

**STATE OF LOUISIANA**

**INTERSTATE-12 WIDENING**

**DESIGN-BUILD PROJECT**

O'NEAL LANE INTERCHANGE TO WALKER  
EAST BATON ROUGE AND LIVINGSTON PARISHES  
STATE PROJECT NOS. 454-01-0047 AND 454-02-0025

**SCOPE OF SERVICES PACKAGE**

**CONTRACT DOCUMENTS**

**DB SECTION 108**

**PROSECUTION AND PROGRESS**



**TABLE OF CONTENTS**

**DB 108-1 SUBCONTRACTING OR ASSIGNING THE CONTRACT ..... 1**

**DB 108-2 START AND PROGRESS OF WORK ..... 1**

    DB 108-2.1 Baseline Progress Schedule ..... 1

    DB 108-2.2 Failure to Submit Baseline Progress Schedule or Update ..... 3

    DB 108-2.3 Monthly Progress Reports ..... 3

        DB 108-2.3.1 Progress Narrative..... 3

        DB 108-2.3.2 Quality Certifications..... 4

        DB 108-2.3.3 Change Order Status Report ..... 4

        DB 108-2.3.4 Subcontract Report ..... 4

        DB 108-2.3.5 Contract Submittals List ..... 5

**DB 108-3 KEY PERSONNEL ..... 5**

    DB 108-3.2 Directory ..... 5

    DB 108-3.3 Temporary Absence of Key Personnel ..... 6

    DB 108-3.4 Changes in Key Personnel ..... 6

**DB 108-4 LIMITATION OF OPERATIONS ..... 6**

**DB 108-5 LABOR, METHODS, AND EQUIPMENT ..... 6**

**DB 108-6 EXTENSION OF TIME ..... 7**

**DB 108-7 FAILURE TO COMPLETE ON TIME ..... 8**

**DB 108-8 DEFAULT AND TERMINATION OF THE CONTRACT ..... 8**

**DB 108-9 TERMINATION OF DESIGN-BUILDER’S RESPONSIBILITY ..... 10**

**DB 108-10 TERMINATION OF CONTRACT ..... 10**

  

APPENDIX 108A – FORMS

APPENDIX 108B – BASELINE PROGRESS SCHEDULE

APPENDIX 108C – KEY PERSONNEL QUALIFICATIONS AND REQUIREMENTS

**DB SECTION 108**

**PROSECUTION AND PROGRESS**

**DB 108-1 SUBCONTRACTING OR ASSIGNING THE CONTRACT**

At the pre-work conference, the Design-Builder shall submit a list of intended Subcontractors and Material suppliers. In addition, the Design-Builder shall update the list of Subcontractors and Material suppliers as the Work progresses so that the LA DOTD will have, at all times, a current and accurate list of Subcontractors along with the Work that they perform and Material suppliers along with the Material that they supply. The required forms for the submission of Subcontractor information will be supplied by the LA DOTD.

All subcontracts must be in writing and must contain all applicable provisions of the Contract Documents and all federal and state laws and regulations. All Subcontractors performing Work on the Project must be appropriately licensed with the Louisiana State Licensing Board for Contractors and/or the Louisiana Professional Engineering and Land Surveying Board (LAPELS), as appropriate.

The Design-Builder shall allow the LA DOTD access to all subcontracts at all tiers and records regarding the subcontracts and shall provide copies of said subcontracts to the LA DOTD within ten Working Days of the LA DOTD's request for a subcontract. No Subcontractor will Work on this Project while on the LA DOTD's disqualified contractors' list.

The intent of this DB Section 108-1 will not be circumvented by the Design-Builder by placing a Subcontractor's employees directly on the Design-Builder's payroll. If a person or group of people generally operated as an independent contractor, the LA DOTD will treat them as independent contractors for purposes of this DB Section 108-1.

The Design-Builder's and its Surety's liability under this Contract and the bonds will not be waived or in any way diminished by subcontracting or other assignment of interest under the Contract.

**DB 108-2 START AND PROGRESS OF WORK**

**DB 108-2.1 Baseline Progress Schedule**

The Design-Builder shall prepare and submit to the Department's Project Manager for Approval a Baseline Progress Schedule as per Part 4 – Design-Build (DB) Special Provisions, DB Special Provision 108A. The Baseline Progress Schedule must show the order in which the Design-Builder proposes to carry on the Work, the date on which it will start the major items of Work (including, but not limited to, excavation, drainage, paving, structures, mobilization, soil erosion, and sediment control) and the critical features (including, procurement of Materials, plant, and Equipment) and the contemplated dates for completing the same. The schedule must be in a suitable scale to indicate graphically the total percentage of Work scheduled to be completed at any time. The LA DOTD requires that the Baseline Progress Schedule, at a minimum, include the following items:

- A) Major work items and activities to be performed;
- B) Seasonal weather limitations;
- C) A time and money curve; and

## Louisiana Department of Transportation and Development

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- D) Phase duration or Progress Check Point events, if applicable.

The Baseline Progress Schedule and all subsequent monthly updates must be certified by the Design-Builder's Quality Control (QC) Manager and signed and sealed by a Louisiana-licensed Professional Engineer. The certification must state the following:

"The Baseline Progress Schedule hereby submitted correctly represents the Design-Builder's planned and actual progress as of the date of the schedule and contains none of the following:

- 1) Excessive leads or lags;
- 2) Assigned constraints, except those specified in the Contract Documents;
- 3) Multiple calendars; or
- 4) Retained logic."

The purpose of this scheduling requirement is to ensure adequate planning and execution of the Work and to evaluate the progress of the Work. Approval by the LA DOTD regarding the Baseline Progress Schedule will not be construed to imply approval of any particular method or sequence of construction or to relieve the Design-Builder of providing sufficient Material, Equipment, and labor to guarantee completion of the Project in accordance with the Contract Documents. The updated Baseline Progress Schedule may be utilized to facilitate the LA DOTD's Quality Assurance/Quality Control (QA/QC) activities. Approval regarding the Baseline Progress Schedule will not be construed to modify or amend the Contract or the date of completion therein.

At the end of each payment estimate period, or at such additional intervals as directed by the Department's Project Manager, the Design-Builder shall do the following:

- a) Adjust the schedule to reflect any changes in the Contract Work, Contract Time, or both;
- b) Enter on the time-price curve the cumulative total percentage of Work actually in place; and
- c) Submit three copies of the adjusted schedule to the Department's Project Manager for Approval.

If, in the opinion of the Department's Project Manager, the specified Work falls behind the Baseline Progress Schedule, the Design-Builder shall take such actions as are necessary to improve its progress. If the Design-Builder is behind schedule any month, it must indicate what measures it will take in the next 30 Calendar Days to put the Work back on schedule so as to meet the Contract's completion date. The Design-Builder shall not be entitled to any additional compensation unless provided for in other provisions of the Contract on account of the requirement to put the Work back on schedule. In preparing the revised Baseline Progress Schedule, the Design-Builder shall consider increasing its Work force, construction plant and Equipment, or number of Work shifts. If the Department's Project Manager does not Approve the proposed Baseline Progress Schedule revision, he will require the Design-Builder to submit a new revision.

The Baseline Progress Schedule and updates must be submitted by the Design-Builder as a part of the weekly progress meetings and will be reviewed by the LA DOTD for Approval at least monthly.

The Design-Builder shall employ and supply a sufficient force of workers, Materials, and Equipment and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Baseline Progress Schedule to prevent Work stoppage and ensure completion of the Project within the Contract Time. Any additional or unanticipated costs or expense required to maintain the schedule will be solely the Design-Builder's obligation and must not be charged to the LA DOTD unless provided for in other provisions of the Contract.

The Design-Builder shall also furnish weekly Work schedules indicating the number of personnel, kind of Equipment, and location and nature of the Work to be performed.

**DB 108-2.2 Failure to Submit Baseline Progress Schedule or Update**

If the Design-Builder fails to submit a Baseline Progress Schedule or any revision or update when required, the Department's Project Manager will suspend payment for Price Center 1 per DB Section 109-4.2.

**DB 108-2.3 Monthly Progress Reports**

The Design-Builder shall submit a monthly progress report with each payment request, consisting of the following:

- A) A progress narrative;
- B) Quality certifications;
- C) A safety report, using Form SAF (DB Section 107-5 and Appendix 108A);
- D) A security report (DB Section 107-6.3);
- E) A monthly Baseline Progress Schedule update for Approval by the Department's Project Manager [DB Section 108-1 and Part 4 – DB Special Provisions, DB Special Provision Section 3.3];
- F) A Change Order status report;
- G) A monthly subcontract report;
- H) Quantity calculations (DB Sections 109-2.7 and 109-5.2);
- I) An updated Contract Submittals List (CSL);
- J) A summary of hazardous and contaminated substance activities;
- K) Project photographs; and
- L) A statement of Materials and labor used.

**DB 108-2.3.1 Progress Narrative**

The Design-Builder shall prepare and submit a monthly progress narrative. The progress narrative must summarize the following information:

- A) Activity and progress for the Contract, including design and construction and identification of the start and completion dates of Work on any Price Centers (PC);
- B) Achievement of any Progress Check Points;
- C) Quality Control efforts, including results of any Design Reviews and/or quality audits;

- D) Problems/issues that arose during the period and remaining problems/issues to be resolved;
- E) Resolution of problems/issues raised in previous progress reports or resolved during the period;
- F) Critical schedule issues and proposed resolutions, proposal of actions planned to correct any negative float or other schedule slippage, and explanation of potential delays and/or problems and their estimated impact on performance and the completion of the Work; and
- G) Issues which may need the Department's Project Manager's attention or action for the next month, including Design Reviews.

**DB 108-2.3.2 Quality Certifications**

The Design-Builder shall submit monthly a certificate signed by the Design QC Manager and the Construction QC Manager certifying the following for the previous month:

- A) That all Work, including that of the Designer and all other designers, Subcontractors at all tiers, suppliers, and fabricators has been checked and/or inspected by the Design-Builder's QC staff and that all Work, except as specifically noted in the certification, conforms to the requirements of the Contract; and
- B) That the Design-Builder's Quality Plan and all measures and procedures provided therein are functioning properly and are being followed, except as specifically noted in the certification.

**DB 108-2.3.3 Change Order Status Report**

The Design-Builder shall provide a report of outstanding Change Order requests containing the following:

- A) The Design-Builder's and Louisiana Department of Transportation and Development's Change Order identification numbers and/or coding;
- B) The issue title;
- C) A brief description of the change;
- D) Any outstanding issues to be resolved;
- E) The estimated cost and time implications; and
- F) The projected resolution date.

**DB 108-2.3.4 Subcontract Report**

As part of the monthly progress report, the Design-Builder shall submit a subcontract report providing the LA DOTD with an updated list of Subcontractors (design and construction, at all tiers, including labor only). The location where the Subcontractors worked must be shown.

The Design-Builder shall also report the results of all procurements completed in the previous month, including those procured competitively and by other means. The Design-Builder shall indicate the type of Work or product procured and size of the procurement (in dollars), the names of firms competing for the subcontract, and the name of the successful Subcontractor.

## Louisiana Department of Transportation and Development

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The report must indicate the total number of Subcontractors and the total dollar value of all subcontracts awarded to date.

The report must indicate, for each subcontract, the following:

- A) The original subcontract amount;
- B) The value of any modifications to date; and
- C) Payments made to date.

### **DB 108-2.3.5 Contract Submittals List**

Within 30 Calendar Days of Notice to Proceed (NTP), the Design-Builder shall prepare and submit to the Department's Project Manager a Contract Submittals List (CSL) covering all submittals required during the first six months of the Contract. Thereafter, the Design-Builder shall submit monthly updates to the CSL with the Monthly Progress Report (DB Section 108-2.3). The updated CSL must show the record of submittals made to date and show the submittals due over the next three month period.

### **DB 108-3 KEY PERSONNEL**

The Design-Builder's key personnel are as follows:

- A) Principal-in-Charge;
- B) Project Manager;
- C) Design Manager;
- D) Construction Manager; and
- E) All positions listed in Appendix 108C – Key Personnel Qualifications and Requirements. The Design-Builder shall provide personnel that meet the minimum requirements specified in Appendix 108C – Key Personnel Qualifications and Requirements, for the positions listed therein.

The Design-Builder's Project Manager must be the Design-Builder's representative and single point of contact.

The Department's Project Manager may designate other positions as key personnel, however, the key personnel specifically identified in this DB Section 108-3 and in Appendix 108C – Key Personnel Qualifications and Requirements must continue for the duration of the Project, unless specifically agreed to by the Department's Project Manager.

Key personnel must be located in the Project vicinity for the duration of the Contract, unless specifically agreed to by the Department's Project Manager. What constitutes the "Project vicinity" will be in the sole determination of the Department's Project Manager.

### **DB 108-3.2 Directory**

Within 15 Working Days after NTP, the Design-Builder shall submit to the Department's Project Manager a directory and organizational chart showing all of its key personnel. The directory must be updated throughout the Contract as changes occur. The directory must include the names, titles, areas of responsibility, office address and location, office telephone and facsimile numbers, E-mail address, and cellular and/or pager numbers of key personnel and the Design-Builder's construction superintendents.

The Design-Builder shall provide information sufficient for the LA DOTD to contact any of the key personnel on a 24 hour basis for the duration of the Contract.

The Department's Project Manager will provide a directory of the LA DOTD's Project staff to the Design-Builder.

**DB 108-3.3 Temporary Absence of Key Personnel**

If any of the key personnel plans to be absent from the site for more than 48 hours, the Design-Builder shall inform the Department's Project Manager in writing seven Calendar Days in advance of an "acting" to represent the absent key personnel.

**DB 108-3.4 Changes in Key Personnel**

The Design-Builder shall assign the key personnel identified in the Design-Builder's Proposal to this Project. The Design-Builder shall submit the names and qualifications of proposed replacement key personnel to the Department's Project Manager 30 Calendar Days in advance of any replacement of any key personnel. The Department's Project Manager will have the authority to either reject or approve any proposed replacement key personnel in his sole discretion.

The Design-Builder shall change key personnel only upon receipt of a written consent from the Department's Project Manager. The Department's Project Manager may require written justification from the Design-Builder explaining the replacement of any key personnel.

**DB 108-4 LIMITATION OF OPERATIONS**

The Design-Builder shall conduct the Work in such manner and sequence to assure the least interference with traffic. The Design-Builder shall have due regard to the location of detours and provisions for handling traffic. The Design-Builder shall not begin new Work to the prejudice of Work already started. The Department's Project Manager may require the Design-Builder to finish a section on which Work is in progress before starting on additional sections if the finishing of such Section is essential to public convenience and safety.

**DB 108-5 LABOR, METHODS, AND EQUIPMENT**

The Design-Builder shall employ sufficient labor and Equipment to prosecute the Work to completion in accordance with the Contract.

Workers must have sufficient skill and experience to properly perform the Work.

Any representative of the Design-Builder or Subcontractor who, in the sole opinion of the Department's Project Manager, does not perform in a skillful manner or is disorderly must be, upon request of the Department's Project Manager, immediately removed by the Design-Builder or Subcontractor. A person removed must not return to the Work. If the Design-Builder fails to remove such a person or fails to furnish suitable and sufficient personnel to properly prosecute the Work, the Department's Project Manager has the authority to suspend any or all of the Work by written notice without incurring any cost to LA DOTD.

Equipment proposed for use in the Work must be of sufficient size and in such mechanical condition as to meet requirements of the Work and produce a satisfactory quality of Work. No damage to the Roadway, adjacent property, or other Highways will result from the use of Equipment.

When methods and Equipment are not specified, the Design-Builder may use any methods or Equipment that will accomplish the Work in conformity with the Contract.

The Design-Builder may request permission to use a method or type of Equipment other than specified in the Contract. The request must be in writing and shall include a description of the methods and Equipment proposed and the reasons for requesting the change. If approval is given, it will be on the condition that the Design-Builder will be responsible for producing Work in conformity with Contract requirements. If, after trial use of the substituted methods or Equipment, the Department's Project Manager determines that the Work produced does not meet Contract requirements, the Design-Builder shall discontinue use of the substituted method or Equipment and shall complete the Work with the specified methods and Equipment. The Design-Builder shall remove the deficient Work and replace it with Work of specified quality or take other corrective action as directed. No change will be made in payment or in contract time as a result of authorizing a change in methods or Equipment. The Department's Project Manager's right to determine that the Work produced does not meet Contract requirements may be given at any time and will not be prejudiced by the fact that the Design-Builder has conducted any measure of Work using the substituted methods or Equipment.

#### **DB 108-6 EXTENSION OF TIME**

If a Project has been under partial or full suspension, upon lifting of the suspension, the Department's Project Manager will furnish the Design-Builder a statement showing the number of Calendar Days charged during the partial or full suspension period and will identify the Calendar Days remaining in the Contract. The Design-Builder will be allowed one week after receipt of the statement in which to file a written protest identifying in what respect the statement is incorrect, otherwise the statement will be deemed to have been accepted by the Design-Builder as correct. Only by mutual written agreement will the Final Acceptance be extended or amended except when the LA DOTD orders Extra Work.

If the Design-Builder finds it impossible for reasons beyond its control to complete the Work within the Contract Time as specified or as extended in accordance with the provisions of this DB Section 108-6, the Design-Builder may, at any time prior to the expiration of the Contract Time as extended, make a written request to the Department's Project Manager for an extension of time setting forth therein the reasons which the Design-Builder believes will justify the granting of the request. The Design-Builder's plea that insufficient time was specified is not a valid reason for an extension of time. If the Department's Project Manager finds that the Work was delayed because of conditions beyond the control and without the fault of the Design-Builder or its Subcontractors or suppliers, at the sole discretion of the Department's Project Manager, the Department's Project Manager may extend the Contract Time in such amount as the conditions justify.

An extension will be granted for the time required to restore the Work to its original state where damage to the Work occurred from causes beyond the control of the Design-Builder or its Subcontractors or suppliers. The extended Contract Time will then be in full force and effect the same as though it were the original Contract Time.

If the Department's Project Manager determines that the Extra Work does not impact the Critical Path of the Project, the additional time will be addressed in accordance with this DB Section 108-6. In all cases where Extra Work necessitates the extension of time the extension must be negotiated and addressed in the Change Order for the Extra Work.

**DB 108-7 FAILURE TO COMPLETE ON TIME**

Time is of the essence for this Contract.

For each Calendar Day that the Work remains uncompleted after the Final Acceptance date, as set forth in Article 4.0 of Contract Documents, Part 1 – Design-Build Agreement, the sum specified in this Section 108-7 will be deducted from payments for the Work, not as a penalty but as stipulated damages.

Based on the amount of the original Contract, the charge of \$10,000.00 will be made for each Calendar Day after the Final Acceptance date, as relevant.

The Design-Builder will automatically be subject to stipulated damages by the Final Acceptance date on the Project and the Design-Builder hereby waives any requirement of written notice of default for failure to attain Final Acceptance of Project by the Final Acceptance date. The amount of stipulated damages will be deducted from payments for the Work under the Contract. The Design-Builder and the Surety will be liable for stipulated damages in excess of amounts due the Design-Builder under the Contract. Any stipulated damages may be collected by the LA DOTD under the retainage or performance bond held by the Surety for this Project or through any other remedy available to the LA DOTD by law. Failure on the part of the LA DOTD to deduct stipulated damages from payment for the Work under the Contract will not be a waiver of the rights of the LA DOTD to collect stipulated damages.

For each Calendar Day that the LA DOTD fails to deliver appropriate the United States (US) Army Corps of Engineers (COE) permit beyond 45 Calendar Days from NTP, the Design-Builder may make a claim for sum specified in this Section 108-7, which may be paid by the LA DOTD not as a penalty but as stipulated damages. In order for the Design-Builder to be eligible for such stipulated damages, the Design-Builder must demonstrate, to the sole satisfaction of the LA DOTD, that it suffered actual damages from the LA DOTD's delay in obtaining the US Army COE permit.

Based on the amount of the original Contract, the charge of \$7,500.00 will be made for each Calendar Day after the date identified by the LA DOTD, above, as the date by which the US Army COE permit will be obtained, as relevant. The amount of the stipulated damages for failure of the LA DOTD to obtain the US Army COE permit as specified in this DB Section 108-7 will serve as full satisfaction for any damages claimed by the Design-Builder for such failure on the part of the LA DOTD, and will not be subject to additional claims or damages by the Design-Builder for any delays related to such failure by the LA DOTD.

**DB 108-8 DEFAULT AND TERMINATION OF CONTRACT**

The Design-Builder will be in default if any of the following occur:

- A) Failure to complete the Project by the Final Acceptance date;
- B) The Design-Builder becomes insolvent or a petition is filed in the Bankruptcy Courts of the US under Chapters 7 or 13 of the Bankruptcy Code naming the Design-Builder as

## Louisiana Department of Transportation and Development

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debtor or conversion of a proceeding or petition from Chapter 11 to Chapter 7 or 13 of the Bankruptcy Code or seeks a forced respite under the laws of this state or similar debtor protection by courts of other states;

- C) Allowance of any final judgment to stand unsatisfied for a period of 14 Calendar Days;
- D) Assignment or arrangement for performance by others of all or part of the performance of the Contract, other than by subcontracting pursuant to DB Section 108-1, without written approval and consent in advance of the LA DOTD and the Surety in the case of an assignment of the entire Contract, and an assignment of Contract proceeds for the benefit of one or more creditors other than pursuant to a security interest in accordance with Louisiana Revised Statutes 10:9-101, et seq., without prior written approval and consent of the LA DOTD. Any such purported assignment will not be honored without evidence of compliance with this DB Section 108-8(D);
- E) Discontinuation of the prosecution of the Work;
- F) Failure to perform with sufficient workers, Equipment, or Materials to assure prompt completion of the Work;
- G) Performance of the Work unsuitably or neglect or refusal to remove Materials or replace or repair rejected Work;
- H) Failure to resume discontinued Work within ten Calendar Days after notice to do so;
- I) Failure to perform the Work in an acceptable manner, violation of any provision in the Contract, or failure to follow any federal, state, or local laws pertaining to performance;
- J) Failure to follow federal, state, or local laws, rules, and regulations concerning construction safety and health standards or permits or conditions upon the site of the Work which are unsanitary, hazardous, or dangerous to the health or safety of the Design-Builder's workmen or the public; or
- K) Fraud.

The LA DOTD will give written notice to the Design-Builder, with a copy to the Design-Builder's Surety, of the LA DOTD's determination that the Design-Builder is in default for any cause specified in this DB Section 108-8. The LA DOTD may give notice to the Design-Builder of its intent to put the Design-Builder in default under this DB Section 108-8 and specify a period of time in which the Design-Builder shall cure the deficiency or a notice of default will be issued. Upon notice of default, the LA DOTD will have authority, without violating the Contract, to take prosecution of the Work out of the hands of the Design-Builder.

Within 30 Calendar Days of receipt of a notification of the Design-Builder's default, the Surety must present to the LA DOTD either a plan to assume performance of the Contract and procure completion of the Project or provide the LA DOTD in writing with a reasonable response for the Design-Builder's default. If no plan is presented by the Surety within 30 Calendar Days, or at any time if immediate action must be taken to protect the public interest or the safety of the public or workers, the LA DOTD will take prosecution of the Work out of the hands of the Design-Builder or Surety and may appropriate or use the Materials and/or Equipment on the Project or may enter into an agreement for completion of the Contract or use other methods as required for completion of the Contract in an acceptable manner. The Surety will then be responsible for payment to the LA DOTD of the cost of completion of the Project and stipulated damages assessed by the public entity up to the total amount of the bond. If the Surety has not timely

completed the Project and a court of competent jurisdiction has determined that the Surety has in bad faith refused to take over the Project, the Surety will be responsible for the payment of any stipulated damages for any delay in completion of the Project as specified in the original Contract and any reasonable attorney's fees and court costs incurred by the LA DOTD in collection of payments required by this DB Section 108-8.

Nothing herein will be construed to require or obligate the LA DOTD to suspend Contract Time or to release the obligation of the Design-Builder and Surety for stipulated damages in accordance with DB Section 108-7.

The costs incurred by the LA DOTD due to the Design-Builder's default, including attorney's fees, or for completing the Work under Contract, will be deducted from any monies due or which may become due the Design-Builder. When this expense exceeds the sum which would have been payable under the Contract, the Design-Builder and Surety will be liable and will pay the LA DOTD the amount of such excess.

#### **DB 108-9 TERMINATION OF DESIGN-BUILDER'S RESPONSIBILITY**

The Contract will be considered complete when all Work has been satisfactorily completed, the final inspection made, and the Work accepted by the LA DOTD. The Design-Builder will then be released from further obligation except as set forth in the Design-Builder's Payment/Performance/Retainage Bond and DB Section 107.

Final Acceptance does not relieve the Design-Builder's obligations pursuant to any guaranty or warranty under the terms of the Contract. Upon expiration of any warranty or guaranty period, the LA DOTD will release any security tendered and issue a letter of release to the Design-Builder.

#### **DB 108-10 TERMINATION OF CONTRACT**

The LA DOTD may, by written notice, terminate the Contract or any portion thereof when, for reasons beyond either the LA DOTD's or Design-Builder's control, the Design-Builder is prevented from proceeding or completing the Work as originally contracted or when termination would be in the public interest. Such reasons for termination may include, but will not be limited to, executive orders of the President of the US relating to prosecution of war or national defense, national emergency which creates a serious shortage of Materials, orders from duly constituted authorities relating to energy conservation, and restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Design-Builder.

When a Contract, or a portion thereof, is terminated before completion of the Work, payment will be made for the Work completed. No claim for loss of anticipated profits will be considered.

Reimbursement for organization of the Work, other overhead expenses (when not otherwise included in the Contract), and moving Equipment and Materials to and from the Project will be considered.

Acceptable Materials obtained or ordered by the Design-Builder for the Work that are not incorporated in the Work will, at the option of the Design-Builder, be purchased by the LA DOTD at actual cost as shown by receipted bills and actual cost records at such points of delivery as designated.

**Louisiana Department of Transportation and Development**

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Termination of a Contract or a portion thereof will not relieve the Design-Builder of responsibility for the completed Work nor will it relieve the Surety of obligation for any just claim arising from the Work performed.