

SECTION 1.04 SCOPE OF WORK

1.04.01--Intent of Contract: The intent of the Contract is to prescribe a complete work or improvement which the Contractor undertakes to do, in full compliance with the specifications, plans, special provisions, proposal, and other Contract documents. The Contractor shall perform all work in conformity with the lines, grades, typical cross-sections, dimensions, and other data shown on the plans and other Contract documents, or as modified by written orders, including the furnishing of all materials, implements, machinery, equipment, tools, supplies, transportation, labor, and all other things necessary to the satisfactory prosecution and completion of the Project.

1.04.02--Increased or Decreased Quantities of Minor Items, and Elimination of Minor Items: An increase or decrease in the quantity of a Contract item shall be deemed to have occurred for the purposes of these specifications when the total pay quantity of that item (i.e., the total number of units of that item for which payment is due to the Contractor as of the time when the work under that item has been completed) is either more or less than the estimated quantity (the Engineer's Estimate) of that item which was given in the Contract as bid upon.

This article shall apply only to eliminated minor Contract items and to increases or decreases in the quantities of minor Contract items, *i.e.*, items which were not major items in the original Contract. Any such increase or decrease resulting from a significant change in the character of the work as defined in Subsection 1.04.03(4)(a) shall be treated in accordance with the provisions of Article 1.04.03, and shall not be governed by or treated in accordance with the provisions of this article. Any such increase or decrease which occurs as the result of a differing site condition as defined in Article 1.04.04 shall be treated in accordance with the provisions of this article only to the extent that the provisions of this article are not in direct conflict with those of Article 1.04.04.

If the total pay quantity of any minor item varies from the engineer's Estimate thereof by 25 percent or less, payment for that item will be made at the original Contract unit price therefor, unless said price is eligible for adjustment under Article 1.04.03. If the total pay quantity of any minor item varies from the Engineer's Estimate thereof by more than 25 percent, the compensation payable to the Contractor for that item will be determined in accordance with the provisions of this article. If, however, the Engineer and Contractor have executed a construction order specifying the payment to be made for the item, then payment will be made in accordance with the terms of said order. As an alternative to any and all basis for payment described in this article, the Department may, in any circumstance described in this article, make any price or payment adjustment agreed upon in writing by the Department and the Contractor.

(a) Increases of More Than 25 Percent--If the total pay quantity of a minor item exceeds the Engineer's estimate thereof by more than 25 percent, the quantity of work in excess of 125 percent of said Estimate shall be paid for by adjusting the Contract unit price for that excess in the manner hereinafter provided or, at the option of the Engineer, on a cost-plus basis as provided in Article 1.09.04.

If the Engineer does not elect to pay for said excess units on a cost-plus basis, the amount of the adjustment of the unit price for that excess shall be the difference between the original Contract unit price and the actual unit cost, calculated as of the time when work under the item has been completed, as hereinafter provided. If the costs of work under such item include fixed costs, such fixed costs shall be deemed to have been recovered by the Contractor as part of the payments made by the Department for 125 percent of the Engineer's Estimate of that item; such fixed costs shall be excluded from any computation of the actual unit costs. Subject to the above provisions, such actual unit costs shall be determined by the Engineer in the same way that they would if the work were to be paid for on a cost-plus basis as provided in Article 1.09.04. As an alternative, the unit price may be adjusted in any way agreed upon by the Engineer and the Contractor.

When the total compensation payable for the excess item units described above would be less than \$25,000 if they were paid for at the original Contract unit price, the Engineer shall have the right to make no adjustment in said unit price.

(b) Decreases of More Than 25 Percent--If the total pay quantity of any minor item is less than 75 percent of the Engineer's Estimate thereof, the original Contract unit price for the item will not be adjusted unless the Contractor gives a written request for such an adjustment to the Engineer. If the Contractor so requests, the quantity of said item performed or provided shall be paid for by adjusting the Contract unit price as hereinafter provided or, at the option of the Engineer, on a cost-plus basis as provided in Article 1.09.04. The unit price paid for the decreased number of units shall not, however, be less than the unit price in the original Contract.

The amount of the aforementioned adjustment of the original Contract unit price shall be the difference between that unit price and the actual unit price (including fixed costs), to be calculated when all work under the item has been completed and to be determined in the manner described hereinafter. Such actual unit costs shall be determined by the Engineer in the same way that they would if payment were to be made on a cost-plus basis under Article 1.09.04. As an alternative, the unit price may be adjusted in any way agreed upon by the Engineer and the Contractor. The payment for a decreased total pay quantity of a minor item may not, however, exceed the payment which would be made for the performance of 75 percent of the Engineer's Estimate of the item at the original Contract unit price for that item.

(c) Eliminated Items --If an item is entirely eliminated from the Contract, the Department will pay the Contractor only for costs it incurred in connection with the eliminated item prior to the date upon which the Engineer provided the Contractor with written notice of said elimination.

If the Contractor had ordered Project materials (which conformed to all pertinent Contract requirements) prior to the aforesaid date of notification, and if the orders for said materials cannot be canceled, the Department shall pay the Contractor for said materials at their actual cost to the Contractor. In such a case, the materials shall become property of the State and the actual cost of any further handling necessary to deliver them to the Department shall be assumed by the State. If the materials are returnable to their vendor and if the Engineer so directs, the Contractor shall return the materials to the vendor and the State shall reimburse the Contractor for any reasonable charges made to the Contractor by the vendor for the return of the materials, as well as for the actual costs to the Contractor of its handling the materials in returning them to the vendor. Such charges or actual costs to be paid by the Department shall be computed as though the work were being paid for on a cost-plus basis under Articles 1.04.02 and 1.09.04.

1.04.03--Changes in Quantities and 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 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 in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

1.04.04--Differing Site Conditions:

(1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering

such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

- (2) Upon written notification, the Engineer will investigate the conditions, and if he/she determines that the conditions materially differ and 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/her 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.
- (4) No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

1.04.05--Extra Work: Unforeseen work made necessary by changes in plans, or work necessary to complete the improvement for which no price is provided in the Contract, shall be done in accordance with the requirements of the specifications and as directed by the Engineer.

The Engineer shall notify the Contractor of the necessity for such extra work, stipulating its character and extent. Within 5 days of receipt of such notification, the Contractor shall advise the Engineer, in writing, of the compensation, either unit price or lump sum, as requested, which the Contractor requests as compensation for the extra work required. The Contractor's request shall be itemized and reasonably detailed, and shall include all direct and indirect costs, including but not limited to, the costs of all small tools, labor, safety and other equipment, consumables, field office overhead/home office overhead, insurance, bonding, and profit. The Engineer may accept the prices submitted by the Contractor, or, if the Engineer considers the prices submitted to be excessive, the Engineer may order the work done on a cost-plus basis, in accordance with Article 1.09.04. In either case, the character and extent of the extra work, together with the basis of compensation, shall be communicated to the Contractor by means of a construction order which, when signed by the Engineer, shall become a part of the Contract.

If a Contractor objects to any portion of a construction order submitted to it by the Engineer for signing, and if the Contractor is therefore not willing to sign that order or some portion of that order, the Contractor must, within 15 days of its receipt of said order, return the order with a letter to the Department's Assistant District Engineer administering the Contract, describing specifically what portions of the order the Contractor finds objectionable, the nature of its objections, and the bases for its objections.

If the Engineer changes the scope of work of the Contract, the Contractor shall submit a proposed revised schedule and a cost revision proposal which takes all such changes into account. The schedule shall be revised in accordance with Article 1.08.08.

1.04.06--Removal and Disposal of Structures on the Work Site: All structures on the work site which are not to remain on the Project or be used in the construction shall become the property of the Contractor and shall be removed and disposed of by the Contractor.

1.04.07--Rights In and Use of Materials Found on the Work Site: Upon written request of the Contractor and with the written approval of the Engineer, subject to limitations which may be set forth within the approval, stone, gravel, sand, topsoil or material from existing bridge substructures, buildings, or other structures, found within the limits of the Project may be excavated or removed and used by the Contractor on the Project provided said materials conform with the requirements of the specification for such materials. Any materials excavated or removed shall not be taken off the Project unless specifically authorized by the Engineer. The following conditions shall govern these matters:

1. Excavation or removal of materials that would necessarily be excavated or removed in making the improvement will be paid for at the applicable Contract unit prices; and in addition, the item in which this material is used will also be paid for at its Contract unit price. The Contractor will not be charged for such materials. The Contractor shall, without compensation, place in the embankment or elsewhere sufficient suitable material to fill the space which the excavated materials would have occupied, unless otherwise directed by the Engineer.

2. The excavation or removal of materials which are not required to be excavated or removed in connection with the Contract work will not be paid for; and the Contractor will be charged for such materials at a negotiated unit price. The item for which this material is used will be paid for at its Contract unit price. The Contractor shall, without compensation, backfill with accepted material the space which the excavated materials had occupied, to the satisfaction of the Engineer, unless otherwise directed by the Engineer.

Surplus material shall be removed from the Project only with the Engineer's permission. The Engineer may determine that such material is not surplus, and may order that it be incorporated into the Project.