SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY
TO PUBLIC

107-1  LAWS TO BE OBSERVED

The Contractor shall keep himself fully informed of all Federal, State and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority which may in any manner affect those engaged or employed in the work or which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall indemnify and hold harmless the Board and the Department and their agents and employees from any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, by the Contractor or by his agents and employees. If during the course of the contract any such laws, ordinances and regulations, and all orders and decrees may be changed, the Contractor shall comply fully with the same.

It is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation and the Office of the Governor). This prohibition covers those vendors and contractors who:

(1) Have a contract with a governmental agency; or
(2) Have performed under such a contract within the past year; or
(3) Anticipate bidding on such a contract in the future.

The Contractor shall comply with all Federal, State and local regulations when performing building removal, asbestos removal and disposal, or underground storage tank removal and disposal. Any fines resulting from violations of any regulation are the sole responsibility of the Contractor and the Contractor agrees to indemnify and hold harmless the Board and the Department and their agents and employees against any assessment of such fines.

107-2  ASSIGNMENT OF CLAIMS VOID

In accordance with NCGS §143B-426.40A, the Department will not recognize any assignment of claims by any Contractor against the Department.

107-3  PERMITS AND LICENSES

The Contractor shall procure all permits and licenses except as otherwise specified; pay all charges, fees and taxes; and give all notices necessary and incident to the due and lawful prosecution of the work.

For asphalt plants and concrete batch plants located on the Department’s rights of way, apply for and obtain all environmental permits and licenses, including stormwater permits, before placement within the project limits or elsewhere on the Department’s rights of way. Use proven Best Management Practices and equip all plants with such pollution control equipment and devices as is necessary to meet all applicable Federal, State and local pollution requirements. Conduct compliance monitoring and report findings to each applicable environmental regulatory agency according to their required frequency.
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107-4 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 his Surety shall indemnify and save harmless the Department from any and all claims for infringement by reason of the use of such patented design, device, material, process, trademark or copyright and shall indemnify and save harmless the Department from any costs, expenses and damages which it may be obligated to pay at any time during the prosecution or after the completion of the work by reason of any alleged infringement.

107-5 ENCROACHMENT ON RIGHT OF WAY

Any entity wishing to encroach on highway right of way shall secure a written permit from the Department. The Contractor is not authorized to allow any entity to perform any work within the limits of the project unless such work has been authorized in writing by the Engineer.

When so directed by the Engineer, the Contractor shall make any repairs necessary due to such encroachments and such work will be paid as extra work.

107-6 FEDERAL PARTICIPATION

When the United States Government pays all or any portion of the cost of the work, the Federal laws authorizing such participation and the rules and regulations made pursuant to such laws shall be observed by the Contractor. The work will be subject to the inspection of the representative of such Federal agencies as are created for the administration of these laws. The Contractor shall have no right to make the Federal Government a party to any court action solely by reason of its participation in the cost of the work or by reason of its inspection of the work.

107-7 SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of 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. Control and manage disposal of sanitary waste such that no adverse impacts occur to water quality.

107-8 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall at all times conduct his work as to insure 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 in Section 150.

107-9 COORDINATION WITH RAILWAY

All work to be performed by the Contractor on railway right of way shall be performed in accordance with the contract and in a manner satisfactory to the railway company and shall be performed at such times and in such manner as not to unnecessarily interfere with the movement of traffic upon the track of the railway company. The Contractor shall use all care and precautions to avoid accidents, damage, or unnecessary delays or interference with the railway company's traffic or other property. The Contractor shall carry such railroad protective insurance and public liability and property damage insurance as may be stipulated in the contract. The Department shall not be responsible for any damage or injury to the railway company's traffic or property caused by the Contractor.
When the Contractor is required by the contract to transport materials or equipment across the tracks of any railway or to perform work on railway right of way, the Department will obtain any necessary written authority from the railway company for the establishment of a railway crossing or for the performance of work on railway right of way. The Contractor will not be required to bear the cost of any watchman service or flagging protection necessary due to such operations, as the railway company will be reimbursed directly by the Department for the cost of such work.

In case the Contractor elects or finds it necessary to transport materials or equipment across the tracks of any railway at any point where a crossing is not required by the contract or at any point other than an existing public crossing, he shall obtain specific written authority from the railway company for the establishment of a private railway crossing and shall bear all costs in connection with such crossing, including installation, drainage, maintenance, any necessary insurance, watchman service, flagging protection and removal of such private railway crossing.

107-10 WORK IN, OVER OR ADJACENT TO NAVIGABLE WATERS

All work in or over navigable waters shall be in accordance with conditions contained in the permit obtained by the Department from the authority granting the permit. These conditions will be included in the contract. The work shall be performed in such manner so as not to interfere with navigation of the waterways unless approval therefor is obtained from the authority granting the permit. The Department shall not be responsible for any damage or injury to entities upon or adjacent to navigable waters caused by the Contractor.

The Contractor shall prepare drawings necessary to obtain any addenda that may be required for his operations that are not included in the Department's permit and shall coordinate the submission with the Engineer.

107-11 PROTECTION AND RESTORATION OF PROPERTY

The Contractor shall be responsible for the protection from his activities of all public and private property on and adjacent to the work and shall use every reasonable precaution necessary to prevent damage or injury thereto. The Contractor shall use suitable precautions to prevent damage to pipes, conduits and other underground structures and to poles, wires, cables and other overhead structures.

The Contractor shall protect carefully from disturbance or damage all land monuments and property markers until the Engineer has witnessed or otherwise referenced their location and shall not remove them until directed.

The Contractor shall be responsible for the removal, preservation and resetting of all mailboxes disturbed by the construction operations. The mailboxes and their supports, when reset, shall be left in as good a condition as they were before removal. The Contractor will not be required to furnish new material except as required to repair damage resulting from construction operations.

The Contractor shall be held responsible for all damage or injury to property of any character resulting from any act, omission, negligence, or misconduct in the prosecution of the work. When any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, negligence, or misconduct in the execution of the work, he shall either restore at his own expense such property to a condition similar or equal to that existing before such damage or injury was done, or shall make good such damage or injury in a manner acceptable to the owner of the damaged property and to the Department. In case of failure on the part of the Contractor to restore such property or make good such damage or injury, the Department may, at the Contractor's expense, repair, rebuild, or otherwise restore such property in such manner as the Engineer may consider necessary.
107-12 CONTROL OF EROSION, Siltation and Pollution

(A) General

The Contractor shall take whatever measures are necessary to minimize soil erosion and siltation, water pollution and air pollution caused by his operations. The Contractor shall comply with the applicable regulations of all legally constituted authorities relating to pollution prevention and control. The Contractor shall keep himself fully informed of all such regulations that in any way affect the conduct of the work and shall at all times observe and comply with all such regulations. In the event of conflict between such regulations and the specifications, the more restrictive requirements shall apply.

The Engineer will limit the area over which clearing and grubbing, excavation, borrow and embankment operations are performed whenever the Contractor's operations do not make effective use of construction practices and temporary measures which will minimize erosion, or whenever construction operations have not been coordinated to effectively minimize erosion, or whenever permanent erosion control features are not being completed as soon as permitted by construction operations.

Following completion of any construction phase or operation, on any graded slope or any disturbed area, the Contractor shall provide ground cover sufficient to restrain erosion within 21 calendar days or within a time period specified by the NCG 010000 Construction Permit. The ground cover shall be either temporary or permanent and the type specified in the contract.

(B) Erosion and Siltation Control

The Contractor shall exercise every reasonable precaution throughout the life of the project to prevent the eroding of soil and the siltation of rivers, streams, lakes, reservoirs, other water impoundments, wetlands, ground surfaces or other property.

Before suspension of operations on the project or any portion thereof, the Contractor shall take all necessary measures to protect the construction area, including, but not limited to, borrow sources, soil type base course sources and waste areas from erosion during the period of suspension.

Unless otherwise approved in writing by the Engineer, construction operations in rivers, streams and water impoundments shall be restricted to those areas where channel changes are shown in the plans and to those areas which must be entered for the construction or removal of temporary or permanent structures.

Excavated materials shall not be deposited, nor shall earth dikes or other temporary earth structures be constructed, in rivers, streams, or impoundments. As an exception to the above, confined earth materials will be permitted when approved in writing by the Engineer.

Fording of live streams with construction equipment will not be permitted; therefore, temporary bridges or other structures shall be used wherever 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 necessary to construct channel changes and to construct or remove temporary or permanent structures.
(C) Coordination of Erosion Control Operations

Temporary and permanent erosion control measures shall be provided as shown in the plans or as directed by the Engineer. All permanent erosion control work shall be incorporated into the project at the earliest practicable time. Temporary erosion control measures shall be coordinated with permanent erosion control measures and all other work on the project to assure economical, effective and continuous erosion control throughout the construction and post construction period and to minimize siltation of rivers, streams, lakes, reservoirs, other water impoundments, wetlands, ground surfaces, or other property.

Temporary erosion control measures shall include, but not be limited to, the use of temporary berms, dikes, dams, drainage ditches, silt basins, silt ditches, slope drains, structures, vegetation, mulches, mats, netting, gravel, or any other methods or devices that are necessary. Temporary erosion control measures may include work outside the right-of-way or construction limits where such work is necessary as a result of construction such as borrow operations, haul roads, plant sites, equipment storage sites and disposal of waste or debris. The Contractor shall be liable for all damages to public or private property caused by silting or slides originating in waste areas furnished by the Contractor.

Materials for temporary erosion control measures shall have been approved by the Engineer before being used or shall be as directed by the Engineer. The Contractor shall acceptably maintain erosion control measures installed.

(D) Water and Air Pollution

Exercise every reasonable precaution throughout the life of the project to prevent pollution of ground waters and surface waters, such as rivers, streams and water impoundments. Do not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, concrete, bitumens and any other petroleum products. Operate and maintain equipment on site in a manner as to prevent the potential or actual pollution of surface or ground waters of the State. Dispose of spent fluids in accordance with applicable Federal and State disposal regulations. Immediately clean up any spilled fluids to the extent practicable and dispose of properly.

Manage, control and dispose of litter on site such that no adverse impacts to water quality occur. Comply with all Federal, State or local air pollution regulations throughout the life of the project.

(E) Dust Control

The Contractor shall control dust throughout the life of the project within the project area and at all other areas affected by the construction of the project, including, but not specifically limited to, unpaved secondary roads, haul roads, access roads, disposal sites, borrow and material sources and production sites. Dust control shall not be considered effective where the amount of dust creates a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property.

The Contractor will not be directly compensated for any dust control measures necessary, as this work will be incidental to the work covered by the various contract items.

(F) Application of Specifications

Article 107-12 shall apply to all construction operations. Further references and detailed requirements concerning erosion, siltation and pollution prevention and control are given in other sections of the Standard Specifications as supplements to the general requirements of this article.
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(G) Sanctions

In the event that temporary erosion and pollution control measures become necessary due to the Contractor's negligence, carelessness, or failure to incorporate permanent erosion control measures into the project at the earliest practicable time, such measures shall be performed by the Contractor as directed by the Engineer at no cost to the Department. If the Contractor fails to perform such measures as directed, the Engineer may have the work performed in accordance with Article 105-16.

Failure of the Contractor to fulfill any of the requirements of this article may result in the Engineer ordering the stopping of construction operations in accordance with Article 108-7 until such failure has been corrected. Such suspension of operations will not justify an extension of contract time.

Failure on the part of the Contractor to perform the necessary measures to control erosion, siltation and pollution will result in the Engineer notifying the Contractor to take such measures. In the event that the Contractor fails to perform such measures within 24 hours after receipt of such notice with adequate forces and equipment, the Engineer may suspend the work as provided above, or may proceed to have such measures performed with other forces and equipment, or both. No payment will be made to the Contractor for the performance of this work and the cost of such work so performed will be deducted from monies due the Contractor on his contract.

107-13 PROTECTION OF PUBLIC LANDS

In the execution of any work within or adjacent to any National or State forest, park or other public lands, the Contractor shall comply with all regulations of all authorities having jurisdiction over such forest, park or lands, governing the protection of public lands and the carrying out of work within public lands and shall observe all sanitary laws and regulations with respect to the performance of work in public lands. He shall keep the areas in an orderly condition, properly dispose of all refuse and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with the regulations of the appropriate authorities.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires and shall require his employees and subcontractors, both independently and at the request of forest officials, to do all reasonable within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

The Contractor shall obtain any construction permits that may be required for his operations, which are not a part of the project, in accordance with the regulations of the appropriate authorities.

107-14 RESPONSIBILITY FOR DAMAGE CLAIMS

The Contractor shall indemnify and save harmless the Board and its members and the Department, its officers, agents and employees from all suits, actions, or claims of any character brought for any injury or damages received or sustained by any person, persons, or property by reason of any act of the Contractor, subcontractor, its agents or employees, in the performance of the contract. The Contractor's liability to save harmless and indemnify shall include, but not by way of limitation, the following:

(A) Damages or claims for the failure of the Contractor to safeguard the work;

(B) Damages or claims by reason of the failure of the Contractor to erect adequate barricades and post adequate warnings to the public of such barricades;

(C) Any damage or claims caused through the Contractor's use of defective materials or by the performance of defective work;
(D) Any claims by reason of the Contractor's infringement of patent, trademark, or copyright;

(E) Any amounts paid by the Department by reason of the Contractor's failure to comply with
or for violations of laws, ordinances, orders, or decrees;

(F) Any damages or claims caused by blasting operations of the Contractor with or without
proof of negligence on the part of the Contractor;

(G) Damages or claims caused by the failure of the Contractor to protect private or public
property pursuant to Article 107-11, including damages to public and private property
caused by silting and slides from waste areas furnished by the contractor, without proof
of negligence; and

(H) Damages caused by the failure of the Contractor to control erosion in accordance with the
contract.

In addition to any remedy authorized by law, the Department shall have a right to retain from
monies due the Contractor, as the Department considers necessary until final disposition has
been made of the following suits or claims:

(1) For all claims against the Department involving claims or damages that are the
Contractor's responsibility under Section 107. The Contractor and the Surety shall
remain responsible until such suits or claims against the Department have been
settled and until the Department has been indemnified and saved harmless.

(2) In case of claims by third parties against the Contractor involving tort liability for
which the Department might be held liable for as a taking of property, or as a tort
before the Industrial Commission. However, monies due the Contractor will not be
retained provided the Contractor produces satisfactory evidence to the Department
that he is adequately protected from such tort liability by public liability and property
damage insurance. In all other cases involving claims or suits by third parties against
the Contractor, amounts due the Contractor will not be withheld provided that the
consent of the Surety is furnished and the Surety guarantees payment of any amounts
for which the Contractor may be determined to be legally liable.

(3) In cases of damage to property of the Department, such amounts necessary to pay for
such damage.

In cases where claims are made or suits filed against the Board or its members and the
Department, its officers, agents and employees, the Department may retain from any monies
due the Contractor, an amount sufficient to indemnify such member of the Board or officer,
agent or employee of the Department for any amounts which they may be held liable for but
for which the Contractor is responsible under Section 107. In the event that there is not
sufficient monies available from the final estimate, the Department may collect from the
Contractor or its Surety amounts sufficient to indemnify such employee, agent or officer of
the Department or member of the Board for such damages incurred.

107-15 LIABILITY INSURANCE

The Contractor shall be liable for any losses resulting from a breach of the terms of this
contract. The Contractor shall be liable for any losses due to the negligence or willful
misconduct of its agents, assigns and employees including any sub-contractors which causes
damage to others for which the Department is found liable under the Torts Claims Act, or in
the General Courts of Justice, provided the Department provides prompt notice to the
Contractor and that the Contractor has an opportunity to defend against such claims. The
Contractor shall not be responsible for punitive damages.
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The Contractor shall at its sole cost and expense obtain and furnish to the Department an original standard Association for Cooperative Operations Research and Development (ACORD) form certificate of insurance evidencing commercial general liability with a limit for bodily injury and property damage in the amount of $5,000,000 per occurrence and general aggregate, covering the Contractor from claims or damages for bodily injury, personal injury, or for property damages that may arise from operating under the contract by the employees and agents of the Contractor. The required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy. The State of North Carolina shall be named as an additional insured on this commercial general liability policy. The policy may contain the following language as relates to the State as an additional insured: “This insurance with respect to the additional insured applies only to the extent that the additional insured is held liable for your or your agent’s acts or omissions arising out of and in the course of operations performed for the additional insured.”

The Contractor shall maintain all legally required insurance coverage, including without limitation, worker’s compensation and vehicle liability, in the amounts required by law. Prior to beginning services, all contractors shall provide proof of coverage issued by a workers’ compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance for self-insured subcontractors, irrespective of whether having regularly in service fewer than three employees. Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies.

Upon execution of the contract, provide evidence of the above insurance requirements to the Engineer. When required by the contract, the Contractor shall carry insurance of the kinds and in the amounts specified therein in addition to any other forms of insurance or bonds required under the terms of the contract, or any other insurance carried by the Contractor.

107-16 OPENING SECTIONS OF PROJECT TO TRAFFIC

If it is determined by the Engineer that the Contractor will not complete the work by the completion date, intermediate completion date, or intermediate completion date, the Engineer may notify the Contractor in writing that upon expiration of contract time or intermediate contract time the project, or any portion thereof, will be open to traffic. On such sections that are opened, the Contractor shall conduct the remainder of his operations so as to cause the least obstruction to traffic. The Contractor shall not be relieved of his liability or responsibility, shall not receive any additional compensation due to the added cost of the work, nor shall he receive any extension of the completion date, intermediate completion date, or intermediate completion time, by reason of such openings.

107-17 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until final acceptance of the work by the Engineer, as evidenced in writing, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements, or from any other cause, whether arising from the execution or from the nonexecution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof, except as provided in other sections of the Specifications. The Department will reimburse the Contractor for the repair of the work due to actions of the elements of such exceptional nature as to becontractually classified as Acts of God.

In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for all materials and shall properly store them, if necessary, and shall provide suitable
drainage of the roadway and erect necessary temporary structures at no cost to the
Department.

107-18 FURNISHING RIGHT OF WAY

The Department will be responsible for the securing of all necessary rights of way.

107-19 PERSONAL LIABILITY OF PUBLIC OFFICIALS

The Board and its members and the Department’s officers, agents and employees shall not be
held personally liable for any damages connected with the work, it being specifically
understood in all such matters that they act solely as agents and representatives of the Board
or the Department.

107-20 WAIVER OF LEGAL RIGHTS BY THE DEPARTMENT

Upon completion of the work, the Department will expeditiously make an inspection and
notify the Contractor of acceptance. Such final acceptance and processing of the final
estimate, however, shall not preclude or estop the Department from correcting any
measurement, estimate, or certificate made before or after completion of the work, nor shall
the Department be precluded or estopped from recovering from the Contractor or his Surety,
or both, such overpayment as it may sustain, or by failure on the part of the Contractor to
fulfill his obligations under the contract. A waiver on the part of the Department of any
breach of any part of the contract shall not be held to be a waiver of any other or subsequent
breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the
Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as
regards the Department's rights under any warranty or guaranty.

107-21 SAFETY AND ACCIDENT PROTECTION

The Contractor shall comply with all applicable Federal, State and local laws, ordinances and
regulations governing safety, health and sanitation, and shall provide all safeguards, safety
devices and protective equipment, and shall take any other needed actions, on his own
responsibility, that are 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.

All Contractors’ personnel, all subcontractors and their personnel, and any material suppliers
and their personnel shall wear a reflective vest or outer garment conforming to MUTCD at all
times while on the project.

107-22 WAGES AND CONDITIONS OF EMPLOYMENT

The Contractor's attention is directed to the provisions and requirements of any and all public
statutes that regulate hours or conditions of employment on public work. Such provisions and
requirements that are appropriate, in accordance with the intent of the particular law, act, or
statute, will be applicable to all work performed by the Contractor with his own organization
and with the assistance of workmen under his immediate superintendence and to all work
performed by subcontract. It shall be the responsibility of the Contractor to ascertain the
appropriate application of such provisions and requirements to the work.

In addition to the general requirements of the various regulations referred to above, certain
additional regulations and restrictions may be imposed that are peculiar to the particular work
under the contract. In such cases, these regulations and restrictions will be included in the
contract for the particular project involved.
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For projects that are financed wholly or in part with Federal funds, the minimum wage rates to be paid to all mechanics and laborers employed on the project will be determined by the U.S. Secretary of Labor. A schedule of such wage rates will be included in the proposal for such projects. The Contractor shall provide at the job site at no cost to the Department a weatherproof bulletin board covered with glass or rigid transparent plastic and shall display thereon at all times the required federal aid posters with regard to employment and wages that will be furnished to him. The bulletin board shall be located in a conspicuous place easily accessible to all employees.

In the event that changes should occur in any of the regulations referred to in this article, or in any application thereof to the work under contract, no additional compensation will be allowed the Contractor as a result of such changes.

107-23 LIABILITY TO THIRD PARTIES

It is not intended by any of the provisions of any part of these specifications to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone who is not a party to a contract entered into pursuant to these specifications to maintain a suit for personal injury or property damage otherwise than as authorized and provided by law.

107-24 RIGHT OF THE CONTRACTOR TO FILE VERIFIED CLAIM

If the Contractor fails to receive such settlement as he claims to be entitled to under the terms and provisions of the contract, the Contractor may submit a written and verified claim for such amounts he deems himself or his subcontractor entitled to under the terms and provisions of the contract provided he has complied with the applicable provisions of the contract including, but not limited to, giving written notice of intent to file a claim, keeping and submission of cost records and the initial submission of a written claim within the specified time period. The claim shall be submitted to the Chief Engineer within 60 calendar days from the time the Contractor receives the final estimate as defined by Section 101 and shall be submitted in accordance with NCGS § 136-29.

Submission of records by the Contractor and physical acceptance by the Department, during the course of the project shall not be construed as an admission of liability by the Department and shall be accepted by the Department for record keeping purposes only and not as an acknowledgement of entitlement by the Contractor.

107-25 HAZARDOUS, CONTAMINATED AND TOXIC MATERIAL

When the Contractor's operations encounter or expose any abnormal condition that may indicate the presence of a hazardous, contaminated, or toxic material, such operations shall be discontinued in the vicinity of the abnormal condition and the Engineer shall be notified immediately. Upon notification by the Contractor, the Engineer will investigate the work, consult the GeoEnvironmental Section of the Geotechnical Engineering Unit and, if necessary, suspend the work in accordance with Article 108-7. The presence of storage drums or barrels; old or abandoned underground storage tanks; discolored earth, metal, wood, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or anything else that appears abnormal may be indicators of hazardous, contaminated or toxic materials and shall be treated with extraordinary caution as they are evidence of abnormal conditions.

The Contractor's operations shall not resume until so directed by the Engineer.

Disposition of the hazardous, contaminated, or toxic material will be made in accordance with Federal, State and local requirements and regulations. Where the Contractor performs work necessary to dispose of hazardous, contaminated, or toxic material, payment will be made at the unit prices for pay items included in the contract that are applicable to such work. Where the contract does not include such pay items, the Engineer may have the work performed by others or the Contractor may perform the work in accordance with Article 104-7 for extra work and the following paragraphs.
The Contractor shall employ a fully experienced and prequalified geoenvironmental firm to oversee and document the disposal of contaminated material removed from within the project limits. The Contractor shall furnish and deliver to the Department a digital report including all documents necessary to meet the laws, rules and regulations of the environmental regulatory agency(ies) having jurisdiction over each respective site from which contaminated materials are removed. Reports documenting the Contractor’s work and laboratory analyses of collected samples shall be submitted to the Department within 30 calendar days after completion of the removal of the contaminated materials. If the Contractor removes any underground storage tanks (UST), a UST Closure Report shall be presented to the Department within 25 calendar days after receipt of laboratory data. The Contractor shall not submit any reports directly to the regulatory agencies. The Contractor shall provide to the Department a Certificate of Remediation from the disposing/treating facility within 60 calendar days after removal of the materials from the project site unless alternate arrangements are approved in writing by the Department.

Contaminated material removed during construction shall be transported to a waste treatment and disposal facility that is fully approved and permitted by all applicable environmental regulatory agencies to receive, treat and/or dispose of the material. It shall be the Contractor’s responsibility to locate such a facility. Departmental approval of the specific facility identified for use by the Contractor shall occur before removal of any materials from the project limits. Contaminated material shall only be removed to the extent necessary to complete a task or as directed by the Engineer. Remaining contamination shall be left in place and documented in reports provided to the Department. The Contractor shall provide the Department with all transportation manifests and certificates of acceptance from the receiving disposal facility weekly. The Department will be the regulatory generator of all waste excavated and removed from within the project limits. The Contractor, with the approval of the Engineer, is authorized to sign all waste transportation and disposal manifests on behalf of the Department.

The Contractor shall maintain qualified personnel on-site at all times during removal of materials from within known areas of contamination for field screening and to monitor ambient air quality. The qualified personnel shall be knowledgeable with the use of an Organic Vapor Analyzer, Flame Ionization Detector, Photo Ionization Detector, or other appropriate monitoring equipment. In the event that there is a need to stockpile contaminated material, the Contractor shall stockpile all contaminated soil excavated from a parcel in a location within the property boundaries of the source parcel in accordance with the Standard Stockpile Containment Detail. If the volume of contaminated material exceeds available space on site, the Contractor shall obtain a permit from the NCDEQ UST Section for off-site temporary storage.

107-26 FINES AND LEVIES AGAINST THE DEPARTMENT

In the event there are fines or charges levied against the Department, actions taken by the Department, or remediation required by the Department due to the contractor’s negligence, carelessness, or failure, due to violations charged to the Contractor, or due to the Contractor’s failure to comply with the contract, monies will be deducted from monies to be paid to the Contractor on this project.

SECTION 108
PROSECUTION AND PROGRESS

108-1 GENERAL

It is the intent of these Specifications that the Contractor shall commence work on the date of availability shown in the contract or as soon thereafter as practicable, except that when required by permits included in the proposal, work in jurisdictional waters and wetlands shall not begin until a meeting is held between the Department, Regulatory Agencies and the Contractor. The Contractor shall not begin work before the date of availability without written approval of the Engineer. If such approval is given, the Department will assume no responsibility for any delays caused before the date of availability by any reason whatsoever, and such delays, if any, will not constitute a valid reason for extending the completion date.

The Contractor shall pursue the work diligently with workmen in sufficient numbers, abilities and supervision, and with equipment, materials and methods of construction as may be required to complete the work described in the contract or as may be amended by the completion date.

108-2 PROGRESS SCHEDULE

The Contractor shall prepare and submit for review and approval a schedule of proposed working progress. This schedule shall be submitted on forms supplied by the Engineer or in a format that is approved by the Engineer. A detailed Critical Path Method (CPM) schedule shall not be submitted to replace the progress schedule details required below.

The proposed progress schedule shall be submitted no later than 7 calendar days before the date of the project preconstruction conference and shall be approved before any payments will be processed for the project.

When the Engineer has extended the completion date or if the project overrun is anticipated to exceed 5%, the Contractor may submit a revised progress schedule to the Engineer for review and approval. If plan revisions are anticipated to change the sequence of operations in such a manner as will affect the progress but not the completion date, then the Contractor may submit a revised progress schedule for review and approval but the completion date shall remain unchanged.

The proposed progress schedule shall contain the following items:

(A) A time scale diagram with major work activities and milestone dates clearly labeled.

(1) For purposes of composing the progress schedule, major work activities are defined as components comprising more than 5% of the total project cost or occupying more than 10% of total contract time and shall include, if applicable, the following:

(a) Clearing and grubbing
(b) Grading
(c) Drainage
(d) Soil stabilization
(e) Aggregate base course
(f) Pavement
(g) Culverts
(h) Bridges (including removal)