

## **SECTION 1.09 MEASUREMENT AND PAYMENT**

**1.09.01--Measurement of Quantities:** Work completed in compliance with the Contract will be measured by the Engineer according to United States standard measures, and quantities of work performed shall be computed based on such measurements made in accordance with the methods of measurement described herein under the applicable item.

Notwithstanding any other provision in the Contract (including Article 1.05.04), only work which is actually completed within the payment limits prescribed by the Contract or ordered by the Engineer will be measured for payment. There will be no payment made for work which is not actually performed.

Structures shall be measured and quantities computed according to the neat lines shown on the plans, except as changed by authorized revisions of the plans, or as may otherwise be required by provisions of these specifications or of other portions of the Contract which deal with specific items of work.

Quantities of materials measured for payment by net weight shall be weighed in tons, in hauling vehicles on scales furnished by and at the expense of the Contractor. The scales shall be of a type satisfactory to the Engineer and shall be sealed. When required, a weigher will be appointed and compensated by the Department, to check the weight of all material entering into the construction. The total weight for purposes of payment for a given item will be the sum of the weights shown on the weight slips for the material acceptably incorporated into the work under the pertinent item. The tare weight of trucks used to haul material being paid for by weight shall be taken daily at such times as the Engineer directs.

### **1.09.02--Value Engineering Incentive:**

#### **Scope and Purpose**

These Value Engineering provisions apply as an incentive to the Contractor to initiate, develop, and present to the Department for consideration any cost reduction proposals conceived by the Contractor, involving changes in the drawings, designs, specifications, or other requirements of the Contract. These provisions do not apply unless the proposal submitted is specifically identified by the Contractor as being presented for consideration as a Value Engineering Proposal.

The cost reduction proposals contemplated are those that would require a change order 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 such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features. Savings in time only (without monetary savings in the construction contract) will not be considered for Value Engineering.

#### **Conceptual Proposals**

Before expenditure of considerable funds in development of a formal Value Engineering Proposal, the Contractor may find it beneficial to submit a conceptual proposal to the Department. The Contractor will be notified in writing of the acceptability of the proposal or the reason(s) for rejection. The Department retains the right to reject the formal proposal even if the conceptual proposal was determined acceptable. A conceptual Value Engineering Proposal must be submitted for cost reduction proposals involving structures, rights of way acquisitions, permits or revisions as per Section 1.10, or railroad property involvement on forms provided by the Department.

#### **Proposal Submittals**

Value Engineering Proposals will be processed in the same manner as alterations of the Contract that require a change order. As a minimum, the following information shall be submitted by the Contractor with each proposal:

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

2. A description of the difference between the existing contract requirements and the proposed change, and the comparative advantages and disadvantages of each, including considerations of service life, economy of operations, ease of maintenance, desired appearance, safety, and environmental impacts or changes to permits. When an item's function or characteristics are being altered, a justification of the effect of the change on the end item's performance must be included.  
  
A life cycle cost analysis must be included for items involving alteration of functional characteristics. Factors for future worth will be provided by the Department.
3. Complete plans, specifications, and computations sealed by a licensed Professional Engineer in the State of Connecticut showing the proposed revisions which incorporate the same design criteria and restrictions relative to the original contract features and requirements. These revisions will be in the Department's change order format consisting of mylar reproducible plans, quantity increases and decreases by item number with associated cost, new items with quantity and cost, and specifications in contract format, and, if needed, compliance permit applications and revisions in accordance with Section 1.10.
4. A complete analysis of the cost effects of the proposed changes on operations, maintenance, durability, and other considerations as appropriate.
5. A statement of the time in which the proposal must be executed so as to obtain the maximum cost reduction. This date must be selected to allow the Department ample time for review and processing. Should the Department find that insufficient time is available for review and processing, it may reject the proposal solely on such basis. If the Department fails to respond to the proposal by the date specified, the Contractor shall consider the proposal to be rejected and shall have no claims against the State as a result thereof.
6. A statement as to the effect the proposal will have on the time for completion of the contract.

### **Conditions**

Value Engineering Proposals will be subject to the following conditions:

1. The Contractor is cautioned not to base any bid prices on the anticipated approval of a Value Engineering Proposal and to recognize that such proposal may be rejected. The Contractor will be required to perform the Contract in accordance with the existing plans and specifications at the prices bid until formal acceptance of any Value Engineering Proposal.
2. All Value Engineering Proposals apply only to the ongoing Contract and whether approved or not approved, become the property of the Department and shall contain no restrictions imposed by the Contractor on their use or disclosure. The Department will have the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the proposal. The Department retains the right to utilize any accepted proposal or part thereof on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.
3. If the Department already has under consideration certain revisions to the contract or has approved certain changes in specifications or standard drawings for general use which are subsequently incorporated in a Value Engineering Proposal, the Department may reject the Contractor's proposal and may proceed with such revisions without any obligation to the Contractor. If an accepted Value Engineering Proposal is adopted for general use, only the Contractor who first submitted such proposal will be eligible for compensation of the Value Engineering incentive and only on contract(s) awarded to him prior to submission of the accepted Value Engineering Proposal.
4. The proposal shall not be experimental in nature, but shall have been proven to the Department's satisfaction.
5. The proposal must be presented and approved prior to undertaking any work on the items involved in the proposal. Savings due to a reduction in quantities or deletion of items which result solely from adjustments to

field conditions and proposals which would only waive specification or contract requirements are not considered to be Value Engineering.

6. The Contractor shall have no claim against the Department for any costs or delays due to the Department's rejection of a Value Engineering Proposal, including, but not limited to, development costs, anticipated profits, or increased material or labor costs resulting from delays in the review of such proposal.
7. The Department will be the sole judge of the acceptability of a proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the right is reserved to disregard the contract bid prices if, in the judgement of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted. Errors in the original estimate shall be corrected by the Department prior to utilization in the calculations of savings in the Value Engineering Proposal.
8. In order for the Department to consider such a proposal, the savings likely to be generated by the proposal must be sufficient, in the sole judgement of the Department, to warrant its review and processing by the Department. All costs resulting from such review or processing will be borne by the Department. All costs resulting from such review or processing will be borne by the Department. Before any Value Engineering proposal will be considered by the Department, the Department must determine, in its sole judgement, that implementation of the proposal would result in a total contract savings of more than \$200,000, reflecting a savings of at least \$100,000 for the Department. The Department will not consider any Value Engineering proposal that would require an increase in contract days.
9. The Engineer may reject all or any portion of work performed pursuant to an approved Value Engineering Proposal if he/she determines that unsatisfactory results are being obtained. The Engineer may direct the removal of such rejected work and require the Contractor to proceed in accordance with the original Contract requirements. Reimbursement for any work performed under the Value Engineering Proposal, or for its removal, will be reimbursed as per Contract unit price or cost plus as determined by the Department. Where modifications to the Value Engineering Proposal are approved in order to adjust to field or other conditions, reimbursement will be limited to the total amount payable for the work at the Contract bid prices as if it were constructed in accordance with the original Contract requirements. Such rejection or limitation of reimbursement shall not constitute the basis of any claim against the State for delay or for any other costs.
10. Design proposals must conform to the specifications or standards of the Department. The standards governing the original design of the contract will be the minimal standard allowed.
11. If additional information is needed to evaluate proposals, this information must be provided within 14 calendar days or other time periods as approved by the Department. Failure to do so will result in rejection of the proposal. Such additional information could include, where design changes are proposed, results of field investigations and surveys, design computations, and field change sheets.
12. The Contractor is responsible for modifying the plan as part of the Value Engineering Proposal and shall furnish a copy of such modified plan in change order format to the Department and shall be solely responsible for any errors or omissions resulting from such modification.
13. Savings not specifically part of the Contractor's contract such as, but not limited to, reductions in inspection, Department overhead, or reduced testing requirements will not be included in the savings calculation for any Value Engineering Proposal.

### **Payment**

Payment for accepted Value Engineering Proposals will be made in the following manner:

1. The changes resulting from a Value Engineering Proposal will be incorporated into the contract by change order and shall reflect the changes in unit bid item quantities or new agreed price items as appropriate, in accordance with the Specifications.

2. The cost of the revised work will be paid directly as accomplished. In addition to such payment, the Department will pay the Contractor, under a separate item or a Value Incentive Engineering Item, 50 percent of the total savings, which savings is reflected by the difference of the original cost less the adjusted cost of the Value Engineering Proposal. The Value Engineering Incentive will be payable in two (2) parts consisting of 60 percent of the anticipated amount due the Contractor at the time of the acceptance of the Value Engineering Proposal and 40 percent of the amount due the Contractor upon completion of the Value Engineering work. The second payment will reflect all adjusted costs based on actual savings as determined by the Department as a result of the Value Engineering Proposal.
3. The Contractor's cost for development, design and implementation of the Value Engineering Proposal is not eligible for reimbursement.
4. Value Engineering Proposal forms will be supplied by the Department at the Preconstruction meeting.
5. Any cost savings not identified in the Value Engineering proposal prior to acceptance will not be eligible for reimbursement.

**1.09.03--Increased or Decreased Quantities:** Whenever the quantity of any item as given in the proposal form and Contract is increased or decreased, payment for such item shall be made on the basis of the actual quantity completed, at the Contract price for such item, except as otherwise expressly authorized under the provisions of Articles 1.04.02, 1.04.03 and 1.04.04.

**1.09.04--Extra and Cost-Plus Work:** Extra work shall be performed only under the conditions and subject to the requirements outlined in Article 1.04.05. Payment for such work shall be based either on a unit price or on a lump sum, to be agreed upon before the work is started; or, if no agreement as to price can be reached, the work may be paid for on a cost-plus basis.

When extra work is to be done on an agreed unit price or lump sum basis and is to be performed by a subcontractor, the agreed unit price or lump sum paid to the Contractor shall be the unit price or lump sum quoted by the subcontractor and agreed to by the Engineer, plus additional compensation for administrative expenses calculated as they would be for cost-plus work under subparagraph (e).

For all work done on a cost-plus basis, the compensation shall be in accordance with the following requirements:

**(a) Labor:**

(1) For all labor, the Contractor shall receive the rate of wage actually paid as shown by its certified payroll, which shall be at least the minimum rate established for the Project by the State Labor Department or the U.S. Department of Labor. For all foremen in direct charge of the work, the Contractor shall receive the actual wage paid the foremen as shown on the Contractor's certified payroll.

(2) The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work. All such costs shall be certified by the Contractor.

(3) For property damage, bonding, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the cost-plus work, the Contractor shall receive its actual cost. The Contractor shall furnish satisfactory evidence of the cost paid for such insurances and taxes.

(4) An amount equal to 20% (15% for overhead, 5% for profit), of the total sums described in (a) (1) through (3) above will also be paid to the Contractor.

No part of the salary or expenses of anyone connected with the Contractor's forces above the grade of foreman, and having general supervision of the work, will be included in the labor item as specified above, except when the

Contractor's organization is entirely occupied with cost-plus work, in which case the salaries of superintendent and timekeeper may be included in the labor item specified above when the nature of the work is such that, in the opinion of the Engineer, their services are required. The allowable rate of pay of such employees shall be agreed upon before starting the work.

The Engineer reserves the right to determine the number and type of personnel employed.

**(b) Specialized Work:** When the Engineer directs the Contractor to perform special work requiring skills, tools and equipment unlike those used by the Contractor or his authorized subcontractors, payment may be made for such work performed by a specialist. For such specialist services, including materials incorporated in the work, the Contractor will receive the actual cost, plus additional compensation in accordance with subparagraph (e). Prior to performing such specialized work, the Contractor shall obtain and submit to the Engineer a minimum of three price quotes for the work, if requested by the Engineer.

**(c) Materials:** For all materials necessary for extra Contract work, the Contractor shall receive the actual cost of such materials delivered to the work site, including delivery charges as shown by original received bills, plus 15 percent of the sum thereof.

In lieu of receipted bills for materials used which were not specifically purchased for the work but were taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such materials were not purchased for the specific work, that the materials were taken from the Contractor's stock, that the quantity claimed was actually used and that the price claimed is a fair market value. Related transportation costs for which reimbursement is sought will be paid in accordance with subparagraphs (a) and (d).

The Contractor will not be reimbursed for any penalty or carrying charge incurred due to late or delayed payment for material used.

**(d) Equipment:** For any Contractor-owned machinery, trucks or equipment authorized by the Engineer for use, the Engineer will allow the Contractor the rental rate set forth in the current edition of the Rental Rate Blue Book published by K III Directory Corporation of San Jose, California (referred to herein as the Rental Rate Blue Book). All Rate Adjustment Tables and amendments will be applied. If the Contractor submits a lower rate, it will be accepted by the Engineer.

Should the proper completion of the work require equipment of a type not covered by the above-mentioned schedule, the Engineer will allow the Contractor a reasonable rental rate which shall be based on that prevailing in the area of the work and shall be incorporated in the Contract before the work is begun. However, the Contractor must disclose to the Engineer the specific sources of any rates it proposes in this connection.

For machinery, trucks or equipment which the Contractor must obtain by rental, the Contractor shall inform the Engineer of its needs to rent the equipment and of the rental rate for that equipment prior to using it on the work. If that use and rate are acceptable to the Engineer, the Contractor shall be paid the actual rental for the equipment, provided that the rate does not exceed the rental rate set forth in the Rental Rate Blue Book, including all Rate Adjustment Tables and amendments. The Contractor shall provide the Engineer with a copy of the paid receipt for the rental expense incurred.

The estimated operating cost per hour will apply only to the actual time the equipment is operating. Operators will be paid as stated hereinbefore for labor except for certain trucks listed in the Rental Rate Blue Book, as to which trucks said Rental Rate Blue Book indicates that the cost of the operators is included in the pertinent rates.

For equipment which is already on the Project, the State will pay the applicable hourly rate for the actual time the equipment is assigned to the cost-plus work. The period of assignment for each piece of equipment shall start when the equipment commences to be used for the work ordered by the Engineer, and shall continue until the time which the Engineer designates for termination of that work.

For equipment which has to be brought to the Project exclusively for use on cost-plus work, the State will pay all loading and unloading costs and all costs of transporting such equipment to and from the Project site; provided, however,

the cost of return transportation from the Project site shall not exceed that of moving the equipment to that site. If such a piece of equipment is self-propelled, and is driven to the Project site under its own power, then the State will pay only operating costs and labor costs for the transportation to and from the Project site. The State will not pay for loading, unloading and transportation costs, however, if the equipment is used for other than cost-plus work while on the Project site, with the exceptions stated herein.

The State will pay the applicable rental rate for a minimum of 8 hours in each 24-hour day, excluding Saturdays, Sundays and legal holidays during which the Contractor does no work on the Project. The daily usage period shall start at the time the Contractor begins to use the equipment for cost-plus work and shall end when the equipment is released by the Engineer from use for such work. The State will make payment to the Contractor at the applicable hourly rate for the actual time the equipment is being used for cost-plus work in excess of the minimum 8 hours per day. Any hours during which the equipment is in use on other than cost-plus work will be deducted from the rental period. If, however, certain pieces of equipment remain idle during any day or portion of a day within such a rental period, the State will pay for those periods at 50% of the applicable rate (exclusive of operating costs) set forth in the Rental Rate Blue Book.

For rented equipment not owned by the Contractor or a subsidiary, affiliate, or parent company (no matter how far up the chain of ownership) of the Contractor, the following maximum rates shall apply:

The daily rate per hour shall apply when the equipment is specifically assigned to the work by the Engineer for a period of 7 consecutive calendar days or less.

The weekly rate per hour shall apply when the assigned time exceeds 7 consecutive calendar days, but does not exceed 21 consecutive calendar days.

The monthly rate per hour shall apply when the assigned time exceeds 21 consecutive calendar days.

The applicable daily, weekly, or monthly rate will be determined at the expiration of 21 calendar days or upon release of the equipment, whichever occurs first. Interruptions of the rental period, when equipment is used on other than assigned cost-plus work, will not constitute a warrant for a rental rate applicable to shorter periods occasioned by such interruptions.

For equipment owned by the Contractor or a subsidiary, affiliate, or parent company (no matter how far up the chain of ownership) of the Contractor, the maximum hourly rate to be used shall be the monthly rate as set forth in the current edition of the Rental Rate Blue Book, including all Rate Adjustment Tables and amendments, divided by 176 (176 working hours per month).

All equipment used must, in the judgment of the Engineer, be in good working condition and suitable for the purpose intended; and the Engineer reserves the right to determine the size and number of units of equipment to be used. The manufacturer's ratings shall be the basis for all classifications. Trucks will be classified by cubic yard capacity to be determined by water level volume of the body as measured from the length, width, and height, without sideboards.

No percentage will be added to the amounts charged for equipment rental, whether based on the Rental Rate Blue Book, including all Rate Adjustment Tables and amendments, or on the agreed-upon rental rates for equipment not covered in the aforesaid schedule.

**(e) Administrative Expense:** When extra work on a cost-plus basis is performed by a subcontractor, a payment based on the following table will be allowed as additional to the percentage payments described in (a), (b), (c) and (d) above, to reimburse the Contractor for administrative expense incurred in connection with the work.

Amounts of extra work valued at up to \$1,000 -- an added 10 percent of that dollar value.

Over \$1,000 to \$10,000 -- \$100 plus 5 percent of any amount over \$1,000.

Over \$10,000 -- \$550 plus 3 percent of any amount over \$10,000.

Approval of such additional payments will be given only after receipted invoices for all relevant costs are furnished by the Contractor.

**(f) Miscellaneous:** The compensation as herein provided in (a), (b), (c), (d) and (e) above shall be received by the Contractor as payment in full for the extra work done on a cost-plus basis, and shall be deemed to include full compensation for costs of superintendence, use of small tools, equipment for which no rental is allowed, safety equipment, consumables, field office overhead, home office overhead, bonding, other insurance, and profit. The Contractor's representative and the Inspector shall compare records of extra work done on a cost-plus basis at the end of each day. Copies of these records shall be made in quadruplicate by the Inspector and signed by both the Inspector and the Contractor's representative, one copy being forwarded to the Contractor and the others distributed by the Inspector in accordance with Department regulations. Original receipted bills covering the cost of and the transportation charges on all materials used in such work shall be furnished to the Inspector by the Contractor immediately upon their payment by the Contractor.

Should the Contractor refuse or fail to prosecute the work as directed by the Engineer, the Commissioner may withhold all payments on current estimates until the Contractor proceeds to prosecute the work as directed.

**1.09.05--Eliminated Items:** Should any items, or portion of work contained in a lump sum item, be found unnecessary for the proper completion of the contracted work, the Engineer may eliminate such items or portion of work from the Contract. Such action shall in no way invalidate the Contract; and no allowance for any items, or portion of work contained in a lump sum item so eliminated, will be made in making final payment to the Contractor, except for such actual work as may have been done on the items, or portion of work contained in a lump sum item, and such related material as may have been purchased prior to the Engineer's notice to the Contractor that the items, or portion of work contained in a lump sum item, had been eliminated. This provision shall apply unless it is definitely established that an elimination of a given item, or portion of work contained in a lump sum item, constitutes a "significant change" in the character of the Contract work, as defined under Article 1.04.03. In such a case, the terms of that article rather than of this one shall be applied to the elimination of the item, or portion of work contained in a lump sum item.

**1.09.06--Partial Payments:**

**A--Monthly and Semimonthly Estimates.**

(1) Once each month the Engineer will make, in writing, current estimates of the value of work performed in accordance with the Contract, calculated at Contract unit prices, including but not limited to the value of materials complete in place and materials not incorporated in the work but approved by the Engineer for payment as provided elsewhere within this article. The Contractor shall submit to the Engineer for verification a monthly payment requisition documenting the value of work performed in accordance with the Contract during the previous month. Two and one half percent of the total amount so ascertained will be deducted from the estimate and retained by the Department until the Project is accepted. The balance, or 97 1/2 percent of the total estimated amount, less all previous payments, will be certified for payment. When work equaling the original contract value has been accomplished, no additional retainage will be withheld.

Exceptions may be made as follows:

(a) When not in conflict with the interests of the State, the Contractor may request and the Engineer may make, semimonthly estimates for payment, such estimated payments to be restricted to the value of work performed on major items as defined in Article 1.01.01, and to the value of materials delivered at the site but not incorporated in the work, as provided for in paragraph B of this article. Semimonthly estimates will be subject to the same retainage and payment conditions as are the monthly estimates.

(b) No semimonthly or monthly estimates for payments will be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the Contract or when in his judgment the total value of the work done since the last estimate amounts to less than \$2,500 or 2% of the total bid amount, whichever is less.

(c) When Project work with a Contract value equal to at least 95 percent of the original Contract value has been completed, but prior to the Engineer's acceptance of the entire Project, the Commissioner may make additional

payments which draw upon the funds held in retainage under the provisions of A(1) of this Article, if he considers such payment to be in the best interest of the State.

(2) The Engineer, at his discretion, may also make payment at Contract unit prices for the number of units that represent the value of the work performed when units so included are essentially, although not absolutely, complete.

**B--Payment for Stored Materials:** Non-perishable materials which meet specifications requirements, specifically produced or purchased for incorporation into the Project, and delivered at the site or at such location as the Engineer may approve, but not incorporated in the work, may be included in current estimates at such fraction of the Contract unit price or lump sum price, as the Engineer may consider to represent a fair value for the material when such materials have been paid for by the Contractor as shown by receipted bills, or in lieu of such receipted bill or bills, a duly executed Certification of Title executed by the Contractor and the Vendor in the form approved by the Department. When partial payment is made for stored materials, such materials shall become the property of the State; but such payment shall in no way release the Contractor from its responsibility for the condition, protection and, in case of loss, replacement of such materials, or from any liability resulting in any manner from the presence of such materials wherever they may be stored or kept. All materials shall be stored in accordance with Article 1.06.03 and in accordance with the manufacturer's recommendations. Material test approval shall be required prior to payment for the materials .

Offsite storage may be approved by the Engineer provided the materials proposed are segregated from other materials, clearly labeled as being owned by the Department for use on the identified Project, and otherwise meet the requirements of Article 1.06.03 and are in accordance with the manufacturer's recommendations. All materials must be readily available for inventory and inspection by the Engineer. Storage outside of the State of Connecticut will be considered only when a representative of the Department is able to verify that the above requirements have been satisfied.

For items requiring extended fabrication, manufacturing or assembly time the Contractor may propose a schedule of values for the material costs for the Engineer's review and approval. The approved schedule of values shall become the Basis of Payment for the stored materials provided all other requirements of the specifications have been satisfied.

Generic materials having a use on many projects will be considered for payment only if in unopened packaging or in large lots. Stock and Raw materials will not be considered for payment without prior written consent of the Engineer.

In no case shall material payments exceed the Contract unit price or lump sum price less the actual value of delivery and installation of the materials. The Engineer reserves the right to adjust the price paid for the material in these instances. Such reductions in payment shall in no way affect the Department's ownership interest in the stored materials.

**1.09.07--Final Payment:** When the Project has been accepted by the Commissioner, the Engineer shall prepare in writing a final payment estimate. It shall state the entire amount of each class of work performed, the value thereof, and the amount of all payments on prior estimates which may have been made, all such estimated payments being merely partial payments and subject to correction in the calculation of the final payment. Upon certification of the final estimate for payment, all securities which may have been deposited in lieu of monies retained shall be returned to the Contractor.

**1.09.08--Certificate of Quantity:** For such items as the Contract documents may specify or the Engineer may subsequently designate, the Contractor shall furnish a certified statement regarding the quantity of the item completed. This certification will normally be prepared at the completion of the work. In the case of projects that extend beyond one construction season, however, a certified statement will be required at the end of each construction season. No payment will be made for approved quantities in excess of the Engineer's original estimated quantity, as it appears in the Department's bid documents, unless and until such a statement is furnished.

**Article 1.09.09 - Payment of Recoverable Costs Due the State:** The State shall have the right to set off against amounts otherwise due to the Contractor under this Contract or under any other contract or arrangement that the Contractor has with the State (a) any costs that the State incurs which are due to the Contractor's noncompliance with this



Contract and (b) any other amounts that are due and payable from the Contractor to the State. Any sum taken in set off from the Contractor shall be deemed to have been paid to the Contractor for purposes of the Contractor's payment obligations under Article 1.03.04 of the Standard Specifications.