

# PART I — GENERAL PROVISIONS

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## **Section 101**

### **General Information, Definitions, and Terms**

**101.01 VOICE/MOOD AND REFERENCES.** This specification book uses the active voice, imperative mood when describing the contractor's responsibility. For example:

**101.01.1 Active Voice/Imperative Mood:** Provide competent supervision.

The subject of a sentence written in the active voice/imperative mood is not explicitly stated. In these specifications, the implied subject of such a sentence is typically the contractor, although in certain situations, the subject may also be a vendor, fabricator, or manufacturer engaged by the contractor to supply material, products, or equipment for use on the project. Prior to award of a contract, the imperative statements are directed to the bidder; it is only after the contract has been awarded that the imperatives are directed to the contractor.

Section and Subsection titles, and headings provide reference only, not interpretation.

A cross-reference to a specific Subsection of these specifications includes all general requirements of the Section of which the Subsection is a part.

Unless specified by year or date, cited publications refer to the most recent issue, including interim publications, in effect on the first date of advertisement for bids.

**101.02 ACRONYMS AND ABBREVIATIONS.** Wherever the following abbreviations or acronyms are used in the contract documents, they are to be interpreted as follows:

AA	Aluminum Association
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute

AML	Approved Materials List (DOTD)
ANSI	American National Standards Institute
API	American Petroleum Institute
AREMA	American Railway Engineering and Maintenance Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASTM	ASTM International (American Society for Testing and Materials International)
AWG	American Wire Gauge
AWPA	American Wood Protection Association
AWWA	American Water Works Association
AWS	American Welding Society
CPM	Critical Path Method
DBE	Disadvantaged Business Enterprise
DEQ	Department of Environmental Quality (Louisiana)
DOTD	Department of Transportation and Development (Louisiana)
EDSM	Department's Engineering Directives and Standards Manual
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration, Department of Transportation
FHWA	Federal Highway Administration, Department of Transportation
FSS	Federal Supply Service, General Services Administration
ICEA	Insulated Cable Engineers Association
IMSA	International Municipal Signal Association
IRI	International Roughness Index
ISO	International Organization for Standardization
ITE	Institute of Transportation Engineers
LAPELS	Louisiana Professional Engineering and Land Surveying Board
LRS	Louisiana Revised Statutes
LSSRB	Louisiana Standard Specifications for Roads and Bridges
LTRC	Louisiana Transportation Research Center
MASH	Manual for Assessing Safety Hardware
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices (Current adopted edition)
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEMA	National Electric Manufacturers Association

NFPA	National Fire Protection Association International
OSHA	Occupational Safety and Health Administration
PCCP	Portland Cement Concrete Pavement
QC/QA	Quality Control/Quality Assurance
RMA	Rubber Manufacturers Association
SAE	Society of Automotive Engineers International
SI	Systeme Internationale or International System of Units
SSPC	Society for Protective Coatings, (formerly Steel Structures Painting Council)
STB	Surface Transportation Board
TIMED	Transportation Infrastructure Model for Economic Development
UL	Underwriters Laboratories, Inc.

**101.03 DEFINITIONS.** Whenever the following words or expressions are used in the contract documents, they are to be defined as follows:

**Acts of God.** A cataclysmic phenomenon such as an earthquake, tidal wave, tornado, hurricane, or any other occurrence of nature beyond the control of the Department and contractor when the project is in a geographic area that has been declared by the government as a disaster area.

**Adjustment.** A change in contract time or compensation provided in accordance with 108.07 and 109.04.

**Advertisement.** A public announcement inviting bids, generally describing the project to be constructed; how to obtain the contract documents; and giving general bidding instructions including the time and place of opening bids.

**Approved Materials List:** Lists maintained by the Department's Materials and Testing Section for approved products, materials, and supplies which receive preliminary testing and/or review of company procedures. The Approved Materials List (AML) replaces the designation, "Qualified Products List (QPL)."

**Approved Producer/Supplier.** A material manufacturer, producer, supplier, source, or plant which has met all qualifications required by DOTD to supply materials for DOTD projects.

**Assembly Period.** Time the contractor is given to acquire approvals of required drawings, brochures, and other submittals, begin the purchase and assembly of materials, and to perform specified preconstruction activities. Contract time will not be charged during an assembly period.

**Award of Contract.** Transmission of the official written notice to the bidder that the Department intends to enter into a contract for the Project. Notice of award does not create a binding contract.

**Base Course.** The layer or layers of specified material of designed thickness constructed on the subgrade to support a surface course.

**Bid.** The binding offer of a responsible bidder that was submitted to the Department on the bid forms, or via approved electronic media, in accordance with the bidding documents.

**Bid Express.** An on-line service provided at Bidx.com, by Info Tech, Inc., which is under contract to DOTD to facilitate two-way internet electronic bidding.

**Bid Forms.** The portion of the bidding documents required to be submitted, in accordance with the bidding documents, which constitute a bid.

**Bidder.** An individual, partnership, corporation, or any other legal entity, or any acceptable combination thereof, or joint venture submitting a bid.

**Bidding Documents.** The advertisement, plans, specifications, bid forms, bidding instructions, addenda, special provisions, and all other written instruments prepared by or on behalf of the Department for use by bidders.

**Bidx.com.** The Info Tech, Inc. website that provides the Bid Express service.

**Bridge.** A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway, which has a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than twenty feet between undercopings of abutments, spring lines of arches, or extreme ends

of openings for multiple boxes. A bridge may include multiple pipes where the clear distance between openings is less than one-half the smaller contiguous opening.

Bridge Length: The greater dimension of a structure measured along the center of the roadway between backs of abutment backwalls or between ends of bridge floor.

Bridge Roadway Width: The clear width of structure measured at right angles to the center of the roadway between the bottom of curbs or if curbs are not used, between the inner faces of parapet or railing.

**Calendar Day.** Every day on the calendar, beginning and ending at midnight.

**Change Order (Plan Change).** The standard form normally used to describe and detail changes to the contract. When approved and fully executed, the document becomes a part of the contract.

**Conditional Notice to Proceed.** Written notice to the contractor to proceed with ordering of materials, and when specified, performing other activities which would hinder progress in the beginning stages of construction.

**Construction Proposal.** Document furnished to prospective bidders by the Department consisting of, but not limited to, the notice to contractors, special provisions, supplemental specifications, plans, and bid forms.

**Contract.** The written agreement between the Department and the contractor setting forth obligations of the parties thereunder for performance of the prescribed work.

The contract documents include the advertisement, bid forms, contract form, payment/performance/retainage bond form, standard specifications, supplemental specifications, special provisions, plans, standard plans, change orders/special agreements, supplemental agreements, and other documents referenced therein that are required to complete the work in an acceptable manner, and contract time, including authorized extensions thereof, all of which constitute one instrument.

**Contract Item.** See "Pay Item."

**Contract Time.** The number of working days or calendar days allowed for completion of the contract, including authorized time extensions.

When a calendar date of completion is shown in the contract in lieu of a number of working or calendar days, work shall be completed by that date, including authorized time extensions.

**Contractor.** The individual, partnership, corporation, joint venture, other legal entity, or acceptable combination thereof, that is awarded a contract.

**Controlled Access Highway.** Any highway to or from which access is denied or controlled from or to abutting land or intersecting streets, roads, highways, alleys, or other public or private ways.

**Controlling Item(s) of Work.** The controlling items of work are those Pay Items shown on the accepted construction schedule which the contractor must timely complete in appropriate sequence in order to finish the Project within the Contract Time.

**Control of Access.** The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is controlled by public authority.

Full Control: Preference is given to through traffic by providing access connections with selected public roads only, and by prohibiting crossings at grade or direct private driveway connections.

Partial Control: Preference is given to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade, and some private driveway connections.

**Critical Path Method (CPM).** The method of network scheduling that utilizes computer programs to (i) arrange the sequence of project activities based on activity relationships and durations, (ii) show early and late activity start and completion dates, (iii) determine the longest continuous sequence of activities, the critical path, that establishes the minimum overall project duration and identifies the activities on that path, and (iv) facilitate allocation of resources and estimates of contract earnings.

**Culvert.** Any drainage structure under a roadway or other facility not defined as a bridge.

**Dedicated Stockpile.** A stockpile which has been sampled, tested, and approved. Once approved, it shall not be altered.

**Department.** The Department of Transportation and Development of the State of Louisiana.

**Department of Transportation and Development.** The Louisiana Department of Transportation and Development, through its offices and officers, responsible for developing and implementing programs to ensure adequate, safe, and efficient transportation, and other public works facilities and services in the state in accordance with Chapter 11 of LRS Title 36 as amended.

**Disadvantaged Business Enterprise (DBE).** A DBE is a for-profit small business concern that is at least 51 percent independently owned and controlled, in both substance and form, by one or more individuals who are both socially and economically disadvantaged and participating in the DBE Program mandated by the U.S. Department of Transportation Financial Assistance Programs.

**Disqualified.** Contractor's or Bidder's status during the time period in which the Department will not accept its Bids or approve it as a subcontractor.

**Electronic Bid Bond.** An instrument by which a contractor and surety can submit a bid guarantee with a bid electronically in lieu of a written signed paper.

**Electronic Bidding.** The process by which the Department and the bidder can utilize the Internet to facilitate the bidding process.

**Electronic Signature.** A secure and verifiable alphanumeric code assigned to an individual, replacing or acting instead of a traditional signature.

**Engineer.** The Chief Engineer, acting directly or through duly authorized representatives, who is responsible for contract administration including engineering supervision of the work. When the term "Chief Engineer" is used, it shall mean the Department's Chief Engineer in person or the Department's duly appointed designee.

**Engineer of Record (EOR).** The professional engineer licensed in the State of Louisiana responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other engineering services necessary to develop the criteria and concept of the project, perform design analysis, prepare project plans and specifications, and who seals, signs, and dates the plans and documents certifying that the work thereon was done by the licensee or under his/her responsible charge.

**Engineering Directives and Standards Manual (EDSM).** A set of manuals containing directives and standards of the Department.

**Equipment.** All machinery, equipment, tools, and apparatus necessary for acceptable completion of the work.

**Expedite.** Software developed for AASHTO by Info Tech that enables and facilitates electronic bidding.

**Extra Work.** Work not provided for in the contract as awarded but found necessary by the Department for satisfactory completion of the contract within its intended scope.

**Falcon.** Falcon is the Department's plan publishing software, accessible via the Department's web site, used to search, view, print, and download indexed final project plans and plan related documents, and to enable plan and proposal related questions and answers between potential bidders and the Department.

**Falsework.** Temporary construction work on which a main work is wholly or partly built and supported until it is strong enough to support itself; a temporary framework used to support part or all of a structure during demolition.

**Force Account.** Payment for directed construction work based on the cost of labor, equipment, materials furnished, overhead, and profit, in accordance with 109.04.

**Fresh Concrete.** Concrete in the plastic state before achieving initial set.

**Highway, Street, or Road.** A public way for vehicular travel, including the entire area within the right-of-way.

**Incidental Work.** Work required by the contract that is not directly measured and for which no specific pay item is provided, including all work necessary to satisfactorily complete all pay items.

**Inspector.** The engineer's authorized representative assigned to make detailed inspections of contract performance.

**Invitation For Bids.** See "Advertisement."

**Item.** See "Pay Item."

**Laboratory.** The Department's testing laboratory or any other testing laboratory which meets the qualifications required by the contract.

**Local Street or Local Road.** A street or road not in the state maintained system.

**Major Item.** A pay item included in the contract with a total cost equal to or greater than 10 percent of the original total contract amount.

**Manual on Uniform Traffic Control Devices (MUTCD).** The manual adopted by the Department to describe the uniform system of traffic control devices used on state highways.

**Materials.** Any substances used in the work.

**Materials Sampling Manual.** The manual used to establish and standardize construction and maintenance sampling and material acceptance requirements for the Department.

**Median.** The portion of a highway separating traveled ways for traffic in opposite directions.

**Minor Item.** A pay item included in the contract as awarded with a total cost of less than 10 percent of the original total contract amount.

**Notice of Contract Execution.** The notice from the Department that the contract has been fully executed. Once fully executed, the contract is binding.

**Notice to Proceed.** Written notice to the contractor to proceed with the contract work which will stipulate the dates that work shall commence and contract time shall begin.

**Parish.** A political subdivision corresponding to a county in other states.

**Pavement Structure.** The combination of base courses and surface course placed on a subgrade across the roadbed.

**Pay Item.** A specific portion of work for which a price is provided in the contract.

**Payment/Performance/Retainage Bond.** The approved form of security, executed by the contractor and surety, guaranteeing complete execution of the contract and supplemental agreements thereto, and payment of all legal debts, including liens and monies due the Department, pertaining to the contract.

**Plans.** The contract drawings, which show location, type, dimensions and other details of the prescribed work.

**Producer/Supplier.** A material manufacturer, producer, supplier, source, or plant which has met all qualifications required by DOTD to supply materials for DOTD projects.

**Profile Grade.** The trace of a vertical plane intersecting the top surface of the proposed wearing surface or other designed course usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

**Project.** A specific undertaking, as described by the contract within prescribed limits, consisting of all work necessary for satisfactory completion of the contract within its intended scope, including any extra work added to the contract.

**Project Engineer.** The engineer assigned to represent the Chief Engineer in the administration of the contract.

**Project Limits.** That area between the Begin and End stations as shown on the plans and from Right-of-Way line to Right-of-Way line, unless otherwise noted on the plans. On projects with offset beginning/ending points of construction or Design-Build projects, the area is defined as the two most distant points of the Limits of Construction as indicated on the plans, from Right-of-Way line to Right-of-Way line.

**Project Number.** A number used to identify the project.

**Proposal.** See "Bid."

**Proposal Form.** See "Bid Forms."

**Proposal/Bid Guaranty.** The required security furnished with a bid. The only form of security acceptable is a Bid Bond.

**Qualified Products Lists.** The Approved Materials List (AML) replaces the designation, "Qualified Products List (QPL)".

**Quality Assurance (QA).** A program developed by the contractor that incorporates the contractor's Quality Control (QC) and Department Acceptance to ensure that a project adheres to the contract requirements.

1. Quality Control (QC) is the process used by the contractor to monitor, assess and adjust material selections, production and project construction to control the level of quality so that his product continuously and uniformly conforms to specifications.

2. Department Acceptance is the process of sampling, testing and inspection to determine the degree of compliance with the specifications for acceptance of materials and/or the contractor's work.

**Railway/Railroad.** Owner or lessee(s) of railroad tracks and appurtenances.

**Right-of-Way.** Land, property, or interest therein, acquired for or devoted to transportation purposes.

**Roadbed.** The graded portion of a roadway prepared as a foundation for the pavement structure within the top of the side slopes, including the shoulder.

**Roadside.** The area adjoining the outer edge of the roadbed. Extensive areas between roadways of a divided highway may also be considered roadside.

**Roadside Development.** Those items necessary to complete the highway which provide for preservation of landscape materials and features; rehabilitation and protection against erosion of areas disturbed by construction through seeding, sodding, mulching, and placing of other ground covers; and suitable planting or other improvements to increase the effectiveness and enhance the appearance of the highway.

**Roadway.** The portion of a highway within the limits of construction.

**Secretary.** The Secretary for the Louisiana Department of Transportation and Development.

**Service Road or Frontage Road.** A street or road on the side of the mainline roadway for service to abutting property and adjacent areas, and for control of access.

**Small Business Enterprise (SBE).** As defined by Section 3 of the U.S. Small Business Act and S.B.A. regulations, a for-profit business that is at least 51 percent owned by one or more individuals who are economically disadvantaged, and whose company is a small business concern in accordance with 49 C.F.R. § 26.65.

**Specialty Item.** A pay item designated in the contract that may be performed by subcontract and the cost of such may be deducted from the total contract cost before computing the amount of work required to be performed by the contractor with the contractor's own organization.

**Specifications.** The written directions, provisions, and requirements contained in the Contract Documents that describe the work under the Contract. The specifications are further defined as follows:

1. Standard Specifications: The “Louisiana Standard Specifications for Roads and Bridges” a bound book or electronic media, applicable to all

Department Contracts containing adopted specifications for state-wide use.

2. Supplemental Specifications: Approved additions and revisions to the Standard Specifications, and included in all Department Contracts.

3. Special Provisions: Specific requirements adopted by the Department that amend the Standard Specifications or supplemental specifications, applicable to a specific project.

a. Non-Standard Special Provision: A specification that describes requirements for an unusual item or one that should not be part of the Standard Specifications.

b. Technical Special Provisions: Specifications, of a unique or highly technical nature, prepared, signed, and sealed by an Engineer or Architect registered in the State of Louisiana with recognized expertise in the field, that are made part of the Contract as an attachment to the Contract Documents.

c. Developmental Special Provision: A specification developed for a new process, procedure, or material to be monitored by LTRC.

**Specified.** Required or stipulated in the contract documents.

**Standard Plans.** Department drawings approved for repetitive use, showing the details to be used where appropriate.

**State.** The State of Louisiana, acting through its authorized representative.

**Storm Drain.** A fully contained and connected set of drainage structures, which capture the rain water runoff from our transportation system.

**Structures.** Bridges, tunnels, culverts, catch basins, junction boxes, retaining walls, cribbing, manholes, end-walls, buildings, sewers, service pipes, underdrains, foundation drains, and other similar features encountered in the work.

**Subcontractor.** An individual, partnership, corporation, joint venture, other legal entity or acceptable combination thereof, to which the contractor sublets part of the work. Any individual, partnership, corporation, joint venture, other legal entity or acceptable combination thereof shall not be considered to be a subcontractor if it is a subsidiary, wholly owned or majority owned by the contractor or the principals of the contractor, or an affiliate of the contractor or affiliated or otherwise controlled by the contractor or the principals of the contractor such that a

true and independent subcontractor-contractor relationship reached by bidding or arms-length negotiation does not result therefrom.

**Subgrade.** The surface upon which the pavement structure, including shoulders, are constructed.

**Subgrade Layer.** The surface layer of the subgrade, which requires treatment with an approved additive or asphalt.

**Submittals.** Detailed drawings and documents provided by the contractor as required by the contract.

**Substructure.** That part of the structure below the bearings of simple and continuous spans, skewbacks or arches, and tops of footings of rigid frames, including backwalls, wingwalls, and wing protection railings.

**Superintendent.** The contractor's authorized representative in responsible charge of the work.

**Superstructure.** The entire structure except the substructure.

**Surety.** The corporation, partnership, or individual other than the contractor, executing a bond furnished by the contractor.

**Surface Course.** The top course of the pavement structure.

**Technician.** The contractor's or the Department's representative who shall be either certified or authorized as required in the specifications.

**Testing Procedures Manual.** The manual which contains testing procedures specifically required by the DOTD. Each procedure is designated as "DOTD TR xxx" in the specifications. These procedures are distinct from AASHTO and ASTM procedures.

**Through and Local Traffic.**

1. Through Traffic - Traffic that has neither its origin nor destination within the limits of the project.

2. Local Traffic - Traffic that has either its origin or destination, or both, within the limits of the project.

**Traffic/Travel Lane.** The portion of traveled way for movement of a single lane of vehicles.

**Traveled Way.** The portion of roadway for movement of vehicles, exclusive of shoulders and auxiliary lanes.

**Unit.** A quantity adopted as a standard for measurement of work.

**Work.** The furnishing of labor, materials, services, equipment, and incidentals necessary for successful completion of the project and the carrying out of all obligations imposed by the contract.

**Work Order.** See Notice to Proceed.

**Working Day.** A calendar day on which weather or other conditions not under control of the contractor will permit construction operations to proceed in accordance with 108.07.

**Working Drawings.** Drawings produced and submitted by the contractor in accordance with 105.02 that describe the contractor's work, means, and/or methods of construction, including, for example, supplemental design sheets, shop drawings, bending diagrams, and construction joint locations.

**101.04 UNDERSTOOD WORDS OR EXPRESSIONS.** Where the party responsible for the work, testing, or sampling described is not specifically identified, the work is to be performed by the contractor.

To avoid cumbersome repetition of the following words or expressions in the contract or plans, it is provided that whenever anything is, or is to be done, if, as, or, when or where "contemplated, required, determined, directed, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, condemned, waived, or written consent," it shall be understood as if the expression were followed by the words "by the engineer" or "to the engineer".

Whenever the contract or plans contain the expressions "no direct pay, no direct payment, not measured for payment, at no additional cost or expense to the Department, will not be measured for payment, considered

incidental to other items of work, no payment will be made for this work, shall not be entitled to extra payment,” or any variation of one of these expressions it shall be understood by the bidder that the designated work is to be considered incidental work and the cost of such work shall be included in the price bid on other pay items.

When plans, including “as-built” plans from previous projects, specifications, plan notes, general notes, special or supplemental provisions, or other bid or contract documents provide information or data with a notation indicating that the information or data is provided “For Information Purposes” or “For Information Purposes Only,” the Department provides such information, representations, or data only for illustrative purposes.

## **Section 102**

### **Bidding Requirements**

**102.01 PREQUALIFICATION OF BIDDERS.** To qualify for submission of a bid, the bidder shall comply with all rules and regulations of the Louisiana State Licensing Board for Contractors.

**102.02 CONTRACTORS' LICENSING LAWS.** Attention is directed to the rules and regulations of the State Licensing Board for Contractors. Information relative to licensing may be obtained from the offices of said Board in Baton Rouge.

If the estimated project cost is \$50,000 or more, only licensed contractors may receive bid forms, unless federal funds are involved. When federal funds are involved, non-licensed contractors may receive bid forms and submit bids; however, if the contractor's bid is \$50,000 or more, the successful non-licensed bidder will be required to obtain the proper license before execution of the contract.

When the estimated project cost is greater than \$50,000, the contractor shall show his license number, if required, on the bid envelope unless the contractor submits the bid via the Department approved electronic bidding process. If a subcontract amount is \$50,000 or more, both the contractor and subcontractors are subject to the rules and regulations of the State Licensing Board for Contractors.

When landscaping is the predominant work on the project and no federal funds are involved, prior to receiving bid forms, the prospective bidder will be required to possess a current Landscape Contractors license from the Horticulture Commission of the Louisiana Department of Agriculture and Forestry.

The contractor will be required to ensure all work performed conforms to Louisiana licensing laws and permit requirements.

**102.03 CONTENTS OF BIDDING DOCUMENTS.** The Department will furnish prospective bidders with or access to bidding documents. For all electronic bidding, the prospective bidder will use the Bid Express services through Bidx.com. The use of these services will require payment by the contractor of additional fees to the service provider.

The construction proposal will state the location and description of the contemplated work, will show the estimated quantities and kinds of work to

be performed, and will include the bid forms to be completed and returned by the bidder. The construction proposal will state the time in which the work must be completed, and the date, time, and place of opening bids. The construction proposal will also include any supplemental specifications, special provisions, or requirements, which vary from or are not contained in the Standard Specifications. The plans, specifications and other documents designated in the construction proposal will be considered a part of the construction proposal whether attached or not.

Unless the contractor properly submits the bid forms electronically, the bid forms bound with or attached to the construction proposal should be detached, completed, and returned by the bidder. The bid forms consist of the Schedule of Items, the Proposal/Bid Guaranty as required by 102.09, the Construction Proposal Signature and Execution Form, and any other returnables if required in the construction proposal.

Unless explicitly stated otherwise in the contract, when the name of a certain brand, make, manufacture, or definite specifications limit the product or source to be supplied under or pursuant to a specification in this contract to a single product or source, that specification shall not restrict bidders to the specified brand, make, manufacture, product or source, but to set forth and convey to prospective bidders the general style, type, character, quality and salient performance criteria desired by the Department of the product or source specified. The specified product or source shall be a standard by which substitute products or sources will be compared to determine if the substitute product or source will be approved for substitution as equal to or superior to the general style, type, character, quality and salient performance criteria of the product or source specified. Bidders are informed that substitute products or sources shall be submitted to the Chief Engineer for prior approval no later than seven working days prior to the opening of bids in accordance with LRS 38:2295(C). The Department will approve or deny substitution of the product or source submitted within three days, exclusive of holidays and weekends. If a product or source sought to be used as a substitute for the product or source specified is not submitted prior to the opening of bids as provided in LRS 38:2295(C), the Department has the right to require the product or source specified. Substitution of a product or source submitted in substitution of the product or source specified after the seven-day period prior to the opening of bids may only be allowed after that time in the Chief Engineer's sole discretion pursuant to 105.01.

**102.04 ISSUANCE OF BID DOCUMENTS.** The Department may refuse to accept bid documents from a bidder, or allow a bidder access to Bid Express for bidding purposes, for any of the following reasons:

1. Failure of the bidder to comply with any prequalification requirements of the Department.
2. Disqualification of the bidder.
3. If the bidder is in default of a contract in accordance with 108.09 and a notice of default terminating the contractor's participation has been issued.
4. The bidder being included on the List of FHWA Suspension/Debarment Actions or having been found unacceptable for employment on Federal-Aid Projects.
5. When registration for bidding or requesting bid documents within 24 hours before the opening of bids.
6. Any bidder debarred in accordance with Part XIII-B of Chapter I of LRS 48.
7. Any bidder disqualified for Proposal/Bid Guaranty forfeiture or non-payment in accordance with 103.07.

**102.05 INTERPRETATION OF PAY ITEMS, UNIT PRICES, AND QUANTITIES IN SCHEDULE OF ITEMS.** The quantities in the Schedule of Items are prepared for comparison of bids and are calculated approximations. Payment will be made in accordance with measurement and payment requirements for pay items and other requirements of the contract. Pay item quantities may be increased, decreased, or eliminated by the Department. Nothing in the Bidding Requirements, or anywhere else in the contract, is intended to amend, prohibit, or release the contractor from performance of the work specified in the plans and specifications for which no direct pay item is included (i.e., without compensation), in addition to that in the Schedule of Items. The contract unit price for a scheduled item shall include all direct costs, all overhead, any profit, and all indirect, incidental, and subsidiary costs, necessary to complete the item, and any incidental work not measured for payment as described under the individual pay items listed in the Schedule of Items. The contractor shall perform all work required to complete the project.

**102.06 EXAMINATION OF BID DOCUMENTS AND SITE OF WORK.** Written instructions necessary to use the electronic bidding service and prepare and submit a bid electronically are provided on the Bidx.com Internet site. Fees payable to Bidx.com are required of the

bidder to use the service and to establish electronic signatures. The bidder is advised to timely make all necessary arrangements with Bidx.com and to familiarize himself with system and process requirements prior to using the service to submit a bid.

The bidder shall examine carefully the bidding documents before submitting a bid. If the bidder discovers an error, omission, or ambiguity in the plans or proposal, prior to the date of the bid opening, he shall immediately notify the Department, through Falcon.

The bidder shall also examine the site of the proposed work before submitting a bid. In the event the bidder's site investigation reveals that the site conditions are inconsistent with the contract documents, the bidder shall immediately notify the Department, through Falcon.

Any subsurface tests and boring data which have been compiled by the Department and furnished to the bidder shall not be considered as fully representative of subsurface conditions and is not intended as a substitute for personal investigation, interpretations and judgment of the bidder.

By submitting a bid, the bidder represents and warrants that bidder has carefully and thoroughly reviewed and examined all bid documents, including all project plans and specifications; and examined and inspected the project site for the purpose of identifying, assessing, and determining all observable or apparent site conditions that may have an impact on the performance of the work.

By submitting a bid, the bidder further represents and warrants that (1) review and examination of the bid documents, including all project plans and specifications, has not revealed or otherwise indicated, and bidder is otherwise unaware of, any error, omission, ambiguity or deficiency of any kind in any of the bid documents or the information reflected by the bid documents; (2) examination and inspection of the project site has not revealed or otherwise indicated, and bidder is otherwise unaware of, any apparent or otherwise observable site condition that may have an impact on the performance of the work; or (3) that Bidder has provided to the Department written notice identifying and detailing any site condition or error, omission, ambiguity or deficiency of any kind in any of the bid documents or the information reflected by the bid documents that may have a significant impact on the performance of the project, including the cost of the project or the time required to complete the work.

**102.07 PREPARATION OF BID.** Bids shall be submitted on bid forms provided by the Department or accessed through Bidx.com. Only that portion of the construction proposal designated as Bid Forms must be

completed and returned by the bidder. The bid forms include the Schedule of Items, the Proposal/Bid Guaranty as required by 102.09, the Construction Proposal Signature and Execution Form, and any additional returnables if required in the construction proposal.

A unit bid price shall be specified in the Schedule of Items in English words or numerals in U.S. dollars, either typed, printed in ink, or computer printed in the spaces provided for each pay item or alternate pay item. If no alternate pay items are included in the Schedule of Items, bidders shall bid on all items; if alternate items are included, bidders shall bid on all "General Items" and on only one of the groups of items under each set of "Alternate Items." When Additive Alternates are included, the bidders shall bid on all Additive Alternates.

Submission of the bid shall constitute bidder's verification that (1) it has not based any bid prices on the anticipated approval of a Value Engineering Proposal, as described in 105.19.3, (2) it acknowledges that any Value Engineering Proposal may be rejected, and (3) in the event of the rejection of such a proposal, the contractor will be required to complete the contract at the contract bid prices.

The Construction Proposal Signature and Execution Form shall be signed either with an authorized electronic signature or with ink by any of the following who are legally qualified and acceptable to the state:

- an individual;
- a member of the partnership;
- an officer of one of the firms representing a joint venture ;
- an officer of a corporation; or
- an agent of the bidder.

The bidder's business street address and mailing address, if different, and the business telephone number of the individual signing the form and that of a contact person shall be shown on the Construction Proposal Signature and Execution Form.

Execution, signature, and submission of the Construction Proposal Returnables shall constitute a legally binding and irrevocable offer by the bidder.

Electronic bid bonds will be furnished and completed by a Department approved electronic bond verification service.

**102.08 IRREGULAR BIDS.** Bids may be considered irregular or non-responsive and will be subject to rejection for any of the following conditions:

1. If the bid, except for legible facsimiles, is on a form other than that furnished by the Department or Bidx.com or if the bid forms are materially altered.

2. If there are unauthorized additions, conditional or alternate bids or irregularities which make the bid incomplete, indefinite, or ambiguous as to its meaning.

3. If the bidder adds provisions reserving the right to accept or reject the award or to enter into the contract pursuant to the award.

4. If the bid does not contain a legible unit price in accordance with 102.07 for each pay item listed.

5. If the bid is submitted by a bidder other than the one to whom the construction proposal was issued.

6. If the bidder is in default of a contract in accordance with 108.09 and a notice of default has been issued to the bidder.

7. If an owner (part or as a whole), registered agent, license holder, manager, organizer, or a principal officer(s) of the bidding entity is an owner (part or as a whole), registered agent, license holder, manager, organizer, or a principal officer(s) of another or the same bidding entity or of a contracting entity which has been declared by the Department to be ineligible to bid for any reason.

8. If the proposal/bid guaranty does not meet requirements of 102.09.

9. If more than one bid for the same work is received from an individual, partner, corporation, or any other legal entity, joint venture, or combination thereof under the same or a different name, or bidder has a direct financial interest in any bid submitted by another bidder.

10. If the portion of the construction proposal form designated as Bid Forms is not properly executed either by hand or electronically and submitted with the bid.

11. If unit prices are obviously distorted or unbalanced to reflect an advantage to the contractor which would result in undue expenditure of public funds and/or overrun of total cost of project.

12. If it is determined by the Department that collusion and/or the bid rigging has occurred on a project.

13. If the bidder is disqualified in accordance with 108.04.

14. If the bidder is debarred in accordance with Part XIII-B of Chapter 1 of LRS Title 48.

15. If the bidder is disqualified for Proposal/Bid Guaranty forfeiture or non-payment in accordance with 103.07.

16. If the apparent low bidder fails, neglects, or refuses to properly and timely submit any required documentation prior to award of contract.

Upon any such failure, the original apparent low bidder will be declared irregular and will not be allowed to bid on the project should re-advertisement occur.

17. If the bidder is prohibited from bidding or working on any federally funded project by the Federal Highway Administration.

**102.09 PROPOSAL/BID GUARANTY.** Each bid shall be accompanied by a proposal/bid guaranty in an amount not less than five percent of the total bid amount when the bidder's total bid amount as calculated by the Department in accordance with 103.01 is greater than \$50,000. No proposal/bid guaranty is required for projects when the bidder's total bid amount as calculated by the Department is \$50,000 or less. The official total bid amount for projects that include alternates is the total of the bidder's base bid and all alternates bid on and accepted by the Department. The proposal/bid guaranty submitted by the bidder shall be a bid bond made payable to the contracting agency as specified on the bid bond form provided in the construction proposal. No other form of security will be accepted.

The bid bond shall be on the "Bid Bond" form provided in the construction proposal, on a form that is materially the same in all respects to the "Bid Bond" form provided, or on an electronic form that has received Department approval prior to submission. The bid bond shall be filled in completely, shall be signed by an authorized officer, owner or partner of the bidding entity, or each entity representing a joint venture; shall be signed by the surety's agent or attorney-in-fact; and shall be accompanied by a notarized document granting general power of attorney to the surety's signer. The bid bond shall not contain any provisions that limit the face amount of the bond.

The bid bond shall be written by a surety or insurance company that is in good standing and currently licensed to write surety bonds in the State of Louisiana by the Louisiana Department of Insurance and also conform to the requirements of LSA-R.S. 48:253.

All signatures required on the bid bond may be original, mechanical reproductions, facsimiles or electronic. Electronic bonds issued in conjunction with electronic bids must have written Departmental approval prior to use. The Department will make a listing of approved electronic sureties providers on the Bidx.com site.

**102.10 DELIVERY OF BIDS.** Unless delivered electronically through the approved electronic bid submission service, each bid should be submitted in the envelope furnished by the Department, if issued. The blank spaces on the envelope shall be filled in correctly to clearly indicate its content. When an envelope other than the one furnished by the Department is used, it shall be the same general size and shape and be similarly marked to indicate its contents, including, if required, the contractor's Louisiana contracting license number. Bids and bid bonds shall be received no later than the time and at the place specified in the Notice to Contractors. Paper bids and bid bonds received after the time set for opening bids will be returned to bidders unopened. Electronic bids shall be submitted via the Internet in accordance with 102.07. Electronic bids transmitted by the bidder after the time set for bid opening will not be accepted.

**102.11 WITHDRAWAL OR REVISION OF BIDS.** For paper bids, a bidder may withdraw or revise a bid after it has been deposited with the Department, provided the request for such withdrawal or revision is received by the Department's issuing office in person, in writing, or by email, before the time set for opening bids and at the location set forth in the Notice to Contractors. Electronic bids submitted to Bid Express may be withdrawn prior to the specified bid opening time by the authorized bidder.

**102.12 PUBLIC OPENING OF BIDS.** Paper or electronic bids will be publicly opened and read or presented at the time and place indicated in the Notice to Contractors.

**102.13 WITHDRAWAL OF BIDS DUE TO ERROR.**

**102.13.1 Withdrawal of Bid:** The Department may allow a bidder to withdraw a bid after the scheduled time of bid opening in accordance with LRS 48:255, if a bid contains patently obvious mechanical, clerical, or mathematical errors and if clear and convincing sworn, written evidence of such errors is furnished to the Department within seventy-two hours of the bid opening, excluding Saturdays, Sundays, or other legal holidays. If the Department determines that the error is a patently obvious mechanical, clerical, or mathematical error, it shall accept the withdrawal request and return the bid security to the contractor. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted.

Submission of a bid withdrawal request shall constitute bidder's agreement to suspend the tolling of time for award of the contract during the pendency of the request. The award deadline will be extended by the number of days, rounded up to the nearest whole day, from the submission of a bid withdrawal request until the Department's determination regarding said request.

**102.13.2 Other Bid Protests:** The Department may also allow a bidder to protest any matter regarding the bidding or award of a contract after the scheduled time of bid opening.

The protest of a bidder must be submitted in writing and, specifically set forth the grounds and/or reasons for the protest. The written protest must be delivered to the DOTD Chief Engineer within 72 hours after notice of bid rejection, irregularity or any other action regarding the bidding of the contract, excluding Saturdays, Sundays, and legal holidays.

**102.13.3 Hearing by the DOTD Chief Engineer - Prior to Contract:** If a bidder files a notice of error along with a request to withdraw the bid, or protests in a timely manner any other matter regarding the bidding or award of the contract, the DOTD Chief Engineer, or designee, will hold a hearing within a reasonable period of time after a request has been delivered. The DOTD Chief Engineer will give the requesting bidder reasonable notice of the time and place of the hearing. The bidder may appear at the hearing and present evidence together with other facts and arguments in support of the request, except, for a request to withdraw a bid for reason of error, the bidder making such request will be limited to the sworn written evidence submitted within the time period prescribed in this subsection.

**102.13.4 Proposal / Bid Guaranty:** When notice of a bid mistake and a request to withdraw the bid is made, the proposal/bid guaranty shall continue in full force and effect until and unless there is a determination by the Secretary that the conditions of 102.13.1 have been met. If the Secretary determines that an error occurred in the preparation of the bid in compliance with the statutory and contractual requirements, the Department will return the proposal/bid guaranty to the bidder.

**102.13.5 Bid Withdrawal Consequences:** If it has been determined that an error has been made and the bidder is allowed to withdraw a bid, the individual, partnership, corporation, or any other legal entity or joint venture submitting the bid will not be allowed to resubmit a bid on the project, perform work on the project as a subcontractor or sub-subcontractor, or to supply any material or labor to the entity to whom the contract is ultimately awarded.

If all bids are rejected after a bid is successfully withdrawn, the withdrawn bidder shall not be eligible to bid on the project unless the re-advertisement and opening of bids for the work is at least one hundred eighty days after the date the bid is withdrawn.

## **Section 103**

### **Award and Execution of Contract**

**103.01 CONSIDERATION OF BIDS.** After paper or electronic bids are opened and read, they will be compared based on the summation of the products of the quantities and the unit bid prices in the Schedule of Items. Results of such comparisons will be available to the public.

The Department reserves the right to reject bids, waive technicalities and informalities, or advertise for new bids in accordance with the following sections:

**103.01.1 Rejection of Low Bid:** The right is reserved to reject the low bid for any of the following reasons and contract with the next lowest responsive bidder or advertise for new bids:

1. A low bidder's bid is considered irregular as indicated in 102.08.
2. On DBE Goal Projects, the low bidder fails to submit the required information and satisfy the DBE requirements as specified in the DBE contract provisions for the project.
3. The low bidder fails to agree to mutually extend the period required for Award of Contract as indicated in 103.02.
4. The low bidder successfully withdraws the bid in accordance with 102.11.
5. The low bidder is prohibited from bidding or working on any federally funded project by FHWA. This cause applies for state or federally funded projects.

**103.01.2. Rejection of All Bids:** All bids may be rejected for just cause consisting of any of the following:

1. The Department's unavailability of funds sufficient for the construction of the project or the unavailability of funding participation in the project by anticipated funding sources.
2. The failure of all bidders, not considered as irregular, to submit a bid within the established threshold of the construction estimate for the project by the Department's engineers.
3. A substantial change in scope or design of the project occurring prior to award.
4. A determination of the Department or the funding agency not to build the proposed project within twelve months of the letting date.
5. The disqualification or rejection by the Department of all bidders.
6. The discovery, by the Department prior to award, that an error,

defect, or ambiguity was contained within the bidding documents, that these defects may have affected the integrity of the competitive bidding process or may have led to a potential advantage or disadvantage to one or more of the bidders.

**103.02 AWARD OF CONTRACT.** The Department shall award the contract to the lowest responsible bidder within 45 calendar days after the receipt of bids or within 20 days after the receipt by the Department of concurrence in award from all funding agencies or sources, whichever occurs last. Where concurrence in award is required, the total time from receipt of bids to award of contract, shall not exceed 60 calendar days unless extended by mutual agreement between the Department and the successful low bidder. Should the successful low bidder not agree to extend the deadline for award of contract, the proposal/bid guaranty may be returned to the bidder and the Department, at its discretion, may award the contract to the next lowest bidder or may readvertise the project.

An enforceable contract is not created until it is fully executed by all parties.

**103.03 CANCELLATION OF AWARD.** The Department reserves the right to cancel the award of contract at any time before execution of said contract by all parties without liability against the Department for any of the following reasons:

1. Any of the just causes contained in 103.01.2.
2. The low bidder fails to agree to mutually extend the period required for issuance of the Notice to Proceed as indicated in 103.08.
3. The contract, satisfactory bonds, proof of all required policies of insurance with minimum insurance coverage, and all other required contract documents are not properly executed and returned to the Department within the required time period specified in 103.06.

**103.04 RETURN OF PROPOSAL/BID GUARANTY.** The proposal/bid guaranty of the successful bidder will be returned after the contract, satisfactory bonds, and all other required contract documents are properly executed and returned to the Department within the required time period specified in 103.06. Unsuccessful bidders proposal/bid guaranties in the form of checks or money orders will be returned to the bidder not later than sixty days after receipt of bids. The Department will destroy the bid bonds of unsuccessful bidders not later than sixty days after receipt of bids. Electronic bid bonds of unsuccessful bidders will not be returned but

will be deemed by the Department to have no force or effect after sixty days.

This subsection will not apply where the forfeiture of the proposal/bid guaranty is warranted.

### **103.05 PAYMENT, PERFORMANCE, AND RETAINAGE BONDS.**

At the time of execution of the contract, the successful bidder shall furnish, as provided below, the following performance and payment bonds on the forms provided by the Department, and may, at the successful bidder's option, furnish a retainage bond.

1. Payment bond in a sum equal to one hundred percent (100%) of the contract amount.

2. Performance bond in a sum equal to one hundred percent (100%) of the contract amount.

3. Retainage bond in a sum equal to five percent (5%) of the contract amount for contract amounts greater than \$500,000 unless an election is made to have the Department withhold five percent (5%) of the contract amount; and, retainage bond in a sum equal to ten percent (10%) of the contract amount for contract amounts equal to or less than \$500,000 unless an election is made to have the Department withhold ten percent (10%) of the contract amount.

The bonds shall be written by a surety or insurance company that is in good standing and currently licensed to write surety bonds in the State of Louisiana by the Louisiana Department of Insurance and also conform to the requirements of LSA-R.S. 48:255.

All signatures required on any paper "Bond Form" shall be original signatures, in ink, and are not to be mechanical reproductions or facsimiles.

**103.06 EXECUTION AND APPROVAL OF CONTRACT.** The contract, satisfactory bonds, proof of voluntary submission of escrowed bid preparation working papers or a statement that such papers will not be escrowed, proof of all required policies of insurance with minimum insurance coverages, proof of appropriate Louisiana contractor's license (if not required for bidding), and all other required contract documents shall be properly executed and returned to the Department within 15 calendar days after transmission to the bidder. If the contract is not executed by the Department within 20 calendar days following receipt of all required documents, the bidder shall have the right to withdraw his bid without penalty.

**103.07 FAILURE TO EXECUTE CONTRACT.** Failure by the bidder to comply with 103.06 will be cause for cancellation of the award and forfeiture of the proposal/bid guarantee, which shall become the property of the Department, not as a penalty, but in liquidation of damages sustained. For those projects wherein a proposal/bid guarantee was not provided with the bid, failure to comply with 103.06 will be cause for cancellation of the award and bidder to be disqualified from bidding or subcontracting for a period of one year from the award date. Awards, which were cancelled, may then be made to the next lowest responsible bidder or the work may be readvertised for bids, at the Department's discretion.

Should a proposal/bid guaranty be required to be forfeited by the bidder to the Department or other named obligee, and if for any reason the full amount of the proposal/bid guaranty is not collected or collectable by the Department upon demand, the bidder will be disqualified from bidding or subcontracting for a period of one year from the date of non-payment.

**103.08 NOTICE TO PROCEED.** The Department will issue the contractor a Notice to Proceed or a Conditional Notice to Proceed as soon as possible after award of the contract, and in no case will issue the contractor a Notice to Proceed or a Conditional Notice to Proceed later than 60 days after contract execution unless written consent of the contractor has first been obtained. If the Department has not issued the contractor a Notice to Proceed or a Conditional Notice to Proceed within 60 days of contract execution, and written consent of the contractor to extend this time period has not been obtained prior to its expiration, the contractor may demand cancellation of the contract.

After award of the contract, the project engineer will schedule a preconstruction conference. The preconstruction conference will be held prior to performing any work on the project, preferably during the assembly period, but not later than the first day of field operations. The project engineer will schedule the conference sufficiently in advance to permit the attendance of all parties concerned. The contractor is urged to have all subcontractors and major suppliers in attendance at the preconstruction conference.

## **Section 104**

### **Scope of Work**

**104.01 INTENT OF CONTRACT.** The intent of the contract is to provide for performance and completion of the described project. The contractor is obligated to complete the project in accordance with the contract documents.

The Scope of Work consists of, but is not limited to, the following:

i) all Work necessary to perform, construct, and complete the items described by the Contract, which may include extra work;

ii) all Work made necessary by an increase in the quantity of a major or minor pay item;

iii) all other Work incidental and necessary to perform, construct, and complete the Work specifically referenced or described by the Contract and necessary for delivery of a completed Project conforming to the Contract and suitable for its intended purpose;

iv) the performance of any testing as directed by the engineer to determine if any work or any finished product complies with the Contract, and;

v) except as provided in 105.03, to correct and/or replace deficient or nonconforming work, materials, or finished product at no additional cost or expense to the Department with work, materials, or finished product that does conform to the Contract.

To that end, the contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with best industry practices and the Contract, with the Contract taking precedence over industry practices. Performance methods and sequences are described in the contract documents when considered necessary for the successful completion of the project.

When an item in the contract contains a choice to be made by the contractor, the contractor shall indicate the choice to the engineer in writing.

When the project specifications reference or require the use of “manufacturer's recommendations or specifications”, the contractor shall provide the engineer with a current copy of these recommendations or specifications.

The contractor acknowledges, and expressly agrees, that this public works project is based on estimates of anticipated work; that changes in the

work, item quantities, planned work sequences, or methodology can be expected; that the contract does not guarantee any bid profit margin, any bid overhead recovery, or scope of work; and that payment, in accordance with 109.02, will be made only for fully completed work that is accepted, and for the materials incorporated therein.

As work on the Project progresses and in accordance with Section 109.05, the Department shall make partial payments of the Contract Price, as adjusted in accordance with the Contract. The Department shall adjust the Contract Amount as necessary to compensate the Contractor reasonably and fairly for any extra work ordered by the Engineer.

Subject to the Contractor's right to bring legal action against the Department, the Contractor shall deliver the project to the Department within the contract time as adjusted in accordance with the Contract.

**104.02 ALTERATION OF THE CONTRACT.** The Department reserves the right to order such alterations in quantities and plans, within the general scope of the contract, including alterations in grade and alignment, as deemed necessary or desirable in order to complete the work as contemplated. Pay items affected by such alterations shall be performed in accordance with the project specifications and payment will be made at the same unit prices as other parts of the work, except as provided in 109.03 and 109.04.

The Department reserves the right to order work not provided for in the contract whenever such extra work is found essential or desirable to satisfactory completion of the contract within its intended scope. Such extra work shall be performed in accordance with specifications and as directed. Payment for such extra work will be made as provided in 109.04. The Department reserves the right to order changes in details, including changes in materials, processes and sequences, whenever such changes are in the best interests of the public or are necessary or desirable to satisfactory completion of the work. Such changes in details shall be performed in accordance with the specifications and as directed, and payment will be made as provided in 109.04. Changes ordered in details, when such changes are allowed or required by the contract, are not alterations to the contract and payment for the affected work will be made at the contract unit prices.

An approved change order will be executed by the Department and the contractor to alter the contract in accordance with these and other similar provisions of the contract when any alteration is more than incidental, as determined by the Department, to other work specified in the contract. The

change order will describe the nature and scope of the contract alteration and the increase or decrease in the contract amount or time. Upon approval by the parties in Site Manager, or other Department approved contract management software, a change order is fully executed and a binding amendment to the contract. Additionally, the parties agree to thereafter execute a paper duplicate of the change order.

The adjustment in Contract Amount and/or Contract Time stated in a change order shall comprise the total price and/or time adjustment due or owed the contractor for the work or changes defined in the change order.

In the event the contractor refuses to execute a disputed change order, the Department reserves the right to execute a change order without the contractor's assent in order to document the contract alteration and adjust the contract amount and/or time accordingly.

Alterations to the contract as provided for by this subsection shall not invalidate the contract nor release the surety, and the contractor agrees to accept the work as altered, as if it had been part of the original contract. The contractor shall notify the surety of any alterations to the contract. Alterations of the contract shall not involve work beyond the termini of the proposed work except as necessary to satisfactorily complete the project.

Contractor will be allowed to begin the work upon verbal approval of a change order, when such is given by the appropriate authority for each category of change order. Verbal approval shall be followed up in a written format via email, facsimile, or letter within seven days of given verbal direction. Force Account records, in accordance with 109.04, shall be maintained until a fully executed Change Order is completed, and then used to document incurred costs pursuant to LRS 48:252. In the event of a disputed change order, Contractor shall record and maintain records of all costs associated with any work alteration.

#### **104.02.1 Differing Site Conditions:**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site that differ materially from those indicated in the contract, the party discovering such conditions shall immediately notify the other party in writing of the specific differing conditions before they are disturbed any further and before additional work is performed.

2. Upon written notification, the engineer will investigate the conditions and if he determines that the conditions do materially differ and will cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing

accordingly. The engineer will notify the contractor of his determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment, which results in a benefit to the contractor, will be allowed unless the contractor has provided the required written notice.

#### **104.02.2 Suspensions of Work Ordered by the Engineer:**

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The engineer will notify the contractor of his determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

#### **104.02.3 Significant Changes in the Character of Work:**

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a

basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

4. The term “significant change” shall be construed to apply only to the following circumstances.

a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or;

b. When a major item of work, as defined elsewhere in the contract, is increased, or decreased, in excess of 25 percent (25%) of the contract quantity as awarded. Any adjustment in unit price will be made on only that portion of the major item exceeding the 25 percent (25%) increase, or, in the case of a decrease of the item by 25 percent (25%) or more, the remaining portion will be adjusted.

**104.02.4 Eliminated Items:** Should any items or portion(s) thereof contained in the contract, whether bid as a unit price or as a lump sum, be found unnecessary for proper completion of the work, the engineer may, upon written order to the contractor, eliminate such items from the contract and deduct their total price from the contract amount through a change order. Such action shall not invalidate the contract.

When a portion of an item is eliminated or its quantity reduced, a deduction for the eliminated work will be made in the contract amount for that item as determined by the engineer. No allowance, except as provided herein, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits claimed by the contractor resulting either directly from such elimination or indirectly from unbalanced allocation among the pay items of overhead expense by the contractor and the subsequent loss of expected reimbursements therefor, or for other reasons. When an item or portion thereof is eliminated, the contractor will be reimbursed for previously authorized work done toward completion of the item.

The change order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the Chief Engineer, such derivation shall show breakdowns of costs as detailed in 109.04.3.1 through 109.04.3.7.

**104.02.5 Extra Work:** When necessary or desirable to complete the project, the engineer may direct the contractor to perform unforeseen work

for which there is no pay item or unit price in the contract by issuing, when appropriate, a Notice of Extra Work to the contractor. The Department will pay for such work as provided below through an approved change order.

Upon receipt of a directive or written Notice of Extra Work, the contractor agrees to perform the work as directed and provide the Engineer a written cost estimate in accordance with 109.04.

If the Engineer rejects the cost estimate provided by the contractor, the Department may:

1. Issue a directive requiring the contractor to proceed with the Extra Work and to document its costs in accordance with the provisions of 109.04.3; or
2. Advertise the Extra Work for bid in accordance with LRS Title 48.

**104.03 MAINTENANCE OF TRAFFIC.** The contractor shall provide for and maintain through and local traffic at all times and shall conduct his operations in such manner as to cause the least possible interference with traffic at junctions with roads, streets and driveways in accordance with Section 402, unless otherwise noted in plans or special provisions.

The contractor shall keep the portion of the project being used by public traffic, whether through or local traffic, in such condition that traffic (including mail delivery) will be adequately accommodated. The contractor shall furnish, erect and maintain barricades, warning signs and delineators, and shall provide flaggers and pilot cars in accordance with the plans and the MUTCD. The contractor shall maintain existing drainage and also provide and maintain in a safe condition all temporary approaches or crossings, intersections with roads, streets, businesses, parking lots, residences, garages and farms, at no direct pay.

When the engineer directs additional measures for the benefit of the traveling public, payment to the contractor will be made at the contract unit prices in the contract or as provided in 109.04. The engineer will be the judge of work to be classed as additional measures.

All lane closures, including ramps, shall be authorized by the engineer. Unless otherwise authorized, lane closures will only be allowed while work is being performed. The contractor shall provide the engineer a five calendar day notice, prior to any lane closure unless a shorter notification period is allowed by the engineer. A late lane opening rental will be charged to the contractor for any lane closure on any roadway or ramp that extends beyond the allowed closure times. The rental shall be computed in hourly increments only, with fractions of an hour rounded up to the next

whole hour. The rental will also apply to any unauthorized lane closures by the contractor, whether short term or long term. Any rental monies assessed for a late lane opening or for an unauthorized lane closure will be deducted from payments due the contractor. The late lane opening rental or unauthorized lane closure rental will be in accordance with Table 104-1 for a maximum of four continuous hours per instance.

**Table 104-1  
Unauthorized Lane Closure or Late Lane Opening Rental**

Current Average Daily Traffic (Vehicles per Day) stated in contract documents	Hourly Rate (\$/Hour)
<10,000	250
10,000 - 20,000	1,250
20,000 - 35,000	5,000
35,000 - 50,000	11,500
>50,000	15,000

**104.04 FINAL CLEANING UP.** Before final acceptance, the right-of-way, borrow and local material sources, and areas occupied by the contractor in connection with the work shall be cleaned of rubbish, excess materials, temporary structures, haul roads and equipment. All parts of the work, including property adjacent to the right-of-way, which have been damaged or rendered unsightly during the work shall be left in satisfactory condition and when required, the right-of-way shall be mowed in accordance with DOTD maintenance standards, all at no direct pay.

**104.05 GUARANTEE AND WARRANTY OF CONTRACTOR'S WORK.** By signing the contract the contractor guarantees and gives full warranty (1) of the quality of materials incorporated into the work, (2) that all work will be performed in a good and workmanlike manner, (3) that the finished product will be fit for its intended use and purpose and constructed in conformity with the Contract, and (4) that the contractor's work will be otherwise free of all defects.

For the purpose of this subsection, defect shall be understood to mean and to include all conditions or characteristics of the contractor's work not in conformity with the project plans and specifications including, without limitation, any nonconformity with the project plans and specifications that (1) renders the contractor's work inconsistent with applicable design standards, (2) that the contractor has not declared prior to Final

Acceptance, or (3) that the Department has not observed or detected in the course of Final Inspection. Defect shall be understood to exclude reasonably anticipated depreciation or deterioration of the contractor's work and all other conditions arising exclusively from the intended use of the finished product and not caused by a defect as defined in this paragraph.

At no direct pay and in accordance with the instruction of the engineer, the contractor shall remediate or replace any work which the Department determines to be defective during the guarantee and warranty term.

If it should be found that portions of the Project failed due to defective material or faulty workmanship and if such defective portions cause any breakdown or accident, the contractor will not only be required to furnish and install the replacement portion, but will also be held responsible to the Department for all expenses due to accident or breakdown caused by such a failure, including the repair or replacement of any other portion damaged by the failed portion, and/or the replacement of any other portion or equipment when such replacement is necessitated by the replacement of the portion which is the subject of the warranty.

The term of this guarantee and warranty is 3 years after final acceptance, except for National Highway System (NHS) projects. For NHS projects, the guarantee period and warranty term will be 1 year from final acceptance of the project.

This guarantee does not include an obligation by the contractor, or the department, to maintain the contractor's work during the guarantee and/or warranty period, or otherwise.

**104.05.1 Equipment, Instruction Sheets:** For the purpose of this subsection, equipment shall be understood to mean and to include all equipment, project component, apparatus, and/or all parts of such equipment (1) purchased or acquired by the contractor subject to an express warranty provided by the manufacturer of the equipment, and (2) installed by the contractor in accordance with project plans and specifications.

Instruction sheets that are required to be furnished by the manufacturer for installed project equipment, apparatus, materials, supplies, and operation shall be delivered by the contractor to the engineer prior to final acceptance of the project, with the following written warranties and guarantees:

1. Unless otherwise specified, the manufacturer's standard warranty for each piece of installed project equipment, project component, or apparatus furnished under the contract.

2. The contractor's guarantee that, during the guarantee period,

necessary repair or replacement of the warranted equipment, project component, or apparatus will be made by the contractor at no direct pay.

3. The contractor's guarantee for satisfactory operation of installed project equipment including, but not limited to, the mechanical and electrical systems furnished and constructed under the contract for the guarantee period.

To extent possible, contractor shall acquire all such warranties in the name of and for the benefit of contractor and the Department. Otherwise, Contractor shall assign and subrogate all of contractor's rights under all express warranties of such equipment or project components, or parts of thereof, to the Department and deliver such to the Department before acceptance of the work.

The term of the warranty or guarantee period shall commence upon the final acceptance date of the project. If it should be found that parts or portions of equipment failed due to defective material or faulty workmanship and if such parts should, within the manufacturer's warranty period, cause any breakdown or accident, the contractor, during the term of its guarantee period, will not only be required to furnish and install the replacement part, but will also be held responsible to the Department for all expenses due to accident or breakdown caused by such a failure, including the repair or replacement of any other equipment damaged by the failed equipment, and/or the replacement of any other equipment when such replacement is necessitated by the replacement of the equipment or part which is the subject of the warranty.

The contractor shall insert one copy of all warranties and guarantees into the maintenance manuals specified. Routine maintenance during the guarantee period will be performed by the Department.

## **Section 105 Control of Work**

**105.01 AUTHORITY OF THE ENGINEER.** The engineer, acting directly or through duly authorized representatives in accordance with 105.09, will decide all questions which arise as to quality and acceptability of materials furnished and work performed, rate of progress of the work, interpretation of plans and specifications, and acceptable fulfillment of the contract by the contractor.

The engineer will have the authority to suspend the work wholly or in part due to failure of the contractor to correct conditions unsafe for workmen or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as deemed necessary due to unsuitable weather; for conditions considered unsuitable for prosecution of the work; or for other conditions or reasons deemed to be in the public interest.

Orders to suspend the work will be in writing and will include the reasons for the suspension. The order to resume work will also be in writing.

The Chief Engineer has the authority to suspend the work if, at any time, the required policies of insurance become unsatisfactory to the Department, as to form or substance, or if a company that has issued any policies becomes unsatisfactory to the Department.

When work is suspended due to acts, failures to act, or omissions of the contractor, all delays resulting therefrom shall be non-excusable delays and noncompensable.

**105.02 PLANS AND SUBMITTALS.** Conform to 801.05.2 for format of plans, and submittals.

Maintain a copy of all plans and submittals at the job site throughout the duration of the contract.

**105.02.1 Plans:** The contractor will be furnished, without charge, a maximum of five sets of half-scale plans, unless full-scale plans are requested. Plans will show lines, grades, typical cross sections, location and details of structures, and a summary of pay items. Only general features will be shown for steel bridges.

Standard plans required for the work, but included only by reference,

will be furnished free of charge to the contractor upon request.

**105.02.2 Submittals:** A submittal consists of a transmittal letter and required submittal contents. The transmittal letter shall include the state project number, project name, route, parish, transmittal date, and the submitter's name and address. Unless otherwise specified, transmit submittals to the Project Engineer for review or record as provided below. Copy the Project Engineer on all submittals transmitted to other specified recipients.

Submittal contents include working drawings and documents necessary to adequately control the work and fulfill contract requirements. The cost of producing, transmitting, and revising submittals shall be included in and incidental to their respective pay items.

A submittal shall show clearly and explicitly that its objective complies with the contract documents and applicable codes. Vague, imprecise, or ambiguous submittals will be returned for re-submission. The Department may return the submittal for correction or additional information. Failure to explicitly identify in submittals contract and/or code deviations may result in rejection and replacement of subsequent work at no cost to the Department.

Submittals do not alter, modify, or revise contract documents. The acceptance by the engineer of submittals will be subject to satisfactory installation and execution of its objective. Submittal acceptance will not relieve the contractor of responsibility under the contract for successful completion of the work or responsibility for compliance with the terms and conditions of the contract.

Submittals shall be made in accordance with the following, unless specified elsewhere.

**105.02.2.1 Submittal Processes:** Submittals will either be for record or review.

**105.02.2.1.1 Submittal for Record:** The Department reserves the right to comment on submittals for record, but otherwise work may proceed on corresponding work once the submittal is received by the engineer.

**105.02.2.1.2 Submittal for Review:** Do not fabricate, install or purchase an item, or perform corresponding work prior to receiving submittal acceptance and any specified document distribution is complete.

Submittal for review will be stamped either "Returned for Correction" or "Accepted in accordance with LSSRB 105.02," initialed and dated by the reviewer, and returned to the contractor by the Project Engineer.

**a) Returned for Correction:** A submittal stamped “Returned for Correction” has been rejected by the Department due to non-conformance with the contract, proposed unequal item substitution, perceived installation conflicts, missing information, or other deficiency.

**b) Acceptance:** A submittal stamped “Accepted in accordance with LSSRB 105.02” indicates that, at the time of review, the Department has not identified a reason to reject the submittal.

**105.02.2.1.3 Review Periods:** For bidding purposes, unless specified otherwise, allow a minimum of 14 calendar days per submittal or resubmittal. Review periods for separate submittals are not concurrent.

Portions of a submittal marked “Returned for Correction” will receive a new review period upon re-submittal.

Submittal review for manufactured items will not begin until all interdependent items have been submitted except as described herein.

Submittals for mechanical, electrical, or facility items that must be ordered early due to long delivery time may, with the approval of the Project Engineer, be submitted for review without associated assembly or working drawings, or other items that are interdependent with the long lead time item. Assembly or working drawings that contain long lead time items, and other submittals for interdependent items shall still be prepared and submitted for review in a timely manner.

## **105.03 CONFORMITY WITH PLANS AND SPECIFICATIONS.**

**105.03.1 Conformity Obligation:** All work and materials shall conform to the lines, grades, cross sections, dimensions, material and all other requirements of the contract.

By signing the Contract, the contractor expressly affirms its understanding of the requirements of the contract, and agrees that it shall be obligated to complete the project in accordance with those requirements.

**105.03.2 Reasonably Acceptable Work:** When the engineer finds the materials furnished, work performed, or the finished product not in compliance with the contract but that reasonably acceptable work has been produced, the engineer will determine to what extent the work will be accepted and remain in place. If accepted, the engineer will document the basis of acceptance by change order and/or special agreement. The change order and/or special agreement will contain appropriate documentation for an adjustment in the contract price for the work, materials, associated costs, or value of the deficient work as necessary to support the engineer's determination. Reduced pay schedules will be used when such schedules are a part of the project specifications.

**105.03.3 Nonconforming Work:** If the engineer finds the materials, work performed, or the finished product not in compliance with the contract and have resulted in an unsatisfactory or unacceptable product, the work or materials shall be removed and replaced at no direct pay. When directed, the Contractor shall preserve the removed work or materials at the project site, at no direct pay, pending disposal directions from the engineer. Other corrective actions submitted by the contractor will be considered by the engineer and if accepted, will be performed by the contractor at no direct pay.

If due to the contractor's negligence or selected method of operation in performing the work, the engineer deems it necessary to make changes, the contractor will be liable for the additional cost to the Department, including, but not limited to, the cost of consulting engineers or inspectors. The amount thus determined will be deducted from payments for the work. The contractor and its surety shall be solidarily liable for any expense incurred by the Department pursuant to this provision in excess of any remaining amounts due the contractor under the contract.

**105.04 COORDINATION AND PRECEDENCE OF CONTRACT DOCUMENTS.** These specifications, the supplemental specifications, the plans, special provisions and supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

In case of discrepancy, the following order of precedence will apply:

1. Special Provisions
2. Plans
3. Supplemental Specifications
4. Standard Specifications
5. Standard Plans

Calculated dimensions will govern over scaled dimensions.

The contractor shall take no advantage of any error or omission in the plans or project specifications. If the contractor discovers such an error or omission, he shall immediately notify the engineer. The engineer will then make such corrections and interpretations as deemed necessary to fulfill the intent of the plans and project specifications.

**105.05 COOPERATION BY CONTRACTOR.** The contractor shall keep one complete set of plans and other contract documents available at the work site.

The contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the engineer, inspectors, and other contractors.

The contractor shall have on the work site at all times, as the contractor's agent, a competent representative capable of reading and understanding the plans and project specifications and experienced in the type of work being performed, who shall receive and execute directions from the engineer. At the preconstruction conference or upon request, the contractor shall furnish the engineer written notice of the name and telephone numbers of the representative. The representative shall have authority to execute orders or directions of the engineer without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as required. The representative shall be furnished regardless of the amount of work sublet.

The contractor shall furnish the Department the authorized signature list with the names of persons authorized to sign for him in matters pertaining to change orders, force account or extra work, contract time charges and other documents. No work shall commence on the project until the contractor has complied with this requirement. A revised authorized signature list shall also be furnished when a person so designated is removed and replaced.

**105.06 COOPERATION WITH UTILITIES.** The Department will notify all known utility companies, pipeline owners or other parties affected by the work and endeavor to have the necessary adjustments of public or private utility fixtures, pipelines and other appurtenances within or adjacent to the limits of construction made as soon as possible.

Upon award of the contract, utility companies affected will be advised by the Department of the name and address of the contractor, approximate date work will begin, and other pertinent information.

Except as hereinafter provided, and regardless of whether the utility is shown on the plans or referred to in the project specifications, all water lines, gas lines, wire lines, fiber optic cables, telephone lines, cable television lines, service connections, water and gas valve boxes, light standards, cableways, signals, and other utility appurtenances within construction limits which prevent completion of the contractor's work will be relocated or adjusted by the owners at no expense to the contractor. The contract will indicate utility items to be relocated, adjusted or constructed by the contractor.

Where a utility crosses or otherwise occupies an area within

construction limits of the project and the utility will not have the Department's required clearance when the work is completed, it shall be the Department's responsibility to arrange for necessary relocation to the required clearance. When the required clearance will exist when the work is completed, but relocation is considered necessary by the contractor for construction purposes, the contractor shall make arrangements with the owner for any relocation or adjustment necessary to the operations at no direct pay. In such cases, upon completion of the work and prior to final acceptance, the final location of the utility will be acceptable to the Department. Nothing herein shall be interpreted to mean that the Department waives its rights to control entrance onto, or location on, its right-of-way of any utility or appurtenance.

When the engineer determines that the contractor is experiencing significant delays in the controlling items of work because of delays by others in removing, relocating or adjusting utility appurtenances, contract time extensions shall be considered for such delays in accordance with 108.07. On the date stipulated in the Notice to Proceed, the contractor shall begin work in connection with fencing, clearing, grubbing, removal of structures and obstructions, and relocation and demolishing of other structures, provide layout as needed, and shall prosecute such work to completion to avoid delays in removal or adjustment of utilities. The contractor shall cooperate with the utility companies to avoid delays in completion of work.

When the contractor's work involves excavating or underground demolition activity, the contractor is required to reach Louisiana One Call, prior to starting any work, in order to comply with the Louisiana Underground Utilities and Facilities Damage Prevention Law.

**105.07 COOPERATION BETWEEN CONTRACTORS.** The Department reserves the right to contract for and perform additional work on or near the work covered by the contract.

When separate contracts are let within, adjoining, or adjacent to the limits of the project, each contractor shall conduct the work not to hinder the progress of work by other contractors and shall cooperate with each other as directed by the engineer. When a contract is let within, adjoining, or adjacent to the limits of existing project(s), the existing project(s) schedule of work takes precedence over the subsequent project.

The contractor shall arrange the work and shall place and dispose of materials being used not to interfere with the operation of other contractors within, adjoining, or adjacent to the limits of the project. The contractor

shall acceptably join the work with that of other contractors and shall perform the work in proper sequence to that of the others and without causing disruption or delay to the schedule of project completion.

The contractor shall assume all liability, financial or otherwise, in connection with the contract and shall hold the Department harmless and indemnify the Department from all damages or claims that may arise because of inconvenience, delay, or loss experienced by the contractor or caused to other contractors due to the presence and operations of other contractors working within, adjoining or adjacent to the limits of the projects.

**105.08 CONSTRUCTION STAKES, LINES AND GRADES.** The contractor shall set construction stakes establishing lines and continuous profile grade in road work, and centerline and bench marks for bridge work, culvert work, protective and accessory structures and appurtenances. The engineer will furnish the contractor all necessary information relating to lines, slopes and grades. These stakes and marks shall constitute the field control by and in accordance with which the contractor shall establish other necessary controls and perform the work.

The contractor shall be responsible for preservation of all stakes and marks. When any construction stakes or marks have been carelessly or willfully destroyed or disturbed by the contractor, the cost of replacing same will be at no direct pay.

**105.09 AUTHORITY AND DUTIES OF PROJECT ENGINEER.** As the direct representative of the Chief Engineer, the Project Engineer has immediate charge of the Department's engineering details of the construction project. The Project Engineer is responsible for administration of the contract. The Project Engineer shall have authority to give directions pertaining to the work in the interest of the public, to reject defective work, materials, and equipment, and to suspend work in accordance with 105.01.

Except as permitted and instructed by the Chief Engineer, the Project Engineer is not authorized to alter or waive provisions of the contract, alter quantities, order extra and force account work, or accept any portion of the project. In no case will the Project Engineer perform any duties for or act as the representative of the contractor.

When the work is being done by force account, the contractor shall have the responsibility to supervise the work and provide a product meeting the requirements of the contract. The Project Engineer, for force account only, shall have the authority to require the contractor to revise operations,

including but not limited to, sequence and location of work; number, category and caliber of workers; number and type of equipment; and hours of work.

**105.10 DUTIES OF THE INSPECTOR.** Inspectors representing the Department are authorized to inspect all work. Such inspection extends to any part of the work and to preparation, fabrication or manufacture of materials to be used. The inspector is not authorized to alter or waive contract provisions. The inspector is not authorized to issue instructions contrary to the contract; however, the inspector will have authority to reject work or materials until any question can be referred to and decided by the engineer. In no case will the inspector perform any duties for, or act as the representative of the contractor.

**105.11 INSPECTION OF WORK.** All materials and each part or detail of the work shall be subject to inspection by the engineer. The engineer shall be allowed safe and convenient access to all parts of the work, including fabrication facilities, and shall be furnished with such information and assistance by the contractor as required to make a complete inspection. Such inspection will not relieve the contractor from the obligation to furnish acceptable materials or to perform all work in accordance with the contract.

If ordered by the engineer, the contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as directed. After examination, the contractor shall restore said portions of the work to the standard required by the project specifications. Should the work thus exposed prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but, should the work so exposed prove unacceptable, the uncovering or removing, any testing of the work, and the replacing of the covering or making good of the parts removed will be at no direct pay. Force account records shall be kept to document possible reimbursement.

Work done or materials used without supervision or inspection by an authorized Department representative, and/or when the Department is not provided a minimum forty-eight hour notice or opportunity to provide inspection, may be ordered uncovered for examination and/or testing, and recovered, or removed and replaced, all at no expense to the Department.

When a unit of government or political subdivision or other public or private entity is to pay a portion of the cost of the work covered by the contract, its representatives shall have the right to inspect the work. Such

inspection shall not make any unit of government, political subdivision, or corporation a party to the contract and shall not interfere with the rights of either party thereunder.

## **105.12 INSPECTOR'S STAMP FOR SHIPMENT.**

**105.12.1 Approval for Shipment:** When materials requiring shop or plant inspection are ready for shipment, the Department's inspector or representative shall affix the stamp of the Department. Concrete girders, piles, and major structural members are stamped. For other minor members or items, the shipping list or manifest will be stamped.

Application of the inspector's stamp implies that at the time of stamping it was the opinion of the inspector that the product was fabricated or manufactured from accepted materials by approved processes and painted, if required, in accordance with the contract. Application of the inspector's stamp for shipment does not imply that the products will not be rejected by the Department if subsequently found to be defective. Application of the inspector's stamp does not transfer risk of loss of the fabricated material to the Department.

**105.12.2 Rejection:** The inspector will reject material and workmanship that do not conform to the contract.

Stamping of products by Department representatives shall not preclude further testing and inspection by the Department.

Defective materials and workmanship, whenever discovered, will be rejected and shall be repaired or replaced at no direct pay. All repair procedures shall be subject to acceptance by the Department.

**105.12.3 Shipment of Material Not Stamped:** Materials and fabricated items subjected to shop inspection will not be accepted at the project site if they do not bear the inspector's stamp for shipment. If the products are not stamped because they were not offered for shop inspection, or were shipped after rejection at the shop, the products shall be returned to the shop for inspection and correction as necessary.

In lieu of this requirement, the Department may allow inspection to be performed at the project site at no expense to the Department.

## **105.13 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED**

**WORK.** Work not conforming to the contract will be considered unacceptable, unless otherwise determined acceptable under the provisions in 105.03. The engineer may require testing of any work to determine if such work is acceptable. The engineer shall determine the nature and extent of the tests, which shall be paid in accordance with 105.11.

Unacceptable work found to exist prior to final acceptance of the work shall be removed and acceptably replaced, or repaired to the Department's satisfaction.

No work shall be done without lines and grades having been given by the engineer, except that work which is specified as construction layout. No payment will be made for work done contrary to instructions of the engineer, work done beyond lines shown on the plans or as given, or extra work done without authority. Work so done may be ordered removed or replaced at no expense to the Department.

Upon failure of the contractor to comply with any order of the engineer made under the provisions of this subsection, the engineer will have authority to cause unacceptable work to be remedied, or removed and replaced, or have unacceptable work to be remedied, or removed and replaced by a third party, and to deduct the costs therefrom from payments to the contractor. The contractor and its surety shall be solidarily liable for any expense incurred by the Department pursuant to this provision in excess of any remaining amounts due the contractor under the contract.

**105.14 LOAD RESTRICTIONS.** The contractor, subcontractors, or their suppliers shall observe all road and bridge legal load restrictions when hauling equipment or materials on public roads beyond project limits. A special permit does not decrease the contractor's liability for damage. Except for equipment specified in the contract, contractor shall obtain the engineer's written permission to exceed legal load limits within the project limits. Operating equipment or hauling loads that may damage structures, roadway, or any construction is prohibited.

The Department may require the Contractor to provide, for structures within the project limits short-term load impacts to facilitate the permitting of highway traffic, and/or a complete structural impact analysis prepared by a professional civil engineer registered in Louisiana to verify that the existing structure and/or foundation can withstand any dead, live, and wind loads imposed without causing overstress, or compromising the structural integrity of the structure and/or foundation. In any such analysis, live loads on structures and/or foundations shall include Louisiana legal highway loads or special permitted loads as given by the Department/project documents.

The contractor may be required to provide a structural analysis, if the contractor's operations, equipment or material loading, could compromise the structural integrity of the structure and/or foundation. In these cases the costs of the analysis shall be at the contractor's expense. This evaluation

shall include loading from traffic, as indicated in the contract, on the bridge, construction loads, and the dead loading of the bridge.

In the event the Department asks for a structural analysis due to a permitted load above that which is outlined in the contract to be expected, the costs of the analysis shall be at the Department's expense.

**105.15 MAINTENANCE DURING CONSTRUCTION.** The contractor shall satisfactorily maintain the entire area within the project, from the effective date of the Notice to Proceed until the date of final acceptance. This maintenance responsibility includes, but is not necessarily limited to, maintaining drainage, periodic mowing (not to exceed four times per calendar year) and removing of debris and remains, to the satisfaction of the engineer, as well as such striping, patching and shoulder maintenance which will provide safe and convenient conditions at all times for the public. The contractor shall continuously and effectively satisfy his maintenance responsibilities with such equipment and forces as may be necessary to maintain a safe and satisfactory condition for the duration of the project.

The contractor shall maintain the roadway in accordance with Section 402 and in a satisfactory condition to allow traffic to safely travel through the work zone at the posted speed limit.

Adjacent and parallel roadways within the project limits, not affected by construction shall not be the maintenance responsibility of the contractor.

**105.16 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE.** If the contractor fails to comply with 104.03, 104.04, 105.15, the provisions of Section 107, or fails to perform any work for which the contractor is responsible that necessitates correction, the engineer will notify the contractor in writing of such noncompliance. In writing, the contractor will acknowledge receipt of said notice and will advise when the correction will be made.

If the contractor fails to remedy a deficient condition involving traffic or site maintenance within 24 hours after receipt of the written notice, or within a reasonable amount of time for other noncompliance conditions, the Department will have the option to immediately remedy the condition with its own in-house forces or by another contractor, and the cost thereof will be deducted from payments for the work.

When the condition requires more immediate remedy due to hazard to life, health, or property, the engineer may immediately remedy the condition as above and the costs thereof will be deducted from payments for the work.

The contractor and its surety shall be solidarily liable for any expense incurred by the Department pursuant to this provision in excess of any remaining amounts due the contractor under the contract.

### **105.17 ACCEPTANCE.**

**105.17.1 Partial Acceptance:** When the contractor satisfactorily completes a portion of the project that can be used advantageously for traffic or other use, the contractor may request the engineer to make final inspection of that portion. When the engineer finds upon inspection that the portion has been completed in compliance with the contract, the engineer may accept that portion as being completed and the contractor will be relieved of further responsibility for that portion and from further liability to the public.

Partial acceptance of a project will not be made until the portion being accepted has been completed in its entirety, including all safety devices, signs and striping. When partial acceptance is made, the terms of acceptance, including the responsibilities of all parties and any allowance of additional contract time, shall be set forth in a change order, mutually agreed to by the engineer and the contractor. Such partial acceptance shall not void or alter any terms of the contract, except as set forth in the change order.

**105.17.2 Final Acceptance:** Upon notice from the contractor of presumptive completion of the entire project, the engineer will make an inspection. When the inspection discloses any work as being unsatisfactory, the engineer will give the contractor instructions for correction of same. The contractor shall immediately comply with such instructions. If contract time is stopped by the engineer, all corrections shall be completed within 30 calendar days or contract time will resume along with any additional stipulated damages. Upon correction of the work, another inspection will be made which will constitute final inspection provided the work has been satisfactorily completed. In such event, the engineer will notify the contractor in writing of the acceptance.

When all the work provided for in the contract is found satisfactorily completed, that inspection will constitute the final inspection. The Project Engineer will recommend final acceptance to the Chief Engineer. Upon final acceptance by the Chief Engineer, the contractor will be notified in writing.

**105.18 CLAIMS FOR ADDITIONAL COMPENSATION.** If the contractor deems additional compensation is due for work, material, delays, inefficiencies, disruptions or other additional costs or expenses reportedly not covered in the contract or not ordered as extra work, the contractor shall notify the engineer in writing of his intention to make a claim for such additional compensation before beginning the work on which the claim is based or immediately upon encountering the conditions or effects which the contractor claims entitle him to additional compensation. Notification of a claim shall conform to the requirements of EDSM III.1.1.28. Notification must be timely given. The engineer must be afforded a reasonable opportunity and proper facilities by the contractor for keeping account of actual costs incurred by the contractor related to the claim. However, such notice by the contractor and the fact that the engineer has kept account of the costs as aforesaid shall not be construed as proving or substantiating the validity of any claim. Within thirty calendar days after the completion of the event that caused the claim, contractor must submit its sworn Request for Additional Compensation in accordance with the requirements of EDSM III.1.1.28.

If notification and a Request for Additional Compensation is not given or the engineer is not afforded proper facilities by the contractor for keeping an account of actual costs incurred by the contractor, the contractor hereby agrees and shall waive any claim for such additional compensation. If the claim, after consideration by the Chief Engineer, or judicial determination, is found to be just, payment will be made as specified in 109.04, by force account or negotiated price. Nothing in this subsection shall be construed as establishing any claim contrary to 104.02.

**105.19 BIDDER INQUIRIES, CONTRACTOR REQUESTS AND PROPOSALS.** Prior to bid, bidders may submit questions seeking clarification of the construction proposal, specifications, or project plans through Falcon. After award of the contract, the contractor may submit to the engineer requests and proposals as provided below.

**105.19.1 Bidder Inquiries:** Submit questions seeking clarification of the construction proposal, specifications, or project plans via Falcon. Questions answered will be posted for viewing by all prospective bidders. Questions determined by the Department to be submitted untimely, or less than forty eight hours prior to Bid, may not be answered. In addition, the Department reserves the right to not post any unsuitable question or any statement of fact or opinion not made for the purpose of seeking clarification of plans and/or project specifications.

**105.19.2 Requests for Information (RFI):** RFI submittals are written communication tools used to request clarification of plans and specifications after contract award. Number RFIs sequentially and submit them on forms provided by the Department's Construction Section. There will be no cost to the contractor for any Department expense related thereto when an RFI pertains to clarification of plans or specifications. Reputed RFIs found by the Department as not pertaining to plan or specification clarification will be returned to the contractor for resubmission as a VE or Contractor Proposal.

**105.19.3 Value Engineering (VE) Proposals:** After award of the contract, the contractor will be permitted to submit to the engineer written VE Proposals for modifying the plans, specifications, or other requirements of the contract for the purpose of reducing the total cost of construction.

This process serves to share with the contractor only the construction cost savings generated on this contract as a result of a VE Proposal(s) offered by the contractor and approved by the Department. The provisions of this subsection shall not, however, be construed to require the Department to consider any VE Proposal which may be submitted. The Department reserves the right to reject any and all VE Proposals at any time in the process.

Any time savings resulting from a VE Proposal will be considered at the completion of the project as an incentive to the contractor, provided the contract contains an incentive clause for early completion of the work and the contractor has not met the incentive limit in the contract. A time only reduction will not be considered as a VE Proposal. The purpose is to encourage the use of the contractor's ingenuity and experience in arriving at alternative construction methods, which will reduce the overall construction cost.

The VE Proposal shall satisfy all design criteria and not impair, in any manner, the essential functions and characteristics of the project as determined by the Department.

The VE Proposal shall be specifically identified by the contractor as a cost reduction proposal. VE Proposals will be considered by the Department in the same manner as change orders.

Submit a written conceptual VE Proposal to the Project Engineer. The Project Engineer will disseminate this proposal to the appropriate parties within the Department for determining its potential acceptability.

The conceptual VE Proposal shall provide the following minimum information:

1. A description of the proposal.
2. A listing of work and pay items affected, added, or eliminated by the proposed change, including any change in contract time and/or traffic maintenance.

3. An initial estimate of the net construction cost savings which the change is expected to generate, including elimination of any planned work. The contractor may proceed to the formal VE Proposal upon the Department's acceptance of the conceptual VE Proposal. The Department is not obligated to approve the contractor's formal VE Proposal, even if the conceptual VE Proposal is initially considered acceptable.

As a minimum, the following information shall be submitted by the contractor with the formal VE Proposal.

1. A statement that the proposal is submitted as a VE Proposal.
2. A description of the difference between the existing contract requirements and the proposed change(s), and the comparative advantages and disadvantages of each, including effects on service life, economy of operations, ease of maintenance, desired appearance, necessary standardized features, reliability, traffic flow during construction, safety, and contract time.

3. Revised contract plan sheets, specifications, and engineering calculations, all sealed, signed and dated by a professional engineer licensed to practice in the State of Louisiana.

4. Detailed estimates of the cost to the Department for performing the work under the existing contract and under the VE Proposal, including a listing of contract items affected by the proposal, and quantity variations attributable thereto with the related costs.

5. An assessment of any effects that adoption of the VE Proposal could have on other costs to the Department, including future maintenance and operation.

6. A statement of the latest time or date that the VE Proposal must be executed in order to obtain the maximum cost reduction and the reasoning for this time schedule.

7. A statement of the effect that adoption of the VE Proposal will have on the time for completion of the contract.

8. A description of any previous use or testing of the final VE Proposal on another Department project or elsewhere and the conditions and results therewith. If the final VE Proposal was previously submitted on another Department project, indicate the date, the project, and the action taken by the Department.

The proposal execution date submitted by the contractor must allow the

Department time for review and processing of a change order. Should the Department find insufficient time is available for review and processing, it may reject the VE Proposal on such basis. If the Department fails to respond to the VE Proposal by the date or time specified, the contractor shall consider the proposal rejected, and shall have no claim against the Department.

Proposed changes in basic configuration and design of a bridge, hydraulic capacity of drainage facilities, typical roadway section, type or minimum thickness of pavements, or changes in grade or alignment which do not meet the geometric standards of the project as conceived, will not be considered as acceptable VE Proposals. Typically, changes in materials for roadway sections will also not be considered as acceptable VE proposals. Plan errors which are identified by the contractor and result in a cost reduction will not qualify as a VE Proposal. If the Department is already considering certain revisions to the contract or has approved certain changes in the contract for general use, which are subsequently incorporated in a VE Proposal, the Department will reject the contractor's proposal and may proceed without obligation to the contractor. The Department will not be liable to the contractor for failure to act upon or accept any VE Proposal nor for any delays to the work attributable to any such proposal. The contractor may withdraw, in whole or in part, any VE Proposal not accepted by the Department within the period specified in the proposal. The decision of the Department as to the acceptance or rejection of VE Proposals shall be final and shall not be subject to the provisions of 105.18.

The contractor will be notified in writing of the Department's decision to accept or reject each VE Proposal submitted under these provisions. If a VE Proposal is accepted, the necessary contract modifications will be implemented by execution of a change order, which will provide for equitable price adjustments giving the contractor and the Department equal shares in the resulting net savings. Until a VE Proposal is affected by such contract modification, the contractor shall perform the work in accordance with the terms of the existing contract.

The net cost savings to be shared shall be determined as the difference in costs between the original contract costs for the involved work items and the actual final costs to the Department occurring as a result of the proposed change. Only those work items directly affected by the change order will be considered in making the final determination of net cost savings. Subsequent change orders affecting the modified work items but not related to the VE Proposal, will be excluded from such determination.

In reviewing the VE Proposal, the Department reserves the right to reject the proposal if, in its judgment, the proposed net cost savings do not represent a reasonable measure of the value of the work to be performed or deleted.

All costs incurred by the contractor in developing the VE Proposal shall be borne by the contractor. These costs include, but are not limited to, all expenses to prepare the VE Proposal, the engineering costs, including the Department's review cost, cost of printing and copying any revised plan sheets, delivery costs, and any other cost as determined by the engineer to be required for proper justification of the VE Proposal.

The change order implementing the necessary contract modifications shall include a pay item for and a lump sum estimate of the approximate net cost savings anticipated as a result of the VE Proposal, and a proportionate amount thereof shall be included in partial payment estimates as the work on the modified contract items is performed. The contractor's 50 percent share of the net cost savings shall constitute full compensation for implementing all changes pursuant to the agreement. Any time savings for early completion of the project resulting from the VE Proposal will be considered upon completion of the project as an incentive to the contractor provided the contract contains an incentive clause for early completion of the work and the contractor has not met the incentive limit in the contract.

The Department reserves the right to include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VE Proposal. The Department also reserves the right to require the contractor to share in or reimburse the Department's costs of investigating a VE Proposal submitted by the contractor as a condition of considering such proposal. The Department will have the option to perform the investigation in-house or by consultants. When such a condition is imposed, the contractor shall indicate his acceptance in writing, and such acceptance shall constitute full authority for the Department to deduct amounts payable to the Department from any monies due or that may become due to the contractor under the contract.

The Department reserves the right to adopt a VE Proposal for general use when it determines that said proposal is suitable for application to other contracts. When an accepted VE Proposal is adopted for general use, only the contractor who first submitted such proposal will be eligible for compensation pursuant to this subsection, and in that case, only as to those contracts awarded to him prior to submission of the accepted proposal. VE Proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under these provisions if the

identical or similar previously submitted proposals were not adopted for general application to other Department contracts. Subject to the provisions contained herein, the State or any other public agency shall have the right to use all or any part of any submitted VE Proposal without obligation or compensation of any kind to the contractor.

Any changed conditions arising as a result of the acceptance of a VE Proposal will not be considered as the basis for any claim for additional compensation.

**105.19.4 Contractor Proposals:** This provision is to modify the contract as a result of a Contractor Proposal(s) offered by the contractor and accepted by the Department. No modification will be permitted which alters the nature of the project or which is not an integral part of the project objective. Contractor Proposal(s) may decrease or increase construction cost. In the case of a decrease in construction cost, the Department will modify the contract to decrease the construction cost in accordance with the proposal. In the case of an increase in construction cost, the Department will either modify the contract to increase the construction cost or require the contractor to complete the contract at the contract bid prices. The Department reserves the right to reject a Contractor Proposal at any time during the submittal and review process.

Proposed changes in typical roadway section, type, minimum thickness of pavements, or changes in grade or alignment, which do not meet the geometric standards of the project as designed, will not be considered as acceptable Contractor Proposals. Typically, changes in materials for roadway sections will not be considered as acceptable Contractor Proposals.

The Contractor Proposal shall satisfy all design criteria and not impair the essential functions and characteristics of the project, as determined by the Department.

Submit a written conceptual Contractor Proposal to the Department for determining potential acceptability. Provide the following conceptual Contractor Proposal information at a minimum:

1. A description of the proposal.
2. A description of the difference between the existing contract requirements and the proposed change(s), and the comparative advantages and disadvantages of each, including effects on service life, economy of operations, ease of maintenance, desired appearance, necessary standardized features, reliability, traffic flow during construction, safety, and contract time.
3. A listing of work items and pay items affected, added, or

eliminated by the proposed change, including any change in contract time and/or traffic maintenance.

4. An initial estimate of the construction cost decrease or increase resulting from the proposed Contract modifications.

Upon Department written notification that the conceptual Contractor Proposal indicates proposal acceptability, develop and submit a written formal Contractor Proposal. The Department is not obligated to accept the formal Contractor Proposal, even if the conceptual Contractor Proposal indicates proposal acceptability.

Provide the following formal Contractor Proposal information as a minimum:

1. A statement that the proposal is submitted as a Contractor Proposal.

2. A description of the difference between the existing contract requirements and the proposed change(s), and the comparative advantages and disadvantages of each, including effects on service life, economy of operations, ease of maintenance, desired appearance, necessary standardized features, reliability, traffic flow during construction, safety, contract time, and other factors as appropriate.

3. Revised contract plan sheets, specifications, and engineering calculations, all sealed, signed and dated by a professional engineer licensed to practice in the State of Louisiana.

4. Detailed estimates of the cost to the Department for performing the work under the existing contract and under the Contractor Proposal, including a listing of contract items affected by the proposal and quantity variations attributable thereto with the related costs. Describe new contract items that are required.

5. An assessment of any effects that adoption of the Contractor Proposal could have on other costs to the Department, including future maintenance and operation.

6. A statement of the latest time or date that the Contractor Proposal must be executed and the reasoning for this time schedule.

7. A statement of the effect that adoption of the Contractor Proposal will have on the time for completion of the contract.

8. A description of any previous use or testing of the final Contractor Proposal on another Department project or elsewhere and the conditions and results therewith. If the final Contractor Proposal was previously submitted on another Department project, indicate the date, the project, and the action taken by the Department.

The proposal execution date submitted by the contractor must allow the

Department time for review and processing of a change order. Should the Department find insufficient time is available for review and processing, it may reject the Proposal on such basis. If the Department fails to respond to the Proposal by the date or time specified, the contractor shall consider the proposal rejected and shall have no claim against the Department.

The bidder is cautioned not to base any bid prices on the anticipated approval of a Contractor Proposal and to recognize that the proposal may be rejected. In the event of rejection, the contractor will be required to complete the contract at the contract bid prices.

The Department will not be liable to the contractor for failure to act upon or accept any Contractor Proposal nor for any delays to the work attributable to any such proposal. The contractor may withdraw, in whole or in part, any Contractor Proposal not accepted by the Department within the period specified in the proposal. The decision of the Department as to the acceptance or rejection of Contractor Proposals shall be final and shall not be subject to the provisions of 105.18.

The contractor will be notified in writing of the Department's decision to accept or reject each Contractor Proposal submitted under these provisions. If a Contractor Proposal is accepted, the necessary contract modifications will be implemented by execution of a change order. Until a Contractor Proposal is affected by such contract modification, the contractor shall perform the work in accordance with the terms of the existing contract.

All costs incurred by the contractor in developing the Contractor Proposal and Department review cost will be borne by the contractor, regardless of whether or not the Contractor Proposal is implemented.

The Department reserves the right to include in the agreement any conditions it deems appropriate for consideration, acceptance, and implementation of the Contractor Proposal.

The Department reserves the right to adopt a Contractor Proposal for general use when it determines that said proposal is suitable for application to other contracts. Subject to the provisions contained herein, the State or any other public agency shall have the right to use all or any part of any submitted Contractor Proposal without obligation or compensation of any kind to the contractor.

Any changed conditions arising as a result of the acceptance of a Contractor Proposal will not be considered as the basis for any claim for additional compensation.

## **Section 106 Control of Materials**

### **106.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.**

Materials used in the work shall meet all quality requirements of the contract. To expedite inspection and testing of materials, the contractor shall notify the engineer of his proposed sources of materials at least three weeks prior to delivery. With written authorization, materials may be approved at the source of supply before delivery is started. If it is found after installation that sources of supply for previously approved materials do not produce specified products or results, the contractor shall furnish materials from other sources or make necessary changes to provide acceptable materials at no cost to the department.

### **106.02 LOCAL MATERIAL SOURCES.**

**106.02.1 Designated Sources:** Possible sources of local materials may be designated on the plans or in the specifications. The quality of material in such deposits will be acceptable in general, but the contractor shall determine the amount of equipment and work required to produce a material meeting specifications. It shall be understood that it is not feasible to ascertain from samples the limits for an entire deposit and that variations are to be expected. The engineer may order procurement of material from any portion of a deposit and may reject portions of the deposit as unacceptable.

The Department may acquire and make available to the contractor the right to take materials from the sources designated on the plans or in the specifications, with the right to use such property as specified for plant site, stockpiles or haul roads.

When the contractor desires to use material from sources other than those designated, the contractor shall acquire the necessary rights or permits to take materials from the sources and shall pay all costs related thereto, including any which may result from increased haul length. All costs of exploring and developing such sources shall be borne by the contractor. Use of material from other than designated sources will not be permitted until representative samples taken by the engineer have been approved and written authority is issued for the use thereof.

**106.02.2 Contractor Furnished Sources:** When material deposits are not designated in the plans or specifications, the contractor shall

provide sources of acceptable material. When sources of materials are provided by the contractor, the Department may assume the cost of processing samples to determine suitability of material.

**106.02.3 Use of Materials Found on the Project:** Unless otherwise specified, the contractor may incorporate into the work materials found or produced on the project, such as reclaimed asphalt pavement, recycled portland cement concrete, stone, gravel, sand, topsoil or other materials provided they meet the requirements of the use specified. Payment for removal of such materials will be made under the designated contract items such as cold planing asphalt pavement, removal of portland cement concrete pavement, excavation, etc. Payment will also be made for the pay items into which these materials are incorporated.

The contractor shall replace at no direct pay with acceptable material all removed material which was needed for embankments, backfills, approaches or otherwise. No charge for materials so used will be made against the contractor. The contractor shall not excavate or remove material from within the right-of-way which is not within construction limits, as indicated by slope and grade lines, without written authorization from the engineer. If authorization is obtained, payment will not be made for excavation beyond slope and grade lines, nor will payment be made for any required replacement.

Materials from existing structures may be used temporarily by the contractor in erection of new structures. Modification of such material will not be permitted without written approval.

**106.03 ACCEPTANCE SAMPLES AND TESTS.** Materials will be inspected, tested, and approved before incorporation into the work. Work in which untested and unapproved materials are used shall be performed at the contractor's risk. Payment will not be made for materials or work found to be unacceptable and, when directed, shall be removed at the contractor's expense.

Unless otherwise specified in the contract, sample and test per the Department's Materials Sampling Manual or as directed by the Materials Engineer. When the sample or test method is not cited, the following hierarchy applies:

1. DOTD Testing Procedures Manual
2. AASHTO Methods
3. ASTM Methods

Resampling or retesting procedures shall be as determined by the Department's Materials Engineer Administrator. When allowable

variations or conflicts occur within an ASTM or AASHTO test procedure, the established DOTD procedure and publications or hierarchy established above shall govern. All procedures will be the most recent cited which are current on the first date of advertisement for bids. Acceptance testing will be made or witnessed by the Department. Samples for acceptance testing will be taken by an authorized representative of the Department. Materials being used will be subject to inspection, sampling, testing, retesting, or rejection at any time prior to final acceptance. The contractor will be notified of the Department's failing test. Copies of all tests reports will be furnished to the contractor's representative upon request.

The contractor shall supply materials approved by the Department as published in the Approved Materials List. However, inclusion of a product on the Approved Materials List is not a blanket approval for its use in the work, as products are still subject to the requirements of the Materials Sampling Manual. The Approved Materials List may be revised at any time, and only materials approved at the time of construction will be allowed on the project.

**106.04 CERTIFICATES.** Certificates shall include Certificates of Analysis, Certificates of Compliance, and Certificates of Delivery. These certificates shall be furnished prior to use of materials for which the certificates are required. They shall be signed by the material manufacturer, the manufacturer of assembled materials or the material supplier. If the contract has a Buy America provision, the certificates must indicate compliance with the provision.

Materials used on the basis of these certificates may be sampled and tested at any time. The fact that material is used on the basis of a certificate shall not relieve the contractor of responsibility for incorporating material in the work which conforms to the plans and specifications.

Distribution of certificates and requirements for further sampling and testing of certified materials shall be as outlined in the Department's Materials Sampling Manual.

The Department reserves the right to refuse to permit the use of material on the basis of a certificate.

**106.05 CONTRACTOR QUALITY CONTROL.** The contractor shall establish and maintain an effective quality control process. The quality control process shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations which comply with the contract requirements.

The process shall cover all operations both onsite and offsite, and shall be keyed to the proposed construction sequence. The Contractor is responsible for all subcontractors' quality control.

Comply with all requirements in the latest edition of the Department's Quality Assurance Manual" for the appropriate specification section.

Contractor personnel performing sampling and testing, observation, or inspection for the quality control process shall be evaluated and accepted by the Department in accordance with Departmental requirements. Contractor personnel shall have appropriate training and experience in testing procedures and methods of construction for the work they are overseeing. When specifications allow using quality control test results in the acceptance decision, contractor use of an accredited laboratory and certified inspectors is required, or, for materials not normally accredited, certification by a licensed Engineer in the State of Louisiana.

**106.06 PLANT INSPECTION.** The Department reserves the right to inspect plants and operations producing materials and to test materials prior to incorporation into the work as necessary to ensure contract compliance.

When plant inspection is undertaken, the following conditions shall be met:

1. The Department shall have the cooperation and assistance of the contractor and the producer with whom the contractor has contracted for materials.

2. The Department shall have entry at all times to such parts of the plant related to manufacturing or production of materials being furnished.

Certification of specified plants and operations will be in accordance with Department requirements.

**106.07 FIELD LABORATORY.** The contractor shall provide project site laboratories as required by the specifications to be used exclusively for material acceptance purposes by the Department. The buildings shall be installed, furnished, equipped and maintained in accordance with Section 722, and ready for use prior to the time the contractor's operations require testing.

**106.08 FOREIGN MATERIALS.** Materials manufactured outside the United States shall be delivered to approved locations within the United States, where they shall be retained until sampling and testing can be completed.

Testing by the contractor shall be performed within the State at the contractor's expense, and be subject to witnessing by the engineer.

Each lot of foreign material shall be accompanied by a Certificate of Compliance prepared in accordance with 106.04. Certificates of Analysis prepared in accordance with 106.04 shall be attached to the Certificate of Compliance for those materials for which Certificates of Analysis are required. These certificates shall clearly identify the lot to which they apply.

Structural materials requiring Certificates of Analysis (Mill Test Reports) will be accepted only from foreign manufacturers who have previously established to the satisfaction of the engineer the adequacy of their in-plant quality control.

Adequacy of quality control shall be established, at the option of the engineer, by submission of detailed written proof of adequate quality control or through a plant inspection by the engineer.

No structural materials will be accepted which cannot be properly identified with Certificates of Analysis and Certificates of Compliance.

**106.09 MATERIAL STORAGE AND PLANT SITE.** Materials shall be stored and/or stockpiled to assure preservation of their quality and fitness for the work. Such materials, even though accepted before storage, may again be inspected prior to their use in the work. Stored and/or stockpiled materials shall be located to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage and for placing the contractor's plant and equipment. Additional space required shall be provided by the contractor at no direct pay.

**106.10 HANDLING MATERIALS.** Materials shall be handled to preserve their quality and fitness for the work. Transport materials from the storage site to the work in vehicles constructed to prevent loss or segregation of materials after loading and measurement, ensuring consistent quantities of materials loaded and consistent quantities received at the place of operations.

**106.11 UNACCEPTABLE MATERIALS.** Materials not conforming to specifications will be rejected and shall be removed immediately from the work site, unless otherwise directed by the engineer. In addition, if required by the engineer, a sample of the rejected material shall be preserved and delivered to the Department as directed at no additional cost or expense to the Department. No rejected material shall be used until the defects have been corrected and subsequent additional approval has been given.

**106.12 DEPARTMENT-FURNISHED MATERIAL.** The contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the contractor at the points specified.

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

The contractor will be responsible for material delivered. Deductions will be made from payments for the work to make good any shortages and deficiencies, for any damage which occurs after such delivery, and for any demurrage charges.

## **Section 107**

### **Legal Relations and Responsibility to Public**

**107.01 LAWS TO BE OBSERVED.** The contractor shall keep informed of and comply with all Federal, State and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which affect those employed on the work or which affect the conduct of the work. The contractor shall indemnify the State and its representatives against any claim or liability arising from violation of any such law, bylaw, ordinance, code, regulation, order or decree, whether by the contractor or the contractor's employees.

Soil and soil-moving equipment operating in regulated areas will be subject to plant quarantine regulations. These regulations provide for cleaning soil from equipment before it is moved from regulated areas to prevent spread of harmful agricultural pests from areas quarantined by the State or U. S. Department of Agriculture. Complete information may be obtained from the appropriate district office of the USDA Plant Protection Division.

When the Department is the contracting agency, (1) any litigation arising under or related to the contract or the bidding or award thereof shall be instituted in the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, and (2) the contractor shall ensure that each subcontract for the project also requires that any litigation arising under the contract, other than to enforce a lien pursuant to L.R.S. 48:256.3 *et seq.*, be instituted in the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana.

If any court of competent jurisdiction holds that any provision of this Contract is invalid or unenforceable, then the meaning of such provision shall be construed so as to render it enforceable to the extent feasible; and if no feasible interpretation would save such provision, it shall be severed from this Contract and the remainder of this Contract shall remain in full force and effect.

**107.02 PERMITS, LICENSES, TAXES AND INSURANCE.** Contractors shall procure temporary permits and licenses for the work, pay charges, fees, and taxes, and give notices necessary for lawful prosecution of the work. Contractor, and its subcontractors, shall maintain all licenses and certifications necessary to accomplish the work in accordance with contract requirements and applicable law.

The contractor shall maintain, at a minimum, the following insurance coverage until final acceptance of the contract:

1. Workers Compensation in compliance with state law, with the exception that the contractor’s Employer liability is to be at least \$1,000,000 when work is to be over water and involves maritime exposures. For the coverage provided in this subpart the contractor’s Insurer will have no right of recovery or subrogation against the State of Louisiana or the Louisiana Department of Transportation and Development.

2. Commercial General Liability Insurance with a combined single limit per occurrence for bodily injury and property damage. The aggregate loss limit must be on a per project basis. This insurance shall include coverage for bodily injury and property damage, and include coverage for Premises-Operation; Broad form Contractual Liability; Products and Completed Operation; Use of Contractors and Subcontractors; Personal Injury; Broad form Property Damage; and Explosion, Collapse and Underground (XCU) coverage. The required combined single limit amount of insurance shall be as provided in Table 107-1.

3. A separate Owner’s and Contractor’s Protective Liability (OCP) Policy shall be furnished by the contractor naming the Louisiana Department of Transportation and Development as the named insured. The policy period of the OCP insurance shall extend through final acceptance of the project. The required combined single OCP limit amount shall be as provided in Table 107-1.

4. Business Automobile Liability Insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include bodily injury and property damage coverage for owned automobiles, hired automobiles and non-owned automobiles. The required combined single limit amount of insurance shall be as provided in Table 107-1 below.

**Table 107-1  
Insurance Requirements  
(\$ in millions)**

<u>Initial Contract Amount</u>	<u>Occurrence</u>		<u>Ultrahazardous</u>
	<u>Minimum</u>	<u>Aggregate</u>	<u>Aggregate</u>
Up to \$1	\$ 1	\$ 2	\$ 3
From \$1 to \$ 2	\$ 2	\$ 4	\$ 6
Over \$2	\$ 5	\$10	\$15

Aggregate coverage for projects with ultrahazardous activities shall be triple the occurrence minimum. Ultrahazardous activities include pile

driving; transportation, use, storage, or removal of explosives, radioactive materials, or particularly hazardous or volatile chemicals; and asbestos or lead paint abatement; but does not include vibratory installation of sheet piles.

Each policy shall include provisions stipulating that the insurance company(ies) shall have no recourse against the State of Louisiana and the Department for payment of any premiums or for assessments under any form of the policy and that any and all deductibles in the above described insurance policy(ies) shall be assumed by and be at the sole risk of the contractor.

Insurance is to be placed with insurance companies authorized in the State of Louisiana with an A. M. Best's rating of A-: VI or higher. This rating requirement may be waived for Workers Compensation coverage only.

Should any policies be canceled, the contractor shall immediately notify the Department.

Upon failure of the contractor to furnish, deliver and maintain such insurance for itself as required, this contract, at the election of the Department, may be immediately declared suspended, discontinued or terminated. Upon failure of the contractor to maintain OCP insurance at any time prior to final acceptance of the project, work on this contract shall be immediately suspended until proof of such insurance is presented to and accepted by the Department's Project Control unit. During a suspension caused by the lack of any required insurance, contractual time charges will continue to be assessed against contract time, as will any assessment of stipulated damages, without interruption.

Failure of the contractor to maintain any required insurance shall not relieve the contractor from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the contractor concerning indemnification under 107.17.

The contractor is responsible for requiring and verifying that all subcontractors working on the project maintain appropriate types and levels of insurance coverage.

This contract does not authorize or appoint contractor as an agent or mandatory of the Department, or of the State of Louisiana. Accordingly, the contractor is subject to and responsible for all taxes incurred in the performance of its contractual obligations.

**107.02.1 Reimbursement of OCP Insurance:** Contractor may submit the direct cost of OCP insurance (only) to the Department for reimbursement. The provisions of 109.04 shall not apply to this

reimbursement. The cost of all other required insurance must be included in contractor's overhead applied to all other bid items.

The Department will reimburse the actual cost of OCP coverage, with no allowed mark-up, as shown on an invoice produced by the insurance provider. Contractor must also submit an original sworn affidavit from the insurance producer/agent in which that person attests that the submitted invoice is for the required OCP coverage only, and that the invoice accurately reports the cost to contractor of that coverage. The invoice and affidavit may be submitted at the preconstruction conference or thereafter for inclusion with a partial estimate.

There will be no reimbursement for any purchase of OCP insurance policy extensions necessitated by concurrent; non-excusable; or excusable, non-compensable delays in completion of the project, whenever such delays occur, or for claimed utility delays where such days were not added to Contract Time by change order. Any policy extensions necessitated by excusable, compensable delays will be reimbursed on a pro-rata monthly basis.

### **107.03 PATENTED DEVICES, MATERIALS AND PROCESSES.**

If the contractor uses any design, device, material, or process covered by patent or copyright, the contractor shall be responsible for such use. The contractor and surety shall indemnify the State, any affected third party or political subdivision from claims for infringement due to the use of any such patented design, device, material or process, or any trademark or copyright and shall indemnify the State for any costs, expenses, and damages due to any infringement during prosecution or after completion of the work.

If the contractor submits proposed plans, specifications, manufacturer's data, or any other information or documents to the Department for a proposed change order, value engineering proposal or for any other purpose which may be protected by copyright or trade secret protection, the contractor shall first obtain permission or license from the licensor or any other party having a proprietary interest in such documents or information and shall hold harmless, indemnify and defend the Department at the contractor's sole cost from any damages, expenses or actions arising out of or related to use by the Department of information or documents supplied by the contractor to the Department.

### **107.04 RESTORATION OF SURFACES OPENED BY PERMIT.**

The right to construct or reconstruct any utility service in the highway or to

grant permits for same, at any time, is reserved by the Department for proper authorities of the municipality in which the work is done and the contractor will not be entitled to damages either for digging up of the highway or delays occasioned thereby.

When an individual, corporation, or any other legal entity is authorized through an executed permit from the Department, the contractor shall allow parties bearing such permits to make openings in the highway. The contractor shall, when ordered, make all necessary repairs due to such openings. Payment for such work will be made as extra work or as provided in these specifications, and will be subject to the same conditions as original work performed.

**107.05 FEDERAL AID PARTICIPATION.** When the United States Government participates in the cost of the work covered by the contract, the work shall be under the supervision of the State, but subject to inspection and approval of the proper official of the United States Government, in accordance with applicable Federal Statutes, and rules and regulations pursuant thereto. Such inspection shall not make the Federal Government a party to the contract and will not interfere with the rights of either party there under.

**107.06 SANITARY, HEALTH, AND SAFETY PROVISIONS.** The contractor shall not require any worker to work under conditions which are unsanitary, hazardous, or dangerous to health or safety. The contractor shall maintain the work in a sanitary, safe, and nonhazardous condition.

The contractor shall provide and maintain in a neat, sanitary condition, restrooms and other such accommodations for use of employees and Department personnel. Such facilities shall comply with requirements of the State and local Boards of Health or other bodies or tribunals having jurisdiction.

The contractor shall comply with all Occupational Safety and Health Administration (OSHA) regulations.

If the contractor provides an Emergency, Health and Safety (EHS) plan during the preconstruction conference, all Department employees assigned to the project shall comply with the plan while on or adjacent to the job site. The contractor shall not be liable under 107.17 for bodily injuries, death, or damages sustained by the Department, or by any Department employee, due directly to the Department employee's failure to abide by the EHS plan provided by the contractor.

**107.07 PUBLIC CONVENIENCE AND SAFETY.** The contractor shall conduct the work to assure the least possible obstruction to traffic. The project site and haul route shall be kept reasonably free from dust and in such condition that the public can travel in safety.

When the highway under construction is to be kept open for traffic, the subgrade and surfacing shall be kept in such condition that the public can travel in safety. Safety and convenience of the general public and the residents along the work, and protection of persons and property, shall be a primary responsibility of the contractor.

When the contractor works at night, adequate artificial lighting shall be provided. Signs, flaggers, or other traffic controls shall be provided to protect workers, the work, and the traveling public. When such work affects traffic safety, the contractor shall submit to the engineer for approval a plan of lighting, signing, flagmen, or other traffic controls. If the approved plan proves inadequate after work begins, the contractor shall make such changes as needed. If the engineer finds that the night work is so hazardous as to preclude the beginning or require the discontinuing of such work, the contractor shall immediately cease all such operations.

**107.08 RAILWAY-HIGHWAY PROVISIONS.** It is the Contractor's responsibility to contact the railroad to determine the railroad's requirements for work within the railroad right of way and to comply with those requirements. The Contractor shall attend any safety orientation/training required by the Railroad.

All work to be performed by the contractor in construction on railway right-of-way shall be at a minimum in accordance with the following provisions.

1. The contractor shall notify the Railway's duly designated representative at least 10 days in advance of the date on which the contractor is expected to begin work on the Railway's premises.

2. During the progress of work on or about the Railway's tracks or premises, the contractor shall maintain contact and liaison with the Railway's officers or representatives designated by the Railway and Railway approved contractors so as to ascertain time of passage of trains at the work in order to clear Railway's tracks and facilities of people, equipment and obstructions to permit free flow of railway traffic. The contractor shall perform work on the Railway's premises without materially interfering with the Railway's tracks, structures and facilities or operations, or the operations of the Railway's tenants or licensees, or with communication and signal lines upon said premises, except under

documented arrangement effected between the contractor and the Railway. The Contractor shall ensure all Railroad signals are returned to working order and all electronic/electrical equipment is functioning as intended before conclusion of the project work. The contractor shall protect the Railway's property and avoid accidents. The contractor shall keep the Railway's track and roadbed free of earth, rock, construction materials, debris and obstructions.

The contractor shall immobilize equipment parked near the Railway's track, when such equipment is unattended, to prevent its movement by unauthorized persons.

3. The contractor shall, before entering upon the Railway's right-of-way for performance of any construction work, or work preparatory thereto, secure permission from the Railway's representative for the occupancy and use of the Railway's right-of-way outside the limits of the highway servitude area and shall confer with the Railway relative to requirements for railway clearances, operation and general safety regulations.

4. The Railway's representative will at all times have jurisdiction over the safety of railway operation. The decision of the Railway's representative as to procedures which may affect the safety of railway operation shall be final. The contractor shall be governed by such decision.

5. Should any damage occur to railway property, as a result of the contractor's unauthorized or negligent operations, and the Railway deems it necessary to repair such damage or perform work for protection of its property, the required materials, labor and equipment shall be furnished by the Railway. The contractor shall reimburse the Railway for costs incurred.

6. If the contractor's methods or equipment requires access across the Railway's right-of-way and tracks at any location which is not an existing permanent type of open public railway-highway crossing in or incident to the construction of the project, the contractor shall contact the Railway and request access across said right-of-way and tracks and execute a license agreement with the Railway, all at no direct pay. The contractor shall reimburse the Railway for the cost of providing and removing any temporary at-grade and grade-separated structure access crossing, including warning devices, watchmen expense or other costs which the Railway deems necessary for protection of Railway property and operations. The type of temporary crossing required shall be determined by the Railway. The contractor shall not cross the Railway's right-of-way and tracks with vehicles or equipment except at existing open public road crossings or at such crossings established pursuant to this paragraph. The foregoing requirements include new grade crossings which will become part of the

finished highway being constructed under the contract. The contractor shall comply with requirements for insurance in 107.08.14 below during operations hereunder. The contractor shall cooperate with the Railway during all phases of the work including sufficient advance notice for project completion in order for the Railway to remove the temporary grade crossing and perform final grade crossing improvements and/or inspections under the agreement with the Department prior to final acceptance.

7. Any engineering, inspection, training, flagging, and watcher service required by the Railway for the safety of Railway operations because of work being performed by the contractor or in connection therewith, shall be provided by the Railway and the cost thereof shall be reimbursed to the Railway, by the contractor, on the basis of the Railway's bills, to be rendered monthly. The contractor will be reimbursed, by the Department, for its actual incurred cost for such services with no contractor mark-up allowed. The contractor shall furnish documentation of railway invoices and evidence of payment before reimbursement. When it is determined that railroad services and/or crossings are no longer in the best interest of the Department, the contractor will be issued written notification that no further reimbursement will be made by the Department for railroad services. Work done or services provided for the contractor's convenience will not be reimbursed by the Department.

Any engineering, inspection, training, flagging, and/or watcher service required by the Railway for the safety of Railway operations because of work being performed by the contractor, or in connection therewith, and which the Railway requires that the contractor provide will be reimbursed by the Department at the actual incurred cost for such services with no contractor mark-up allowed. The contractor shall furnish documentation of railway invoices and evidence of payment before reimbursement by the Department. The contractor shall notify the Railway 72 hours in advance of when railway services are required.

8. The contractor will be required to reimburse monthly the Railway for the cost of all services performed by the Railway for the contractor, and furnish the Department satisfactory evidence that the Railway has acknowledged receipt of payment before final acceptance.

9. During construction of piers or other supports or structures adjacent to any track or of drainage pipe or structure under or adjacent to any track of the Railway, the contractor shall make adequate provisions against sliding, shifting, sinking or in any way disturbing the railway embankment and track adjacent to said piers, supports or structures due to construction operations by driving temporary sheeting or by other means satisfactory to

the Department and Railway.

10. Before commencing work on any pier or structure adjacent to any track, or on any structure and parts thereof which carry Railway facilities, the contractor shall submit to the engineer, prints of the proposed sheeting, shoring, bracing and falsework details for protection of the Railway's track and embankment and shall submit prints of the shop drawings or other contractor's detailed plans for structures and parts thereof which will carry Railway facilities. This submittal shall include proposed methods of construction and be accompanied by supporting data, including design computations, soil descriptions and other pertinent information.

After acceptance by the engineer, four prints of the above plans, shop drawings and details bearing the seal of a registered Civil Engineer, with supporting data and documents, shall be forwarded to the Railway for approval. Prior to beginning work on Railway right-of-way, the shop drawings and details, with supporting data and documents, shall be approved by the Railway.

11. The contractor shall possess the required Railroad permits and notify the Railway's representative in writing at least one week in advance of the proposed time of the beginning of construction of piers, supports or structures adjacent to the track or of drainage pipe or structure under or adjacent to the track.

12. The following temporary clearances are the minimum which shall be maintained during construction operations:

Vertical: 22.5 feet above top of highest rail.

Horizontal: 10.0 feet from centerline of the nearest rail measured at right angles thereto.

If lesser clearances are required for any part of the work, the contractor shall secure written authorization from the Railway's representative for such lesser clearances in advance of the start of work on that portion of the project along, on, over, under or across the right-of-way or tracks of the Railway.

13. The contractor shall not store or construct falsework or store materials, supplies or equipment closer than 15.0 feet from the centerline of the nearest rail, measured at right angles thereto, or 22.5 feet vertically from top of rail.

14. Unless otherwise specified by special provisions or waived by the railroad, the contractor shall provide insurance of the following kinds and amounts:

14.1. Regular Contractor's Public Liability and Property Damage Insurance, including automobile, issued in the name of the contractor shall

be written to furnish protection to the contractor respecting operations in performing work covered by the contract in regard to the liability with respect to bodily injury to or death of persons, and injury to or destruction of property, which may be suffered by persons other than the contractor's employees as a result of operations in connection with construction of highway projects located wholly or partly within railroad right-of-way.

14.2. When a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in the contractor's own behalf under Contractor's Public Liability and Property Damage Insurance policies to cover any liability imposed on the contractor by law for damages due to bodily injury to or death of persons and injury to or destruction of property as a result of work undertaken by such subcontractors.

In addition, the contractor shall provide for, and on behalf of, any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual Contractor's Public Liability and Property Damage policies. As an alternative, each subcontractor shall provide satisfactory insurance as described herein on the subcontractor's own behalf to cover the subcontractor's individual operations.

14.3. Railroad Protective Liability Insurance shall be purchased on behalf of the Railway by the contractor. The standards for Railroad Protective Liability Insurance shall be in accordance with provisions of the Federal-Aid Policy Guide (FAPG) Part 646 as amended. Proof of Railroad Protective Liability Insurance, with the policy period effective until final acceptance of the project, must be submitted in accordance with 103.06.

The limits of liability for the kinds of insurance required above shall be as follows:

**RAILROAD INSURANCE COVERAGE (other than AMTRAK)**

**(1), (2) and (3)**

Combined Single Limit for Bodily Injury Liability, Property Damage Liability and Physical Damage to:

Property - \$2,000,000 per occurrence

Aggregate Limit - \$6,000,000 for the term of the policy

**AMTRAK COVERAGE**

**(1), (2) and (3)**

Combined Single Limit for Bodily Injury Liability, Property Damage Liability and Physical Damage to:

Property - \$6,000,000 per occurrence

Aggregate Limit - \$12,000,000 for the term of the policy

The name of the Railway and the ratio of the estimated cost of operations within the Railway's property to the total estimated project cost, expressed by percent, will be specified in the project specifications. No direct payment will be made for providing the required insurance coverage by the contractor.

15. The insurance specified shall be kept in force until final acceptance of the contract. Proof of Insurance is required at the project site anytime work is in progress on or near the Railroad.

16. The contractor shall indemnify the Railway, its officers and employees from all suits, actions, or claims brought because of injuries or damages sustained by any person or property due to operations of the contractor; due to negligence in safeguarding the work; or use of unacceptable materials in constructing the work; or any negligent act, omission or misconduct of the contractor; or claims or amounts recovered from infringements of patent, trademark, or copyright.

17. Upon completion of the work, the contractor shall, within 10 calendar days, remove from within the limits of the Railway's right-of-way all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings of said contractor, and restore the Railway's premises substantially to their former condition or documented proposed conditions agreed upon by the Railroad, Department, and Contractor as satisfactory to the Railway's representative.

Should the contractor fail to make such removal and restoration within 10 calendar days, the Railway shall have the right to make such removal or restoration. The expense incurred shall be chargeable to the project on the Railway's force account statement and the Department will reimburse the Railway for such work. The amount will be deducted from payments due the contractor.

All costs incurred under this subsection, other than as provided in 107.08.7, or for which payment is elsewhere provided, shall be included in the contract prices of other pay items.

Prior to final acceptance of the project, the contractor shall secure a Certificate of Final Inspection and Payment, as found on the Department's website, signed by both the Department representative and a duly authorized railroad company representative, and furnish same to the Department stating that the contractor has satisfactorily restored the Railway's premises and has completed payments for all railway services performed for the contractor's account. If the contractor is unable to secure

a Certificate of Final Inspection and Payment from the Railway, the contractor shall submit to the engineer an executed Contractor's Sworn Railroad Affidavit, in which the Contractor warrants (1) the work the Contractor performed on railway right-of-way; (2) that, despite a diligent effort, the Contractor was unable to acquire the Certificate of Final Inspection and Payment from the railroad company; (3) that all work on railway right-of-way complies with and conforms to all contract documents and railway requirements; (4) that the Contractor has made all payments and reimbursements required by the railroad company and its respective right-of-access agreement; (5) that the Contractor has removed all his machinery, equipment, materials, falsework, rubbish, and temporary structures from railway right-of-way and has returned or restored railway property to a condition equal to or better than its former condition.

In addition, on said affidavit, the Contractor shall agree to (1) indemnify, defend, and hold the Department harmless from and against all claims, demands, causes of action, or rights of action arising from or related to any negligent or intentional act, omission, or misconduct of the contractor on the railway right-of-way, and (2) in the event of a claim or legal action asserting liability covered by the Contractor's Sworn Railroad Affidavit, regardless of the merits of the claim or legal action and whether or not the Department is cast in judgment based on such a claim or legal action, the Contractor agrees to indemnify the Department in the amount of any litigation related costs, including, without limitation, attorneys' fees and expert witness fees and costs, incurred by the Department in connection with such a claim or legal action covered by the Contractor's Sworn Railroad Affidavit.

**107.09 NAVIGABLE WATERS AND WETLANDS.** All work in, over, or adjacent to navigable waters or wetlands shall be conducted in accordance with rules and regulations of the U. S. Army Corps of Engineers and U. S. Coast Guard.

Navigable clearances on waterways shall not be infringed upon, and existing navigable depths shall not be impaired except as allowed by permits issued by the responsible agency.

The Department will obtain a permit from the U. S. Coast Guard and U.S. Army Corps of Engineers relative to approval of construction plans for bridges, causeways, embankments, dredging, spoil disposal, etc., for work in navigable waters or wetlands. The contractor will be furnished a copy of the permit and shall comply with all provisions and conditions of the permit. When required by permit, upon completion and before final

acceptance of the project, the contractor shall furnish the Bridge Design Engineer 8-by-10-inch color photographs of the bridge from abutment to abutment, two photographs looking upstream and two looking downstream. The prints shall be glossy finish, mounted on linen. These photographs will be furnished at no direct pay.

The contractor shall prepare reproducible drawings complying with the standards of the U. S. Coast Guard and the U. S. Army Corps of Engineers showing falsework construction, test piles or other temporary pile driving operations, erection sequence, temporary navigational lighting, location of equipment and barges in the navigable limits and other drawings required by the permit agencies. Drawing sizes shall be 8-by-10 1/2 inches with a 1-inch border on the top or short side. The drawings shall be submitted to the Bridge Design Engineer for acceptance and transmittal to the appropriate agency for approval. Construction of falsework, test pile operations and erection or operation of construction equipment within the navigable limits shall not commence until drawings are approved.

The contractor shall display lights on equipment operating, berthed, or moored in navigable streams, and provide temporary navigational lighting on temporary and permanent construction in the navigable limits as required by the U. S. Coast Guard.

Should the contractor sink, lose, or throw overboard any material, machinery, or equipment which may be dangerous to navigation, it shall be immediately removed or recovered. The contractor shall give immediate notice of such obstruction to proper authorities and, if required, shall mark or buoy such obstruction until it is removed.

The contractor shall not deposit excavated material into the water-way or wetland without a permit from the appropriate agency.

All operations in connection with the work shall be in accordance with permits, rules and regulations of the U. S. Army Corps of Engineers and the U. S. Coast Guard. Deviations therefrom shall be only by special permission or special permit which shall be the responsibility of the contractor. Failure of the contractor to become familiar with the terms, conditions and provisions of the permits, rules and regulations applicable to the work shall not relieve the contractor of responsibility under the contract.

The contractor shall conduct operations to cause minimum interference with marine operations. If interference is necessary, the contractor shall notify the Department's Bridge Design Engineer, in writing, sufficiently in advance so that the Department may obtain approval from the U. S. Coast Guard at least 3 weeks prior to said interference.

Copies of Department obtained permits are available from the Department's Environmental Section.

Copies of any special permits obtained by the contractor shall be submitted immediately to the Bridge Design Engineer.

**107.10 BARRICADES AND WARNING SIGNS.** The contractor shall provide, erect, and maintain necessary barricades, suitable lights, danger signals, signs, and other traffic control devices, including flaggers, and shall take all necessary precautions for protection of the work and safety of the public. Highways closed to traffic shall be protected by effective barricades. Suitable warning signs shall be provided to direct traffic.

The contractor shall erect and maintain warning signs in advance of any place on the project where operations may interfere with traffic, and at intermediate points where new work crosses or coincides with an existing road.

Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the details shown on the plans and the MUTCD.

**107.10.1 Certification:** Prior to installation, the contractor shall furnish the engineer a listing of all the Category II and III devices to be used on the project, including a reference to the FHWA Work Zone letter number for each device. FHWA letters of approval shall serve as verification that these devices comply with the crash testing requirements of NCHRP Report 350 or MASH. Provide a certificate of compliance indicating the producer/supplier code for all barricades and warning signs delivered to the project.

**107.11 USE OF EXPLOSIVES.** Explosives shall not be used without written approval from Chief Construction Engineer. When explosives are used, the contractor shall not endanger life or property. The use of explosives shall be in compliance with all laws and ordinances. The contractor shall be responsible for all damage resulting from the use of explosives.

Explosives shall be securely stored, in compliance with all laws and ordinances. Such storage places shall be clearly marked. When no local laws or ordinances apply, satisfactory storage shall be provided not closer than 1,000 feet from any road, building or place of human occupancy.

The contractor shall notify, in writing, each utility company and affected property owner having facilities in proximity to the site of work of the intention to use explosives. Such notices shall be given sufficiently in

advance to enable them to protect their property from damage.

**107.12 PRESERVATION OF PUBLIC AND PRIVATE PROPERTY.**

The contractor shall be responsible for preservation of public and private property and shall protect from disturbance and damage all land monuments, property line markers or horizontal and vertical control monuments such as those established by the United States Coast and Geodetic Survey, National Geodetic Survey, Louisiana Geodetic Survey, Louisiana DOTD, Corps of Engineers, or United States Geological Survey. Before removing and/or resetting any survey monuments, the contractor shall give sufficient written advance notice to the engineer with a copy to the Department's Location and Survey Section for coordination with the appropriate agency. The contractor shall not disturb or move any such monument without written approval. The contractor shall give immediate written notice to the engineer, with a copy to the Department's Location and Survey Section, of damage to survey monuments. The engineer will designate the location and manner in which monuments are to be reset in accordance with current Department procedures.

The contractor shall be responsible for damage to property during the work due to any negligent act, omission or misconduct in executing the work, or due to defective work or materials. This responsibility will not end until final acceptance.

When damage is done to public or private property by the contractor due to any negligent act, omission or misconduct in execution of the work, or in consequence of nonexecution thereof by the contractor, such property shall be restored at the contractor's expense, to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding or otherwise acceptably restoring as directed, or making good such damage in an acceptable manner.

**107.13 FOREST PROTECTION.** In carrying out work within or adjacent to State or National Forests, the contractor shall comply with all regulations of the Department of Public Safety Office of the State Fire Marshal, Department of Wildlife and Fisheries/Wildlife Division, and the Department of Agriculture and Forestry or other authority having jurisdiction governing protection of forests and performance of work within forests. The contractor shall observe all sanitary laws and regulations with respect to performance of work in forest areas. The contractor shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for construction and maintenance of all construction

camp, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with requirements of the forest supervisor.

The contractor shall take reasonable precaution to prevent and suppress forest fires and shall require employees and subcontractors, both independently and at the request of forest officials, to do all that is reasonable within their power to prevent and suppress forest fires and to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

**107.14 ENVIRONMENTAL PROTECTION.** The contractor shall comply with federal, state and local laws and regulations controlling pollution of the environment, including air, water and noise. The contractor shall take precautions to prevent pollution of waters and wetlands with fuels, oils, asphalts, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter. Attention is directed to Section 204, Temporary Erosion Control.

The contractor certifies under penalty of law that he understands and will abide by the terms and conditions of the Storm Water Pollution Prevention Plan (SWPPP) and the National Pollution Discharge Elimination System (NPDES) General Permit that require the discharges from construction sites be managed to prevent pollutants from entering waters of the United States in accordance with the Environmental Protection Agency's (EPA) regulations for storm water discharges with respect to 33 U.S.C. § 1342 (Sections 402 (p) and 405 of Public Law 100-4).

The use of erosion control features or methods other than those in the contract shall be as directed.

The Storm Water Pollution Prevention Plan shall be comprised of all components specified in the U.S. Environmental Protection Agency document entitled, "Storm Water Management for Construction Activities," and shall include Section 204, Temporary Erosion Control of the standard specifications along with applicable supplemental specifications, special provisions, and the plans.

Construction operations in rivers, streams, lakes, tidal waters, reservoirs, canals, and other impoundments will be restricted to areas where it is necessary to perform filling or excavation to accomplish the work and areas which must be entered to construct temporary or permanent structures. Operations in navigable waters, wetlands, or other waters of the United States require permits. It is the responsibility of the contractor to ensure all appropriate permits are obtained prior to commencement of

operations. As soon as conditions permit, streams and impoundments shall be cleared of temporary obstructions placed therein or caused by construction operations.

Frequent fording of streams with construction equipment will not be permitted.

No residue from dust collectors or washers shall be dumped into a stream. Attention is further directed to the federal, state, and local air pollution control programs and their rules and regulations regarding air pollution, especially open burning, fugitive dust and asphalt concrete plant restrictions.

The contractor shall maintain and operate equipment to minimize noise and vibration as well as comply with local noise ordinances. Engines shall be equipped with properly functioning mufflers. The contractor shall assure the activities near noise and vibration sensitive areas, such as churches, hospitals, and schools are not unduly disruptive.

**107.15 AIR NAVIGATION.** The Department will obtain a permit (or a determination of no hazard to air navigation) from the FAA for all permanent structures. The contractor will be furnished a copy of the permit, if requested. If the contractor's equipment, falsework, etc. is classified as a hazard to aerial navigation, the contractor shall prepare drawings complying with the FAA current requirements for temporary lighting for protection of aerial navigation. These drawings shall be submitted to the Bridge Design Engineer and Project Engineer for review and transmittal to the FAA for approval. Operations in connection with the work for protection of aerial navigation shall be in accordance with the approved drawings and applicable federal regulations. Failure of the contractor to be familiar with applicable rules and regulations of the FAA will not relieve the contractor of responsibility under the contract.

**107.16 HAZARD ZONES.** If any portion of the work is determined to be within a known hazard zone, the presence of such hazards will be noted in the plans or project specifications to the extent that definite information can be obtained on these situations.

It shall be the responsibility of the contractor to arrange and coordinate the work in the area with the agency or agencies concerned.

The contractor shall obtain from the Department and submit to the engineer the Department's Standard Release Form signed by the agency involved stating that the contractor has satisfactorily discharged the obligations under terms of the arrangements. This form shall be submitted

with the required signatures.

Failure of the Department to determine the presence of all hazards and to note same on the plans or in the project specifications shall not relieve the contractor from performing any required work.

**107.17 DAMAGE CLAIMS.** The contractor shall indemnify, defend, and hold the Department, its officers and employees harmless from all suits, actions, or claims brought because of injuries or damage sustained by any person or property due to operations of the contractor in connection with the Contract; due to negligence in safeguarding the work; or use of unacceptable materials in constructing the work; or any negligent or intentional act, omission or misconduct of the contractor; or claims or amounts recovered from infringements of patent, trademark or copyright; or from claims or amounts arising or recovered under the Workmen's Compensation Act or other law, ordinance, order or decree. Any money due the contractor as considered necessary by the Department for such purpose, may be retained for use of the State; or, in case no money is due, the surety bond may be held until such suits, actions, claims for injuries or damages have been settled and suitable evidence to that effect furnished to the Department; except that money due the contractor will not be withheld when the contractor produces satisfactory evidence that adequate Workman's Compensation, Public Liability, and Property Damage Insurance are in effect.

**107.18 OPENING SECTIONS TO TRAFFIC.** Opening of sections of the work to traffic prior to completion of the entire contract may be desirable from a traffic service standpoint, or may be necessary due to conditions inherent in the work or by changes in the contractor's work schedule, or may be required due to conditions or events unforeseen at the time of the contract. Such openings shall be made when directed and shall not constitute acceptance of the work nor a part thereof or a waiver of any provisions of the contract.

The plans or project specifications will specify, insofar as possible, which sections shall be opened prior to completion of the contract. On any section opened by order of the engineer, when not specified, the contractor will not be required to assume any expense entailed in maintaining the road for traffic. Such expense will be borne by the Department or compensated for in accordance with 109.04. On portions of the project which are ordered to be opened for traffic, in the case of unforeseen necessity not the fault of the contractor, compensation for additional expense to the

contractor and allowance of additional time for completion of other work on the opened portions of the project shall be as set forth in a change order mutually agreed on by the engineer and the contractor.

When the contractor's progress is undesirably slow in completing shoulders, drainage structures or other features of the work, the engineer may notify the contractor in writing and establish therein a reasonable period of time in which the work is to be completed. If the contractor fails to make a reasonable effort toward completion in this time period, the engineer may order all or a section of the project opened to traffic. On such sections ordered to be opened, the contractor shall conduct the remainder of construction operations to cause the least obstruction to traffic and shall not receive any added compensation due to the added cost of the work by reason of opening such section to traffic.

On any section opened to traffic under the foregoing conditions, whether specified in the contract or opened by necessity of the contractor's operations or unforeseen necessity, any damage to the highway not attributable to traffic that occurs on such section (except slides) shall be repaired by the contractor at no direct pay. Removal of slides shall be done by the contractor on a basis agreed to prior to removal of such slide.

**107.19 CONTRACTOR'S RESPONSIBILITY FOR WORK.** Until final acceptance, the contractor shall have garde, charge, and care of the work and roadway within the project limits. In addition, the contractor shall take every precaution against damage to any part thereof by action of the elements, vandalism, theft, or from any other cause. The contractor shall rebuild, repair, restore, or pay for damages, including theft and vandalism, to the work before final acceptance and shall bear the expense thereof, except for the following:

1. Guard rail and impact attenuators shall be repaired as soon as possible after damage. If the engineer determines that the contractor did not contribute to the damages, the contractor shall first attempt to collect repair costs from responsible third parties. The Department will reimburse the contractor for such repairs by force account in accordance with 109.04 when responsible parties cannot be identified.

2. Unavoidable damage, except for materials and equipment that are not incorporated into the Project, due to Acts of God as defined in 101.03, or due to/by acts of governmental authorities.

In case of suspension of the work, the contractor shall continue to be responsible for the project. The contractor shall take such precautions as necessary to prevent damage to the project, maintain traffic, provide for

normal drainage, and erect any necessary temporary structures, signs or other facilities at no direct pay. During such period of suspension, the contractor shall acceptably maintain all living material in newly established plantings, seedings and soddings furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against damage. Should suspension of the work not be attributed to any actions of the contractor, the contractor will be reimbursed for additional work.

**107.20 UTILITY PROPERTY AND SERVICES.** The contractor's operations adjacent to properties of a railway, utility companies, or other property, damage to which might result in considerable expense, loss, or inconvenience, shall not commence until after all arrangements necessary for the protection thereof have been made.

The contractor shall cooperate with owners of utility lines in their removal and relocation, in order that these operations may progress in a reasonable manner, that duplication of relocation work may be minimized and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption of utility services due to accidental breakage or being exposed or unsupported, the contractor shall promptly notify the proper authority and shall cooperate with such authority in restoration of service. If utility service is interrupted, continuous cooperation will be required until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

**107.21 FURNISHING RIGHT-OF-WAY.** The Department will be responsible for securing all necessary right-of-way, servitudes and easements in advance of construction.

**107.22 PERSONAL LIABILITY OF PUBLIC OFFICIALS.** In carrying out the provisions of these specifications, or in exercising any authority granted to them by the contract, there shall be no liability upon the Secretary, Chief Engineer, or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as representatives of the State.

**107.23 NO WAIVER OF LEGAL RIGHTS.** Upon completion of the work, the Department will make final inspection and then notify the

contractor of acceptance within 30 calendar days. Such final acceptance shall not prevent the Department from correcting any measurement, estimate or certificate made before or after completion of the work, nor shall the Department be prevented from recovering from the contractor or the surety, or both, any overpayment it may sustain. The contractor and its surety shall be solidarily liable for any overpayment or added expense incurred by the Department, as provided in the contract or resulting from any deficient performance of the work, in excess of any remaining amounts due the contractor.

A waiver by the Department of any breach of any part of the contract shall not be a waiver of any other breach.

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

**107.24 THIRD PARTY LIABILITY.** It is agreed between the parties executing the contract that it is not intended by any provisions of the contract to create the public nor any member thereof a third party beneficiary hereunder, nor to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the contract.

**107.25 ANTI-TRUST VIOLATIONS.** By execution of the contract, the contractor conveys to the Department all rights, title and interest in and to all causes of action it may acquire under Federal and State anti-trust laws, relating to the goods or services purchased by the Department pursuant to the contract.

**107.26 CONTRACTOR'S PAYROLLS.** When predetermined minimum wage rates are included in the contract, the minimum wage determination shall be posted by the contractor in a prominent and easily accessible place at the site of work.

On Federal-Aid Projects, the contractor's payrolls shall be in accordance with the project specifications.

**107.27 ARCHAEOLOGICAL FINDINGS AND UNMARKED BURIALS.** If the contractor encounters cultural artifacts or archaeological or historical sites, operations in the area of the discovery shall be discontinued. The engineer will contact the DOTD Environmental

Engineer Administrator, or designee, in order that an appropriate assessment may be made to determine the disposition thereof and necessary actions relative to the site. Those decisions will be made in consultation with, as applicable, the State Archaeologist, the State Historic Preservation Officer, and the lead federal agency. When directed, the contractor shall perform services on the site to preserve the artifacts encountered. Such extra work will be paid for in accordance with 109.04, including an appropriate adjustment in contract time in accordance with 108.07. Borrow and muck disposal areas furnished by the contractor will be subject to such assessment by the contractor prior to use.

If the contractor discovers unmarked burial sites, human skeletal remains, or burial artifacts, operations in the area of the discovery shall be discontinued. The contractor will notify the proper authorities, as well as the engineer, in compliance with the Louisiana Unmarked Human Burial Sites Preservation Act (RS 8:680-681).

## **Section 108**

### **Prosecution and Progress**

**108.01 SUBLETTING OF CONTRACT.** The contractor shall not sublet any portion of the contract, excluding material, without written consent, including work sublet to an authorized Disadvantaged Business Enterprise. If such consent is given, the contractor will be permitted to sublet a portion of the work, but shall perform with the contractor's own organization work amounting to at least 50 percent of the total contract amount as established in contractor's bid. Any items designated in the contract as "Specialty Items" may be performed by subcontract and the cost of such may be deducted from the total contract cost before computing the amount of work required to be performed by the contractor with the contractor's own organization.

The contractor shall indemnify the Department, its officers, and employees from any loss of any kind, including loss of funding, resulting from its failure to perform at least 50 percent of the total contract cost, as provided above.

By executing the contract, contractor acknowledges and agrees that a subcontract shall incorporate all applicable requirements and provisions of the contract between it and the Department, including the insurance requirements in 107.02, and that subcontracts do not relieve contractor of any of its obligations, liabilities, or guarantees under this contract or included bonds.

The contractor shall indemnify the Department, its officers, and employees from any loss of any kind, including loss of funding, resulting from the failure of any of its subcontractors to comply with the terms of this contract. Any such indemnification will be in addition to, if applicable, the terms of the Required Contract Provisions For DBE (or SBE) Participation In Federal Aid Construction Contracts.

Any failure by the contractor to comply with the Required Contract Provisions For DBE Participation In Federal Aid Construction Contracts may result, at the discretion of the Department, in a reduction of payment up to the full federal participation in said payment for any item(s) of affected work, whether or not the work itself is acceptable. Such reduction may not be applied to the payment of a DBE unless the DBE is the proximate cause of said reduction.

A subcontractor shall not further subcontract to a third party any portion of its authorized work, including work sublet to an authorized

Disadvantaged Business Enterprise but excluding acquisition of materials, without prior written consent from the Department's Compliance Program and Construction Division. If consent is given, the contractor will then be required to submit a OMF – 1A, Request to Sublet form to the Compliance section.

**108.02 COMMENCEMENT OF WORK.** The “Notice to Proceed” will stipulate the date on which the contractor shall begin work, which date shall be the beginning of contract time charges.

**108.03 CONSTRUCTION PROGRESS SCHEDULE.** Prior to or at the preconstruction conference and before beginning work on the project, the contractor shall submit to the project engineer a Construction Progress Schedule giving a satisfactory schedule of operations that provides for completion of the work within the contract time. This schedule shall be on the prescribed bar graph form. The contractor shall have copies of the schedule available at the preconstruction conference.

If the contractor's operations are affected by changes in the plans or amount of work, or if the contractor has failed to comply with the approved schedule, or if requested by the engineer, the contractor shall submit a revised Construction Progress Schedule for approval. This revised schedule shall show how the contractor proposes to prosecute the balance of the work. If a revised schedule has been requested by the engineer, the contractor shall submit the revised schedule within 14 calendar days after the date of request or progress payments may be withheld.

The approved Construction Progress Schedule will be used as the basis of establishing the controlling item of work, charging contract time and as a check on the progress of the work. The Construction Progress Schedule shall show only one controlling item of work for each contract day. If the Construction Progress Schedule has not been approved prior to the issuance of the Notice to Proceed, the engineer will establish the controlling work item and charge contract time accordingly.

**108.04 PROSECUTION OF WORK.**

**108.04.1 General:** The contractor shall provide sufficient materials, equipment, and labor to complete the project in accordance with the plans and specifications within the contract time. If the completed work is behind the approved progress schedule, the contractor shall take immediate steps to restore satisfactory progress and shall not transfer equipment or forces from uncompleted work without prior notice to, and approval of, the

engineer. Each item of work shall be prosecuted to completion without delay. If prosecution of the work is discontinued for five contract days, the contractor shall give the engineer written notice at least 24 hours before resuming operations.

**108.04.2 Progress and Disqualification:** The contractor's progress will be determined monthly at the time of each partial estimate, and will be based on the total amount earned by the contractor as reflected by the partial estimate. If the contractor's progress is more than 20 percent behind the elapsed contract time, the contractor may be notified that he is not prosecuting the work in an acceptable manner. If requested by the Department, the contractor must meet with and provide the project engineer with an acceptable written plan which details how the contractor will regain lost progress and prosecute the remaining work.

When a contractor has only one project with the Department, the contractor shall be disqualified once contract time has expired and the project is less than 90% complete. The contractor shall then remain disqualified until the project has been completed.

When a contractor has multiple projects with the Department, a contractor shall be immediately disqualified when:

(a) its progress on one project is 50 percent or more behind the elapsed contract time. In such case, the contractor shall remain disqualified until progress is within 10 percent of the elapsed contract time. Or,

(b) on two or more projects, contract time has expired and at least two such projects are less than 90% complete. The contractor shall remain disqualified until only one of the overdue projects remain incomplete, and it has achieved final acceptance of the other project(s).

Should the surety or the Department take over prosecution of a project, the contractor shall remain disqualified for a period of one year from Final Acceptance of the project, unless the contractor is debarred.

A contractor may also be disqualified for other causes as provided elsewhere in the contract. During the period of disqualification, except as provided elsewhere, the contractor will not be permitted to bid on Department contracts nor be approved as a subcontractor on Department projects. Any bid submitted by the contractor during the period of disqualification will not be considered and will be ruled irregular.

**108.04.3 Disqualification Review Board:** After disqualification, the contractor may submit a written appeal to the Chief Engineer. The written appeal shall be submitted within 7 days, excluding weekends and holidays, after issuance of written notice of disqualification and the contractor may either request a meeting with the review board or that the

review board consider a written appeal only. A meeting of the review board will be scheduled within 5 days, excluding weekends and holidays, after receipt of appeal.

The Department's review board will be composed of the Chief Engineer, or his designee, and five other members appointed by the Secretary. The Chief Engineer, or his designee, and two other members will constitute a quorum.

After all pertinent information has been considered, the contractor will be notified of the decision of the review board in writing within 5 days, excluding weekends and holidays. The decision of the review board will not operate as a waiver by the Department of its rights concerning the assessment of stipulated damages as specified under 108.08.

When the Department of Transportation and Development is not the contracting agency on a project, the contracting agency will make any disqualification determination and the contractor shall submit its appeal to the appropriate agency representative for that agency to address. The contracting agency will request that the Department concur with their decision prior to notifying the Contractor in writing. The DOTD's concurrence is advisory and will not make the DOTD a party to the contracting agency's construction contract.

**108.05 LIMITATION OF OPERATIONS.** The contractor shall conduct the work in such manner and sequence to assure the least interference with traffic. The contractor shall have due regard to the location of detours and provisions for handling traffic. The contractor shall not begin new work to the prejudice of work already started. The engineer may require the contractor 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.

**108.06 LABOR, MEANS, METHODS, AND EQUIPMENT.** The contractor shall employ sufficient labor and equipment to prosecute the work to completion in accordance with the contract.

Workers shall have sufficient skill and experience to properly perform the work.

Any representative of the contractor or subcontractor who, in the opinion of the engineer, does not perform in a skillful manner or is disorderly shall be, upon written request, immediately removed by the contractor or subcontractor. A person removed shall not return to the work without written approval. If the contractor fails to remove such a person or

fails to furnish suitable and sufficient personnel to properly prosecute the work, the engineer may suspend the work by written notice.

Equipment proposed for use in the work shall 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 shall result from the use of equipment.

When means, methods, and equipment are not specified, the contractor may use any means, methods, or equipment that will accomplish the work in conformity with the contract.

The contractor may request permission to use a means, method, or type of equipment other than specified in the contract. The request shall comply with 105.19.4 and shall include a description of the means, methods, and equipment proposed and the reasons for requesting the change. If approval is given, it will be on the condition that the contractor will be responsible for producing work in conformity with contract requirements. If, after trial use of the substituted means, methods, or equipment, the engineer determines that the work produced does not meet contract requirements, the contractor shall discontinue use of the substituted means, method, or equipment and shall complete the work with the specified means, methods, and equipment. The contractor 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 for pay items involved nor in contract time as a result of authorizing a change in means, methods, or equipment.

**108.07 DETERMINATION AND EXTENSION OF CONTRACT TIME.** The number of days allowed for completion of the work will be stated in the contract.

When the contract time is a fixed calendar date, it shall be the date on which all work on the project shall be completed.

The contract time for the work as awarded is based on the original quantities as defined in 102.05 and includes time to procure material, equipment and an adequate labor force to complete the work. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those specified, or requires performance of extra work in accordance with 104.02 and the contractor requests additional contract time, the document authorizing or ordering alterations will show the number of additional days justified.

If the contractor finds it impossible, for reasons beyond the contractor's control, to complete the work within the contract time as specified or as extended in accordance with the provisions of this subsection, the

contractor shall, at the time the delay occurs make written request to the engineer for an extension of time setting forth therein the reasons which justify granting the request. Such written request shall conform to the requirements of EDSM III.1.1.28. If the request does not so conform, the contractor hereby agrees to and shall be deemed to have expressly waived any claim for such additional time. The contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the engineer finds that the work was delayed because of conditions beyond the control and without the fault of the contractor, the engineer may extend the contract time in such amount as conditions justify.

Upon satisfactory final inspection, daily time charges will cease.

**108.07.1 Working Day Contracts:** On working day contracts, a working day will be charged when weather or other conditions not under the control of the contractor will permit construction operations to proceed for at least 5 continuous hours of the day or 65 percent of the normal work day, whichever is greater, with the normal working force engaged in performing the controlling item of work.

Should the contractor prepare to begin work on any day in which inclement weather, or the conditions resulting from the weather, prevent work from beginning at the usual starting time, and the crew is dismissed as a result, the contractor will not be charged for a working day whether or not conditions change during the day and the rest of the day becomes suitable for work.

No working days will be charged for the following days:

1. Saturdays and Sundays when no work is performed.
2. State recognized holidays that are defined as regular legal holidays or special holidays that are proclaimed by the Governor or fixed by the Legislature on which no work is performed.
3. Days on which delays, attributable solely to the Department or other governmental agencies, prevent contractor from proceeding with the controlling item of work at time of delay.
4. Days on which delays are attributable to the direct effect of strikes, riots or civil commotions.

When the contract time is on a working day basis, the engineer will furnish the contractor a monthly statement showing the number of days charged to the contract for the preceding month and the number of days specified for completion of the contract. The contractor will be allowed 14 calendar days in which to file a written protest setting forth in what respect said monthly statement is incorrect; otherwise, the contractor hereby agrees to abide by the monthly statement and shall be deemed under the contract

to have waived any claim that the monthly statement is incorrect.

If a protest is filed by the contractor, the Department will conduct such reviews and investigations as required to rule on the protest within 30 calendar days from the date the statement is furnished the contractor. The number of days charged as listed, or revised within the allotted time, shall become final at the end of this 30-day period, subject to change only through the claims process.

**108.07.2 Calendar Day Contracts:** When the contract time is on a calendar day basis, it shall consist of the number of calendar days stated in the contract beginning with the date stipulated in the Notice to Proceed. All calendar days will be charged contract time, including days elapsing between the effective dates of written orders to suspend work and to resume work for suspensions not the fault of the contractor. Contract time extensions will be granted for any delays for which the Department is responsible.

**108.07.3 Excusable, Non-Compensable Delays:** Excusable non-compensable delays are delays that are not the contractor's or the Department's fault or responsibility. The engineer will not grant additional payment for excusable, non-compensable delays, but will grant additional contract time.

**108.07.4 Excusable, Compensable Delays:** Excusable, compensable delays are delays that are not the contractor's fault or responsibility, but are the Department's fault or responsibility or determined by judicial proceeding to be the Department's sole responsibility or are the fault and responsibility of a local government. The contractor will be granted additional contract time and payment in accordance with 104.02, 105.18, and 109.04.

**108.07.5 Non-Excusable Delays:** Non-excusable delays are delays that are the contractor's fault or responsibility. All non-excusable delays are non-compensable.

**108.07.6 Concurrent Delays:** Concurrent delays are separate critical delays that occur at the same time. When a non-compensable delay is concurrent with a compensable delay, the contractor is entitled to additional time but not additional payment.

**108.08 FAILURE TO COMPLETE ON TIME.** For each calendar day including, but not limited to, adverse weather days and holidays that the work remains incomplete after expiration of the contract time, the sum specified in Table 108-1 will be deducted from payments for the work, not as a penalty but as stipulated damages, except for days DOTD directs in

writing as no work days.

Permitting the contractor to continue work after expiration of the contract time will not operate as a waiver by the Department of its rights under the contract. Contractor accepts, expressly assents, and does hereby confess judgment in favor of DOTD as to the daily charge amount set forth in Table 108-1.

Stipulated damages will be determined by the project's Original Contract Amount and the Average Daily Traffic (ADT) for the project's location. The ADT will be the traffic count as shown on the plans and the Original Contract Amount will be equal to the bid amount. The sum of Daily Charges (A) and (B) shown in Table 108-1 will be the assessed daily stipulated damages for each calendar day after expiration of the contract time.

**Table 108-1  
Stipulated Damages**

Original Contract Amount	Daily Charge (A)
Million Dollars	Dollars
0 - 1	\$ 500
>1 - 5	1,000
>5 - 10	2,000
>10 - 15	4,000
>15 - 20	8,000
> 20	10,000

Traffic Volume	Daily Charge (B)
ADT x 1000	Dollars
0 - 10	\$ 500
>10 - 20	1,000
>20 - 30	2,000
>30 - 40	4,000
>40 - 50	8,000
>50	10,000

The contractor will automatically be subject to an assessment of stipulated damages by the expiration of contract time on the project. At any time stipulated damages are assessed, such damages shall be assessed continuously until the cause of such assessment ends, regardless of intervening circumstances.

The amount of assessed stipulated damages will be deducted from payments for the work under the contract or from any payments on any other contract the contractor has with the Department. The contractor hereby waives any requirement of written notice of default prior to any deduction for stipulated damages from any payments. The contractor and the surety shall be solidarily liable for stipulated damages in excess of any remaining amounts due the contractor under the contract.

**108.09 DEFAULT OF CONTRACT.** The contractor shall be in default, if the contractor:

1. Fails to complete the project within the contract time,
2. Becomes insolvent or a petition is filed in the Bankruptcy Courts of the United States under Chapters 7 or 13 of the Bankruptcy Code naming the contractor as 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,
3. Allows any final judgment to stand unsatisfied for a period of 14 calendar days,
4. Makes an assignment or arranges for performance by others of all or part of the performance of the contract, other than by subletting pursuant to 108.01, without written approval and consent in advance of the Department, and the surety in the case of an assignment of the entire contract,
5. Makes an assignment of contract proceeds for the benefit of one or more creditors without prior written approval and consent of the Department; any such purported assignment will not be honored without evidence of compliance with this subparagraph,
6. Discontinues prosecution of the work,
7. Fails to begin work within 10 calendar days of either the “Notice to Proceed” or end of the Assembly Period,
8. Fails to perform with sufficient workers, equipment, or materials to assure prompt completion of the work,
9. Performs the work unsuitably or neglects or refuses to remove materials, or replace or repair rejected work,
10. Fails to resume discontinued or suspended work within 10 calendar days after notice to do so,
11. Fails to maintain licenses or certifications, or to acquire permits, necessary to accomplish the work;
12. Fails to perform the work in an acceptable manner, violates any

provision in the contract, or fails to follow any federal, state or local laws pertaining to performance,

13. Fails to follow federal, state or local laws, rules and regulations concerning construction safety and health standards or permits conditions upon the site of the work which are unsanitary, hazardous or dangerous to the health or safety of the contractor's workmen or the public, or

14. Is a party to fraud.

When one or more of these default events occur and circumstances warrant, the Department may give notice to the contractor of its intent to put the contractor in default under this subsection and specify a period of time in which the contractor shall cure the deficiency.

If circumstances do not warrant an opportunity to cure, or in the event the contractor fails to timely cure a default after notice, the Department will give written notice to the contractor, with a copy to the contractor's surety, of the Department's determination that the contractor is in default for any cause specified in this subsection and direct the surety to complete the work. Such notice removes the contractor's right to proceed with the work and suspends payments to the contractor. Within thirty days of receipt of such notification, the surety shall present to the Department either a plan to assume performance of the contract and procure completion of the project, or provide the Department in writing with a reasonable response for the contractor's default. A response that fails to procure completion of the project shall not release the surety of its obligations under the performance bond as provided in the following paragraph.

If no completion plan is timely presented by the surety, or at any time if immediate action must be taken in the public interest or to protect the safety of the public or workers, the Department will take prosecution of the work out of the hands of the contractor or surety, 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 shall then be responsible for payment to the Department 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 unreasonably refused to take over the project, the surety shall 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 Department in collection of payments required by this subsection.

Nothing herein shall be construed to require or obligate the Department to suspend contract time or to release the obligation of the contractor and surety for stipulated damages in accordance with 108.08.

The costs incurred by the Department due to the contractor'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 contractor. When this expense exceeds the sum which would have been payable under the contract, the contractor and surety shall be liable and shall pay the Department the amount of such excess.

**108.10 TERMINATION OF CONTRACTOR'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 DOTD Chief Engineer. The contractor will then be released from further obligation except as set forth in the contractor's payment/performance/ retainage bonds, 104.05, 107.17, 107.23, or as otherwise provided.

**108.11 TERMINATION OF CONTRACT.**

The Department may, by written notice, terminate the contract or any portion thereof when, for reasons beyond either the Department's or contractor's control, the contractor 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:

1. Executive orders of the President relating to prosecution of war or national defense;
2. National emergency which creates a serious shortage of materials;
3. Orders from duly constituted authorities relating to energy conservation; and
4. 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 contractor.

When a contract, or a portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the number of units or items of work completed at the contract unit price, or as mutually agreed for items of work partially completed or not started. No claim for loss of anticipated profits will be considered.

Reimbursement for organization of the work, and 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 contractor for the work that are not incorporated in the work shall, at the option of the contractor, be purchased by the Department at actual cost as shown by receipted bills and actual cost records at such points of delivery as designated.

Termination of a contract or a portion, thereof, shall not relieve the contractor of responsibility for the completed work, nor shall it relieve the surety of obligation for any just claim arising from the work performed.

**108.12 TERMINATION OF CONTRACT FOR CONVENIENCE.** The Department may, by written notice, terminate the contract or any portion thereof for the Department's convenience and without cause. Upon receipt of written notice from the Department of such termination, the contractor shall cease operations as directed by the Department in the notice and complete work not terminated; take actions necessary, or those that the Department may direct, for the protection and preservation of the Work; place no further subcontracts or order materials, services, or facilities, except as approved by the Department to complete any remaining portion of the contract; terminate all existing subcontracts and purchase orders to the extent they relate to terminated work; deliver to the Department any unfabricated or partially fabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated; coordinate a time and date with the engineer to inventory materials obtained but not yet used for the project; deliver all completed or partially completed plans, drawings, information, and other property required to be furnished to the Department if the contract had been completed.

In case of such termination for the Department's convenience, the contractor shall be entitled to receive payment for (1) the quantity of units or items of work completed at the contract unit price, and, as mutually agreed, for items of work partially completed, and (2) reasonable direct labor costs and non-labor cash expenditures incurred for unplanned termination related activities described above.

The Department will not be liable for destroyed, stolen, or damaged material; unliquidated advance or other payments to third parties under the terminated portion of the contract; or the agreed upon price or the proceeds from the sale of any materials, supplies, or other items acquired and sold, or retained, by the contractor. In addition, the Department will deduct from any termination payment any claim the Department has against the contractor under the Contract.

Acceptable materials obtained or ordered by the contractor for the work that are not incorporated in the work shall, at the option of the contractor, be purchased by the Department at actual cost as shown by receipted bills and actual cost records at such points of delivery as designated.

Termination of a contract or a portion thereof, shall not relieve the contractor of responsibility for the work completed, nor shall it relieve the surety of any obligation for any just claim arising from the work performed.

## **Section 109**

### **Measurement and Payment**

**109.01 MEASUREMENT OF QUANTITIES.** All work completed under the contract will be measured according to United States standard measure. The International System of Units, generally known as SI or metric units will be used only if quality control or acceptance testing must be conducted under those standards. Standard practice used in these specifications will be to show values in the United States standard measure units, except for Part X, Materials, where both systems of measure are shown. Applicable units of measure will be defined in the table or figure titles. The terms weight and mass can be used interchangeably in these specifications if SI units are used.

The engineer shall be the judge of the accuracy of measurements, or approximations made in lieu of accurate determinations and these decisions shall be binding upon both parties.

When project specifications or plans indicate that quantities for certain pay items have been computed with sufficient accuracy for payment, the pay quantities for those items will be the design quantities subject to the following adjustments. Design quantities will be adjusted if the engineer makes changes to fit field conditions, if plan errors are proven, or if design changes are necessary.

When measurement of excavation and embankment is based on a cubic yard, the design quantities will be verified or revised in accordance with Departmental policy.

Longitudinal measurements for area computations will be made horizontally. Transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing.

Structures will be measured according to neat lines shown on the plans or as directed.

Items measured by the linear foot, such as pipe culverts, underdrains, etc., will be measured parallel to the foundation upon which such structures are placed.

In computing volumes of excavation, the average end area method or other acceptable methods will be used.

Thickness of plates and galvanized sheet metal used in the manufacture of corrugated metal pipe and metal plate pipe culverts and arches will be measured in decimal fractions of inches.

When United States standard units are used, the pound or the ton will be

the standard units of weight. The term “ton,” in the United States standard, will mean the short ton of 2,000 pounds avoirdupois. Materials measured or proportioned by weight shall be weighed on approved scales by qualified personnel at designated locations. If material is shipped by rail, the car weight may be accepted provided the weight of material only will be paid for; however, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid by measured weight shall be weighed empty at such times as directed; and each truck shall bear a plainly legible identification mark.

Materials specified to be measured by volume in hauling vehicles shall be hauled in approved vehicles and will be measured therein at the point of delivery on the project. Vehicles may be of any acceptable size or type, provided the body is of such shape that the volume can be readily and accurately determined. Vehicles shall be loaded to at least a predetermined permanently fixed mark, which defines a known volume, upon arrival at the point of delivery. Vehicles will be measured in increments of 0.5 cubic yard, except that when tailgate spreader boxes are used to place aggregate materials for asphalt surface treatment, the volume of the spreader box will be added to the volume of the vehicle. When materials are measured by weight and converted to volume for payment, conversion will be made to the nearest 0.1 cubic yard.

Asphalt materials will be measured by the gallon or by the ton. When specified, volumes of liquid asphalt materials will be converted to gallons at 60°F (liters at 15°C) in accordance with DOTD TR 321.

Net certified scale weights or weights based on certified volumes (in the case of shipments by rail, truck or other transport) will be used as a basis of measurement, subject to correction when material has been lost in transit, wasted or otherwise not incorporated in the work.

When asphalt materials are shipped by truck or transport, net certified weights or volume, subject to correction for loss or foaming, may be used for computing quantities. Portland cement will be measured by the ton.

Timber will be measured by the thousand feet board measure (MFBM) incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the length of each piece.

The terms “lump sum, each, or unit” when used as a unit of measure for payment will mean complete payment for the work described in the contract.

When a complete structure or structural unit is specified as the unit of measurement, the unit of measurement will include the necessary fittings and accessories. Incidental work associated with the structure or structural

unit will not be measured for payment.

When standard manufactured items are specified, and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

When conversion is necessary from United States standard units to International System of Units (SI units) or from SI units to U. S. Standard units the guidelines, terminology, conversion factors, and rules for rounding in the Standard Metric Practice Guide, AASHTO R1 will be used.

**109.02 SCOPE OF PAYMENT.** The contractor shall receive and accept compensation as provided in the contract as full payment for furnishing materials and for performing work in an acceptable manner and for all risk, loss, damage or expense arising out of prosecution of the work, subject to the provisions of 107.23, 108.08, and 108.09. All work on Pay Items must be subject to inspection by Department personnel. Any work performed without being subject to inspection by Department personnel may not be measured or paid.

Contractor accepts the summation of the product of the unit prices bid on the schedule of items, or as altered by change order, multiplied by the actual quantity placed or performed for each such item per its unit measure, as audited by DOTD, as full, complete, and final compensation under the contract for all work, labor, materials, and other direct costs; indirect expenses and overhead; and any attained profit. Only those quantities for each item necessary to complete the project, as adjusted by any change orders approved by the DOTD Chief Engineer or designee, will be compensated.

When the "Payment" clause in the specifications relating to any unit price in the Schedule of Items requires that the said unit price be considered compensation for certain work, such work will not be measured nor payment made under any other pay item.

**109.03 COMPENSATION FOR ALTERED QUANTITIES.** When contract quantities are altered in accordance with 104.02, or when final quantities vary for other reasons from the quantities in the Schedule of Items, the contractor shall accept as payment in full, payment at the contract unit prices for the accepted quantities of work done. No allowance, except as provided hereinafter, will be made for any increased expense, loss of expected reimbursement or loss of anticipated profits

claimed by the contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the pay item expenses of the contractor for labor, materials, equipment, subcontractor costs, profits and overhead and subsequent loss of expected reimbursements therefor or for other cause.

When alterations of quantities are caused by alteration in the plans, and such alterations affect the methods or sequence of construction, an allowance will be made, either for or against the contractor, in such amounts and basis as agreed to in advance of the performance of the work. The change order authorizing or ordering the work shall show how the allowance was derived. Except when otherwise authorized by the Chief Engineer, such derivation shall show, as a minimum, breakdown of costs as detailed in 109.04.3.1 through 109.04.3.7, except that projected costs rather than actual costs will be used, along with the mark-up provided in 109.04, as full and final compensation for all related jobsite and home office overhead, and any profit.

When alterations in quantities result in an increase or decrease of more than 25 percent in the contract quantity as awarded on any "Major Item" of the contract, a supplemental agreement to the contract may be executed between the Department and the contractor at the request of either party, prior to performance of any work in excess of 25 percent of the contract quantity. A "Major Item" is an item included in the contract as awarded with a total cost equal to or greater than 10 percent of the original total contract amount.

Any adjustment in unit price will be made on only that portion of the Major Item exceeding 125 percent of the original item quantity. In the case of a decrease of a Major Item by 25 percent or more, the entire remaining portion of the item quantity will be adjusted. The actual costs shall be itemized in accordance with 109.04.03.1 through 109.04.3.7, except that projected costs may be used in case of an increase in quantity. When a supplemental agreement or change order is executed for an adjustment in unit price, the consent of the contractor's surety shall be obtained by the contractor and furnished to the engineer.

A "Minor Item" is an item included in the contract as awarded with a total cost of less than 10 percent of the original total contract amount. A minor item shall become a major item if it is increased by such an amount that its total cost is equal to or greater than 10 percent of the original total contract amount. If a minor item is increased to the extent that it becomes a major item, only that part of the item that exceeds 12.5 percent of the original total contract amount will be considered on any change order

and/or special agreement. The agreement shall be executed prior to performance of any work in excess of 12.5 percent of the contract amount. The requirements of the special agreement shall be as described above for increases in major items. Except as provided in this paragraph, if a minor item is increased or decreased, no adjustment will be made in its unit price.

**109.04 COMPENSATION FOR ALTERATIONS OF THE CONTRACT.** Payment for work performed in accordance with 104.02 and 105.19 will first be made at the contract's established unit prices. If unit prices are not applicable, the second basis of payment will be negotiated prices agreed to by change order prior to the start of the work. If an acceptable negotiated price cannot be established prior to the work being performed, the Department may require the contractor to perform the work on a "force account" basis.

**109.04.1 Unit Prices:** When payments are made at the contract's established unit prices, and the work requires a material change in construction method or sequence, adjustment to the unit prices for or against the contractor shall be made in accordance with 104.02 and 109.03.

**109.04.2. Negotiated Prices:** The Department's objective is to compensate the contractor using the same pricing formulas established by the contractor in determining the original bid contract prices. Therefore, reasonable rates for labor burden, company owned equipment internal cost recovery rates, jobsite overhead items and rates, home office overhead and profit mark-up on direct costs, and other pricing components established by the contractor at the time the original contract bid prices were determined will also be used in determining the negotiated prices for the change order work. The change order authorizing the work shall include a detail cost breakdown showing direct labor, materials, equipment, and subcontractor costs, as well as each of the pricing components listed above.

In order to facilitate the identification of the original contract bid prices and the detailed cost breakdown used in bid preparation, the contractor is encouraged to place their original bid estimate preparation documents, working papers, and notes in "escrow" upon executing the awarded contract and provide the Department proof of such placement in accordance with 103.06. If this action is undertaken, the contractor is required to prepare the "Summary of Key Bid Pricing Formula Elements" form, which is to be included with the escrowed bid estimate work papers and notes as its first summary document. When the contractor and the Department choose to utilize Negotiated Prices to resolve change order amounts for extra work, claims for additional compensation, or other

contract price modifications, the escrowed documents and information will be open to department review to verify the original bid estimate pricing formulas and information, and then used to price the change order. The specific escrow procedures, documents to be escrowed, and the “Summary of Key Bid Pricing Formula Elements” form shall conform with the requirements of the Department.

**109.04.3. Force Account:** When “force account” is the method of payment, the contractor shall be paid the direct cost of the work as determined and documented in 109.04.3.1 through 109.04.3.7 below. Jobsite and home office overhead indirect expenses, and profit for all parties shall be considered fully compensated by a 15 percent mark-up on allowable direct cost items described in 109.04.3.1 through 109.04.3.4 below, and the mark-up on direct cost for the subcontractor and contractor described in 109.04.3.5 below. The Department may consider additional reimbursement to the contractor for indirect fixed jobsite overhead costs for excusable compensable delays as defined in 108.07.4 when the change order results in extension of the project’s critical work path and the 15 percent mark-up on direct costs is deemed by the Department to be insufficient.

**109.04.3.1 Direct Labor:** For labor and working foremen in direct charge of operations, the contractor shall receive the wage rates agreed on in writing before beginning work for each hour that said labor and foremen are engaged in such work. Jobsite and home office supervisory personnel shall not be included as direct labor.

The contractor shall receive the actual costs paid to, or in behalf of, workers for subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits when such amounts are required by collective bargaining agreement or other employment contract applicable to the classes of labor employed on the work, but limited to a maximum daily rate for subsistence and travel allowances. This maximum shall be agreed upon prior to the contractor incurring such charges.

**109.04.3.2 Direct Materials:** For materials accepted by the engineer and used, the contractor shall receive the actual cost of such materials delivered to the work, including transportation charges and sales taxes if applicable.

**109.04.3.3 Equipment:** For authorized machinery or special equipment the contractor shall receive the rental rates agreed on in writing before such work is begun. For equipment rented from independent outside sources, the contractor will be reimbursed the reasonable actual cost as shown on paid rental invoices. For company owned equipment, the

contractor will be reimbursed his internal cost recovery equipment charge rate consistent with his original bid cost estimates. The Department's Engineering Directives and Standards Manual, EDSM III.1.1.27, entitled Equipment Rental Rates, provides additional guidance concerning allowable equipment rental rates and their application. If the contractor chooses to use a rental rate guide book instead of his internal cost recovery rates to establish rental rates for company owned equipment, adjustments to the allowable type of equipment and hours per day must be made as described in the EDSM. In addition, no 15 percent mark-up on equipment direct cost for jobsite and home office overhead expenses and profit will be allowed if the contractor chooses to use rental rate guide book prices instead of his internal cost recovery rates.

**109.04.3.4 Bond, Insurance and Tax:** For property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, social security taxes, and bond costs on force account work, the contractor shall receive the actual cost thereof. The contractor shall furnish satisfactory evidence of the rates paid for such bond, insurance and tax.

**109.04.3.5 Subcontractor Costs:** For change order work performed by an approved subcontractor, the subcontractor shall receive the subcontractor's actual and reasonable allowable direct cost of such work as described in 109.04.3.1 through 109.04.3.4 above plus a 15 percent mark-up for the subcontractor's indirect jobsite and home office overhead expenses and profit. In addition, the contractor will be paid a 10 percent mark-up on the subcontractor's total direct and indirect costs, and profit for general supervision and sequencing of the change order work.

**109.04.3.6 Non-allowable Costs:** No additional contractor cost reimbursement will be made for general superintendence, small tools or craft specific tool allowances, or other direct or indirect costs not specifically included in 109.04.3.1 through 109.04.3.5 above.

**109.04.3.7 Statements:** No payment will be made for force account work until the contractor has furnished the engineer with duplicate itemized statements of the cost of such work detailed as follows:

1. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
2. Designations, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices, and extensions.
4. Transportation of materials.
5. Cost of property damage, liability, and workmen's compensation

insurance premiums, unemployment insurance contributions, social security taxes, and bond costs.

The contractor's representative and the engineer shall compare records of the cost of work done as ordered on a force account basis. Such comparison shall be made daily. Statements shall be accompanied by invoices for materials used and transportation charges. If materials used on force account work are not purchased for such work, but are taken from the contractor's stock, in lieu of invoices, the contractor shall furnish an itemized list of such materials showing that the quantity claimed was actually used, and that the price and transportation costs claimed represent the actual cost to the contractor. Invoices shall be accompanied by the contractor's notarized statement that payment in full has been made for the materials.

**109.05 PARTIAL PAYMENTS.** Provided the work is prosecuted in accordance with the provisions of the contract and with satisfactory progress, the engineer will make the first progress estimate within 2 months from the date indicated to begin work in the Notice to Proceed. The Department will determine the progress estimate date. Each successive progress estimate will be made on this same date of each month thereafter until completion of the contract. Each progress estimate will be an approximation of the value of work performed up to the date the estimate is made. Prior to the progress estimate date the contractor will be allowed to review the progress estimate with the engineer.

Monthly estimates will be approximate and subject to correction in subsequent estimates.

If an election has been made to have retainage withheld from contract payments due the contractor in accordance with 103.05, the Department will deduct from the monthly payment estimate an amount equal to five percent of the monthly payment estimate. In addition should defective work or material be discovered or reasonable doubt arise as to the integrity of any part of the work prior to final acceptance and payment, an amount will be deducted from subsequent estimates equal in value to the defective or questioned work. Payment for this work will not be included in subsequent estimates until defects have been remedied or causes for doubt removed.

Payment of the monthly estimate shall not be taken as an admission that the work is done or that its quality is satisfactory, nor as a release of the contractor from the responsibility for any portion thereof, but the whole work and all particulars relating thereto shall be subject to revision and

adjustment by the engineer at the time of final acceptance, or at any time thereafter pursuant to contract provisions including, but not limited to, the Department's audit of the project.

#### **109.06 PAYMENT FOR STOCKPILED OR STORED MATERIAL.**

**109.06.1 General:** Payment for stockpiled or stored material will be considered only for materials anticipated to be stored for periods in excess of 30 calendar days. When approved, advance payments may be made for fabricated or natural materials that are to be incorporated in the project when stockpiled materials are stored on the project or in a dedicated stockpile at an approved site outside the limits of the project within the State of Louisiana. Payments shall be limited to durable materials described herein and shall represent a significant portion of the project cost. Perishable articles and small warehouse items are not included. These materials shall meet the requirements of the specifications. Payment for stockpiled or stored materials will not constitute acceptance. It shall be the contractor's responsibility to protect the material from damage while in storage.

Payment for materials stored outside the State of Louisiana will be considered, subject to approval of the Chief Engineer. This will generally be limited to adjacent states, except in cases where it will be in the best interest of the Department to pay for these materials. If payment for stockpiled materials outside the State will affect the bid price for an item, the contractor shall submit a written request to the Chief Engineer prior to bidding.

Payment may be made for the invoice price for the materials, which shall not exceed 85 percent of the contract price for the items where the materials are to be incorporated. For fabricated materials purchased from commercial sources and delivered to approved storage, partial payment may be the invoice price plus freight and taxes. The quantity of material for payment will not exceed the total estimated quantity required to complete the project.

The amounts advanced on stockpiled or stored materials will be recovered by the Department through deductions made on payments as the materials are incorporated in the work.

Partial payment for stockpiled materials shall be requested by the contractor in writing and the following documents shall be furnished:

1. A copy of the invoices from supplier or manufacturer verifying the cost and quantity of material.
2. If storage is on private property, a copy of the lease or agreement

granting the Department right of entry to property.

Within 30 calendar days after payment by the Department, the contractor shall submit a certified copy of invoices from the supplier for each item for which payment has been made. All such invoices submitted shall state the amount received by the supplier as payment in full for the materials. If this certification of payment is not presented within the 30-day period, the advanced payment will be deducted from future progress payments.

Title and ownership of materials for which advancements have been made by the Department shall not vest in the Department until such materials are incorporated in the work and the work accepted by the Department. The making of advancements by the Department shall not release the contractor from the responsibility for any portion thereof.

**109.06.2 Fabricated or Manufactured Materials:** Fabricated or manufactured materials may include but is not limited to the following:

Structural steel, fabricated structural steel items, steel piling; reinforcing steel; electrical equipment; mechanical equipment; precast concrete items; structural timber; timber piling; fencing and guard rail materials; fabricated sign structures and sign panels.

**109.06.3 Other Material:** These materials will normally be large quantities of natural or manufactured aggregate. The contractor's request for payment of stockpiled natural material shall give a detailed description of the material, its intended use and location of the site. This material will be inspected and approved after placement in stockpiles on the project. Approval of the stockpiled material will be in writing.

**109.07 ADJUSTMENT FOR CHANGES IN COMMON CARRIER RATES.** It is agreed that the accepted proposal for the work is based on common carrier rates on file with the Surface Transportation Board (STB) or with a corresponding intrastate commission or body in effect on the date of opening of bids. Payments to the contractor will be adjusted upon request to compensate for increases in cost due to changes in common carrier rates becoming effective after the date of opening of bids and before expiration of the contract time. The adjustment shall be limited to an amount determined as follows.

The adjustment shall be the product of the increase in common carrier rates multiplied by the net quantity of material shipped at the new rates to the work and incorporated therein, all as shown by receipted common carrier bills.

If the freight cost by common carrier to the job site is included in the quotation by the supplier to the contractor, in addition to receipted freight

bills, the supplier shall furnish on each invoice a breakdown showing the freight rate, quantity of material and total freight cost. The contractor shall furnish the supplier's written quotation made prior to the date of bid opening and a notarized statement that the increased freight rate has been paid.

The contractor's request for payment adjustment due to increased common carrier rates shall be submitted as soon as possible after shipments to the project have been completed. Only one request for such payment adjustment shall be made for each project, and any payment adjustment due the contractor for increased common carrier rates will be included in the final estimate for the project. No request for such payment adjustment will be considered unless submitted to the Department, with the required receipted bills and forms, within 30 calendar days after final acceptance.

**109.08 ACCEPTANCE AND FINAL PAYMENT.** Upon acceptance of the work, the Chief Engineer will execute a certificate that the work provided for in the contract has been completed and accepted under the terms of the contract. The Certificate of Acceptance will be recorded in the office of the Recorder of Mortgages of the parish in which the work has been done. The entire balance due the contractor, including the amounts withheld as retainage in accordance with 103.05, will be paid to the contractor after the Department has determined that quantities shown on the final estimate are correct; however, before payment of the final estimate, the contractor shall submit to the Department a certificate from the Recorder of Mortgages of the parish in which the work has been done to the effect that there are no claims or liens recorded against the contract. The date of the certificate shall not be prior to the expiration of 45 calendar days, but shall be prior to the expiration of 90 calendar days, after the Certificate of Acceptance was recorded in the Mortgage Office.

Prior to payment of the final estimate, all releases or waivers on buildings, wells, utilities and railroads shall be furnished as well as any maintenance bonds, certificates from Health Department, tracings, brochures or other items required by the contract.

Payment of the final estimate shall not release the contractor or sureties from liability as provided in the Contract and contract documents or for any fraud in construction, or in obtaining progress payments, or in payment for materials, labor or other supplies or services for the work, or for any claims for damages, loss or injury sustained by any person through the fault, negligence or conduct of the contractor or any of its employees, agents, subcontractors, suppliers or representatives.