

## Section 104—Scope of Work

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### 104.01 Intent of Contract

The intent of the Contract is to provide for the construction and completion in every detail of The Work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete The Work in accordance with the Plans, Specifications, and terms of the Contract.

### 104.02 Special Work

Should any construction or conditions not thoroughly or satisfactorily stipulated and set forth by the Standard Specifications and Supplements thereto be anticipated on any proposed work, Special Provisions for such work will be included in the Proposal and the Contract as a part thereof. Should any such Special Provisions contain requirements in conflict with the *Standard Specifications* and Supplements thereto, the Special Provisions will govern.

### 104.03 Alteration of Plans or Character of Work

#### A. Authority to Make Changes

The Department reserves the right to make, at any time during the progress of The Work, such increases or decreases in quantities and such alterations in the details of construction, including alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable. Such increases or decreases and alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform The Work as altered, the same as if it had been a part of the original Contract.

Whenever an alteration in character of Work involves a substantial change in the nature of the design or in the type of construction or materially increases or decreases the cost of performance, a Supplemental Agreement acceptable to both parties shall be executed before work is started on such alteration, except that in the absence of a Supplemental Agreement acceptable to both parties, the Engineer may direct that the Work be done by Force Account. Any Force Account Agreement shall be in writing, specifying the terms of payment, signed by the State Construction Engineer and agreed to in writing by the Contractor.

All work shall be performed as directed and in accordance with the Specifications.

#### B. No Waiver of Contract

Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work as done.

#### C. Certain Items Not Limited

The quantities of all types of excavation, embankment when a Pay Item, perforated underdrain pipe, ditch paving, subgrade treatment materials, stabilizers, extra depth of concrete including its reinforcement, piling, guard rail, asphaltic concrete leveling, erosion control items, traffic control items, slope paving, bridge rip-rap, filter fabric, or any other items that cannot conveniently be determined accurately until after the Work is in progress, and any increase or decrease in these quantities, whatever the amount, will be considered normal overruns or underruns. The Engineer has unlimited authority to increase or decrease these quantities.

#### D. Changes in Other Quantities

The Engineer may increase or decrease the quantities of any and all other Pay Items, without changing the Unit Prices Bid, provided that the sum total of such changes, exclusive of changes in those items covered in [Subsection 104.03.C](#), does not increase or decrease the original Contract amount by more than 20 percent.

#### E. Changes to Original Length or Cost of Project

The Engineer has the authority to extend or reduce the total length or total cost of the Project by as much as 20 percent. The provisions of [Subsection 104.03.C](#), covering overruns or underruns of certain Pay Items apply also to overruns or

underruns in quantities resulting from an extension or reduction in the length of the Project. If the Project is extended in length, an Extension Agreement will be executed. If the Extension Agreement calls for Pay Items already in the Contract, the Unit Prices for such Items will not be changed except as provided in [Subsections 104.03.A, 104.03.B and 104.03.D](#). New work for which no Unit Prices have been Bid will be paid for as Extra Work as defined in [Subsection 104.04](#).

#### **F. Railroad Grade Separation Structures**

Changes in design or construction features of railroad grade separation structures must be submitted to the Engineer of the railroad for approval. The Department will diligently expedite all correspondence with the railroad officials, but will not be responsible to the Contractor for any delay to the Contractor's work resulting from delay in securing the necessary approval. The Engineer will give due consideration to such delays in determining the time for completion of the Contract.

### **104.04 Extra Work**

The Contractor shall perform unforeseen work, for which there is no price included in the Contract, whenever it is necessary or desirable in order to complete fully the work as contemplated. Such work shall be performed in accordance with the Specifications and as directed, and will be paid for as provided in [Subsection 109.05](#).

### **104.05 Maintenance During Construction**

#### **A. Contractor Maintenance**

The Contractor shall maintain the project from the beginning of construction operations until maintenance acceptance or final acceptance of the project, except as otherwise provided in [Subsection 104.05.B](#). This maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment and forces to the end that the roadway or structures are kept in satisfactory condition at all times. This includes signing, pavement markings, and traffic control devices as outlined in the Manual on Uniform Traffic Control Devices, [Section 150](#), Project Plans and Special Provisions for Traffic Control. All existing guard rail, signs, pavement, pavement markings, bridge handrail, and other safety appurtenances shall also be maintained in a safe and satisfactory condition.

The Contractor shall not allow vegetative growth at any time to obstruct signs, delineation, traffic movements, or sight distance. The Contractor shall, at intervals not to exceed 6 months, clean up and remove litter and debris; remove all weeds from around guard rail, barrier, poles, standards, utility facilities, and other structures; and cut or trim trees, bushes, or tall grass. These requirements shall apply to all areas within the project termini and lateral limits.

For projects or segments of projects with staging which requires that traffic be maintained through the project limits during the prosecution of the Work, the Contractor shall assume all responsibility for damage to the work until either maintenance acceptance or final acceptance of the section or project.

On projects constructed with traffic relocated to an alternate roadway or projects constructed on new location, the Contractor shall be responsible for all damage to the work until the Department directs that the project be opened to traffic. At that time the Contractor will no longer be responsible for traffic related damage to the work other than that attributable to the Contractor's actions or inadequate construction. The Department may direct, however, that traffic-related damage be repaired at existing unit prices or as extra work as provided for in [Subsection 104.04](#).

All costs for maintenance of traffic shall be as provided in [Section 150](#). All other maintenance costs during construction and before the project is accepted will be included in the Contract Unit Prices and the Contractor will not be paid an additional amount.

#### **B. Maintenance of Traffic During Suspension of Work**

During any suspension of work ordered by the Engineer, the Contractor shall make passable and shall open to traffic such portions of the Project and temporary roadways, special detours, or portions thereof as may be agreed upon between the Contractor and the Engineer for the temporary accommodation of necessary traffic during the anticipated period of suspension. Thereafter, and until issuance of an order for the resumption of construction operations, the maintenance of the temporary route or line of travel agreed upon will be by and at the expense of the Department. When work is

resumed, the Contractor shall replace or renew any work or materials lost or damaged because of such temporary use of the Project; shall remove to the extent directed by the Engineer any work or materials used in the temporary maintenance thereof by the Department; and shall complete the Project in every respect as though its prosecution had been continuous and without interferences. All additional work caused by such suspensions, for reasons beyond the control of the Contractor, will be paid for by the Department at Contract prices or by Force Account.

#### **C. Maintenance Directed By The Engineer**

If the Engineer directs special maintenance for the benefit of the traveling public, the Contractor will be paid on the basis of Unit Prices or under [Subsection 104.04](#). The Engineer will be the sole judge of work to be classed as special maintenance.

#### **D. Detours Outside Right-of-Way**

The Department will be responsible for the construction and maintenance of detours outside the right-of-way except where otherwise provided for in the Contract.

#### **E. Special Detours**

When the Proposal contains Bid Items which provide for construction, maintenance, and removal of detour bridges or roads, the payment for such items shall cover all cost of constructing and maintaining such detour or detours, including the construction of any and all temporary bridges and accessory features and the removal of the same, and obliteration of the detour road, except as otherwise provided in [Subsection 104.05.B](#). Right-of-Way for temporary highways or bridges called for under this Subsection will be furnished by the Department.

#### **F. Delays to Traffic**

Two-way traffic shall be maintained at all times, unless otherwise approved. The Contractor shall not stop traffic without permission of the Engineer.

When one-way traffic is approved, the Contractor shall provide the necessary flagmen to direct such traffic. When specified in the Proposal, the Contractor shall furnish pilot vehicles.

#### **G. Overhead Sign Lighting**

Maintenance of overhead sign lighting within major construction or reconstruction Projects may be performed by the Contractor at no additional cost to the Department. All required repairs shall be made within 48 hours.

In the event such repairs are not made within the specified time, State Forces shall perform them and the cost thereof deducted from any monies due or which may become due the Contractor.

### **104.06 Right in and Use of Materials Found on the Project**

Materials that have salvage value, as determined by the Engineer, shall remain the property of the Department and shall be utilized as directed by the Engineer. The Contractor, with the approval of the Engineer, may use on the Project such materials as may be found on the Project, and will be paid at the bid price for removal of the material. If the materials, after processing, are suitable for other items of work, the Contractor will also be paid for those items in which the material is incorporated except as otherwise provided for in these specifications. He shall replace at his own expense with other acceptable material all of that portion of the materials so removed and used which was needed for use in the embankments, backfills, approaches, or otherwise, including proper allowance for swell when applicable. When existing materials found on the Project, such as crushed stone base, are to be reused directly in the work, the Contractor will not be paid the full Contract Price for the Item, but will be paid at the Contract Price minus the equivalent cost of new materials. The Contractor shall not excavate or remove any material without written authorization from the Engineer. The Contractor shall not make any claim upon the State for damages or loss of anticipated profits because of the expected use of any materials indicated on the Plans as existing and later found to be nonexistent or unfit for use. The Department does not warrant or guarantee the existence, quality, or quantity of materials indicated as existing on the Plans. If any sales tax is involved in materials found on the right-of-way and sold by the Contractor, the Contractor will be responsible for paying same.

Unless otherwise provided, the material from any existing old structure may be used temporarily by the Contractor in the erection of the new structure. Such material shall not be cut or otherwise damaged except with the approval of the Engineer.

Any material used by the Contractor and damaged during use shall be replaced at the Contractor's expense.

## **104.07 Final Cleaning Up**

Before final acceptance, the highway borrow pits and all ground occupied by the Contractor in connection with the Work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment. All weeds and high grass shall be cut and disposed of. The right-of-way shall be mown when directed by the Engineer in accordance with [Subsection 700.3.07](#). All parts of the Work shall be left in an acceptable condition.

The disposal adjacent to the right-of-way of materials cleaned from the right-of-way will not be permitted, even with the permission of the property owner. Temporary buildings or other structures built for the Contractor's use and located within view of the right-of-way, constituting a hazard or making an unsightly appearance, shall be removed and disposed of as directed.

On specialty-type Contracts where the entire Work consists of such specialty items as resurfacing, fencing, stripe painting, signing, highway lighting, and the like, the Contractor will not be required to clean up the right-of-way beyond the limits of construction, unless such clean up work is included in the Contract as a Pay Item. However, he shall remove all of his own property and leave the remaining right-of-way in a condition at least as good as it was before The Work was begun.

As to compliance or non-compliance with these provisions, as well as the obligations of the Contractor in relation thereto, the decision of the Chief Engineer shall be final and conclusive.

## **104.08 Value Engineering Proposals**

### **A. Applicability**

This Section applies to those cost reduction proposals initiated and developed by the Contractor for changing the Plans, Specifications, or other requirements of the Contract. These provisions do not apply unless the proposal submitted by the Contractor is specifically identified as being presented as a Value Engineering Proposal (VEP) and the Contract amount is in excess of \$50,000.

The cost-reduction Proposals contemplated are those which would require a Supplemental Agreement modifying the Contract and would produce a savings to the Department by providing less costly items or methods than those specified in the Contract without impairing essential functions and characteristics including, but not limited to: service life, reliability, economy of operations, ease of maintenance, and safety, both during and after construction.

These provisions are applicable to the prime Contract and include all subcontracts.

### **B. Documentation**

Value Engineering Proposals (VEP) will be processed in the same manner as prescribed for any other alterations of the Contract requiring a Supplemental Agreement.

As a minimum, the following information shall be submitted by the Contractor with each Value Engineering Proposal:

1. A description of the difference between the existing Contract requirement and the proposed change and the comparative advantages and disadvantages of each.
2. An itemization of the requirements of the Contract which must be changed and a recommendation of how to make such change (e.g., a suggested revision).
3. A detailed estimate of the cost of performing the work under the Contract and under the proposed change.
4. A prediction of any effects the proposed changes would have on other costs to the Department, including cost of related items and costs of maintenance and operation.
5. A statement of the time by which an agreement for adoption of the proposed changes must be executed in order to obtain the maximum cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.
6. The dates of any previous or concurrent submissions of the Proposal, the Contract number(s) under which submitted, and any previous actions by the Department, if known.

NOTE: If a VEP is similar to a change in the Plans or Specifications for the Project that is under consideration by the Department at the time said VEP is submitted, or if such VEP is based upon or similar to Standard Specifications, Special Provisions, or Standard Plans adopted by the Department after the advertisement of the Contract, the Engineer will not accept such proposal and the Department reserves the right to make such changes without compensation to the Contractor under the provisions of this Section.

Proposed changes in the basic design of a bridge (i.e., concrete to steel or vice versa), or of a pavement type (i.e., rigid to flexible or vice versa), or in drainage structures (i.e., concrete to steel or vice versa), will not be considered as an acceptable Value Engineering Proposal.

### **C. Submission**

Value Engineering Proposals submitted by the Contractor will be processed as expeditiously as possible; however, the Department will not be liable for any delay in acting upon proposals submitted. The Contractor may withdraw, wholly or in part, any VEP not accepted by the Department within the time specified in [Subsection 104.08.B.5](#).

### **D. Acceptance**

The decision of the Engineer as to the acceptance or rejection of a VEP shall be final and shall not be subject to the provisions of [Subsection 105.13](#), "Claims for Adjustments and Disputes."

The Engineer may accept, in whole or in part, before work has been completed, any VEP submitted pursuant to this Subsection and not withdrawn by the Contractor by giving the Contractor written notice thereof reciting acceptance under this Subsection.

### **E. Notification**

The Contractor will be notified in writing of the Department's decision or rejection of each VEP submitted under these provisions. If a proposal is accepted, the necessary Contract modifications will be effected by execution of a Supplemental Agreement. Unless and until a VEP is effected by such Supplemental Agreement, the Contractor shall remain obligated to perform The Work in accordance with the terms of the existing Contract.

Supplemental Agreements made as a result of this Subsection will state that they are made pursuant to it.

### **F. Sharing**

In the event a VEP submitted by the Contractor under this Subsection is accepted, the Supplemental Agreement effecting the necessary modifications will establish the net savings agreed upon and will provide for an adjustment in Contract Prices that will divide the net savings between the Contractor and the Department in accordance with the following provisions:

1. Division of net savings in Contract Price Adjustment:
  - 50 percent of the net savings to the Contractor.
  - 50 percent of the net savings to the Department.
2. The Department reserves the right to include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VEP. The Contractor's 50 percent of the net savings shall constitute the full compensation for effecting all changes pursuant to the agreement.

Development costs incurred by the Contractor and review costs incurred by the Department shall not be considered in computing the net savings of the VEP.
3. Restrictions and Disclosures: Upon acceptance and implementation of any VEP, any restrictions imposed by the Contractor on its use or disclosure of the information submitted shall be void.

The Department shall thereafter have the right to use, duplicate, and disclose, in whole or in any part, all data necessary in the utilization of the proposal.