

C. In writing, submit the claim to binding or non-binding alternative Dispute resolution.

111.5.4 Final Agency Action Any affirmation, revision, amendment, or reversal by the Commissioner is final agency action as of the date of Receipt of such action by the Contractor. If the Commissioner submits the Dispute to alternative Dispute resolution, the date of final agency action will be established by the mediator, arbitrator, or other Dispute resolution neutral by written notice to the parties. If the Commissioner takes no action within such 30-day period, the DRB's final recommendation (if one exists) or the decision of the Director (if a DRB recommendation does not exist) shall be final agency action upon the expiration of said 30-day period.

111.6 Judicial Review The Contractor must comply with all of the notice and Dispute resolution provisions of this Contract in order to pursue judicial review. For related provisions, see Sections 111.1.2 - Escalation Process and 111.1.4 - Mandatory Notice.

All Bidders and the Contractor agree that any judicial review of any claim or cause of action arising from the Bid and/or the Contract must be commenced in the Superior Court of Maine, Kennebec County. Any petition for review must be in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §11001, et seq. and Rule 80C of the Maine Rules of Civil Procedure.

SECTION 112 - DEFAULT AND TERMINATION

Scope of Section This Section contains general provisions related to Default and termination of the Contract.

112.1 Default

112.1.1 Grounds for Default The Contractor and the Surety are in Default of the Contract if the Contractor or the Surety:

A. Fails to Promptly begin the Work under the Contract after being authorized to proceed,

- B. Fails to perform the Work with sufficient labor, Equipment, or Materials to assure the timely Completion of the Work,
- C. Performs Defective Work, neglects or refuses to uncover, remove or rebuild Unacceptable Work, or neglects or refuses to uncover Unauthorized or Uninspected Work when directed by the Department;
- D. Discontinues the prosecution of the Work without Departmental approval,
- E. Continues to perform Work after the Department directs that Work be stopped,
- F. Fails to resume Work which has been suspended as required by the Contract,
- G. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency that could affect the Work in any way,
- H. Allows any final judgment to stand against the Contractor unsatisfied for a period of ten Days,
- I. Makes an assignment for the benefit of creditors without authorization by the Department, or
- J. In any other manner, fails to perform the Work in Substantial Conformity with any material provision of the Contract.

112.1.2 Notice of Default / Cure Except as otherwise provided in this Contract, if Default occurs, the Department may give written Notice of Default to the Contractor and its Surety. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract.

If the Contractor or Surety fails to completely cure such Default within a period of 14 Days after Notice of Default, then the Department may (A) terminate the Contract for cause in accordance with Section 112.2.1 - For Cause, or (B) take prosecution of the Work away from the Contractor without violating the Contract.

112.2 Termination The Department may, by written order to the Contractor, terminate the Contract as provided in this Section 112. Termination of the Contract or

portion thereof shall not relieve the Contractor of its Contractual responsibilities for the Work completed (including warranty obligations), nor shall it relieve the Surety of its obligation for claims arising from the Work or the Contract.

112.2.1 For Cause If the Contractor fails to completely cure all Defects identified in the Notice(s) of Default provided for in Section 112.1.2 within the 14-day cure period provided, the Department may immediately terminate the Contract for cause by written Notice of Termination For Cause. In this event, the Department may use any or all Materials and Equipment for the Work and may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Contract in an acceptable and timely manner.

The Department will pay for all Accepted items of Work as of the date of Termination at agreed upon prices. Items eliminated in their entirety by Termination will be paid for as provided in Section 109.2 - Elimination of Items, except that there will be no reductions in the amount of the credit to the Department. The Contractor shall make all Work records available to the Department upon request regarding payment under this Section. All costs and charges incurred by the Department, together with the cost of completing the Work specified in the Contract, will be deducted from amounts otherwise due the Contractor. If such expenses exceed the sum that would have been payable under the Contract, then the Contractor and the Surety are liable and shall pay to the Department the amount of such excess within 30 Days of the Delivery of a Statement setting forth such expenses to the Contractor and the Surety, as applicable.

If the Contractor files for bankruptcy at any time before expiration of the warranty periods provided by this Contract, then the Contractor and its Surety agree, if requested by the Department and within 30 Days of such request, to take all actions necessary or convenient to reject or accept this Contract under the executory Contract provisions of the federal bankruptcy code.

112.2.2 For Convenience The Department may terminate this Contract for convenience or for any reason that is in the best interest of the Department. Terminations caused without fault of or for reasons beyond the control of the Contractor are Terminations for Convenience. The Department will notify the Contractor of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Department will pay for all Accepted items of Work as of the date of termination at agreed upon prices. Items eliminated in their entirety by Termination will be paid for as provided in Section 109.2 - Elimination of Items. The Contractor shall make all Work records available to the Department upon request regarding payment under this Section. Acceptable Materials, obtained by the Contractor for the Work but which have not been incorporated therein, may at the option of the Department be purchased from the Contractor at Actual Cost Delivered to a prescribed location or otherwise disposed of as mutually agreed.

After Receipt of Notice of Termination for Convenience from the Department, the Contractor may also submit a claim for additional damages or costs not covered above or elsewhere in this Contract to the Project Manager within 60 Days of the effective Termination date. Such claim may include such cost items as idle Equipment time, Bidding and Project investigative costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in claim preparation, Subcontractor costs not otherwise paid for, idle labor cost if Work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage item for which the Contractor reasonably believes reimbursement should be made. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Contractor agrees to make the Bid Escrow, Documentation, if any, and its cost records available to the extent necessary to determine the validity and amount of each item claimed.

The Department will respond in writing to such claim within 60 Days of Receipt. If the Contractor wants additional consideration, the Contractor must Deliver a written "Notice of Unresolved Dispute" to the Director as provided in Section 111.3.1 - Notice of Unresolved Dispute and comply with all other applicable Dispute resolution provisions of Section 111 - Resolution of Disputes.