



GENERAL PRIME CONTRACTOR (GPC) BID BOND

KNOW ALL PEOPLE BY THESE PRESENTS, that _____
(a corporation of the State of _____) (individual), (partnership) (hereinafter referred to as the
"Principal"), and _____, a corporation of the State of _____

Name of Surety

(hereinafter referred to as the "Surety"), are held and firmly bound unto the State of Wisconsin, for Department of Administration, Division of Facilities Development (hereinafter referred to as "DFD"), in the penal sum of ten percent (10%) of the amount of the total bid or bids of the Principal herein accepted by DFD, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that, whereas the Principal has submitted, or is about to submit, to the State of Wisconsin a certain bid, including the related combined bids attached hereto and hereby made a part hereof, to enter into a Contract in writing for _____

Type of Work

for the _____
Project

- (1) If said bid is rejected by DFD, then this obligation shall be void; or
- (2) If said bid is accepted by DFD and the Principal shall execute and deliver a Contract in the form specified by DFD (properly completed in accordance with said bid) and shall furnish a separate 100% performance bond for the Principal's faithful performance of said Contract, and a 100% payment bond for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation shall be void; or
- (3) If said bid is accepted by DFD and the Principal shall fail to execute and deliver the Contract and the performance and payment bonds noted in (2) above, all within the time specified or any extension thereof, the Principal and Surety agree jointly and severally to forfeit to DFD the penal sum mentioned above, it being understood that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal sum of this obligation as stated. Notice will be given by DFD to the Principal and Surety of intent to request payment of all or any part of the penal sum, a minimum of 7 calendar days before making demand of payment. Payment of the penal sum by the Surety and its bond shall be received by DFD within 72 hours following demand by DFD.

The Surety, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by an extension of the time within which DFD may accept such bid, and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, on the day and year set forth below.

SEAL: _____
Principal Date

By: _____

SEAL: _____
Name of Surety Date

By: _____

NOTE TO SURETY AND PRINCIPAL: The bid submitted, which this bond guarantees, may be rejected if the following instrument is not attached to this bond: Power of Attorney showing that the agent of Surety is currently authorized to execute bonds on behalf of the Surety, and in the amounts referenced above.



DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

The attached material submitted in response to Bid/Proposal # _____ includes proprietary and confidential information which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this bid/proposal response be treated as confidential material and not be released without our written approval.

Prices always become public information when bids/proposals are opened, and therefore cannot be kept confidential.

Other information cannot be kept confidential unless it is a trade secret. Trade secret is defined in s. 134.90(1)(c), Wis. Stats. as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

We request that the following pages not be released

Section	Page #	Topic
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN THE EVENT THE DESIGNATION OF CONFIDENTIALITY OF THIS INFORMATION IS CHALLENGED, THE UNDERSIGNED HEREBY AGREES TO PROVIDE LEGAL COUNSEL OR OTHER NECESSARY ASSISTANCE TO DEFEND THE DESIGNATION OF CONFIDENTIALITY.

Failure to include this form in the bid/proposal response may mean that all information provided as part of the bid/proposal response will be open to examination and copying. The state considers other markings of confidential in the bid/proposal document to be insufficient. The undersigned agrees to hold the state harmless for any damages arising out of the release of any materials unless they are specifically identified above.

Name - Authorized Representative

Signature - Authorized Representative

Company Name

Date



Form A — Affidavit of Compliance

Minority Business Enterprise (MBE) / Disabled Veteran-Owned Business (DVB) Provisions

Project Title _____

Project Location _____ Project No. _____

The State of Wisconsin has an active Diversity Business Initiative. The purpose of this initiative, in the interest of fairness and equity, is to encourage increased voluntary expenditure of State construction dollars by prime contractors under subcontracts with MBE / DVB firms. **Please refer to the checklist on page 2 of this form which is provided to assist you in this effort.**

To that end, the bidder's commitment for MBE participation on this project is _____% and DVB participation is _____%.

The State of Wisconsin, Department of Administration, Division of Facilities Development reserves the right to reject and disqualify any bidder who does not include this completed form and who fails to comply with the State's bid requirements as outlined in the bid specifications.

I, the apparent low bidder, acknowledge, understand and agree to comply with my commitment for MBE/DVB participation on this contract including submission of all information required.

I attest that, to the best of my knowledge, all of the above information is true and correct.

Dated (mm/dd/ccyy) _____

Authorized Signature

Printed Name

Title

Company Name

Telephone Number

State of _____

County of _____

On this _____ day of _____, 20_____, I confirm that _____
Bidder's Name

came before me and signed the document for the purposes stated.

I witness, and set my hand and official stamp or seal.

Notary Public

County, State of _____

My Commission expires _____, 20_____

“Good Faith Effort” To Obtain Minority Business Enterprise / Disabled Veteran-Owned Business Participation

All “Yes” boxes must be checked to ensure that a “Good Faith Effort” has been made to obtain MBE participation.

- Have you searched the Supplier Diversity Program’s Database for Diverse, Certified Suppliers?_ <https://wisdp.wi.gov/Search.aspx> Yes No

- Have you emailed (prior to bidding) diverse suppliers that you wish to consider regarding the logistics of them being considered for subcontracting opportunities and copied the Wisconsin Supplier Diversity Program (DiverseSpend@wi.gov) Yes No

- Have you provided MBE/DVB firms adequate project information about plans, specifications and requirements pertaining to their work? Yes No

- Have you communicated with any MBE/DVB that performs the type of services needed for the project and was there any follow-up? Yes No

- Was MBE/DVB participation advertised (newspaper, radio, etc.) for this project? (You may be asked to submit evidence.) Yes No

- Did you contact any MBE/DVB trade associations to assist in locating MBE/DVBs or have you made contact with any MBEs/DVBs that may not yet be certified by the State? (You may be asked to verify.) Yes No

- Have you determined if there are other possible opportunities for MBE/DVB participation such as suppliers, haulers, etc. or using a group of MBEs/DVBs jointly? Yes No

- Have you considered creating a plan of action with the assistance of the Supplier Diversity Program office to ensure that future contracts can have MBE/DVB participation and meet the construction requirements and goals of the State? (These plans may include mentoring, technical support and other innovative opportunities.) Yes No

- Did you negotiate in good faith? (You may be asked to verify.) Yes No



REQUEST FOR SUBMITTAL APPROVAL

Project Name _____ DFD Project No. _____
Contractor Name _____ Contractor Phone No. _____
Subcontractor/Supplier Name _____ Specification Section No. _____

- By checking this box the contractor certifies that the product(s) in this submittal comply with the Build America, Buy America (BABA) Act.
- Check this box if the product(s) is/are exempt of compliance with the Build America, Buy America (BABA) Act. Attach the waiver(s) with this submittal.
- Check this box if Building America, Buy America (BABA) Act is not applicable to the project(s).
- a. This Submittal is made under the provisions of the General Conditions of the Contract Documents. The Contractor makes an express warranty to DFD, by express affirmation, that if installed into or made a part of this project, the work which forms the basis of this Submittal will conform to the design requirements of the Contract Documents.
- b. It is the purpose of this Submittal to describe the goods proposed for use by the Contractor and to demonstrate conformance of that description to the Contract Documents.
- c. At the time of this submission, the Contractor acknowledges awareness that the purpose of this Submittal is to obtain DFD's authorization to use this Work for purposes of Contract Document compliance by the Contractor, and further, that DFD, in doing so, relies upon the skill, judgment and integrity of the Contractor to insure that this submitted Work complies with requirements of the Contract Documents. Contractor hereby acknowledges that it has, through the use of its own resources, found and selected the Work submitted herewith and that the Work submitted is usable for the purpose of being fit and suitable in the final construction under this Contract Documents.
- d. Notwithstanding any provision of this Contract Documents to the contrary, the Contractor hereby notifies DFD that the following features of the Submittal MAY NOT BE IN CONFORMANCE with Contract Document requirements, but nevertheless asks approval thereof. (Contractor shall include brief, specific description of each potential nonconformity. If NONE, Contractor shall so state.)

1.

2.

3.

4.

Check if additional page(s) of potential nonconformity are attached.

Signed _____ Contractor's Authorized Representative _____ Date _____

Note: Contractors are required to copy and use this form as a cover sheet accompanying all submittals, as described in the General Conditions of the Contract Documents. All pages of submittals are to be consecutively numbered, with a front index page listing the total sequence of pages included.

This form can be made available in accessible formats to qualified individuals with disabilities upon request.



PERFORMANCE BOND (100%)

This Surety Bond instrument is hereby executed to guarantee performance of a proposed contract between the herein named Principal and the State, dated _____, 20____, a copy of which is hereto attached and made a part hereof, herein called "Contract," for the construction of

Project Title and Location _____

Project Number _____ Contract For Work _____

KNOW ALL PEOPLE BY THESE PRESENTS That _____
Name of Contractor

as contractor, herein called "Principal", and

_____ of _____
Name of Surety City and State

as Surety, herein called "Surety", are held firmly bound to the State of Wisconsin, for the Department of Administration, Division of Facilities Development herein called "the Owner", in the amount of \$ _____ for the faithful performance of the Contract as hereinafter set forth. For the payment of which, well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the said bounded Principal shall promptly and faithfully perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of the Contract, in all respects, and within the time prescribed in the Contract (or as such time may be extended as provided in the Contract), and shall indemnify and save harmless the Owner, its officers, employees and agents against any direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by Principal or its subcontractors, and shall in all respects perform the Contract according to law, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

FURTHER, that no change, extension of time, alteration or addition to the work to be performed, or amount of, the Contract shall in any way affect Principal's or Surety's obligations on this bond, and Surety does hereby waive notice of any change, extension of time, alterations or additions thereunder.

PROVIDED, FURTHER, that the undersigned states that pursuant to express authority the corporate seal affixed to this instrument is the seal of this surety company, that the seal was affixed and this instrument was executed for and on behalf of this surety company; that authority has not been revoked by this surety company; that this instrument was executed as the free act and deed of this surety company; that the certificate of authority from the Commissioner of Insurance showing authority of this surety company to transact business in the State of Wisconsin has been obtained and will be provided to the Owner upon request; and further, that this surety bond was written through an agent duly licensed as such on the date thereof.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 20 _____.

FOR THE PRINCIPAL

By _____
Corporate Secretary Signature

(Seal)

President, Partner or Individual Signature

Witnessed by _____

Witnessed by _____

Two witnesses must attest above signatures.

FOR THE SURETY

By _____
*Corporate Secretary Signature

(Seal)

Attorney in Fact or Authorized Officer

Street or PO Box

City, State and Zip Code

Telephone Number

Email Address

(This email address will be used to notify Surety of Project Start Date)

ACKNOWLEDGEMENT

STATE OF _____)

) ss

COUNTY OF _____)

I, _____, a Notary Public of said County and State, do hereby certify that _____

_____, Attorney-in-Fact or authorized officer of _____,
Name of Surety

who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument for and on behalf of _____,

for the uses and purposes therein set forth. Name of Surety

Given under my hand and notarial seal at my office at _____, _____, in said county,
City State

this _____ day of _____, 20 _____, A.D.

Notary Public

My commission expires _____

This Performance Bond is

APPROVED

Administrator, Division of Facilities Development

* If signatory is a corporation, Secretary of corporation shall attest, otherwise leave blank.



PAYMENT BOND (100%)

This Surety Bond instrument is hereby executed to guarantee payment of a proposed contract between the herein named Principal and the State, dated _____, 20____, a copy of which is hereto attached and made a part hereof, herein called "Contract," for the construction of

Project Title and Location _____

Project Number _____ Contract For Work _____

KNOW ALL PEOPLE BY THESE PRESENTS That

Name of Contractor

as contractor, herein called "Principal", and

Name of Surety

of

City and State

as Surety, "Surety", are held firmly bound to the State of Wisconsin, for the Department of Administration, Division of Facilities Development herein called "the Owner", in the amount of \$_____ for the payment of all claims, costs, charges and other amounts arising in connection with, or related to, the Contract as hereinafter set forth. For the payment of which, well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the said bounded Principal shall promptly make payment pursuant to Section 779.14 of the Wisconsin Statutes to all persons who supply labor and material to said project in the prosecution of the work arising in connection with, or related to, the Contract, and shall pay all other just debts, dues and demands incurred in the performance of the Contract, and shall indemnify and save harmless the Owner, its officers, employees and agents against any direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered as the result of Principal's failure to pay any amounts in connection with, or related to, the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

FURTHER, labor performed and materials furnished, used or consumed in making the public improvement or performing the public work, include, without limitation because of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance and contributions for unemployment compensation.

FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

FURTHER, that no change, extension of time, alteration or addition to the work to be performed, or amount of, the Contract shall in any way affect Principal's or Surety's obligations on this bond, and Surety does hereby waive notice of any change, extension of time, alterations or additions thereunder.

PROVIDED, FURTHER, that the undersigned states that pursuant to express authority the corporate seal affixed to this instrument is the seal of this surety company, that the seal was affixed and this instrument was executed for and on behalf of this surety company; that authority has not been revoked by this surety company; that this instrument was executed as the free act and deed of this surety company; that the certificate of authority from the Commissioner of Insurance showing authority of this surety company to transact business in the State of Wisconsin has been obtained and will be provided to the Owner upon request; and further, that this surety bond was written through an agent duly licensed as such on the date thereof.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 20_____.

FOR THE PRINCIPAL

By _____
Corporate Secretary Signature

(Seal)

President, Partner or Individual Signature

Witnessed by _____

Witnessed by _____

Two witnesses must attest above signatures.

FOR THE SURETY

By _____
*Corporate Secretary Signature

(Seal)

Attorney in Fact or Authorized Officer

Street or PO Box

City, State and Zip Code

Telephone Number

Email Address

(This email address will be used to notify Surety of Project Start Date)

ACKNOWLEDGEMENT

STATE OF _____)

) ss

COUNTY OF _____)

I, _____, a Notary Public of said County and State, do hereby certify that _____

_____, Attorney-in-Fact or authorized officer of _____
Name of Surety

who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument for and on behalf of _____, for the uses and purposes therein set forth.
Name of Surety

Given under my hand and notarial seal at _____, _____, in said county,
City State

this _____ day of _____, 20_____, A.D.

Notary Public

My commission expires _____

This Payment Bond is

APPROVED

Administrator, Division of Facilities Development

* If signatory is a corporation, Secretary of corporation shall attest, otherwise leave blank.



CONSTRUCTION CONTRACT

Date _____

Project No. _____

THIS AGREEMENT is between the State of Wisconsin by its Department of Administration, represented by its Division of Facilities Development, herein called "DFD", and _____ doing business as a _____ hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and arrangements hereinafter mentioned, to be directed by DFD, the CONTRACTOR will commence and complete the construction described as follows:

hereinafter called the "Project", for the sum of _____ Dollars (\$ _____ .00) and all other work in connection therewith, under the terms as stated in the Contract Documents; and at the CONTRACTOR's own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Project in accordance with the conditions and prices stated in the Bid Form, Bidding and Contract Requirements, the drawings which include all maps, plats, plans, and other drawings and printed or written explanatory matter thereof, and the technical portion of the specifications therefor; as prepared by _____ herein called the A/E, and as enumerated in the Specification's Table of Contents, all of which are made a part hereof and collectively evidence and constitute the Contract Documents.

The CONTRACTOR hereby agrees to commence work under this Contract on or after a date to be specified in a written "Notice to Proceed" and to complete this work **within #### consecutive calendar days thereafter.**

DFD agrees to have the CONTRACTOR paid in current funds for the performance of the contract subject to additions and deductions, as provided in the General Conditions of the Contract, and to authorize payments on account thereof as provided in the Article entitled, "Payments to Contractor" of the General Conditions.

DFD has the delegated power and duty pursuant to Sec. 16.85(l), to act on all matters and for all purposes under this Contract; including additions and modifications therein incorporated.



GENERAL CONDITIONS OF THE GENERAL PRIME CONTRACTOR CONTRACT

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GENERAL CONDITIONS OF THE GENERAL PRIME CONTRACTOR CONTRACT

(REV 11/2017)

1. CONTRACT ADMINISTRATION

- A. The intention of the Contract Documents is to include all labor, materials, and equipment necessary for the completion of the Work in accordance with the standard of quality established by the Contract Documents and within the allowable time period specified.
- B. The General Prime Contractor shall attend a Pre-Construction Meeting, which will be scheduled by DFD. DFD shall designate DFD'S "PROJECT REPRESENTATIVE" at the Project Pre-Construction Meeting. This person is delegated authority to act on behalf of DFD, unless the Contract Documents specifically identify another party responsible for DFD Work activities. It is the intent of DFD to provide, to the extent possible, a single point of contact and communication for the General Prime Contractor to facilitate efficient, timely, and cost cost-effective completion of the Work.
- C. The General Prime Contractor shall employ, and specifically assign to the Project, a construction superintendent or foreman, experienced in Work of the character required by the Contract Documents. This person shall be delegated authority to act on behalf of the General Prime Contractor, and shall be, to the extent possible, a single point of contact and communication for DFD and all Subcontractors to facilitate efficient, timely, and cost-effective completion of the Work.
- D. DFD will periodically schedule progress meetings. At each such progress meeting, the parties will discuss the above-mentioned items, cooperate with others to assure successful completion of the Work, and help to quickly resolve problems which arise.

2. DEFINITIONS

THE FOLLOWING TERMS AS USED IN THE CONTRACT DOCUMENTS ARE DEFINED AS FOLLOWS:

- A. "ADDENDUM" means a written or graphic instruction which clarifies, amends, or interprets the Bidding Documents.
- B. "A/E" and "ARCHITECT/ENGINEER" means a person, partnership, corporation, or other business organization under Contract with DFD to prepare drawings and specifications, to advise DFD, to provide DFD with design services, and in certain cases, to perform inspection and review for the sole benefit of DFD during construction.
- C. "BIDDING AND CONTRACT REQUIREMENTS" means all items as described in Division 1 including "Bidding Requirements," "Contract Forms," "General Conditions," "Supplementary General Conditions," "General Requirements."
- D. "CONTRACT DOCUMENTS" means collectively, all documents listed in the Table of Contents of this Specification, the Drawings, Addenda, Change Orders, Notice to Proceed, and any changes in the Work approved by DFD and General Prime Contractor before the execution of the Contract.
- E. "CONTRACTOR" means any individual, firm, corporation, or other non-governmental organization which, in cooperation with other Contractors and persons, performs Work required by the Contract Documents. "Contractor" is all contractors working on a project regardless of contractual relationship. This includes the General Prime Contractor, MEP Subcontractors, Non-MEP Subcontractors, and all Subcontractors, regardless of tier of subcontract. The term "Contractor" does not include the State or the A/E.
- F. "DAMAGES FOR UNTIMELY PERFORMANCE" means a predetermined monetary amount to be paid to the State, based on anticipated real costs which the State will incur, due to the General Prime Contractor's failure to complete the Work within the allowable time identified in the Contract Documents.
- G. "DELAY" means an event that causes an increase in the duration of the Project, or that changes the sequence of the Work or individual Work activities, thereby preventing completion of the Project within the time period specified in the Contract Documents.
- H. "DFD" means Division of Facilities Development. (See "OWNER").

GENERAL CONDITIONS OF THE GENERAL PRIME CONTRACTOR CONTRACT

(REV 11/2017)

- I. "DFD'S PROJECT REPRESENTATIVE" means the person or persons' delegated authority to act on behalf of DFD. Such person or persons may be the employees of DFD, or Consultants hired to perform the activities and responsibilities of DFD. "DFD's Project Representative" will be designated in writing at the Pre-Construction Meeting. DFD reserves the right to change its designated Project Representative at any stage of the Work, upon prior written notice to the General Prime Contractor.
- J. "DRAWINGS" means the graphic and pictorial portions of the Contract Documents, showing the design, type of construction, location, dimension and character of the Work to be provided by the General Prime Contractor, generally including, but not limited to plans, elevations, sections, details, schedules, diagrams, notes and portions of Specification.
- K. "EQUALS" means material, equipment or methods proposed and warranted by the General Prime Contractor as being equivalent to essential attributes of the material, equipment or method specified in the Contract Documents, and approved by DFD.
- L. "EXTENDED AND UNABSORBED OVERHEAD COSTS" means extended and unabsorbed overhead costs and related damages calculated pursuant to the original and modified Eichleay formulas adopted and recognized by the Armed Services Board of Contract Appeals and the United States Court of Appeals for the Federal Circuit.
- M. "FIELD ORDER" means changes in the Work made by DFD through use of direction, instruction, interpretation, determination, or any other mode or manner.
- N. "GENERAL PRIME CONTRACTOR" means the individual, firm, corporation, or other non-governmental organization that enters into a contract with the state to perform all work as required by the Contract Documents and enters into contracts with subcontractors including MEP Subcontractors identified by DFD. The term "General Prime Contractor" does not include the State or the A/E.
- O. "MECHANICAL, ELECTRICAL, OR PLUMBING SUBCONTRACTOR" ("MEP SUBCONTRACTOR") is any individual, firm, corporation, or other non-governmental organization that performs mechanical (Heating, Ventilating, and Air Conditioning), electrical, plumbing, or fire protection (fire suppression) work for the Project, and is identified by DFD as the successful MEP Subcontractor to enter into a contract with the General Prime Contractor to perform their division of work described in the contract documents.
- P. "NON-MEP SUBCONTRACTOR" means any subcontractor to a General Prime Contractor in divisions of work other than mechanical, electrical, plumbing, and fire protection. "Non-MEP Subcontractor" includes suppliers and installers to the General Prime Contractor.
- Q. "SUBCONTRACTOR" means all subcontractors on a project. "Subcontractor" includes MEP Subcontractors, subcontractors to the MEP Subcontractors, and Non-MEP Subcontractors.
- R. "NOTICE TO PROCEED" means a written notice provided by DFD to the General Prime Contractor authorizing the General Prime Contractor to proceed with the Work and establishing the date for completion of the Work.
- S. "OWNER" means the State of Wisconsin, Department of Administration, Division of Facilities Development, herein termed "DFD." DFD exercises the powers and duties prescribed by Wis. Stats. §§ 16.85 and 16.855.
- T. "PROJECT" means the total and complete construction of the Work required by the Contract Documents.
- U. "PROJECT SCHEDULE" means a graphic and written analysis of activity duration and sequencing, which is required for successful completion of the Project within the time period identified in the Contract Documents.
- V. "SHOP DRAWINGS" means drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data or samples specially prepared or provided by the General Prime Contractor, a Subcontractor including MEP Subcontractor Non-MEP Subcontractor, or Material Supplier to illustrate some portion of the Work. The terms "SHOP DRAWINGS" and "SUBMITTALS" may be used interchangeably in the Contract Documents.

GENERAL CONDITIONS OF THE GENERAL PRIME CONTRACTOR CONTRACT

(REV 11/2017)

- W. "SPECIFICATIONS" means the Volume assembled for the Work which typically includes the Bidding and Contract Requirements, forms, and Technical Sections.
- X. "STATE" means the State of Wisconsin and its officers, employees, agents, divisions, bureaus, commissions, boards, authorities, and universities, colleges, and other institutions of higher learning.
- Y. "SUBMITTALS" means the terms "SUBMITTALS" and "SHOP DRAWINGS" may be used interchangeably in the Contract Documents. Refer to the definition of "SHOP DRAWINGS" contained herein.
- Z. "SUBSTANTIAL COMPLETION" means the stage in the progress of the Work when DFD determines that the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Project, or designated portion thereof, can be occupied and used for its intended purpose.
- AA. "SUBSTITUTIONS" means the use of material or equipment not specified in the Contract Documents, but that the General Prime Contractor proposes and warrants as suitable for the use intended and conforms to all other physical, functional, and performance requirements of the Contract Documents.
- BB. "SURETY" means a person or entity licensed to do business in the State of Wisconsin, who provides separate Performance Bonds and Payment Bonds to a General Prime Contractor to indemnify the State against all damages suffered by failure of the General Prime Contractor to perform the Work and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers.
- CC. "WORK" means the plant, labor, materials, service, supplies, equipment, and other facilities and items comprising the whole of the Contract Documents.

3. CONTRACT DOCUMENTS

- A. The Contract Documents as defined in Article 2 shall form a part of this Contract. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
- B. The technical provisions of this Contract are set forth in the Specifications. The Specifications are complemented by the "Drawings" which may also be referred to as the "Plans." The Specifications and Drawings for this Contract are complementary and are to be so interpreted, unless that interpretation is so clearly erroneous as to defy the intent of the parties.
- C. The General Prime Contractor's bid price shall include complementary interpretation, and the performance of all Work which;
 - 1. in accordance with industry standards, customary practice, or by reasonable inference are details of Work that are necessary as part of the construction, operation, and coordination and interface of the Work;
 - 2. would necessarily be readily apparent to one skilled in the trades; or,
 - 3. a competent and experienced contractor would recognize as part of its responsibility.
- D. The failure of the General Prime Contractor to include in its bid the Work as defined in Paragraph 3.B. shall not relieve the General Prime Contractor from performing such Work and it shall be performed as if fully and correctly set forth and described in the Drawings and Specifications.
- E. Periodically, DFD may provide the General Prime Contractor additional instructions and drawings necessary to perform the Work. DFD shall make a good faith effort to coordinate such instructions and drawings with the Contract Documents, preparing them so they can be reasonably interpreted as a part thereof.

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4. CONFLICTING CONDITIONS

- A. DFD shall take all reasonable steps to assure that the Contract Documents are as accurate as possible, and provide information which, in the opinion of DFD, is necessary in preparing bids and constructing the Project. However, it is mutually understood that discrepancies or conflicts in the Contract Documents may be identified, in which case:
 - 1. Amendments and addenda take precedence over the Specifications;
 - 2. The Specifications take precedence over the Drawings;
 - 3. Stated dimensions take precedence over scaled dimensions;
 - 4. Large-scale detail drawings take precedence over small-scale drawings;
 - 5. Schedules take precedence over other data on the plans.
- B. Notwithstanding the above order of precedence, any clearly stated requirement of duties of the General Prime Contractor shall control over any rule of contract interpretation which might otherwise place those duties in conflict with other provisions of the Contract, and such duties shall be included in the General Prime Contractor's bid.
- C. The failure to inquire about any ambiguity in any provision of the Contract Documents which would be reasonably apparent to any bidder knowledgeable and skilled in the Work required by the bid shall grant DFD the right to interpret that ambiguity.
- D. Where the terms "A/E," "Architect/Engineer," "Architect," or "Engineer" are used in technical Sections of the Specifications, the General Prime Contractor shall understand that actions indicated to be accomplished by such named parties are actions which are solely as the professional technical advisor and consultant to DFD and such actions thus require final approval by DFD.
- E. In the event of any conflict between the terms of this Contract and any provision of law, the provision of law shall control and the parties hereto shall not be free to Contract contrary to law.

5. CONTRACT SECURITY

- A. The General Prime Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract price, and a Payment Bond in an amount equal to one hundred percent (100%) of the Contract price, as security for the faithful performance of this Contract, payment of all persons performing labor or furnishing materials for the Project, and payment of all other debts incurred in the performance of the Work.
- B. The Performance Bond and Payment Bond Forms that the General Prime Contractor is required to execute are bound into the Specifications. Before the Construction Contract can be executed, the Performance Bond and Payment Bond must be delivered to and approved by DFD. Such approval will be predicated on prior satisfactory performance of a Surety.

6. SAFETY AND ACCIDENT PREVENTION

- A. The General Prime Contractor shall provide and maintain a Work environment and procedures which will:
 - 1. Safeguard the public and State personnel and agents, property, material, supplies, and equipment exposed to General Prime Contractor and all Subcontractors including, MEP Subcontractors and Non-MEP Subcontractors operations and activities;
 - 2. Avoid interruptions of user agency operations and delays in Contract completion dates; and,
 - 3. Control costs in the performance of this Contract.
- B. For these purposes, the General Prime Contractor shall:

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1. Provide appropriate safety barricades, signs, and signal lights;
 2. Comply with any safety requirement published by any governmental authority with jurisdiction over the site, including Federal, State, or local jurisdictions;
 3. Ensure that any additional measures which are reasonably necessary for the purposes stated are taken.
- C. The General Prime Contractor shall strictly comply with, and bear full responsibility for, any safety procedure set forth in the Contract Documents. In the absence of such compliance, the General Prime Contractor shall be responsible for indemnification of the State for any cost or expense, including legal fees. At the discretion of DFD, the General Prime Contractor may also be subject to termination of the Contract for default.
- D. If DFD becomes aware of any noncompliance by the General Prime Contractor or any Subcontractor, with the safety conditions of this Contract or of any condition caused by the General Prime Contractor or any Subcontractor, which poses a serious or imminent danger to the health or safety of the public or to State personnel, DFD's Project Representative shall notify the General Prime Contractor orally, with written confirmation, and direct immediate initiation of corrective action. This Notice, when given to the General Prime Contractor or the General Prime Contractor's Representative at the Work site, shall be deemed sufficient notice of noncompliance and that corrective action is required. After receiving the Notice, the General Prime Contractor shall immediately take corrective action. If the General Prime Contractor fails or refuses to promptly take corrective action, DFD may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The General Prime Contractor shall not be entitled to an equitable adjustment of the Contract price or an extension of the performance schedule by reason of the issuance of any stop Work order under this Article 6.
- E. The General Prime Contractor shall cause this Article 6, including this Paragraph E., with appropriate changes in paragraph designation, to be incorporated in all MEP Subcontracts and Non-MEP Subcontracts, regardless of tier.

7. PROTECTION OF WORK AND PROPERTY

- A. The General Prime Contractor shall at all times safely guard State property and adjacent property from injury, loss, release of hazardous or toxic materials, or damage in connection with the Contract Documents or the performance of the Work hereunder. The General Prime Contractor shall replace or make good any damage, loss, or injury caused as a result of failure to comply with Contract Documents. This contract provision shall be incorporated into the contracts between the General Prime Contractor, MEP Subcontractors, and Non-MEP Subcontractor.
- B. In case of an emergency which threatens loss or injury of property, or safety of life, the General Prime Contractor will be allowed to act, without previous instructions from DFD, in a diligent manner. The General Prime Contractor shall notify DFD immediately thereafter. Any claim for compensation by the General Prime Contractor due to such extra Work shall be promptly submitted to DFD for approval as provided for in Article 18 of the General Conditions.
- C. In the event of temporary suspension of Work, or during inclement weather, or whenever DFD shall direct, the General Prime Contractor shall carefully protect all Work and materials against damage or injury from the weather. This contract provision shall be incorporated into the contracts between the General Prime Contractor, MEP Subcontractors, and Non-MEP Subcontractors. If, in the opinion of DFD, any Work or materials have been damaged or injured by reason of failure on the part of the General Prime Contractor Subcontractors including MEP Subcontractor or Non-MEP Subcontractors to protect the Work, such materials shall be removed and replaced at the expense of the General Prime Contractor.
- D. The General Prime Contractor shall promptly, and without prior demand by DFD, remedy and repair any damage caused by the General Prime Contractor and all Subcontractors, suppliers, and vendors to completed or partially completed construction or to property of DFD or other Subcontractors

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8. PERMITS, REGULATIONS, UTILITIES, AND TAXES

- A. The General Prime Contractor shall procure all permits, licenses, and approvals necessary for the execution of this Contract and performance of the Work, and shall provide evidence of such permits, licenses, and approvals at the Pre-Construction Meeting or before commencement of the Work.
- B. Where Contract Documents require abatement of asbestos containing materials, prior written Notice to the State of Wisconsin, Department of Natural Resources is required. The General Prime Contractor shall provide evidence of such Notice prior to commencement of the Work.
- C. Work under this Contract shall be in compliance with all applicable state laws, codes, and regulations relating to environmental quality and safety, the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities. Such Work shall not be subject to the ordinances or regulations (except land use zoning) of the municipality in which the construction takes place, including ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions of any nature whatsoever. DFD shall be notified by the General Prime Contractor of any Notices of noncompliance or violation associated with Work required by the Contract Documents.
- D. The General Prime Contractor shall pay all Sales, Consumer, Use, and other similar taxes required by law assessed to or arising out of the construction of the Project.
- E. If the General Prime Contractor believes that any of the Work required by the Contract Documents is in violation of any State law, code, rule, or regulation, the General Prime Contractor shall promptly notify DFD. Upon such notification, DFD will determine whether corrective action is required and make such changes, if any, at no additional cost to the General Prime Contractor provided such violation was not caused by the General Prime Contractor or a Subcontractor including, a MEP Subcontractors, or a Non-MEP Subcontractors.
- F. Charges for water, sewer, and other utility connections made by municipalities will be paid by the State. Payment for use of such services and utilities before Substantial Completion shall be in accordance with provisions of the General Requirements of the Contract.

9. STATE RESPONSIBILITY FOR THE SITE

- A. Prior to start of construction, the State shall furnish all land and rights-of-way necessary for the carrying out and completion of the Work to be performed under this Contract.
- B. DFD will furnish to the General Prime Contractor site, topography, and property surveys which DFD reasonably believes necessary for the execution of the Work.
- C. DFD, upon receipt of the Notice set forth in Paragraph 10.E., shall promptly investigate the site conditions reported by the General Prime Contractor to determine whether the conditions discovered differ materially from those indicated in the Contract Documents, are of an unknown and unusual nature which could not have been discovered by a reasonable site investigation by the General Prime Contractor as required by the Contract Documents, or which differ materially from those ordinarily encountered and generally recognized as being inherent in the Work of the character required by the Contract Documents at the site where Work is to be performed.
- D. DFD shall act on any General Prime Contractor Notice, as described in Paragraph 10.E. of the General Conditions, as soon as practicable, but in no case later than ten (10) working days after the receipt of such Notice. If DFD determines that the conditions reported by the General Prime Contractor differ materially from those indicated in the Contract Documents, or are of an unknown and unusual nature which could not have been discovered during a reasonable site investigation by the General Prime Contractor, then to the extent established by the General Prime Contractor and approved by DFD, DFD shall authorize an increase or decrease in the cost or time required for performing any part of the Work under this Contract.
- E. No request by the General Prime Contractor for an equitable adjustment to the Contract under this Article 9 shall be allowed, unless the General Prime Contractor gives proper Notice, which is a **CONDITION PRECEDENT** to any liability on the part of the State.

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- F. In no event shall any claim by the General Prime Contractor for equitable adjustment to the Contract for differing site conditions be allowed if presented after final payment under this Contract is made.

10. GENERAL PRIME CONTRACTOR RESPONSIBILITY FOR CONDITIONS AT THE SITE

- A. The General Prime Contractor is responsible for and hereby acknowledges that it has taken the steps reasonably necessary to prepare a bid which includes the costs for Work, the requirement for which would reasonably be known to a competent contractor, in overcoming normal subsurface conditions at the site where the Work is to be performed and in order to accomplish the Work described in the Contract Documents. Additionally, the General Prime Contractor certifies that it has investigated the site and satisfied itself as to the general and local conditions which affect the Work or its cost, including, but not limited to:
 - 1. Conditions bearing upon transportation, disposal, handling, and storage of materials;
 - 2. The availability of labor, water, electric power, and roads or access;
 - 3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
 - 4. The conformations and conditions of the ground; and
 - 5. The character of facilities and equipment as represented by the Contract Documents.
- B. The General Prime Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, and information included in the Contract Documents.
- C. Any failure of the General Prime Contractor to take the actions described and acknowledged in this Article 10 will not relieve the General Prime Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the State.
- D. The State assumes no responsibility for any erroneous conclusions or interpretations made by the General Prime Contractor based on the information made available by DFD. If an analysis of such data is only meaningful to a person skilled in the geotechnical sciences, then the General Prime Contractor is responsible for, and certifies that it has obtained, such an analysis or has otherwise decided that the data is understandable by it, as presented. The State assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers, representatives, or agents before the execution of this Contract, unless that understanding, or representation is expressly stated in the Contract Documents.
- E. If the General Prime Contractor discovers, in the performance of the Work, a subsurface or latent physical condition at the site, including but not limited to possible environmental contamination or hazardous substances, which it did not discover pursuant to this Article 10, then the General Prime Contractor shall promptly, and before the condition is disturbed, give written Notice to DFD. Such Notice shall be subject to the procedures and limitations set forth in Article 20 hereof, entitled "Notice Requirements. The General Prime Contractor shall disclose in such Notice all the facts and circumstances then known to it, including the impact of such condition on the price, time, or quality of the Work remaining to be done.

11. SUBCONTRACTS

- A. The General Prime Contractor must subcontract with all successful MEP Subcontractors identified by DFD. The General Prime Contractor may enter into subcontracts for work other than MEP Subcontractor work, if subcontractors are approved by DFD through the Request for Subcontractor Approval Form. However, the election to subcontract Work shall not relieve the General Prime Contractor from responsibility or liability which it has assumed under this Contract. The General Prime Contractor shall remain liable to the same extent that its liability would attach, as if the Work had been performed by the General Prime Contractor's own employees. If the Specifications require or otherwise designate only one Subcontractor or source of supply for Work required under the Contract Documents, the General Prime Contractor's failure to acquire suitable Contract arrangements with such Subcontractor or source of

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supply shall not excuse the General Prime Contractor from full responsibility and liability for any failure or default of such source of supply.

- B. All Non-MEP Subcontractors are subject to DFD approval. DFD may request, or the General Prime Contractor may provide, any of the following information to substantiate the proposed Subcontractors' qualifications or ability to perform the Work. DFD shall consider such information when reviewing the qualifications of proposed Subcontractors to determine whether such qualifications serve the best interests of the Project.
1. The amount of experience completing similar Work to that required by the Contract Documents;
 2. The quality of Work the proposed Subcontractor has provided on past Projects;
 3. The extent of available staffing and financial resources of the proposed Subcontractor;
 4. The General Prime Contractor's intended method of monitoring the proposed Subcontractor's Work;
 5. The level of supervision of the Subcontractor's Work which the General Prime Contractor will provide;
 6. Any other information regarding the proposed Subcontractor's ability to complete the Work.
- C. Bidders shall submit a completed Request for Subcontractor Approval Form with their bid or within seven days of the general prime contractor bid opening. Submission of a completed Request for Subcontractor Approval Form is an element of responsiveness. Failure to submit this completed form within the above time limits will be considered unresponsiveness and may result in contract award to the next apparent low bidder. When no Subcontractors are anticipated, the General Prime Contractor shall give DFD notice of this fact on the Form within the time limits noted above.
- D. The General Prime Contractor shall not replace any DFD identified or approved Subcontractor or material supplier without written approval of DFD. Any General Prime Contractor request for replacement of a Subcontractor previously approved by DFD shall include the reason(s) for such replacement and all documentation necessary to substantiate such change.
- E. The General Prime Contractor agrees, to the extent practicable, to maintain a list of all Subcontractors and suppliers performing labor or furnishing materials for the project.
- F. The General Prime Contractor shall be fully responsible for all acts and omissions of all Subcontractors and shall be responsible for scheduling and coordinating the Work of all Subcontractors, including MEP Subcontractors, Non-MEP Subcontractors and material suppliers.
- G. Nothing herein shall be construed to create any express or implied Contractual relationship between DFD and any of the General Prime Contractor's MEP Subcontractors, Non-MEP Subcontractors, suppliers or vendors.
- H. Notwithstanding Paragraphs 11.C. and 11.D., the General Prime Contractor shall insert the following mandatory provisions in all subcontracts with Subcontractors s:
1. All provisions of this Article 11
 2. Article 26 - Payments to General Prime Contractor
 3. Article 27 - Payments by General Prime Contractor
 4. Article 32 - Nondiscrimination/Affirmative Action
 5. Article 33 - Minimum Wages

The General Prime Contractor shall include the mandatory provisions in Article 12 MEP SUBCONTRACTORS in all MEP subcontracts.

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12. MECHANICAL, ELECTRICAL, PLUMBING, AND FIRE PROTECTION (MEP) SUBCONTRACTORS

A. The General Prime Contractor will offer a subcontract to the successful MEP Subcontractors identified by DFD and included in the General Prime Contractor's bid. This subcontract between a General Prime Contractor and a MEP Subcontractor must include a scope of work clause identical to the scope of work clause included in the Bid Documents and the contract between the General Prime Contractor and the state (see item D below). A General Prime Contractor and an MEP Subcontractor may not enter any agreement in connection with bids submitted that would alter or affect the scope or price of the contracts entered into. This prohibition does not apply to DFD change orders that result in changes to the plans or specifications, or to back charges allowed by the contract. The General Prime Contractor shall base its project schedule on the schedule in the specifications or bid instructions unless otherwise agreed to by the MEP Subcontractor.

B. **Pursuant to Wis. Stat. §16.855 (14m)(a), The contract entered into between the General Prime Contractor and an MEP Subcontractor must contain all of the following clauses:**

Prompt Payment. (general prime contractor) shall pay (mechanical, electrical, or plumbing subcontractor) in accordance with section 16.855(19)(b), Wisconsin stats, for work that has been satisfactorily completed and properly invoiced by (mechanical, electrical, or plumbing subcontractor). A payment is timely if it is mailed, delivered, or transferred to (mechanical, electrical, or plumbing subcontractor) by the deadline under section 16.855(19)(b), Wisconsin stats.

If (mechanical, electrical, or plumbing subcontractor) is not paid by the deadline in this contract, (general prime contractor) shall pay interest on the balance due from the eighth day after the (general prime contractor) receives payment from the Department of Administration for the work for which payment is due and owing to (mechanical, electrical, or plumbing subcontractor), at the rate specified in section 71.82, Wisconsin stats., compounded monthly. A (mechanical, electrical, or plumbing subcontractor) that receives payment as provided under this contract and that subcontracts with another entity shall pay those subcontractors, and be liable for interest on late payments to those subcontractors, in the same manner as the (general prime contractor) is required to pay the (mechanical, electrical, or plumbing subcontractor) under this contract.

Insurance and Bonds. (mechanical, electrical, or plumbing subcontractor) shall not commence work under this contract until it has obtained all necessary insurance required of (mechanical, electrical, or plumbing subcontractor) in the contract between the (general prime contractor) and the Department of Administration. (mechanical, electrical, or plumbing subcontractor) shall provide a separate 100 percent performance bond and a separate 100 percent payment bond to the benefit of the (general prime contractor) as the sole named obligee. Original bonds shall be given to the (general prime contractor) and a copy shall be given to the Department of Administration no later than 10 days after execution of this contract.

Indemnification. To the fullest extent permitted by law, (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others whom (general prime contractor) is required to indemnify under its contract with the department, and the employees of any of them, from and against claims, damages, fines, penalties, losses, and expenses, including but not limited to attorney fees, arising in any way out of or resulting from the performance of the work under this contract, but only to the extent such claim, damage, fine, penalty, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence, or acts or omissions, of (mechanical, electrical, or plumbing subcontractor), its subcontractors, any of their employees, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses, and expense of or against (general prime contractor), results from or arises out of the negligence of the (general prime contractor) or other fault in providing general supervision or oversight of the work of (mechanical, electrical, or plumbing subcontractor) or (3) as related to claims, damages, fines, penalties, losses, and expense against the Department of Administration, arises out of the department's status as owner of the project or project site.

In addition (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others (general prime contractor) is required to indemnify under its contract with the department, and the employees of any of them, from any liability, including

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liability resulting from a violation of any applicable safe place act, that (general prime contractor) or the state incurs to any employee of (mechanical, electrical, or plumbing subcontractor) or any third party where the liability arises from a derivative claim from said employee, when the liability arises out of the failure of the (general prime contractor) or the state to properly supervise, inspect, or approve the work or work area of (mechanical, electrical, or plumbing subcontractor), but only to the extent that the liability arises out of the acts or omissions of (mechanical, electrical, or plumbing subcontractor), its employees, or anyone for whom (mechanical, electrical, or plumbing subcontractor) may be liable, or from (mechanical, electrical, or plumbing subcontractor's) breach of its contractual responsibilities or arises out of (general prime contractor's) negligence or other fault in providing general supervision or oversight of (mechanical, electrical, or plumbing subcontractor's) work or arises out of the Department of Administration's status as owner of the project or project site. In claims against (general prime contractor) or the state by an employee of (mechanical, electrical, or plumbing subcontractor) or its subcontractors or anyone for whose acts (mechanical, electrical, or plumbing subcontractor) may be liable, the indemnification obligation of this paragraph is not limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the (mechanical, electrical, or plumbing subcontractor) subcontractors under workers compensation act.

Except as identified above, the obligations of (mechanical, electrical, or plumbing subcontractor) under this indemnification do not extend to the liability of (general prime contractor) and its agents or employees arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; (2) the giving of or failure to give directions or instructions by the (general prime contractor) or the Department of Administration or their agents or employees provided the giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

Retainage. Retainage shall occur and be in amounts and on a schedule equal to that in the contract between (general prime contractor) and the Department of Administration.

- C. Pursuant to Wis. Stat. § 16.855(19)(b), Retainage between General Prime Contractor and MEP Subcontractors is governed as follows:

As the work progresses under any MEP subcontract for construction of a project, the general prime contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed, less retainage. The retainage shall be an amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the department certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the department.

- D. Pursuant to Wis. Stat. § 16.855(14m)(b), the MEP Subcontracts must include a scope of work clause that is identical to the scope of work clause on which the MEP Subcontractor bid. The following Scope of Work language shall be included in the contracts between the General Prime Contractor and MEP Subcontractors:

Scope of Work. The MEP Subcontractor scope of work is identical to the General Prime Contractor scope of work included in these bidding and contract documents. By submitting and signing a bid, all bidders have examined all of the Bidding Documents listed in the Table of Contents of the project specifications. The successful bidders will be required to do all work which is shown on the drawings, mentioned in the specifications, or reasonably implied as necessary to complete the division of work bid for this project.

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13. SCHEDULING AND COORDINATION OF WORK

- A. The General Prime Contractor has the full and complete responsibility for the accomplishment of all Work within the specified time indicated in the Contract Documents, except where the Contract Documents explicitly and specifically place a limited duty for completion on the State.
- B. DFD and the General Prime Contractor hereby commit themselves to good faith negotiation, coordination, and cooperation to assure the timely completion of the Project. By accepting this Contract, the General Prime Contractor agrees that scheduling, coordination, and monitoring activity for All Work will be placed under the direct control and supervision of a person experienced in construction scheduling, means and methods. If such experience and knowledge must be obtained by Contracting with a separate scheduling consultant, the entire cost of such consultant shall be borne by the General Prime Contractor. Additionally, the General Prime Contractor fully agrees to cooperate in all respects with all Subcontractors, including MEP Subcontractors, Non-MEP Subcontractors, and suppliers to provide all data required, and shall coordinate the activities of its own Work forces and the Work forces of the Subcontractors, in such manner and at such time as to not cause a delay in the Project.
- C. The General Prime Contractor and the State shall be given the opportunity to schedule its own Work as conveniently as is consistent with the overall needs of the Project Schedule.
- D. The General Prime Contractor shall afford the State and any other parties performing Work on the Project, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities at the site.
- E. The Project Schedule shall incorporate all activities, events, and milestones required for successful Project completion within the allowable time for completion specified in the Contract Documents. The General Prime Contractor shall prepare a breakdown of all Work activities or events, whether the activities are to be performed by the General Prime Contractor's own forces, those of Subcontractors, including MEP Subcontractors and Non-MEP Subcontractors, or the State, indicating the proposed duration and sequencing of such activities for successful completion of the Project within the allowable time specified in the Contract Documents. The General Prime Contractor shall also identify whether any Work activity or event is dependent on the Work of its own forces or with those of the State. The failure to list any activity or to perform any other duty required by or incident to that required by these General Conditions shall not be the basis of a claim for adjustment of any provision of this Contract, or of any other type of claim whatsoever.
- F. The General Prime Contractor shall, within fourteen (14) calendar days from the Notice to Proceed, develop and publish a Project Schedule for the first sixty (60) calendar days of the Project. The completed Project Schedule, for all Work activities through Project completion, shall be developed and published within this sixty (60) day period. **Pursuant to 16.855 (14m)(d), the General Prime Contractor must base this Project Schedule on the schedule that the MEP Subcontractors and General Prime Contractors bid on (in the specifications or bid instructions), unless otherwise agreed to by the MEP Subcontractor.** No provision of this Contract shall be construed to relieve the General Prime Contractor of this requirement. Monthly updates of the schedule shall be developed, analyzed and published and each subsequent update shall include a breakdown of major activities to be performed by each separate Contractor or entity, and all activities required for development, monitoring, and updating the Project Schedule.
- G. If the General Prime Contractor's Work depends upon construction or operations by the State, the General Prime Contractor shall, prior to proceeding with that portion of the Work, promptly give Notice to DFD of any apparent deficiencies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the General Prime Contractor to so report shall constitute an acknowledgment that the State's completed or partially completed construction is fit and proper to receive the General Prime Contractor's Work, except as to defects not then reasonably discoverable.
- H. The General Prime Contractor shall identify forthwith any critical event which will require DFD to act or to refrain from acting, or critical time periods within which the State must complete activities or Work for which DFD is responsible under the Contract. Timely Notice of any such identified event or time period shall be given to DFD. The giving of such Notice is a CONDITION PRECEDENT to the creation of any duty of DFD to take any action or to refrain from taking any action. The failure of the General Prime Contractor to give such Notice forthwith shall

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thereafter bar and preclude any claim by the General Prime Contractor for adjustment of any Contract provision or claim predicated on the breach of any obligation by DFD.

- I. Where any Work activity required for completion of the Project, is completed in less time than that required, anticipated, or otherwise allowed by the Project Schedule, the unused time, hereinafter called Float, shall belong to the Project, to be used by the General Prime Contractor as the Project needs determine, including but not limited to providing additional time for completion of any other Work activities required for completion of the Project. Float shall not be considered owned, subject to the exclusive use, or management by any of the interested participants. No claim against DFD or the General Prime Contractor shall be made by any party for the loss of Float time.
- J. The General Prime Contractor shall be independently responsible for resolving any time related matters with Subcontractors, including MEP Subcontractors, Non-MEP Subcontractors, suppliers, or others who may furnish supplies or services on the Project, as a result of Contractual relations with the General Prime Contractor. No liability shall attach to the State, for the failure of any party to carry out the coordination and scheduling responsibilities which they have assumed under this Article 13.
- K. The General Prime Contractor is hereby put on Notice that failure to furnish data or cooperate in good faith is a MATERIAL BREACH OF CONTRACT and may be the basis for a Termination for Default under the procedures set forth in these General Conditions. In such cases DFD, in addition to, and not in lieu of the right to termination for default, may acquire the services of a scheduling specialist to perform any such duties and charge the cost thereof to the General Prime Contractor. In the event that DFD is required to acquire any replacement scheduling services, the General Prime Contractor shall conform to any revised schedule resulting therefrom.
- L. In addition to the criteria set forth in these General Conditions, the full and complete performance of duties required to be performed under this Article 13, is a CONDITION PRECEDENT to the right of the General Prime Contractor to payment of any sums due.. In the event of any delays by the General Prime Contractor or other breach hereof which gives rise to penalties and/or damages to the State, then in any such event DFD may offset such penalties and damages against the sums due or to become due the General Prime Contractor hereunder.
- M. The bonds furnished to secure these commitments shall be applicable to each and every one of these time and scheduling commitments and may be enforced by any person or entity who is entitled to enforce the bonds as a matter of law and who is damaged as a result of breach of these commitments by the General Prime Contractor on the Project to which these provisions apply. The State shall not be responsible for the default of the General Prime Contractor and the remedies of any damaged party shall be limited to an action by the damaged party against the defaulting General Prime Contractor and/or its bonding company, in addition to any other coverage for the bond.
- N. The General Prime Contractor is cautioned that the reporting requirements specified in or for the Schedule Requirements, are in addition to any such similar requirements set forth in the Articles hereof entitled, "REPORTS, RECORDS AND DATA", "QUALITY CONTROL & INSPECTION, and "NOTICE".
- O. In the event it becomes necessary to interpret this Article 13, the construction or interpretation shall strive to achieve the purpose for which this Article 13 was designed to accomplish, i.e. timely, effective and efficient performance of the Work under the Contract within the allowable time identified in the Contract Documents, and at no extra cost or inconvenience to any party, if at all possible.

14. GENERAL PRIME CONTRACTOR'S OBLIGATIONS AND SUPERINTENDENCE

- A. The General Prime Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, and superintendence necessary to execute, complete, and deliver the Work within the specified time.
- B. Where technically and economically feasible, the General Prime Contractor shall use the least hazardous materials, equipment, and processes to execute the Work. If materials are used which are considered an OSHA hazardous material, the General Prime Contractor shall comply with all OSHA rules and regulations.
- C. No materials or supplies which are to become part of the Work shall be purchased by the General Prime Contractor or by any Subcontractor, including MEP Subcontractor or Non-MEP Subcontractor subject to any chattel mortgage, conditional sale contract, or other agreement by which a security interest is retained by the seller. Upon Substantial

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Completion of the Work, good title to all materials and supplies incorporated into the Work shall be conveyed to the State, free and clear of all liens and encumbrances.

- D. General Prime Contractor's obligation for inspection and quality control shall be as provided for in Article 15, entitled "QUALITY CONTROL & INSPECTION", of these General Conditions.
- E. General Prime Contractor's obligation for scheduling of Work and coordination with other entities performing Work required for the completion of the Project shall be as provided for in Article 13, entitled "SCHEDULING AND COORDINATION OF WORK", of these General Conditions.
- F. Any Work necessary to be performed after regular working hours, on Sundays, or Legal Holidays, and for which the General Prime Contractor is responsible, shall be performed without additional expense to the State.
- G. The General Prime Contractor shall furnish, erect, maintain, and remove such temporary Works as identified in the General Requirements of the Contract.
- H. The General Prime Contractor shall give continuous personal superintendence to the Work and its performance at the site, or shall employ a construction superintendent or foreman, experienced in Work of the character covered by the Contract Documents, who shall have full authority to act for the General Prime Contractor.
- I. The presence and observation of the Work by DFD's Project Representative shall not relieve the General Prime Contractor of any obligations.
- J. The premises and surrounding area shall be kept reasonably free from accumulation of waste material or rubbish as specified in the General Requirements of the Contract.
- K. Unused and discarded materials shall be managed or disposed of as specified in the General Requirements of the Contract.
- L. If, in the opinion of DFD, the actions or Work of an employee of the General Prime Contractor or a Subcontractor, including MEP Subcontractor or Non-MEP Subcontractor are judged to be unsatisfactory, careless, incompetent, unskilled, in violation of any environmental or safety standards, or otherwise objectionable, the employee shall be removed from the Project or other corrective action taken upon Notice from DFD.

15. QUALITY CONTROL & INSPECTION

- A. The General Prime Contractor shall, except where a provision of the Contract Documents explicitly states to the contrary, have the full, complete, and absolute responsibility and obligation for insuring that the Work performed by the General Prime Contractor and Subcontractors, including MEP Subcontractors, and Non-MEP Subcontractors strictly conforms to the requirements set forth in the Contract Documents. The General Prime Contractor shall maintain an adequate inspection and quality control system and shall perform such inspections as will ensure that the Work performed under this Contract conforms to the requirements of the Contract Documents.
- B. At the Pre-Construction Meeting, the General Prime Contractor shall provide DFD a full description of the General Prime Contractor's quality control and inspection system and method of implementation.
- C. Prior to the start of significant on-site work by any trade, DFD's Project Representative, the General Prime Contractor's Superintendent and the Subcontractor's foremen, including the MEP Subcontractor foremen and Non-MEP Subcontractors' foremen, shall conduct a pre-installation conference. The purpose of the meeting is to review and discuss Contract requirements applicable to the work, samples required, level of quality necessary, and find answers to any questions that may arise. Such meeting is in addition to regularly-scheduled progress meetings and will be arranged on-site by DFD's Project Representative.
- D. The General Prime Contractor shall maintain complete inspection records and test data to ensure that quality of the Work is in strict compliance with the terms of the Contract Documents. These records shall be available to DFD's Project Representative at all reasonable times and places. The doctrine of "substantial conformity" to the quality

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requirements of the Contract Documents, shall have no application, unless DFD accepts the Work in accordance with Paragraph 15.F

- E. DFD reserves the right to conduct its own quality assurance verification, and to observe, inspect, and /or conduct tests relative to General Prime Contractor and Subcontractor performance. If, when conducting its own quality assurance program, DFD determines that the Work or a portion thereof does not comply with requirements of the Contract Documents, DFD shall attempt to notify the General Prime Contractor of such deficiencies as soon as practicable. However, DFD's exercise of rights under this provision does not:
 - 1. Relieve the General Prime Contractor of the responsibility for providing adequate inspection and quality control measures or the proper documentation of the occurrence of the events required to be tested or monitored in the performance of the Work required by the Contract Documents; and shall provide no basis for waiver or estoppel claims to be asserted against the State;
 - 2. Relieve the General Prime Contractor of responsibility for damage to or loss of the material before acceptance;
 - 3. Constitute or imply acceptance on the part of DFD;
 - 4. Affect the continuing rights of the State after acceptance of the completed Work, except as specifically stated to the contrary, in the Contract Documents.
- F. The presence or absence of DFD's Project Representative does not relieve the General Prime Contractor from any Contract requirement. If the General Prime Contractor desires waiver of any technical or Contract requirement or any other deviation from the strict requirements of the Contract Documents, a specific request for such waiver or deviation must be made to DFD's Project Representative for consideration.
- G. The General Prime Contractor shall, without charge, replace or correct Work found not to conform to the Contract Document requirements, unless in the public interest, DFD agrees to accept the non-conforming Work with an appropriate adjustment in the Contract price thereof. Such acceptance of non-conforming Work shall, whether the determination is to be made at the time of final completion or during the performance of Work, be based upon a determination by DFD that the deviation from Contract Document requirements does not adversely affect the integrity of completed Work.
- H. When DFD directs the General Prime Contractor to replace or correct rejected Work and the General Prime Contractor fails to take such action within the time period identified by DFD, DFD may:
 - 1. Terminate this Contract for default under Article 29, hereof entitled "DFD'S RIGHT TO TERMINATE CONTRACT", or
 - 2. Suspend or stop the Work under Article 28, hereof entitled "DFD'S RIGHT TO SUSPEND, STOP, OR COMPLETE WORK".
- I. If, before acceptance, DFD decides to examine already completed Work by removing it, or removing other Work to expose it, the General Prime Contractor shall promptly furnish all necessary facilities, labor, and material necessary to accomplish the examination. If the Work is found to be defective or non-conforming in any material respect due to the fault of the General Prime Contractor or Subcontractor, or otherwise fails, in the judgment of DFD, to meet the requirements set forth in Paragraph 15.F., the General Prime Contractor shall be responsible for all costs associated with replacement or repair of the defective Work, including the costs of removing or tearing the Work out and satisfactory reconstruction. However, if the Work is found to meet Contract requirements, DFD shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.
- J. Costs caused by defective construction shall be borne by the General Prime Contractor.
- K. Unless otherwise specified in the Contract, DFD shall accept, as reasonably as practicable after completion and inspection, all Work completed under the Contract or that portion of the Work which DFD determines can be accepted separately.

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16. SUBMITTALS

- A. The General Prime Contractor shall submit at the Pre-Construction Meeting a register listing all known submittals required for the project.
- B. When the General Prime Contractor makes a "Submittal" to describe how it will fulfill its responsibility under this Contract by submitting Shop Drawings, Samples, Cuts, Catalogues, Models, Mockups, or other preliminary information, the following provisions shall apply:
 - 1. THE GENERAL PRIME CONTRACTOR NOTES THE CONSPICUOUS NATURE OF THIS ARTICLE and agrees that these provisions are material provisions and are to be enforced, in the event of controversy, in such a manner as to place upon the General Prime Contractor the full, complete, and total responsibility for the submittal's conformance with the requirements of this Contract, and suitability or usability of preliminary submissions by the General Prime Contractor, without regard to any DFD action or failure to act;
 - 2. All Submittals and supporting information shall be delivered to a party designated by DFD, who shall act on any such Submittal within ten (10) working days or notify the General Prime Contractor in writing, of the time required for such action if greater than the aforementioned ten (10) day period. Such designation shall take place at the Project Pre-Construction Meeting. Review of the Submittals for conformance with requirements of the Contract Documents shall be completed by the party responsible to DFD for Project design. A copy of all such submittal and transmittal forms shall also be sent to DFD's Project Representative;
 - 3. The General Prime Contractor shall make submittals in a timely fashion to assure completion of the entire Project within the allowable time specified in the Contract Documents. The timing of such Submittals shall be subject to the provisions of Paragraphs 13.C. and 13.H.;
 - 4. Each Submittal by the General Prime Contractor shall contain the cover page included in the Specifications. Such cover page shall be signed by a representative of the General Prime Contractor responsible for review of the Submittal to assure compliance with requirements of the Contract Documents.
- C. Submittals shall be provided in response to requests for submittals by DFD, or whenever required by the Contract Documents.
- D. If the General Prime Contractor submits for approval items which do not strictly comply with the design requirements of Contract Documents, the General Prime Contractor shall provide all engineering or design information necessary for complete evaluation of the Submittal by DFD. If it is determined by the General Prime Contractor or DFD that the services of a professional consultant, engineer or architect are required to provide such information, the General Prime Contractor shall acquire such services at its own expense.
- E. If the General Prime Contractor believes that requirements of the Contract Documents are in conflict with the manufacturer's recommended method of installation or application of specified materials, products, or systems, the General Prime Contractor shall indicate such possible conflicts at the time of submittal.

17. EQUALS AND SUBSTITUTIONS

- A. It is not the intention of DFD to limit or restrict competition by the use of any "Brand Name", reference to a particular manufacturer, process, technique, catalog number or other identifying information. Such proprietary specifications or use of "Brand Names" are intended to establish a level of quality or the minimum essential requirements to which the General Prime Contractor must conform, unless more explicit restrictions are stated to apply.
- B. When the Contract Documents list performance or functional characteristics in connection with Work to be performed, these characteristics are mandatory for reasons of design. Use of any "Equal" or "Substitution" shall be subject to the prior written approval of DFD.
- C. Material, equipment, or processes offered for use as an "Equal" or "Substitution" may be proposed by the General Prime Contractor in writing. Such proposals shall guarantee the proposed "Equal" or "Substitution" to be capable of

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performing the duties of the originally specified material, equipment, or process. DFD shall respond to any such proposal as soon as practicable, but in no case later than seven (7) working days after receipt of such proposal.

- D. It shall be the sole responsibility of the General Prime Contractor to provide all documentation, regardless of type or quantity, to clearly establish the qualifications of items proposed as "Equals" or "Substitutions" under this Article 17. If the value of the "Equal" or "Substitution" is less than the item specified in the Contract Documents, then an equitable reduction of the price of the Contract shall be made.
- E. When "Equals" or "Substitutions" are approved by DFD and incorporated into the Project by the General Prime Contractor, all costs incurred to 1) correct deficiencies in items, 2) provide for installation or hookup, or 3) to achieve performance specified in the Contract Documents, will be borne by the General Prime Contractor.
- F. Any substitute material or equipment installed by the General Prime Contractor without approval of DFD shall be subject to immediate removal and all costs required to conform to the Contract Documents shall be borne by the General Prime Contractor.
- G. The General Prime Contractor shall assume all liability and responsibility for any changes in the Work or additional Work required to accommodate use of proposed and approved "Equals" or "Substitutions." DFD's approval of such "Equals" or "Substitutions" does not relieve the General Prime Contractor from the obligation to pay all additional costs resulting from their inclusion in the Work, even if additional costs or Work become apparent after execution of the change or installation of the "Equal" or "Substitution." The General Prime Contractor's liability shall include payment of any additional costs incurred by the State, made necessary by, or directly connected to, such changes.

18. CHANGES IN THE WORK

- A. Except in cases of emergency, no changes in the Work required by the Contract Documents may be made by the General Prime Contractor without having prior approval of DFD.
- B. DFD may at any time, without invalidating the Contract and without Notice to Sureties, order changes in the Work by written Change Order or Field Order. Such changes may include additions and/or deletions.
- C. Where DFD desires to make changes in the Work through use of written Change Order, the following procedures shall apply:
 - 1. If requested by DFD, the General Prime Contractor shall prepare and submit a detailed proposal, including all cost and time adjustments to which the General Prime Contractor believes it will be entitled if the change proposed is incorporated into the Contract. DFD shall be under no legal obligation to issue a Change Order for such proposal;
 - 2. The parties shall attempt in good faith to reach agreement on the adjustments needed to the Contract to properly incorporate the proposed change(s) into the Work. In the event that the parties agree on such adjustments, DFD may issue a Change Order and incorporate such changes and agreed to adjustments, if any;
 - 3. In some instances, it may be necessary for DFD to authorize Work or direct changes in Work for which no final and binding agreement has been reached and for which unit prices are not applicable. In such cases the following shall apply:
 - a. Upon written request by DFD, the General Prime Contractor shall perform the proposed Work;
 - b. The cost of such changes shall be determined in accordance with subparagraph 18.I.3..
 - c. In the event agreement cannot be accomplished as contemplated herein, DFD may authorize the Work to be performed by State forces or to hire others to complete the Work. Such action on the part of the State shall not be the basis of a claim by the General Prime Contractor for failure to allow it to perform the changed Work.

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- D. Where changes in the Work are made by DFD through use of a Field Order, the General Prime Contractor shall as soon as practicable, and in no case later than ten (10) working days from the receipt of such order, unless another time period has been agreed to by both parties, give DFD written Notice, stating:
1. The date, circumstances and source of the Field Order; and,
 2. The cost of performing Work described by such Order, if any; and,
 3. Effect of the order on the required completion date of the Project, if any.
- E. The giving of each Notice by the General Prime Contractor as prescribed by this Article 18, shall be a **CONDITION PRECEDENT** to liability of the State for payment of any additional costs incurred by the General Prime Contractor in implementing changes in the Work. Under this Article 18, no order or statement of the State shall be treated as a Change Order, or shall entitle the General Prime Contractor to an equitable adjustment of the terms of this Contract or damages for costs incurred by the General Prime Contractor on any activity for which the Notice was not given.
- F. In the event Work is required due to an emergency as described in Article 7.B., the General Prime Contractor must request an equitable adjustment as soon as practicable, and in no case later than ten (10) working days of the commencement of such emergency.
- G. All General Prime Contractor requests for equitable adjustment shall be submitted to DFD's Project Representative in written form. Such requests shall set forth with specificity the amount of and reason(s) for the proposed adjustment and shall be accompanied by supporting information and documents. The review, resolution, and payment of such requests shall be governed by Article 30.
- H. No adjustment of any kind shall be made to this Contract, if asserted by the General Prime Contractor for the first time, after the date of final payment.
- I. When DFD makes changes in the Work through written Change Order or Field Order, an amount to be added to or deducted from the Contract shall, at the sole discretion of DFD, be calculated using one of the following methods:
1. By unit prices stated in the Contract Documents or subsequently agreed upon by DFD and the General Prime Contractor; or
 2. By a lump sum agreed upon by the General Prime Contractor and DFD, which includes and is limited to the following:
 - a. **LABOR:** Actual labor rate includes the base rate, taxes, insurance and fringe benefits required by agreement or custom. Unit labor is the labor time anticipated to be expended to install the corresponding unit of actual materials, as taken from the appropriate column of a DFD pre-approved current national manual of labor units. Labor cost is the labor hours approved by DFD multiplied by the DFD pre-approved composite hourly labor rates;
 - b. **MATERIAL:** Actual material cost is the amount paid or to be paid by the General Prime Contractor for materials, supplies and equipment entering permanently into the Work, including cost of transportation and applicable taxes. This cost shall be substantiated by the Vendor/Supplier's verified invoices/quotes or by using a DFD approved current national pricing service, lowest column price, multiplied by 0.75. The cost shall not exceed the usual and customary cost for such items available in the geographical area of the project. DFD shall have the option of using either or both methods of substantiation to determine the cost to be used;
 - c. **LARGE TOOLS AND MAJOR EQUIPMENT:** Large tools and major equipment are those with an initial cost greater than \$1,000, whether from the General Prime Contractor or other sources. Allowable rental rate is the lesser of the General Prime Contractor's actual rental schedule pre-approved by DFD or a DFD-approved nationally accepted manual of equipment rental rates, lowest column price, multiplied by 0.75. The rental rate shall not exceed the usual and customary amount for such items available in the geographical area of the project. Tool and equipment use time allowed is only for the

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extra Change Order work. Rental cost is the above tool and equipment time approved by DFD multiplied by the DFD pre-approved rental rates also described above. When large tools and equipment needed for Change Order work are not already at the job site, the actual labor cost to get them there is also reimbursable;

- d. BOND COST: The cost is the actual rate paid for the performance and payment bonds;
 - e. SUBCONTRACTOR COSTS: Subcontractor costs (including MEP Subcontractor and Non-MEP Subcontractor costs) are for those subcontracted specialties required to complete the Change Order work, with maximum markups as outlined hereinafter;
 - f. OVERHEAD AND PROFIT ALLOWANCE: The maximum allowable markup for overhead and profit markup on Change Order proposals shall not exceed 15 percent total. The General Prime Contractor markup of change order work done by Subcontractors shall not exceed 7 ½ percent. When the value of a Change Order proposal exceeds \$30,000, a declining scale will be used to negotiate the allowable combined overhead and profit margin. Where Change Order proposals involve a credit only, a reasonable allowance for overhead and profit are properly included as part of the downward adjustment for a deductive change exceeding \$15,000. The amount of such allowance is subject to negotiation.
 - g. EXCLUSIONS: All other Change Order expenses are part of the overhead and profit allowance which are not reimbursable as separate items and include the following:
 - (1) CHANGE ORDER PREPARATION: All costs associated with the processing of the Change Order are included in the overhead and profit allowance;
 - (2) DESIGN, ESTIMATING, AND SUPERVISION: All such efforts, unless specifically requested by DFD as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance;
 - (3) INSTALLATION LAYOUT: The layout required for the installation of material and equipment, and installation design, is the responsibility of the General Prime Contractor and is included in the overhead and profit allowance;
 - (4) SMALL TOOLS AND SUPPLIES: The cost of small hand tools with an initial cost of \$1,000 or less, along with consumable supplies and expendable items such as drill bits, saw blades, gasoline, lubricating or cutting oil, and similar items, is included in the overhead and profit allowance;
 - (5) GENERAL EXPENSE: The general expense, which is those items that are a specific job cost not associated with direct labor and material, is included in the overhead and profit allowance;
 - (6) RECORD DRAWINGS: The preparation of record or as-built drawings required is included in the overhead and profit allowance;
 - (7) OTHER COSTS: a) All association dues, assessments, and similar items are included in the overhead and profit allowance. b) All education, training, and similar items are included in the overhead and profit allowance. c) All drafting and/or engineering, unless specifically requested by DFD as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance. d) All other cost items such as, but not necessarily limited to, review, coordination, estimating, and expediting, relative to Change Order proposals, are associated with field and office supervision and are included in the overhead and profit allowance.
3. By segregating the cost for Work performed and monitoring such costs. These costs shall be recorded daily, reported as a part of the General Prime Contractor's daily report procedure, and certified by DFD's Project Representative. Such costs shall be limited to those identified in subparagraph 18.I.2., except that actual rather than estimated labor expended and material installed shall be used in determining the cost adjustment.
- J. The General Prime Contractor shall provide DFD with costs for all proposed Change Orders as outlined in the "Procedures for the Change Order Proposal" document, to be provided by DFD to the General Prime Contractor at the Pre-construction meeting. Typical labor rates to be used shall be provided by the General Prime Contractor to DFD no later than submittal of the first payment request.

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- K. The completion date is determined by DFD. The schedule, however, is the responsibility of the General Prime Contractor. Time extensions for extra Work will be considered when a schedule analysis shows that the Change Order places the Work beyond the completion date stated in the Notice To Proceed. Unless the cumulative time extensions for extra Work places the Work beyond the original completion time specified in the Instructions to Bidders, all extended overhead costs are included in the overhead and profit allowance. If significant scope changes occur which places the extra Work beyond the original completion time specified in the Instructions to Bidders, actual additional costs will be considered in accordance with Article 30, CLAIMS.

19. REPORTS, RECORDS AND DATA

- A. The General Prime Contractor shall submit to DFD's Project Representative daily Work activity reports for each day on which Work is performed by any employee or entity for which the General Prime Contractor is responsible. Such reports shall include all relevant data concerning the progress of Work activities the General Prime Contractor and Subcontractors are responsible for and the effect of that activity on the time of performance of the Contract or the cost thereof.
- B. Daily Work activity reports shall be completed and signed by the General Prime Contractor's Job Superintendent or other on-site representative authorized by the General Prime Contractor to make such reports, who shall be personally responsible for assuring that each such report is current, accurate and complete. The signature of the General Prime Contractor's representative shall constitute a warranty to DFD that, after suitable inquiry, to the best of their knowledge and belief, all such data is current, accurate and complete as of the date of the report.
- C. The General Prime Contractor shall submit to DFD's Project Representative schedules of quantities and costs, progress schedules, wage rates, reports, estimates, invoices, records and other data as DFD may request concerning Work performed or to be performed under this Contract if DFD determines such information is needed to substantiate Change Order proposals, claims, or to resolve disputes.

20. NOTICE REQUIREMENTS

- A. Except as otherwise expressly provided in the Contract Documents, all notices, demands and other communications that are required to be made or delivered to DFD shall be signed by or on behalf of the General Prime Contractor, and shall be deemed fully made and effective immediately upon presentation to DFD's Project Representative or the deposit thereof in the United States mail, postage prepaid and addressed to DFD's Project Representative.
- B. The General Prime Contractor's presentation to DFD's Project Representative or mailing of such Notice to DFD's Project Representative is a CONDITION PRECEDENT to any liability of DFD for any actual or alleged breach of DFD's contractual obligations hereunder. The General Prime Contractor's failure to give such written Notice in the manner and time prescribed by the Contract Documents shall result in the waiver of any and all claims, demands and causes of action that the General Prime Contractor may have against DFD arising from or in connection with the actual or alleged breach.

21. TIME FOR COMPLETION OF THE PROJECT

- A. It is hereby understood and mutually agreed, by and between the General Prime Contractor and DFD that the time for completion of the Work required by the Contract Documents is an ESSENTIAL CONDITION of this Contract.
- B. The General Prime Contractor agrees that the Work required by the Contract Documents will be prosecuted regularly and diligently at a rate of progress that will ensure its full completion within the time specified in the Contract Documents. It is expressly understood and agreed, by and between the General Prime Contractor and DFD, that the specified time period for completion of the Work described in the Contract Documents is a reasonable time for the completion of the Work, taking into consideration the average weather conditions and usual industrial conditions prevailing in the locality in which the Work is to be completed.
- C. When events occur which, in the opinion of the General Prime Contractor, prevent completion of the Project within the time period allowed by the Contract Documents, the General Prime Contractor shall request an extension of the specified time for completion. Such request shall include the reasons for delay, the amount of time extension being

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requested, and any cost(s) associated with the delay. All such requests shall be made in writing and delivered to DFD's Project Representative within ten (10) working days from the beginning of such delay, or within ten (10) working days from the time when the circumstance with potential for delay becomes reasonably known to the General Prime Contractor, whichever is earlier. DFD shall act on such requests as soon as practicable and notify the General Prime Contractor of DFD's decision.

- D. If any activity is delayed, or anticipated to be delayed, thereby delaying the completion of the entire Project, the General Prime Contractor shall have the right to take action as may be necessary to recapture any delay. Such action shall include, but not be limited to:
1. Increase in staffing
 2. Increase in shifts, hours of Work, or number of days of Work
 3. Use of available float
 4. Changing the sequence of Work activities
- E. Costs caused by delays or improperly timed activities shall be borne by the party responsible therefor, and Change Orders, as deemed appropriate by DFD, shall be issued in accordance with Article 18 of these General Conditions.
- F. Costs for acceleration of Work activities to allow completion of the Project in less time than that allowed by the Contract Documents shall be borne by the party requesting such acceleration or early completion. No claim for delay shall be valid against DFD for compensation for delayed completion which extends completion beyond the early finish date, but which does not continue beyond the stated time for completion as set forth in the Contract.
- G. Where abnormal weather conditions may have substantially contributed to the delay of Project completion, such determination shall only be made by DFD upon written request by the General Prime Contractor, and by comparing the total season in which such weather occurs with the average of the previous five years. Where DFD determines that weather has substantially delayed Work, thereby delaying completion of the Project within the time specified in the Contract Documents, DFD shall extend the allowable time for completion an amount equal, in the opinion of DFD, to the delay caused by such weather conditions. Extension(s) in the allowable time for completion, when granted by DFD as a result of abnormal weather conditions, shall not be cause for any request for additional compensation by the General Prime Contractor.
- H. Where, under the Contract, DFD extends the amount of time specified for completion of the Project, the new time limit fixed by such extension shall be the essence of this Contract.
- I. Time extensions and associated adjustments in the Contract Documents which are implemented by, or based on Change Orders and Field Orders for which an overhead allowance would otherwise be permitted hereunder, shall not include any allowance for extended and unabsorbed overhead costs.
- J. Permitting the Work or any part of it to continue after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of DFD, of any of DFD's rights under the Contract or a waiver of any default by the General Prime Contractor.
- K. If the General Prime Contractor fails to complete the Work within the time specified in the Contract and such failure is due to reasons which were not beyond the reasonable control of the General Prime Contractor or if the General Prime Contractor fails to complete the Work within the time specified in the Contract and fails to make the written request as provided for in Paragraph 21(C), then in any such event the General Prime Contractor shall pay to DFD actual damages. When such damages can be reasonably predetermined, the amount will be indicated in the Supplementary General Conditions.
- L. If DFD terminates the Contract, or suspends or stops Work in accordance with Paragraphs 28.B. or 29.A. due to the fault of the General Prime Contractor, the damages described in Paragraph 22.M shall be assessed for each day (or any part thereof) such Work is stopped on the Project. If DFD does not elect to terminate the Contract or to suspend or stop the Work, the damages shall be assessed for each day of delay in Substantial Completion.

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- M. Nothing contained herein shall be construed as limiting the right of the State to recover actual damages sustained as a result of any delay by the General Prime Contractor which exceed the amounts specified in the Supplementary General Conditions.
- N. DFD may, at its discretion, waive damages due the State, or any portion thereof.

22. USE AND POSSESSION PRIOR TO COMPLETION

- A. DFD shall have the right to authorize possession or use of any completed or partially completed part of the Work. Before the State takes possession or uses any part of the Project:
 - 1. DFD and the General Prime Contractor shall prepare a list of items of Work remaining to be performed or corrected on those portions of the Project that the State intends to take possession of or use;
 - 2. Failure to include on this list any item of Work clearly required to be performed by the General Prime Contractor shall not relieve the General Prime Contractor of responsibility for complying with the terms of the Contract;
 - 3. The State's possession or use shall not be deemed an acceptance of any Work under the Contract Documents.
- B. While the State has such possession or use, the General Prime Contractor shall be relieved of the responsibility for loss or damage to the Work resulting from the State's possession or use.

23. SUBSTANTIAL COMPLETION

- A. Prior to the General Prime Contractor's request for final inspection by DFD, the General Prime Contractor shall conduct an inspection to determine if building systems are functional, Work activities complete, and the Work product is in strict accordance with the requirements of the Contract Documents. If, in the course of this inspection, items are identified which are in need of repair, replacement, correction, or completion, the General Prime Contractor shall make every attempt to complete or correct those items prior to any request for DFD inspection of the Work or Certification of Substantial Completion.
- B. When the General Prime Contractor considers that the Work, or a designated portion thereof, is Substantially Complete, the General Prime Contractor shall provide written Notice and Request for Inspection to DFD. Such Notice shall include a list of all known incomplete and non-conforming work along with a schedule for completing each item as appropriate. Upon the receipt of the General Prime Contractor's Notice, DFD will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If, during such inspection, DFD identifies items not complete, in need of correction, replacement, or otherwise not in accordance with the requirements of the Contract Documents, the General Prime Contractor shall complete or correct such items. After completion of such punch list items, the General Prime Contractor may request subsequent inspection by DFD.
- C. When in the judgment of DFD the Work, or designated portion thereof is Substantially Complete, DFD will prepare a Certificate of Substantial Completion, establishing the responsibilities of the State and General Prime Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance.
- D. Where items have been identified which are not complete or are in need of correction DFD may, at its sole discretion declare the Work, or designated portion thereof Substantially Complete, noting such deficiencies. In such case, the Certificate of Substantial Completion shall fix the time within which the General Prime Contractor shall finish all items not completed or corrected.
- E. At the time DFD declares the Work or designated portion thereof Substantially Complete, the General Prime Contractor may request payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

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24. FINAL COMPLETION AND FINAL PAYMENT

- A. Prior to Request for Final Payment, the General Prime Contractor shall provide a Certification that all debts and claims against this Project have either been paid in full or otherwise satisfied and give final evidence of release of all liens against the Project, the State, and all proceeds payable hereunder. The General Prime Contractor shall certify upon such payment request that the data contained therein is current, accurate, and complete. General Prime Contractor shall permit, if requested by DFD, the final inspection to be jointly conducted by the General Prime Contractor and DFD's Project Representative. The General Prime Contractor shall give Notice at least 72 hours in advance of the time set for final inspection.
- B. Upon completion of the project and before receiving final payment for work on the project, the General Prime Contractor shall file with DFD an affidavit stating that the General Prime Contractor has complied fully with Section 103.49(4r) Wis. Stat. and that the General Prime Contractor has received an affidavit from each of the General Prime Contractor's agents, MEP Subcontractors, and Non-MEP Subcontractors stating that they also have complied fully with Wis. Stat. § 103.49(4r).
- C. As a CONDITION PRECEDENT to Final Payment, all corrective action to remedy deficiencies in the Work required by Contract Documents and Work identified on the punch list must have been completed. In addition, where required by Contract Documents, all training of the user agency's staff in the proper operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to DFD's Project Representative, and all Warranty certificates signed and presented for DFD acceptance.
- D. When to the satisfaction of DFD the Work has been completed, and is of the quality required by the Contract Documents, DFD may authorize payment of all sums then due the General Prime Contractor. Receipt of the final payment, as provided for herein shall constitute a waiver of any and all claims against the State arising out of, under, or incident to the Work performed under the Contract.
- E. If the General Prime Contractor fails to submit a Request for Final Payment or make satisfactory arrangements with DFD within thirty (30) calendar days of notification, no further payments will be made and the Contract will be closed. The last Request for Certification for Payment will be considered the Final Payment under the terms and conditions of the Contract.
- F. The authorizing of Final Payment by DFD shall constitute the final acceptance of the Work but shall not constitute a waiver of any claims by DFD including, but not limited to the following:
 - 1. Outstanding lien claims or claims for liens;
 - 2. Defective Work which was specifically identified before the making of final payment;
 - 3. Defects which result from the General Prime Contractor's failure to perform the Work in strict accordance with the Contract Documents;
 - 4. Any warranty or guarantee required by the Contract Documents;
 - 5. Any other right surviving the State as to which the General Prime Contractor was specifically given notice before or during the final inspection and final payment process;
 - 6. Rights surviving to the State as a matter of law.

25. WARRANTIES

- A. The General Prime Contractor Warrants to DFD that all materials and supplies used in the Work are free from all liens, claims, or encumbrances, and good title to materials and supplies is retained by the General Prime Contractor and shall be conveyed to DFD on or before the date of Substantial Completion.

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- B. The General Prime Contractor Warrants to DFD that all materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
- C. Printed, signed copies of Manufacturer's warranties, which are required by the Contract Documents, shall be presented to DFD prior to approval of final payment.
- D. All warranties, including manufacturer's warranties and General Prime Contractor warranties, shall take effect on the date of Substantial Completion and shall remain in effect for a period of one (1) year thereafter, unless Contract Documents specifically require a different warranty period.
- E. If any part of the Work is declared Substantially Complete by DFD, and the user agency takes possession of that portion of the Work before completion of the entire Project, the warranty for that portion of the Work shall continue for a period of one (1) year from the date of Substantial Completion for that portion of the Work, unless Contract Documents specifically require a different warranty period.
- F. The General Prime Contractor shall remedy, at the General Prime Contractor's expense, any defect in the Work. In addition, the General Prime Contractor shall remedy, at the General Prime Contractor's expense, any damage to State owned or controlled real or personal property, when the damage is the result of:
 - 1. The General Prime Contractor's failure to conform to Contract Document requirements; or
 - 2. Any defect in equipment, material, Workmanship, or design furnished by the General Prime Contractor or Subcontractors regardless of tier.
- G. The General Prime Contractor shall warrant any Work restored or replaced due to damage caused in fulfilling the terms and conditions of this Article 25, or during performance of any Work required by the Contract Documents. The General Prime Contractor's warranty with respect to Work repaired or replaced will run for one (1) year from the date of Substantial Completion of said repair or replacement.
- H. DFD shall notify the General Prime Contractor, in writing, within a reasonable time after discovery of any failure, defect, or damage.
- I. If, after the receipt of Notice of a claim under this warranty, the General Prime Contractor fails to remedy any failure, defect, or damage within a time judged reasonable by DFD, DFD shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage, at the General Prime Contractor's expense.
- J. All warranties under this Contract or in any related to this contract, express or implied, shall be obtained for and shall be subject to direct enforcement by DFD. The General Prime Contractor shall provide in each subcontract, or other purchase agreement, for the assignment to DFD of all such warranties and for the right of enforcement by DFD. In addition, if necessary the General Prime Contractor shall:
 - 1. Obtain for the State's benefit all warranties that would be given in normal commercial practice;
 - 2. Require all warranties to be executed, in writing, for the benefit of the State, if so directed by DFD;
 - 3. Enforce all warranties for the benefit of the State, if directed to do so by DFD;
 - 4. Obtain for the State's benefit all warranties given by any Subcontractor, at any tier, if such warranty is in excess of the one (1) year warranty period set forth herein.
- K. Unless a defect is caused by the negligence of the General Prime Contractor or Subcontractors at any tier, the General Prime Contractor shall not be liable for the repair of any defects of material or design furnished by the State.
- L. This warranty shall not limit the State's rights under Articles entitled:

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1. Article 15 - "QUALITY CONTROL & INSPECTION"
 2. Article 26 - "PAYMENTS TO GENERAL PRIME CONTRACTOR"
 3. Article 27 - "PAYMENTS BY GENERAL PRIME CONTRACTOR"
- M. Defects in design or manufacture of equipment specified by DFD on a "Brand Name" basis shall not be included in this warranty. In this event, the General Prime Contractor shall require any Subcontractor manufacturers, or suppliers to execute their warranties, in writing, directly to DFD.

26. PAYMENTS TO GENERAL PRIME CONTRACTOR

- A. Payments to the General Prime Contractor under the Contract Documents will be made as provided for in Wis. Stat. § 16.855(19)(a), as the Work progresses on this Project. Payment requests will be processed monthly, except for special circumstances approved by DFD. The General Prime Contractor must perform all of the conditions required for payment and must have met the obligations which are necessary to qualify for any partial payments.
1. No General Prime Contractor whose Work is deficient or whose Work fails to conform to the quality standards set forth in the Contract Documents shall be entitled to interim, progress or partial payments;
 2. As a CONDITION PRECEDENT to entitlement to payment, the General Prime Contractor shall, at the request of DFD, submit satisfactory evidence to establish that the sum set forth in any application for payment represents the "Proportionate Value" of Work completed;
 3. The General Prime Contractor shall certify each request for payment as being a true, accurate, and complete statement of account as of the date on which the certificate was made, and that the stated sums are then earned and payable to the General Prime Contractor;
 4. The General Prime Contractor shall certify that it holds clear title to all property of every description which serves as the basis for the application for payment. General Prime Contractor warrants that title to any such property is being transferred to the State free and clear of all liens. If requested by DFD, the General Prime Contractor shall produce satisfactory evidence of transfer of title from suppliers and Subcontractors, including MEP Subcontractors or Non-MEP Subcontractors, to the General Prime Contractor, without reservation, or with adequate waiver of lien. These payments may include any fabricated or manufactured materials and components specified, previously paid for by General Prime Contractor and delivered to the site, properly stored, and suitable for incorporation into the Work embraced in the Contract;
 5. All material and Work, title to which has been transferred to the State as a result of the making of a partial payment, shall become the sole property of the State. Nothing in this Article shall be construed as relieving the General Prime Contractor from the risk of loss or damage to any such property. The General Prime Contractor shall have the sole responsibility for obtaining proper insurance on, as well as the responsibility for the care and protection of materials and Work upon which payments have been made. The General Prime Contractor shall be responsible for the restoration of any damaged Work. Nothing herein shall operate as a waiver of the rights of DFD to require fulfillment of all of the terms of the Contract.
 6. As soon as possible after the notice to proceed is received, the General Prime Contractor shall submit to DFD's Project Representative a cost breakdown of the proposed values for work to be performed, as prescribed by the Contract Documents and in the detail requested by DFD. The cost breakdown items shall reflect actual work progress stages as closely as feasible which, if approved by DFD, will become the basis for construction progress payments.
- B. All requests for payment shall be submitted to DFD's Project Representative. To expedite payment of sums due under the Contract, the General Prime Contractor and DFD's Project Representative shall, where possible, jointly review any such request for payment at the site, inspecting the Work, if necessary to determine the validity of the request or modifications to the request which are necessary to accurately represent the value of Work completed in accordance with the Contract Documents.

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- C. The General Prime Contractor shall furnish any and all accounting records requested by DFD to validate all or any part of any request for payment. The General Prime Contractor shall maintain these accounting records for a period of three (3) years from the date DFD authorizes final payment.
- D. For the purposes of this Article 26, requests for payment may include any fabricated or manufactured materials or components specified, previously paid for by the General Prime Contractor and delivered to the Work site, or properly stored and suitable for incorporation in the Work embraced in the Contract Documents. The General Prime Contractor shall identify the method of storage for such materials and shall complete an "Off-site Storage Agreement" form which is available from DFD. Proper evidence of insurance shall be presented to protect the interest of the State. If payment is intended to be requested for any off-site storage items, such items shall be listed as separate lines in the request and certification for payment, cost breakdown.
- E. If separate prices are set forth in the Contract Documents for identifiable items of Work, payment for such prices shall be made at the time of completion of those items of Work. Payment under this Paragraph (E) shall be an interim payment until the time of Final Payment and acceptance of the Work by DFD.
- F. As the work progresses under the general prime contract for construction of a project the department, from time to time, shall grant to the General Prime Contractor an estimate of the amount and proportionate value of the work properly completed, which shall entitle the contractor to receive the amount, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5% of the estimate until 50% of the work has been completed. At 50% completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the department certifies that the job is not proceeding satisfactorily. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, any amount retained shall be paid to the General Prime Contractor, less the value of any required corrective work or uncompleted work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by General Prime Contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

Nothing herein shall preclude DFD from deducting from any request for payment such amounts as will properly represent the value of Work which fails to meet the quality standards of the Contract Documents or which the General Prime Contractor fails to complete.

- G. In the event DFD receives Notice from any person, Subcontractor, or other third party, that the Contractor has failed to pay such person(s) for Work performed in accordance with the Contract Documents, the Contractor shall, at the request of DFD, and in no more than 10 calendar days, provide all documentation DFD believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event DFD determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, DFD may authorize direct payment of any unpaid bills, withholding from the General Prime Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the General Prime Contractor. In no event shall these provisions be construed to impose any obligations upon the State to either the General Prime Contractor or the General Prime Contractor's Surety.
- H. In paying any unpaid bills of the General Prime Contractor relating to the Work, the State shall be deemed the agent of the General Prime Contractor, and any payment so made by the State shall be considered as a payment made under the Contract by the State to the General Prime Contractor for its account and the State shall not be liable to the General Prime Contractor for any such payment made in good faith.
- I. The General Prime Contractor agrees to indemnify and hold the State harmless from all claims growing out of lawful demands of Subcontractors (including MEP Subcontractors and Non-MEP Subcontractors), laborers, Workers, mechanics, material persons, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the performance the Work required by Contract Documents.
- J. The General Prime Contractor shall, at DFD's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.

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27. PAYMENTS BY GENERAL PRIME CONTRACTOR

- A. Please see Article 12 for specific information regarding Prompt Payment from General Prime Contractors to MEP Subcontractors and the specific Prompt Payment clause that must be inserted into the contract between General Prime Contractors and MEP Subcontractors.
- B. Not more than seven (7) calendar days following the receipt of each Payment authorized by DFD, the General Prime Contractor shall make payment to each and every person, Subcontractors, (including MEP Subcontractors, and Non-MEP Subcontractors), or entity who furnished goods or services for the progress of the Work on the Project, the value of which goods or services were included in the General Prime Contractor's "Request and Certification for Payment" under Article 26 of the General Conditions, or who by law or Contract payment is due upon the receipt of the payment most recently received from the State. The General Prime Contractor shall insert a provision in all subcontracts requiring payment in the manner herein specified. The General Prime Contractor shall also require Subcontractors to include a like provision in all contracts with their subcontractors or suppliers, regardless of tier.
- C. Upon request of DFD, satisfactory evidence of payment under this Article 27 shall be furnished to DFD forthwith.
- D. Please see Article 12 for specific information regarding retainage on contracts between General Prime Contractors and MEP Subcontractors. In short, retainage on an MEP Subcontract shall occur and be in amounts and on a schedule equal to the retainage schedule in the contract between the General Prime contractor and the State.
- E. Nothing herein shall preclude the General Prime Contractor from deducting from any request for payment such amounts as will properly represent the value of Work which fails to meet the quality standards of the Contract Documents or which the MEP Subcontractor fails to complete.

28. DFD'S RIGHT TO SUSPEND, CORRECT, OR COMPLETE WORK

- A. DFD may order the General Prime Contractor, in writing, to suspend or delay all or any part of the Work of the General Prime Contractor for the period of time that DFD determines appropriate for the convenience of the State.
 - 1. If the General Prime Contractor determines that the cost of the Work is altered by such suspension, or the time for completion of such Work is altered or delayed, the General Prime Contractor shall provide Notice to DFD of any such costs or delay;
 - 2. Such Notice shall be made within ten (10) calendar days of the order to stop or suspend Work;
 - 3. Provision of such Notice to DFD shall be a CONDITION PRECEDENT to any State liability for increased costs, delay, or time extension.
- B. In the event that any of the Work in progress, or Work already completed by the General Prime Contractor, Subcontractors, including MEP Subcontractors, or Non-MEP Subcontractors, is determined by DFD to be of substandard quality, defective, or otherwise in violation of requirements of the Contract Documents, or in the event that the General Prime Contractor fails or refuses to complete Work required by the Contract Documents, DFD may serve written Notice upon the General Prime Contractor requiring that corrective action be taken by the General Prime Contractor to remedy, correct, complete, or replace such Work.
 - 1. The General Prime Contractor shall have ten (10) calendar days after the serving of such Notice within which to take corrective action or to make arrangements judged satisfactory by DFD for the corrections to be made. The Contract shall terminate in accordance with the provisions of Paragraph 29.A. of the General Conditions if corrective action is not taken or other arrangements, judged satisfactory by DFD, are not made by the General Prime Contractor;
 - 2. If the General Prime Contractor fails within the ten (10) calendar day period after receipt of written Notice to commence and continue correction of such default or neglect with diligence and promptness, DFD may order the General Prime Contractor to stop the Work or any portion thereof until the cause for such order has been

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eliminated. DFD may then, without prejudice to other remedies DFD may have, correct such deficiencies through whatever means necessary;

3. The cost of any corrective action, replacement, or repair shall be chargeable to the General Prime Contractor and its Surety. In such cases DFD may deduct from payments then or thereafter due the General Prime Contractor the cost of correcting such deficiencies, compensation for the State's additional services, and expenses made necessary by such default, neglect, or failure. Such action by the State shall not prevent the State from recovery of other damages or penalties sustained as a result of the General Prime Contractor's default or neglect. If payments then or thereafter due the General Prime Contractor are not sufficient to cover such amounts, the General Prime Contractor and its Surety shall pay the difference to the State;
 4. If, after suspension of the Work, it is determined that the General Prime Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the State under Paragraph 29.B.
- C. The right of DFD to stop or suspend the Work shall not give rise to a duty on the part of DFD to exercise this right for the benefit of the General Prime Contractor or any other person or entity.
- D. DFD may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

29. DFD'S RIGHT TO TERMINATE CONTRACT

- A. In the event that any of the provisions of this Contract, including time for completion, are violated by the General Prime Contractor, DFD may serve written Notice upon the General Prime Contractor and the Surety of its intention to terminate this Contract, including the reasons for such intention to terminate. The General Prime Contractor shall have ten (10) calendar days after the serving of such Notice within which to cease the default or violation, to take corrective action, or to make arrangements judged satisfactory by DFD for the corrections to be made. Contract shall terminate upon expiration of the said ten (10) calendar day period if corrective action is not taken by the General Prime Contractor.
1. In the event of termination of the Contract, DFD shall immediately serve Notice thereof upon the Surety and the General Prime Contractor, and the Surety shall have the right to take over and perform the Contract subject to DFD's approval;
 2. The Surety shall take over and perform the Contract without need for further agreement with DFD. All Subcontractors shall be subject to approval of DFD in accordance with Article 11. DFD will not consider a General Prime Contractor or a subsidiary of a General Prime Contractor whose contract was terminated as a qualified, responsible Subcontractor.
 3. Within ten (10) calendar days after the serving of such Notice of termination, the Surety shall provide DFD with a comprehensive plan for completion of the Work required by the Contract Documents. Such plan must include performance of the Work within a time period acceptable to DFD. In the absence of such a plan, DFD may take possession of materials, appliances, and facilities as may be on the site of the Work, and complete the Work by whatever means necessary;
 4. All costs for completion of the Work and any additional damages sustained by the State thereby shall be at the expense of the General Prime Contractor and its Surety.
- B. Notwithstanding any contrary provision of the Contract or these General Conditions, DFD shall also have the right, exercisable by it in its sole discretion, to terminate this Contract at any time without cause following the expiration of thirty (30) calendar days after written Notice to the General Prime Contractor. In such event, the General Prime Contractor shall be paid for all Work performed to the effective date of termination, and any "Reimbursable Expenses" outstanding as of the date of termination. The term "Reimbursable Expenses" shall include the cost of personal property or materials which meet requirements of the Contract Documents and have been purchased by the General Prime Contractor for incorporation into the Work but not yet incorporated therein; lease payments due to an unaffiliated third party lessor for equipment provided to the Project, where the lease term extends beyond the

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termination date of this Contract and the General Prime Contractor is unable to terminate said lease; and other costs approved by DFD. Reimbursable Expenses do not include lost profits or payments due to Subcontractors, including MEP Subcontractors or Non-MEP Subcontractors for any period of time subsequent to termination of the Contract. Upon payment of the Reimbursable Expenses, the General Prime Contractor shall deliver to the State any materials or personal property for which said payment has been made.

- C. The right of DFD to terminate the Contract shall not give rise to a duty on the part of DFD to exercise this right for the benefit of the General Prime Contractor or any other person or entity.
- D. DFD may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

30. CLAIMS

- A. The General Prime Contractor shall be barred from asserting or pursuing any claims, demands, and causes of action against the State unless the General Prime Contractor complies with the following requirements:
 - 1. First, the General Prime Contractor shall present its claim to DFD's Project Representative who shall have twenty-one (21) calendar days after presentation of the claim to act thereon or notify the General Prime Contractor in writing of the additional time required for such action if greater than the aforementioned twenty-one (21) day period. Failure by DFD's Project Representative to so act within the aforesaid period of time shall constitute a rejection of the General Prime Contractor's claim;
 - 2. If the General Prime Contractor's claim is rejected by DFD's Project Representative, the General Prime Contractor may appeal it in writing to the Administrator of Division of Facilities Development. Any such appeal shall be made within twenty-one (21) calendar days after it is rejected by DFD's Project Representative. If no such appeal is made, the decision of DFD's Project Representative shall become final and binding and the General Prime Contractor shall waive its right to pursue the claim further;
 - 3. If the General Prime Contractor files a timely appeal of the decision of DFD's Project Representative, the Administrator of the Division of Facilities Development shall act on the General Prime Contractor's claim within fourteen (14) calendar days or notify the General Prime Contractor in writing, of the time required for such action if greater than the aforementioned fourteen (14) day period. Failure by the Administrator of the Division of Facilities Development to so act within the aforesaid period of time shall constitute a rejection of the claim;
 - 4. If the General Prime Contractor's claim is rejected by the Administrator of the Division of Facilities Development, the General Prime Contractor shall, as a CONDITION PRECEDENT to filing suit against the State, comply with the two-step claims resolution procedure set forth in Wis. Stat. §§ 16.007,775.01.
- B. Any judicial action relating to the construction, interpretation, or enforcement of the Contract Documents including without limitation, the General Prime Contractor's claims, demands, and causes of action for additional construction costs, delay damages, and other amounts owed hereunder, shall be brought and venued in the Dane County Circuit Court in Madison, Wisconsin. The General Prime Contractor hereby consents to personal jurisdiction in that venue, and waives any defenses that the General Prime Contractor otherwise might have relating thereto.
- C. The General Prime Contractor hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise by and between the State and the General Prime Contractor concerning the construction, interpretation, or enforcement of the Contract Documents including, without limitation, any claims, demands, or causes of action that the General Prime Contractor hereafter may assert against the State for additional construction costs, delay damages, and other amounts.
- D. The General Prime Contractor shall proceed diligently with the performance of the Work, as directed by DFD, pending the final decision of DFD's Project Representative, the Administrator of the Division of Facilities Development, the State Claims Board, the Legislature, and any subsequent judicial action or appeal.

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- E. It is recognized by DFD and General Prime Contractor that performance of DFD's duties may require or cause the interruption or suspension of the Work for periods other than the reasonable time allowed under Article 28. In the event of such interruption or suspension, DFD and the General Prime Contractor shall negotiate in good faith in an effort to agree upon the additional construction costs and other amounts, if any, that shall be paid the General Prime Contractor because of the interruption or suspension of Work. Anything in the Contract Documents to the contrary notwithstanding, however, it is expressly understood and agreed that:
1. The total amount recoverable by and payable to the General Prime Contractor shall be limited to an amount equal to the sum of:
 - a. The additional construction costs and other amounts actually incurred by the General Prime Contractor because of DFD's actions and omissions; plus
 - b. A maximum overhead and profit allowance equal to fifteen (15) percent of the sum of additional construction costs and other amounts.
 2. Overhead costs for extended or unabsorbed overhead shall not be used as the basis for calculating or determining the amount of any additional construction costs or other amounts recoverable by or payable to the General Prime Contractor; and
 3. By entering into this Contract with DFD, the General Prime Contractor hereby waives any rights that it otherwise might have to pursue recovery of overhead costs for extended or unabsorbed overhead from DFD.
- F. DFD and the General Prime Contractor shall act in good faith to efficiently and fairly resolve claims and disputes arising under the Contract in order to avoid wherever possible, formal legal proceedings.

31. INSURANCE

- A. The General Prime Contractor shall not commence Work under this Contract until the General Prime Contractor has obtained all the insurance required under this Paragraph 31.A. Such insurance must be approved by DFD. The company providing the insurance must be lawfully authorized to do business in Wisconsin and/or be approved by DFD with a minimum A.M. Best rating of (A-). The General Prime Contractor shall provide the following insurance:
1. Worker's Compensation Insurance:
 - a. The General Prime Contractor shall procure and maintain during the life of this Contract, and shall require all Subcontractors, including MEP Subcontractors and Non-MEP Subcontractors, to maintain, Worker's Compensation Insurance as required by State of Wisconsin Statutes and any applicable Federal Act coverage such as the Longshoremen's and Harbor Workers Act, the Jones Act or the Admiralty Act for all employees engaged in Work associated with the Project under this Contract. Minimum coverage is listed in paragraph 31.A.5.
 - b. The General Prime Contractor shall procure and maintain during the life of this Contract, and shall require all Subcontractors, including MEP Subcontractors and Non-MEP Subcontractors, to maintain, Employer's Liability Insurance. Minimum coverage is listed in paragraph 31.A.5.
 2. Commercial General Liability Insurance and Excess Liability-Umbrella:
 - a. The General Prime Contractor shall maintain during the life of this Contract, and until two years after completion of this Contract, Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Contract. Minimum coverage is listed in paragraph 31.A.5. Such coverage shall be of the "occurrence" type form.
 - b. The General Prime Contractor's Commercial General Liability and Umbrella Insurance shall apply to the provisions of indemnity obligations under Section 37 of these General Conditions.

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- c. Such Commercial General Liability coverage shall include employees of the General Prime Contractor as insureds.
 - d. The General Prime Contractor shall require Subcontractors to procure and maintain Commercial General Liability Insurance and Excess Liability equal to that required in subparagraph 31.A.2.a. The General Prime Contractor shall require each MEP Subcontractor to procure and maintain Commercial General Liability and Umbrella Insurance equal to that required in subparagraph 31.A.2.a. However, the General Prime Contractor may insure the activities of the Non-MEP Subcontractor(s) in the General Prime Contractor’s policy. The General Prime Contractor’s policy shall include coverage for Independent Contractors.
3. Auto Liability Insurance:
- a. The General Prime Contractor shall procure and shall maintain during the life of the Contract Commercial Automobile Liability Insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Contract. Minimum coverage is listed in paragraph 31.A.5.
 - b. The General Prime Contractor shall require each Subcontractor, including MEP Subcontractors and Non-MEP Subcontractors, to procure and maintain Commercial Auto Liability Insurance equal to that required in paragraph 31.A.3.a of the General Conditions.
4. The minimum required limits do not represent the coverage and limits necessary to protect the General Prime Contractor. The limits should not be construed in any way to limit the General Prime Contractor's liability to the State.

5. Minimum Limits Required:

TYPE	Limits
Commercial General Liability	\$1,000,000 General Aggregate (applies per project)
	\$1,000,000 Products Aggregate
	\$1,000,000 Personal Injury
	\$1,000,000 Each Occurrence
	\$50,000 Fire Damage
	\$5,000 Medical Expense Per Person
Automobile Liability	\$1,000,000 Combined Single Limit
Excess Liability Umbrella	\$5,000,000 Each Occurrence
	\$5,000,000 Aggregate

Worker’s Compensation/Employers Liability Insurance

- 1. State: Statutory to all states the work is being performed;
 - 2. Federal: As Applicable;
 - 3. All Employees, partners, individuals, any managers on project site must be included for coverage.
6. The Commercial General Liability and Umbrella policies described in paragraph 31.A.2. of the General Conditions shall include the State as an Additional Insured as respects the activities carried out under this Contract. Additional coverage on the General Prime Contractor’s Umbrella policy can be used to make up the required limits.
7. Proof of Insurance: The General Prime Contractor shall provide a certificate of insurance to DFD from a company lawfully authorized to do business in the State of Wisconsin indicating coverage is in place at the limits set forth in this Article. The insurer shall give DFD thirty (30) day notice of cancellation or changes in coverage. The insurance certificate shall be provided before commencement of the Contract. If the General Prime Contractor is self-insured, audited financial records will need to be provided that clearly demonstrate the

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financial ability to cover losses up to the limits of insurance required. The General Prime Contractor shall also be required to disclose deductibles or Self-Insured Retention's (SIR).

8. Commercial General Liability and Auto Liability carried under Article 31 shall contain a provision making it primary and non-contributory to any other coverage available to the State.
- B. The State shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Wisconsin, Builder's Risk insurance in the amount of, at least, the initial Contract sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis.
1. Property Insurance shall include insurance for physical loss or damage to the Work, temporary buildings, and equipment or material consumed in the construction of the Work.
 2. Off-Site and Transit Coverage: Upon the request of the General Prime Contractor and written approval of DFD, the Property Insurance policy, subject to policy terms, definitions, and conditions, will provide a \$250,000 limit for materials and/or Work stored off the site or in transit. It is the General Prime Contractor's responsibility to insure materials and/or Work in excess of this amount. The State will not be responsible for materials or completed Work under the care, custody, and control of the manufacturer prior to delivery;
 3. Deductible: The property insurance shall be written with a deductible sum of no more than \$10,000 for each occurrence. If the Contract value is less than \$1,000,000 and the loss is attributable to the General Prime Contractor, a Subcontractor, including MEP Subcontractor or Non-MEP Subcontractor, a \$5,000 deductible per occurrence will apply. The risk of loss within the deductible amount will be borne by the General Prime Contractor;
 4. Loss of Use Insurance: The State, at DFD's option, may maintain such property insurance as will insure the State against loss of use of the State's property due to fire or other hazards, however caused. Except as set forth in section C.2. below, DFD waives all rights of action against the General Prime Contractor for loss of use of the State's property, including consequential losses due to fire or other hazards covered by the Property Insurance described in subparagraph 31.B.1
 5. Policy Review: A copy of the property insurance policy or policies may be obtained pursuant to the Public Records and Property Provisions of the Wisconsin State Statutes.
- C.
1. The State and General Prime Contractor waive all rights against each other and shall require its insurers to waive any rights of subrogation or recovery, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 31 or other property insurance applicable to the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise, except as set forth in C.2. below. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged. This waiver shall be effective only to the extent any policy of insurance is not impaired thereby. This contract provision shall be incorporated into the contracts between the General Prime Contractor, MEP Subcontractors, and Non-MEP Subcontractors.
 2. DFD retains the right to subrogate against General Prime Contractor, Subcontractors including MEP Subcontractor and Non-MEP Subcontractor(s), up to \$1,000,000 per occurrence, for damage to property, including loss of use thereof, provided said property damage is to work performed by other parties and provided said General Prime Contractor's, Subcontractors' including MEP Subcontractors', and Non-MEP Subcontractors', negligence contributed in any way to said damage. This contract provision shall be incorporated into the contracts between the General Prime Contractor and Subcontractors, including MEP Subcontractors, and Non-MEP Subcontractors.

32. NONDISCRIMINATION/AFFIRMATIVE ACTION

- A. In connection with the performance of Work under this Contract, the General Prime Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex,

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physical condition, developmental disability as defined in Wis. Stat. §51.01(5), sexual orientation, national origin, or any other basis prohibited by law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Except with respect to sexual orientation, the General Prime Contractor further agrees to take affirmative action to ensure equal employment opportunities. This contract provision shall be incorporated into the contracts between the General Prime Contractor, MEP Subcontractors, and Non-MEP Subcontractors.

- B. Contracts with a value of fifty thousand dollars (\$50,000) or more require the General Prime Contractor to submit a written affirmative action plan acceptable under Wisconsin Statutes and Administrative Code. An exemption occurs from this requirement if the General Prime Contractor has a Work force of less than thirty (50) employees. The General Prime Contractor is responsible for obtaining affirmative action compliance from MEP Subcontractors and Non-MEP Subcontractors. Instructions on satisfying these requirements will be sent with the Notice to Proceed. Technical assistance regarding this Article 32 is available from the Wisconsin Office of Contract Compliance, telephone (608) 266-5462.

- C. The General Prime Contractor should establish and take appropriate initiatives to reach goals and timetables for minority and female utilization which shall be based on appropriate work force, demographic, or other relevant data which shall cover construction projects or construction contracts performed in specific geographical areas. The goals shall be applicable to the General Prime Contractor’s, MEP Subcontractor’s, or Non-MEP Subcontractor’s entire work force which is working in the area covered by the goals. The goals are established and are as follows:

County	Women Goal	Minority Goal
Adams/Juneau/Monroe/Vernon	12%	2%
Ashland/Bayfield/Douglas/Price	9%	6%
Barron/Sawyer/Washburn	13%	4%
Brown	11%	9%
Buffalo/Jackson/Pepin/Trempealeau	12%	5%
Burnett/Polk	11%	2%
Calumet/Winnebago	11%	3%
Chippewa/Rusk	12%	2%
Clark/Taylor	16%	2%
Columbia	12%	2%
Crawford/Grant/Richland	14%	2%
Dane	9%	9%
Dodge	12%	3%
Door/Kewaunee/Manitowoc	13%	3%
Dunn/Eau Claire	11%	3%
Florence/Forest/Marinette/Oconto	13%	2%
Fond du Lac	11%	4%
Green/Iowa/LaFayette	13%	1%
Green Lake/Marquette/Waushara	10%	4%
Iron/Oneida/Vilas	9%	3%
Jefferson	12%	4%
Kenosha	7%	10%
La Crosse	10%	4%
Langlade/Lincoln/Menominee/Shawano	11%	7%
Marathon	12%	4%
Milwaukee	10%	29%
Outagamie	10%	5%
Ozaukee	8%	3%
Pierce/St Croix	12%	2%
Portage	13%	3%
Racine	8%	13%

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Rock	11%	7%
Sauk	10%	2%
Sheboygan	14%	5%
Walworth	10%	8%
Washington	9%	3%
Waukesha	7%	4%
Waupaca	11%	2%
Wood	12%	2%
Source: Combined Occupation Distribution: 2000 Census		

- D. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom a General Prime Contractor has a collective bargaining agreement, to refer to either minorities or women shall excuse the General Prime Contractor's required initiatives under these specifications.
- E. The General Prime Contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the State that sets forth the provisions of this Article 32.
- F. Failure to comply with the conditions of this Article 32 may result in the General Prime Contractor becoming declared an "ineligible" General Prime Contractor, termination of the Contract, or withholding of payment.

33. MINIMUM WAGES

- A. Wage determinations, when required by Federal Law, are listed in the Supplementary General Conditions.
- B. The specified federal wage rates are minimum rates only, and DFD will not consider any claims for additional compensation made by the General Prime Contractor because of payment by the General Prime Contractor of any wage rate in excess of the applicable rate contained in this Contract. Any disputes in regard to the payment of wages in excess of those specified in this Contract shall be adjusted by the General Prime Contractor.
- C. Failure to comply with the conditions of this Article 33 may result in the General Prime Contractor becoming declared an "ineligible" Contractor, termination of the Contract, or withholding of payment.

34. ASSIGNMENTS

- A. The General Prime Contractor shall not assign the whole or any part of this Contract or any moneys due or to become due hereunder without the prior written consent of DFD. In case the General Prime Contractor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain an Article substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the General Prime Contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract and subject to the terms of this Contract and claims of offset by the State.
- B. On the date of Substantial Completion, the General Prime Contractor shall assign to the State all warranties and guarantees of labor or material incorporated into the Work which are provided by third party vendors, suppliers, manufacturers, and Subcontractors, including MEP Subcontractors or Non-MEP Subcontractors.

35. ANTITRUST AGREEMENT

The General Prime Contractor and the State recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State. Therefore, the General Prime Contractor hereby assigns to the State any and all claims for such overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and any Change Order thereto.

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36. INDEMNIFICATION

- A. To the fullest extent permitted by law, and in addition to any other indemnification provisions provided for herein, the General Prime Contractor shall indemnify and hold harmless the State, the A/E and its agents and employees and any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including loss of use resulting therefrom, and (2) is caused in whole or in part by acts or omissions of the General Prime Contractor, a Subcontractor thereof, a MEP Subcontractor, a Non-MEP Subcontractor thereof, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.
- B. The obligations of the General Prime Contractor under this indemnification shall not extend to the liability of the State, the A/E and its agents or employees thereof arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by DFD, or the A/E or its agents or employees thereof provided such giving or failure to give is the cause of the injury or damage.

37. GENERAL PRIME CONTRACTOR PERFORMANCE EVALUATION

- A. The General Prime Contractor acknowledges that following completion of the Work, DFD's Project Representative will evaluate the General Prime Contractor's performance under and pursuant to this Contract. Such evaluation may take place after Substantial Completion or after Final Completion of the Work, as determined by DFD's Project Representative. The purpose of such evaluation includes, but is not limited to, determining whether or not the General Prime Contractor responsibly performed its Contractual obligations and whether or not the best interests of the State were promoted thereby.
- B. DFD shall provide a copy of any such performance evaluation to the General Prime Contractor, as soon as practicable after completion of such evaluation.
- C. The General Prime Contractor may appeal results of the General Prime Contractor's performance evaluation completed by DFD's Project Representative by submitting a request for performance review to the Administrator of the Division of Facilities Development. Any such request must include the reasons for such request, and documentation necessary to substantiate the General Prime Contractor's claim that initial performance evaluation was inappropriate or otherwise in error. The Administrator shall notify the General Prime Contractor of the results of this review as soon as practicable.
- D. DFD reserves the right to waive the results of such performance evaluation(s) if, in the opinion of DFD, corrective action has been taken to remediate substandard performance, events beyond the control of the General Prime Contractor resulted in substandard performance, or the best interests of the State will be served.
- E. The General Prime Contractor acknowledges and agrees that such evaluation(s) may be used by DFD pursuant to Wis. Stat. § 16.855(9m) when determining whether the General Prime Contractor is a "qualified responsible bidder" for future Project(s); provided, however, any such evaluation made more than five (5) years prior to the submission of any such subsequent bid shall not be considered in any event.
- F. The General Prime Contractor acknowledges and agrees that all such evaluations so prepared by DFD shall constitute "open public records" available for inspection and copying as provided for by law.
