by the Contractor, **Sub-Contractor** or an Associated Company,
- (iv) rental of equipment at approved rates, this equipment considered by the Engineer as being necessary to perform the Extra Work and is not included in (iii) above. A 10% overhead cost for administration will be added to the approved rates when the equipment supplied is not owned by the Contractor, **Sub-Contractor** or an Associated Company,
- (v) cost of materials,
- (vi) 15% of items (i) and (v).

When Extra Work is performed on an actual cost basis, the Contractor shall keep a daily record. The record shall include the names and number of hours worked by each worker and the number of hours worked by each piece of equipment. The record shall be signed by the Contractor or his representative in charge of the work and submitted to the Engineer for approval. Claims for materials in connection with Extra Work shall be submitted by the Contractor to the Engineer, on certified statements, not later than the tenth day of the month following that in which the Extra Work was performed. The Contractor shall submit receipted bills for materials included in the statements.

**SECTION 5 CONTROL OF WORK****110. 5.1 Authority of the Engineer**

The Engineer will decide all questions which may arise as to:

- (a) the quality and acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work,
- (b) the interpretation of the plans and specifications,
- (c) the acceptable fulfilment of the Construction Order on the part of the Contractor,
- (d) disputes and mutual rights between Contractors,
- (e) compensation.

The Engineer will have authority to make effective any order which the Contractor fails to carry out promptly.

**5.2 Layout of the Work**

Where appropriate, construction stakes will be placed by the Engineer to mark the location, alignment and elevation of the work. The Contractor shall assume full responsibility for dimensions and elevations measured from the stakes and shall be responsible for maintaining all stakes set by the Engineer. The cost of damage to construction stakes caused by neglect on the part of the Contractor will be deducted from the progressive payments.

## 110. 5.2 Layout of the Work (Cont'd)

If an error in the plans, specifications or the directions of the Engineer is suspected, work shall be discontinued until the error is rectified.

Insofar as bridge work is concerned, the Contractor shall supply to the Engineer, as necessary, boats and crew, scaffolding, labour, and any other assistance that may be required by the Engineer.

The Engineer will establish the structure centreline, the location offset stakes for one of the substructure units and one benchmark. The Contractor shall be responsible for all measurements and elevation settings taken from the substructure unit and the benchmark established by the Engineer. The Engineer will check the Contractor's measurements and elevations prior to start of construction.

## 5.3 Starting Location

The location at which the Contractor commences construction and the sequence of operations will be as permitted or directed by the Engineer.

## 5.4 Instructions

The Contractor shall, at all times, have a responsible representative in charge of the work who shall be authorized to receive on behalf of the Contractor written or verbal instructions. Copies of the written instruction shall be signed as having been received by the representative in charge at the time that these are issued.

## 5.5 Incompetent Worker

Any employee or agent employed by the Contractor who, in the opinion of the Engineer, does not perform the work in a proper skilful manner, is disrespectful, intemperate, disorderly, or otherwise objectionable, shall, at the written request of the Engineer, be promptly removed from the work. The foreman or worker shall not be employed again on the work without the written consent of the Engineer.

## 5.6 Protection of Survey Monuments

Before commencing construction, the Contractor shall identify the location of survey monuments located on the site. Monuments disturbed by the Contractor will be restored by the Department. The cost of restoring the monuments will be deducted from the progressive payments.

## 5.7 Conduct of Operations

The Contractor shall not undertake construction which may interfere with the progress of those engaged in other work for the Department without first discussing, with others, plans for doing the work. If the parties are unable to arrive at a mutually satisfactory time for doing the work, the matter shall be referred to the Engineer for his decision. The Contractor shall save harmless the Department from and against all just claims arising as a result of any action on his part or the action of anyone working for him which interfered with the progress of those engaged in other work for the Department.

## 5.8 Camps

Camps shall be constructed and operated in accordance with the requirements of the appropriate government authorities responsible for public health, safety and the environment.

## 110. 5.9 Equipment

Equipment to be used for the work shall be subject to approval and shall be maintained in satisfactory working condition for the duration of the work. The Engineer shall have access to the equipment at all times for purposes pertaining to the work. The Contractor shall notify the Engineer prior to removing equipment from the project.

## 5.10 Roads

The Contractor shall, during the term of the Construction Order, maintain at his expense all haul roads except Provincial Trunk Highways and Provincial Roads between sources of material supply and the site unless other arrangements have been made with the local authorities. Prior to the commencement of hauling the Contractor shall arrange for an inspection of the roads upon which hauling is to take place. The inspection shall be made by the Contractor, the Engineer and a responsible representative of the Municipality or Territory. During the inspection, notes shall be kept on the condition of each kilometre of haul road. On completion of the hauling, the same persons, if possible, shall examine the haul roads and determine how much work, if any, the Contractor shall do in order to leave them in as good condition as when hauling commenced. Under no circumstances will the final contract payment be made to the Contractor until at least two of the above noted parties indicate that they are fully satisfied with the conditions of the haul roads.

If, in the opinion of the Engineer, damage is being done to public roads by the Contractor's equipment, the Contractor shall, at his own expense and on the direction of the Engineer, remove the cause of the damage.

When work is interrupted by highway load restrictions and the project is delayed, the Department will either;

- (i) Assess no working days or liquidated damages during this period, or
- (ii) Extend the calendar completion date equal to the interrupted time.

## 5.11 Rejected Work and Materials

Faulty work discovered prior to acceptance of the work shall be rectified by the Contractor. Rejected material shall be removed from the site. Should the Contractor neglect or refuse to rectify faulty work, or remove the rejected material, the Engineer will cause the faulty work to be rectified and the rejected material removed. The cost will be deducted from the progressive payments.

SECTION 6 CONTROL OF MATERIALS

## 110. 6.1 Storage and Care of Materials

The Contractor shall, prior to receipt of material, provide adequate and proper storage facilities and, on receipt of material, promptly place it in storage, except when it is to be incorporated forthwith into the work. The Contractor shall provide adequate protection for materials that are subject to deterioration during their transportation, handling, storage and use by him. Material supplied by the Department or otherwise, damaged while in the possession of, or under the control of the Contractor, shall be replaced by the Contractor at his own expense.

## 110. 6.1 Storage and Care of Materials (Cont'd)

The Contractor shall give the Supplier and Engineer four days notice of his intention to require the Supplier to provide materials ordered by the Department for the work. The notice shall state the applicable purchase order number or Contract number. If the Contractor requires the Supplier to provide more material than can be used and it becomes necessary to return it to the source of supply, the Contractor shall pay all delivery and return charges.

The Contractor shall give two days notice of his intention to remove materials supplied by the Department from its storage yard. The notice is to be given to the storekeeper of the storage yard.

Materials supplied to the Contractor by the Department shall not be used for any purpose other than that for which they were intended. The Contractor shall be liable for demurrage, rentals and other charges for handling, hauling or storing materials ordered for the Contract.

The Contractor shall, at the time materials are released to him, check and record the quantity of materials. Shortages, discrepancies, or material in bad condition, shall immediately be reported in writing to the Supplier and the Engineer.

The Contractor shall be held responsible for the acceptance, at the point of delivery, of any damaged material, unless, prior to acceptance, the Engineer gives the Contractor a release in writing, from all responsibility in accepting such material.

If a question should arise as to the suitability of any material supplied by the Department for use on the work, such material shall remain in the care of and at the risk of the Contractor until it can be examined and tested by the Engineer to determine its fitness for the purpose for which it was purchased.

Any theft of, loss of, or damage to material after delivery to the Contractor will be charged against him.

**6.2 Material from Pits, Quarries, and Other Deposits**

Permission in writing shall be obtained by the Contractor prior to removing sand, gravel and quarried material from deposits located on Crown Lands, from

- (i) The Mining Recorders office of the Department of Energy and Mines, for Crown Lands not controlled by the Department of **Transportation and Government Services**;
- (ii) The Engineer, for gravel pits owned or controlled by the Department;

Sand, gravel and quarried materials removed from Crown Lands and used on Department projects is not subject to payment of Royalty. Subject to the approval of the Engineer, the Contractor may use materials from such lands for building and maintaining production facilities and haul roads, necessary for the performance of work, but no payment will be made to the Contractor for such materials or for any work done in connection therewith.

Prior to excavating sand, gravel or quarried materials from crown or privately owned lands the Contractor shall report to the Department of Energy and Mines, the location of the pits or quarries and the proposed date of commencement of operations and shall, immediately after removing sand or gravel, submit a report showing the quantity of each material removed from each pit.

Permission to remove sand, gravel and quarried materials does not guarantee the quality or quantity of the materials.

**110. 6.2 Material from Pits, Quarries, and Other Deposits (Cont'd)**

Surplus aggregate from Crown Lands, produced by the Contractor's plant, not required or beyond that quantity required for the Construction Order, shall be neatly piled by the Contractor.

In **Department** owned pits, the Department will purchase up to a maximum of 10% above the quantity that the Contractor was instructed to crush, at the rates specified in the Provisions for Interim Payment excluding the rate for the supply of raw aggregate. Any quantity over 10% will become the Department's aggregate.

Surplus aggregate remained in the Energy and Mines controlled pits may be purchased by the Department at the rates specified in the provisions for interim payments, excluding the rate for the supply of raw aggregate or the Contractor may apply for a Stockpile Protection Permit in accordance with the Department procedures.

Upon completing his operations on any lands, the Contractor shall, at his expense, cleanup and vacate such lands and leave them in a condition satisfactory to the Department of Energy and Mines.

**6.3 Surplus Material**

Surplus materials supplied by the Department, which are not required in construction or permanently incorporated in the work.

The Contractor shall, if required, haul surplus materials to a location designated by the Engineer.

Payment for loading and hauling surplus materials to a designated location will be paid for on the basis of Extra Work.

**6.4 Salvaged Materials**

When the removal of material to be salvaged is necessary for the satisfactory completion of the work, the material shall be carefully salvaged, sorted and stored at the site or at the location specified in the Special Provisions.

**SECTION 7 LEGAL RELATIONS AND RESPONSIBILITIES****110. 7.1 Legal Responsibilities and Permits**

Entry into this Construction Order shall not relieve the Contractor of his responsibility to comply with all Acts, statutes, bylaws, regulations or ordinances of the Local, Provincial or Federal Authorities pertaining to the work.

**7.2 Public Convenience and Safety**

The Contractor shall take every measure to provide for the safety and convenience of the highway users and residents along the highway and provide and maintain at his own expense access to driveways, houses, buildings or other property contiguous to the highway under construction.

## 110. 7.3 Care of Various Services

The Contractor shall provide access to and take precautions to prevent damage to services such as railroad facilities, oil pipe lines, gas pipe lines, water & sewage pipes, electrical and telephone lines and cables, fire hydrants, manholes and catchbasins. The Contractor shall determine the exact location of such services and conduct his operations so as to avoid the possibility of damaging them. The Contractor shall pay just claims arising directly or indirectly from damage caused by his construction operations and shall save harmless the Department from and against all claims arising therefrom.

**7.4 Workplace Safety and Risk Management**

**The Contractor shall develop operational safety policies, procedures and plans to prevent loss or injury to any person or property on or travelling through the site. The Contractor shall familiarize himself, his staff and his subcontractors with the terms of the Manitoba Workplace Safety and Health Act W210 and Regulations to ensure complete understanding respecting the responsibilities given and compliance required. The Workplace Safety and Health Act W210, Regulations and other related safety information can be obtained from Manitoba Labour, Workplace Safety and Health Branch. A current copy of the Department's "Project Safety Manual" can be obtained from Manitoba Transportation and Government Services, Employee Safety and Loss Management Branch.**

**The Contractor shall indemnify and save harmless the Department from and against all claims for damages arising from any lack of precaution or acts of negligence on the part of the Contractor, Sub-Contractor or their employees.**

## 7.5 Insurance

1. The Contractor shall, at its own expense, provide for and maintain the following insurance:
  - A. General Liability Insurance:
    - (i) The Contractor shall maintain throughout the term of the Construction Order, public liability and property damage insurance against claims for personal and bodily injury, death or damage to property arising out of any of the operations, acts or omissions of the Contractor or any of its officers, employees or agents under the Construction Order, including contingent coverage for all subcontractors; such insurance shall provide, at minimum \$2 million (\$2,000,000) per occurrence limits of liability, in a form satisfactory to the Government of Manitoba;
    - (ii) Such insurance shall include coverage for premises and operations, completed operations, blanket contractual, extended bodily injury, broad form automobile, broad form property damage, non-owned automobile liability, and where applicable, damage to underground property and damage to property, building or land caused by;
      - (a) the use of explosives or blasting;
      - (b) vibration from pile driving or caisson work; or
      - (c) removal or weakening of support of such property, building or land whether such support be natural or otherwise; and



## 110. 7.5 Insurance (Cont'd)

- (iii) Such insurance shall include cross-liability and name the Government of Manitoba, its officers, employees and agents as Additional Insured with respect to operations performed under the Construction Order. Completed operations coverage shall be maintained for 24 months following completion of the work;

- B. Automobile Liability Insurance

The Contractor shall obtain and maintain throughout the term of the Construction Order automobile public liability and property damage liability insurance on all licensed vehicles owned or operated by the Contractor and used on the project, with minimum limits of liability of \$2 million (\$2,000,000) per vehicle; and

- C. Workers Compensation Insurance

The Contractor shall obtain and maintain Workers Compensation insurance as required by The Workers Compensation Act. The Contractor shall be registered and be in good standing with the Workers Compensation Board.

- 2. Notice of Cancellation or Alteration

Where provided, such general liability, professional liability and/or automobile public liability and property damage insurance shall contain a clause which states that the insurers will not cancel, materially alter or cause the policy(ies) to lapse without giving 30 days prior notice in writing to the Province.

- 3. Certificates of Insurance

When requested by the Department, the Contractor shall submit a certified copy of the general liability policy or certificate in lieu thereof evidencing said insurance. The insurance policy or certificate shall be submitted prior to the date in the Contract where the assessment of working days will commence and/or the date of commencement of Work. As well, when requested by the Department, the Contractor shall submit certified copies of professional liability, automobile public liability and property damage liability and Workers Compensation, policies or certificates in lieu thereof evidencing said insurance.

- 4. Contractor Shall Not Impair or Invalidate Policies

The Contractor shall not do or omit to do or suffer anything to be done or omitted to be done on the Contract or in performance of the Work which will in any way impair or invalidate such policy or policies.

- 5. Each Party to Insure Own Property

Each party is responsible for insuring its own property directly or indirectly connected with the Contract and the Work except for materials supplied by the Department as referred to in Section **110.6.1**.

- 6. Course of Construction Insurance for Bridges

Where applicable, structures such as bridges shall be insured by the Contractor against all risks of physical damage or loss, on a full replacement cost basis, through the Course of Construction or Builders' Risk Policy.

## 110. 7.5 Insurance (Cont'd)

## 7. Professional Liability Insurance

When applicable, the Contractor shall provide for and maintain Professional Liability Insurance.

The Contractor shall ensure that all Consultants engaged or employed by the Contractor or subcontractor maintain Professional Liability Insurance throughout the term of the Contract. "Claims Made Insurance" shall be provided for a minimum of five years following completion of all work and/or services under the contract, insurance against claims arising out of faulty design, maps, plans and specifications or any other error, omission, mistake of a professional or technical nature committed or alleged to have been committed by or on behalf of the Consultant, and provide, at minimum, \$2 million (\$2,000,000) limits of liability, in a form satisfactory to the Government of Manitoba.

The Contractor shall provide satisfactory written evidence of this insurance as required by the Department.

SECTION 8 PROSECUTION AND PROGRESS OF WORK

## 110. 8.1 Assigning or Sub-Contracting

The Contractor shall ensure that all Sub-Contractors working on the project have adequate insurance and comply with the Acts and Regulations. The Department may require a list of Sub-Contractors prior to the award of Contract. Requests for information on a Contract by Sub-Contractors and/or suppliers shall be directed to the Contractor, unless otherwise authorized by the Contractor.

## 8.2 Contract Completion

The time for the completion of the work contemplated in the Construction Order will be specified either as a calendar date or as a number of working days. The completion of the work within the time as specified is an essential part of the Construction Order.

Should the Contractor fail to complete the work within the time allotted, or within such extra time as may have been allowed by extensions, the sum set forth as "Liquidated Damages" will be deducted for each and every day that Liquidated Damages may be charged in accordance with the terms of the Construction Order.

When the Construction Order has not been completed within the required time, the Contractor shall continue to perform the work diligently and expeditiously. Permission to continue and finish the work or any part of it after the time fixed for its completion, shall in no way be considered as a waiver on the part of the Department of any of its rights under the Contract, and time shall continue to be an essential part of the Construction Order.

## 110. 8.3 Temporary Suspension of Work

The Engineer may suspend the work wholly or in part by written order for such period as he may deem necessary due to conditions considered unfavourable for the suitable prosecution of the work, unsuitable weather, failure on the part of the Contractor to correct unsafe conditions, failure to carry out orders given or failure to perform any provisions of the Construction Order.

## 8.4 Extensions of Time

The time set forth in the Construction Order for its completion may be extended free of liquidated damages;

- a) When the Construction Order is not completed within the required time because the Contractor was ordered to perform unspecified Extra Work, the Engineer will extend the number of days allowed for completion by the number of days required to perform the Extra Work.
- b) When the Construction Order is not completed within the required time because of increases to the original quantities, the Engineer will extend the number of days allowed for completion based on the following formula:

$$E = \frac{F \times D}{O} - D$$

E = Extension of time in Days

F = Finished Construction Order Value

D = Number of specified days allowed in Construction Order, or, in a Calendar Completion Contract, the number of days between the date of the award letter and the specified completion date.

O = Original Construction Order Value

- c) By the Director, in the form of a written approval, when:
  - (i) The Contractor is able to prove conclusively that conditions encountered during the work were much more difficult than could reasonably have been anticipated and,
  - (ii) The Contractor submits a request for an extension of time accompanied by evidence of the difficult conditions and forwards it to the Director prior to completion of the Construction Order.

No claims for damages shall be made against the Department on account of delays on the part of the Department in the delivery of materials or in the performance of work; but should there be unduly prolonged delays upon the part of the Department in the delivery of any materials required for the work or in the performance of the work, the Contractor shall be entitled to a corresponding extension of time to complete the work.

**110. 8.5 Termination of Construction Order**

Notwithstanding any extension of time, if at any time prior to the completion of the Construction Order, for any cause whatsoever, whether or not due to the fault of the Contractor, Sub-Contractor, or the employees of either of them, or otherwise, the work, in the opinion of the Director, is not being performed in accordance with the terms of the Specifications and the Construction Order, or is not progressing satisfactorily, or is not likely to be completed within the time specified, the Department, after forty-eight hours notice given to the Contractor or his agent, may re-let the work and enter into a new Construction Order for the whole or any part of the uncompleted work, or otherwise cause said work or any part thereof to be completed, and pay for same out of any monies of the Contractor which may be due or accruing due him from the Department, and may further charge the Contractor with the amount of any money which the Department may have spent in connection with such work over and above the monies aforesaid of the Contractor, and may collect the same as a debt due from the Contractor to the Department. The Department reserves the right to take over and use any plant and materials being used in the work. The Contractor hereby agrees that he will not remove, dispose of, nor transfer his rights in any of the plants or materials after he has received the above-mentioned forty-eight hours notice, and any assignment or transfer made in contravention of this provision is invalid.

**The normal penalty for non-performance will be removal from the bidders list for two years. Reinstatement after two years will be on approval of the Department.**

**8.6 Maintenance**

The Contractor shall satisfactorily maintain the work described in the Construction Order until the final acceptance of the work.

**8.7 Cleaning Up**

The Contractor shall conduct all his day to day operations in such a manner as to avoid creating any unpleasant appearances or any conditions that will be detrimental to or mar the surrounding area or waterways. Waste materials and refuse shall be promptly disposed of in a manner that will not contaminate or mar the surrounding area or waterways.

Upon completion and before final acceptance of the work, the site occupied by the Contractor in connection with the work shall be cleaned of rubbish, excess materials, temporary structures, and equipment; and all parts of the work shall be left in an acceptable condition.

**8.8 Final Acceptance of Work**

Until final completion and final acceptance of the work, the work shall be under the charge and care of the Contractor, and he shall take every necessary care against damage to the roadway or any part of the work by the action of the elements, or from any other cause whatsoever arising from the execution of the work or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good, at his own expense, all damages to any portion of the roadway or any part of the work, occasioned by any of the above mentioned causes, before final completion and acceptance.

When work has been completed according to the plans and specifications and upon certification of the Engineer, final acceptance of the work will be made by the Department.

## 110. 8.9 Opening to Traffic

The work shall not be open to traffic until authorized by the Engineer. When, in the opinion of the Engineer, the work or any portion thereof, is in an acceptable condition for travel, it shall be opened to traffic as may be directed by the Engineer, but such opening shall not be construed as an acceptance of the roadway, or any part of it, or as a waiver of any of the provisions of the Contract or of the Specifications.

Necessary repairs or renewals made on any section of the roadway due to its being open to travel, under instructions from the Engineer, and to ordinary wear and tear, or otherwise, prior to the completion and acceptance of the roadway, shall be performed at the expense of the Contractor.

If the Contractor is dilatory in completing certain phases of the work, the engineer may order the road open to traffic. In such an event, the Contractor, prior to final acceptance, shall not be relieved of his liability and responsibility during the period the road is so opened.

Where the work is divided into sections, upon application by the Contractor, the Department may take over for maintenance any section which may be found to be completed in a satisfactory manner. No such section will be taken over unless it connects with a completed section or road; said taking over shall not be deemed to be final acceptance of the work or in any way prejudice the rights of the Department under the Contract or otherwise.

SECTION 9 CLAIMS AND PAYMENTS110. 9.1 **Claims for Adjustments**

As time is of the essence, every effort must be made to resolve disputes at the field level as they occur. Resolution on claims against the Department should be achieved in one or two days at the maximum. Should it not be possible to resolve the dispute in this manner, then the Contractor shall submit the claim in writing to the Section Head. The claim must show justification and background calculations.

- (i) The Section Head will investigate and respond to the claim in writing within 7 days of receipt, with copies to the Director responsible for the project and the **Executive Director of Construction and Maintenance**.

If the claim is considered invalid the response should include why the Department does not feel the claim is valid.

If the claim is deemed valid but the Department does not agree on the compensation requested, the Contractor should be contacted and a meeting set up to determine fair compensation.

Quality Assurance will participate in the meeting in an advisory capacity, when requested.

- (ii) The Contractor may appeal the decision of the Section Head to the Director responsible for the project. The Director shall respond within 7 days.
- (iii) The Contractor may request that the **Executive Director of Construction and Maintenance** review the decision made by the Director responsible for the project.

**110. 9.1 Claims for Adjustments (Cont'd)**

- (iv) In the event that the dispute or claim cannot be resolved by the **Executive Director of Construction and Maintenance**, the dispute or claim may, with the consent of both the Department and Contractor, be forwarded to binding arbitration in accordance with the provisions of The Arbitration Act, except that any decision of the arbitrator will be final and binding and not subject to appeal.

**9.2 Changes in Quantity**

Unless the contract provides otherwise, adjustments in contract unit prices for increased or decreased quantities shall be governed by the following provisions:

- 1) Major Contract Item means a contract item representing at least 7% of the total contract price.
- 2) If the final quantity of a Major Contract Item is within 20% of the estimated quantity, there will be no adjustment to the contract unit price.
- 3) If the final quantity of a Major Contract Item is less than 80% of the estimated quantity **and the total contract price is under by a minimum of 15%**, the Contractor may submit a written request for an adjustment of the contract unit price. The Department will consider the request subject to the following limitations:
  - a) an adjustment will be considered only to the extent that the decrease in the quantity justifies an increase in the pro-rata share of fixed expenses chargeable to that Major Contract Item.
  - b) Fixed expenses will be deemed to be 20% of the bid price.**
  - c) no allowance will be made for anticipated profits on any work not performed.
  - d) the total adjusted payment shall not exceed 80% of the payment which would be made for the estimated quantity at the contract unit price.

**The method used to adjust the unit price will be as follows:**

- **Determine the Fixed Cost = 20% x Unit Price**
  - **Determine the balance of Unit Price = Unit Price - Fixed Cost**
  - **Calculate Adjusted Fixed Cost rounded to nearest cent (4)**  

$$= \text{Fixed Cost} \times \frac{\text{Estimated Quantity}}{\text{Actual Quantity}}$$
  - **Calculate the Adjusted Unit Price**  

$$= \text{Balance of Unit Price} + \text{Adjusted Fixed Cost}$$
- 4) If the final quantity of a Major Contract Item is more than 120% of the estimated quantity, either party may submit a written request to the other for an adjustment of the contract unit price. The request will be considered by the party receiving it subject to the following limitations:
    - a) the contract unit price shall apply to all quantities up to and including 120% of the estimated quantity.
    - b) if adjusted, the adjusted unit price shall apply only to the quantities in excess of 120% of the estimated quantity.

**110. 9.2 Changes in Quantity (Cont'd)**

- 5) Any request for an adjustment of the contract unit price shall be:
  - a) in writing.
  - b) received no later than 30 days after the Department has notified the Contractor of the final quantities, and
  - c) accompanied by supporting evidence.
- 6) Nothing in this section shall excuse the Contractor from proceeding with the work.

**9.3 Financial Obligations of Contractor**

The Contractor shall pay every just claim for the cost of work, service or material made by a person who performs any work or service, or places or furnishes material to be used in the performance of the Construction Order. The payment of every such claim by the Contractor shall be an obligation under the Construction Order. So long as any such claim remains unsatisfied the Construction Order shall be deemed to be uncompleted.

Where a written claim for the cost of work, service or material is placed by a third party, the Department will retain from any funds still owing to the Contractor an amount equal to the claim as the minimum holdback until the claim is satisfied.

When requested, the Contractor shall supply a statement showing all obligations incurred by the Contractor in connection with the work and remaining unpaid at the date of submission of the statement. Supplying such a statement shall be a condition precedent to the payment of any money due the Contractor under the Construction Order.

**9.4 Sales Tax**

The Manitoba Government is not subject to payment of the Goods and Services Tax (GST), therefore the tender cost for all work to be carried out shall not contain the provision for any Goods and Services Tax. The Department will issue a statement certifying the goods and services provided under this contract are for the sole use of the Manitoba Government.

Applicable Provincial Sales Tax for processing and hauling aggregates will be paid by the Department, on behalf of the Contractor.

All other applicable Provincial and Federal Sales Taxes will not be reimbursed to the Contractor or paid on behalf of the Contractor but should be included in the applicable unit or lump sum prices. Sales Tax should not be added as a separate item.

**9.5 Workers Compensation Payments**

Should the Contractor fail to pay to the Workers Compensation Board, premiums on the wages of his employees, or compensation awarded by the Workers Compensation Board in respect to the work, the Department may deduct from any money due the Contractor under the Construction Order a sum sufficient to pay all of such amounts to the Workers Compensation Board.

## 110. 9.6 Payments to Contractor

Progress payments will be based on estimates prepared and certified by the Engineer.

The total amount paid to the Contractor will be determined by multiplying the actual quantities of work, which have been certified by the Engineer, by the applicable unit prices, plus payments for work actually performed for which the basis of payment is a lump sum amount, plus payments for extra work actually performed.

When, in the opinion of the Engineer, lump sum prices are unbalanced, the payments for the applicable lump sum item may be made on a pro-rata basis over the life of the Construction Order.

On payments made prior to completion of the Construction Order, 15% of the amount of each payment will be retained as holdback.

Where a Construction Order is estimated to be 75% complete in terms of dollars and work is stopped for a seasonal shutdown, the Contractor may request a reduction in holdback to the Department. If approved, the Department may reduce the holdback to 7.5% or \$1,000.00, whichever is the greater, providing the Contractor submits a Statutory Declaration certifying that all just claims against the Contractor in connection with the Construction Order have been paid.

Payment for any reduction in holdback will be held for 40 days after the date the Contractor last worked.

The Department will release the final payment providing;

- (i) The Engineer has accepted the completed work.
- (ii) The Contractor has filed with the Department a Statutory Declaration, on the form provided by the Department, certifying that all just claims against the Contractor in connection with the Construction Order have been paid.
- (iii) There are no outstanding claims of which the Department has been notified.

If, four months after the completion of the work on a Construction Order the Department is unable to finalize the Contract due to outstanding claims or the Contractor is unable to submit the required Statutory Declaration, the Department shall proceed in accordance with the procedures outlined in the Highways and Transportation Construction Contracts Disbursement Act.

Neither the final inspection and acceptance, nor the final payment, nor any provision in the Construction Order shall relieve the Contractor of his responsibility for complying fully with all the terms and conditions of the Construction Order, and he shall remedy any defects or omissions arising out of non-compliance therewith that appear within one year after the date on which the final estimate, issued in accordance with the terms of the Contract, has been approved and paid, and he shall save harmless the Department from and against all claims for damages to persons or property arising out of any such defects or omissions, or the remedying thereof.