

103.04. RETURN OF PROPOSAL GUARANTIES.

When the lowest responsible bidder submitting a responsive bid has been determined, the Proposal Guaranties which accompanied those Proposals of the unsuccessful bidders will be returned. The bidding security of the successful bidder will be retained by the Department until the Contract and bonds have been executed and approved after which the Proposal Guaranty will be returned to the successful bidder.

103.05. BONDING REQUIREMENTS.

The bidder to whom the Contract is awarded shall, at the time of the execution of the Contract, deposit with the Department a Performance Bond, Statutory and Payment Bond and, where applicable, a Maintenance Bond as required by law. The Surety shall be acceptable to the Department and shall be in conformance with the rules, regulations, policies and procedures of the Commission. The terms of the bonds shall be provided by the Department, be executed by the Surety, and accompanied by valid and acceptable Powers of Attorney.

103.06. (RESERVED)**103.07. EXECUTION OF CONTRACT.**

The individual, partnership, joint venture, or corporation to whom the Contract has been awarded shall sign and attest, where applicable, the necessary forms for entering into a Contract with the Department, and return the executed Contract to the Office Engineer of the Department at Oklahoma City, Oklahoma, within the time limit specified in the Proposal.

103.08. APPROVAL OF CONTRACT.

The Contract shall not be binding upon the Department or Commission until it has been executed by the Director or his/her authorized designee, approved as to form and legality by the General Counsel or his/her authorized designee, and delivered to the Contractor.

103.09. FAILURE TO EXECUTE CONTRACT.

Failure to comply with any of the requirements of these Specifications, to execute the Contract, or to furnish the bonds required by law shall nullify the Award. In the event of such annulment of the award, the amount of the Proposal Guaranty shall be subject to forfeiture to the Department.

**SECTION 104
SCOPE OF WORK****104.01. PURPOSE OF CONTRACT.**

The purpose of the Contract is to provide for the construction and completion in every detail of the work described in the Proposal. The Contractor shall furnish all labor, materials, equipment and incidentals required to complete the work in a workmanlike manner and in accordance with the Plans, Specifications and terms of the Contract.

104.02. SPECIAL WORK.

Whenever deemed necessary by the Department, the Department may prepare Special Provisions for any work included in the Proposal. Special Provisions attached to or incorporated by reference with the Proposal form and shall be considered part of the Specifications.

104.03. DIFFERING SITE CONDITIONS.

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 the site is disturbed and before the affected work is performed.

- (a) Upon written notification as provided in Subsection 104.06., the Resident Engineer will investigate the conditions, and if it is determined 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 anticipated profits, will be made and the Contract modified in writing accordingly. The Resident Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.
- (b) No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice as specified in Subsection 104.06.
- (c) No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.
- (d) If the Contractor has provided written notification of differing site conditions as provided in Subsection 104.06. and the Resident Engineer determines that differing site conditions exist, payment will be made in accordance with Subsection 109.04. and adjustments to Contract time will be made as provided in Subsection 108.07.

104.04. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK.

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.

- (a) If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, 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.

- (b) 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 at the unit price as bid by the Contractor.
- (c) The term “significant change” shall be construed to apply only to the following circumstances:
 - 1. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction;
 - 2. When a major item of work, as defined in Subsection 101.48., is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in price 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.
- (d) If directed changes require additional time to complete the Project, adjustments in the Contract time will be made as provided by Subsection 108.07.
- (e) Payment for changed major item quantities or altered work will be made as provided in Subsections 109.03. or 109.04. as appropriate.

104.05. SUSPENSION OF WORK ORDERED BY THE RESIDENT ENGINEER.

The Resident Engineer may suspend all or any portion of the work for any reason during performance of the Contract. Suspension of all or any portion of the work will be done by written notice to the Contractor.

- (a) If the performance of all or any portion of the work is suspended or delayed by the Resident 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 Resident Engineer in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- (b) Upon receipt, the Resident Engineer will evaluate the Contractor’s request. If the Resident 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 at any approved tier, and not caused by weather, the Resident Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Contractor will be notified of the Resident Engineer’s determination whether or not an adjustment of the Contract is warranted.
- (c) No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
- (d) 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 or excluded under any other term or condition of this Contract.

- (e) If the Contractor has submitted a request for adjustment within the time prescribed and the Resident Engineer determines that an adjustment is warranted, payment will be made as provided in Subsection 109.04. and adjustments to Contract time will be made as provided in Subsection 108.07.

104.06. NOTIFICATION OF DIFFERING SITE CONDITIONS, CHANGES AND EXTRA WORK.

The Contractor shall notify the Resident Engineer of alleged changes to the Contract due to differing site conditions, extra work, altered work beyond the scope of the Contract, or action(s) taken by the Department that changed the Contract terms and conditions, before beginning work not covered by the Contract or continuing work in progress but which has been altered by directed changes in methodology, location or differing site conditions.

- (a) No further work is to be performed or Contract item expense incurred with relation to the claimed change after the date the change allegedly occurred unless directed otherwise in writing by the Resident Engineer.
- (b) Immediately notify the Resident Engineer verbally of the alleged change or extra work occasioned by site conditions or actions by the Department, and within seven (7) calendar days of the date the alleged change or action was noted, provide the following information to the Resident Engineer in writing:
 1. The date of occurrence and the nature and circumstances of the occurrence that constitute a change.
 2. Name, title, and activity of each Department representative knowledgeable of the claimed change.
 3. Identify any documents and the substance of any oral communication involved in the claimed change.
 4. Basis for a claim of accelerated schedule performance.
 5. Basis for a claim that the work is not required by the Contract.

The failure of the Contractor to provide both verbal and written notices required under this Section constitutes a waiver of any and all claims that may arise as a result of the alleged change.

- (c) Following submission of the notification to the Resident Engineer, the Contractor shall not begin work not covered by the Contract, nor shall the Contractor continue work which has been altered by direction of the Department or differing site conditions, but the Contractor shall continue diligent prosecution of other work under the Contract to the maximum extent possible under the Contract provisions.

The Resident Engineer shall promptly investigate the conditions and within ten (10) calendar days after receipt of notice, the Resident Engineer shall respond in writing to the Contractor to:

1. Confirm that a change occurred and, when necessary, direct the method and manner of further performance, or
2. Deny that a change occurred and, when necessary, direct the method and manner of further performance, or

3. Advise the Contractor that adequate information has not been submitted to decide whether (1) or (2) applies, and indicate the needed information and date it is to be received by the Resident Engineer for further review. The Department will respond to such additional information within ten (10) calendar days of receipt from the Contractor.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information in accordance with this clause.

104.07. MAINTENANCE OF TRAFFIC.

The Contractor shall keep all roads open to all traffic as provided for in the Plans. Where provided in the Contract, or approved by the Resident Engineer, traffic may be bypassed over an approved detour route. The section of the Project being used by public traffic shall be kept in a condition that safely and adequately accommodates traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, delineators, striping, flaggers, and pilot cars in accordance with the traffic control plan, MUTCD and Section 880, Construction and Traffic Control. The Contractor shall bear all expense of maintaining the section of road undergoing improvement including all temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages, farms, and other features as may be necessary. Snow and ice removal is not required during winter work suspensions. Payment for the furnishing, installation, and maintenance of traffic control will be as provided in Section 880, Construction Signing and Traffic Control. No other additional compensation for maintenance will be made except as provided below:

- (a) **Special detours.** When the Contract contains an item for "Maintenance of Detours" or "Removing Existing Structures and Maintaining Traffic," the payment for such item covers all costs of constructing, maintaining, and obliterating detours, including construction and removal of temporary bridges and accessory features. Right-of-Way for temporary highways or bridges designated in the Contract will be furnished by the Department.
- (b) **Maintenance of Traffic During Suspension of Work.**
 1. **Suspensions Ordered by the Resident Engineer.** The Contractor shall make passable and open to traffic the sections of the Project and temporary roadways as agreed upon between the Contractor and the Resident Engineer for the accommodation of necessary traffic during the anticipated period of suspension.

During this suspension period the maintenance of the temporary roadway and sections of the Project will be the responsibility of the Department.

When work is resumed, the Contractor shall replace or restore any work or materials lost or damaged because of temporary use of the Project and remove work or materials used in the temporary maintenance and complete the project as though its prosecution had been continuous and without interference. Additional work caused by the suspensions, for reasons beyond the Contractor's control, will be paid for at Contract prices or by extra work.
 2. **Other Suspensions of Work.** When work is suspended due to seasonal or climatic conditions or, for failure to correct conditions unsafe for the workers or the general public, for failure to carry out orders of the Resident Engineer or for other reasons caused by the Contractor, all

costs for maintenance of the roadway to accommodate traffic during the suspended period shall be borne by the Contractor.

- (c) **Maintenance Directed by the Resident Engineer.** If the Resident Engineer directs special maintenance for the benefit of the traveling public not otherwise included in the Contract, payment will be on the basis of unit prices or under Subsection 104.04. - Changes in the Character of Work. The Resident Engineer will determine the work to be classed as special maintenance.

104.08. RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK.

The Resident Engineer may authorize the use of materials found in the excavation that are suitable for completing bid items of work. The Contractor will be paid both for the removal of the materials at the corresponding Contract unit price and for the pay item for which the removed materials are used.

The removed material shall be replaced with acceptable material at no cost to the Department. No charge for the materials used will be made against the Contractor. Material shall not be excavated or removed from within the highway Right-of-Way that is not within the grading limits without written authorization from the Resident Engineer. Replacement material covered under this Subsection shall be compacted to the density requirements specified for roadway embankment construction.

Unless otherwise provided, the material from any structure to be removed may be used temporarily by the Contractor in the erection of the new structure. Such material shall not be cut or otherwise damaged without approval of the Resident Engineer.

104.09. REMOVAL AND DISPOSAL OF SALVAGED MATERIALS, STRUCTURES AND OBSTRUCTIONS.

Unless otherwise shown on the Plans or in the Proposal, all salvaged materials or materials not incorporated in the work shall become the property of the Contractor and disposed of by him/her. No materials shall be buried or otherwise disposed of within the Project limits or on any publicly owned property without written permission of the Resident Engineer.

104.10. FINAL CLEANING UP.

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the right-of-way all of his/her machinery, equipment, surplus and discarded materials, rubbish and temporary structures. The Contractor shall remove stumps or portions of trees, shall cut all brush and weeds within the limits of the right-of-way and shall leave the Project and his/her borrow pits in a neat workmanlike condition. Material cleared from the right-of-way and deposited on property adjacent to the right-of-way will not be considered as having been disposed of satisfactorily.

The Contractor shall leave any areas or slopes, where he/she performs any work, in a neat and workmanlike condition. The Contractor shall repair at his/her own expense any areas, slopes or turf that have been damaged by his/her operations. The cost of final cleanup shall be incidental to other items and no separate payment will be made.

104.11. RESTORATION OF SURFACES OPENED BY PERMIT.

The right to construct or reconstruct any utility service within the Project or to grant permits for same, at any time, is hereby expressly reserved by the Department for the proper authorities of the municipality in which the work is done. The Contractor shall not be entitled to any damages from the Department except as provided for in Subsection 108.07. for delay or damage due to utility service construction or reconstruction by a third party or parties.

Any individual, firm, or corporation wishing to construct a utility, driveway, or make a curb-cut, or otherwise access the highway must secure a permit from the Department. The Contractor shall allow parties bearing such permits, and only those parties, to make accesses to the highway. The Contractor shall make, in an acceptable manner, all necessary repairs due to such accesses and such necessary work will be paid for as provided for in Subsection 104.04., or as otherwise provided, and will be subject to the same conditions as original work performed.

104.12. RAILWAY-HIGHWAY GRADE CROSSINGS.

On any work to be done on railway right-of-way, or on right-of-way occupied jointly by the highway and railway, the Contractor shall take such precautions necessary to ensure the safety of railway operations. The Contractor and his/her Surety shall indemnify and save harmless the Railway Company from all actions or claims of any character, name or description brought for or on account of any injuries or damages received or sustained by any person, persons, or property resulting from any act, omission, neglect or misconduct of the Contractor or his/her employees in the performance of the work.

104.13. CONSTRUCTION OVER OR ADJACENT TO NAVIGABLE WATERS.

Work over, on, or adjacent to navigable waters shall be conducted without interfering with free navigation of the waterways and so that the existing navigable depths are not impaired except as allowed by permit issued by the U.S. Coast Guard or the U.S. Army Corps of Engineers, as applicable.

104.14. CONTRACTOR'S RESPONSIBILITY FOR WORK.

Until a final completion notice is issued by the Resident Engineer, all work and material for the Contract, including any change order work, shall be at the sole risk of the Contractor, who shall protect the work against injury or damage from all causes whether arising from the execution or non-execution of the work except as provided in Subsection 104.07.b.1.

At the Contractor's expense, the Contractor shall rebuild, repair, restore, and make good all losses, injuries or damages to any portion of the permanent or temporary work occurring before the final written notice of completion except damage to permanent work caused by (a) cataclysmic phenomenon of nature, or (b) acts of public enemy or of governmental authorities; provided, however, that these exceptions shall not apply should damages result from the Contractor's failure to take reasonable precautions or to exercise sound engineering and construction practices in conducting the work.

If the performance of the work is delayed as the result of damages by others, an extension of time will be evaluated in accordance with Section 108.07.

Nothing contained in this section shall be construed as relieving the Contractor of responsibility for, or damage resulting from, the Contractor's operations or negligence, nor shall the Contractor be relieved from full responsibility for making good any defective work or materials as provided for under Section 105.12.

The Contractor shall provide a competent supervisor on the job site who is thoroughly experienced in the type of work being performed. The supervisor shall have authority to make binding decisions on behalf of the Contractor, and have authority to provide labor, equipment, and materials required for effective progress of the job. It is the intent that the supervisor be available for contact and communication on the job site irrespective of the amount of work sublet.

104.15. ENVIRONMENTAL PROTECTION.

The Contractor shall comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and pollution of the atmosphere from particulate and gaseous matter shall be avoided.

Fording of streams is not permitted unless the plan for such operation meets the approval of the Resident Engineer and results in minimum siltation to the stream.

When work areas or pits are located in or adjacent to streams, they shall be separated from the main stream by dike or barrier to keep sediment from entering the stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

Water from aggregate washing or other operations resulting in sediment shall be treated by filtration, settling basins, or other means sufficient to reduce the sediment concentration to no more than that of the stream or lake into which it is discharged.

Other requirements relating to temporary and permanent erosion and water pollution controls are in Section 200, Earthwork and Roadside Development.

104.16. CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES.

At points where the Contractor's operations are adjacent to properties of railroad, telephone, power companies, other utilities or facilities rightfully located within the limits of the Project, damage to which might result in considerable expense, loss or inconvenience, work shall not be commenced until all arrangements that are required for the protection thereof have been made.

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner and that duplication of rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.

Reference is made to the Underground Facilities Damage Prevention Act (63 O.S. Section 142.1 et. seq.), including amendments, which is made part of the Contract. Copies may be obtained from the Resident Engineer.

In the event of interruption to water or utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Contractor shall immediately notify the proper authority. He/She shall cooperate with the said authority in the prompt restoration of service. In no case shall interruption to water service be allowed to exist outside of working hours. Fire hydrants shall be kept accessible to the Fire Department at all times and no materials shall be kept or stockpiled within 15 feet (4.6 meters) of any fire hydrant.

The Contractor shall check the location of all water services, water mains, sanitary sewers and other utilities shown on the Plans and shall be responsible for damages to these facilities resulting from his/her operation in accordance with the Underground Facilities Damage Prevention Act (63 O.S. § 142.1, et seq.).

104.17. VALUE ENGINEERING PROPOSALS BY THE CONTRACTOR.

Any cost savings generated to the Contract as a result of Value Engineering Proposal(s) offered by the Contractor and approved by the Department shall be shared equally between the Contractor and the Department.

Bid prices are not to be based on the anticipated approval of a Value Engineering Proposal that may be rejected by the Department. If a Value Engineering Proposal is rejected, the Contract shall be completed at the Contract bid prices.

If the Department determines that the time for response indicated in the submittal under item b.5. below is insufficient for review, the Contractor will be promptly notified. Based on the additional time needed by the Department for review and the affect on the Contractor's schedule occasioned by the added time, the Department will evaluate the need for a noncompensable delay adjustment to the Contract.

The Contractor shall have no claim against the Department for compensable or noncompensable delay to the Contract based on the failure to respond within the time indicated in item b.5. below in the submittal if additional information is needed to complete the review.

- (a) The Value Engineering Proposals contemplated are those that could produce a savings to the Department without impairing essential functions and characteristics of the facility; including but not limited to, service life, economy of operation, ease of maintenance, desired appearance, and safety.
- (b) **Submittal of Proposal.** The following materials and information shall be submitted 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 and the proposed change, and the cooperative advantages and disadvantages of each, including effects on service life, economy of operations, ease of maintenance, desired appearance, and safety.
 3. A complete set of plans and specifications showing the proposed revisions relative to the original Contract features and requirements.
 4. A complete analysis indicating the final estimate costs and quantities to be replaced by the Value Engineering Proposal compared to the new costs and quantities generated by the Value Engineering Proposal.

5. A statement specifying the date by which a Change Order adopting the Value Engineering Proposal must be executed to obtain the maximum cost reduction during the remainder of the contract.
 6. A statement detailing the effect the Value Engineering Proposal will have on the time for completing the Contract.
 7. A description of any previous use or testing of the Proposal and the conditions and results. If the Value Engineering Proposal was previously submitted on another Department project, indicate the date, Contract number, and the action taken by the Department.
- (c) **Conditions.** Value Engineering Proposals will be considered only when all of the following conditions are met:
1. Value Engineering Proposals, approved or not approved by the Department apply only to the ongoing Contract(s) Value Engineering referenced in the Proposal and become the property of the Department. The Proposal(s) shall contain no restrictions imposed by the Contractor on their use or disclosure. The Department has the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the Value Engineering Proposal. The Department retains the right to utilize any accepted Value Engineering Proposal or part thereof on other projects without obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.
 2. If the Department is already considering certain revisions to the Contract or has approved certain changes in the Contract for general use that are subsequently incorporated in a Value Engineering Proposal, the Department will reject the Value Engineering Proposal and may proceed without obligation to the Contractor.
 3. The Contractor shall have no claim against the Department for additional costs or delays resulting from the rejection of a Value Engineering Proposal, including but not limited to, development costs, loss of anticipated profits, increased material or labor costs.
 4. The Department will determine if a Value Engineering Proposal qualifies for consideration and evaluation. It may reject any Value Engineering Proposal that requires excessive time or costs for review, evaluation, and/or investigations, or that is not consistent with the Department's design policies and criteria for the project.
 5. The Resident Engineer will reject all or any portion of work performed under an approved Value Engineering Proposal if unsatisfactory results are obtained. The Resident Engineer will direct the removal of such rejected work and require construction to proceed under the original Contract requirements without reimbursement for work performed under the proposal, or for its removal. Where modifications to the Value Engineering Proposal are approved 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 under the original Contract requirements. The rejection or limitation of reimbursement shall not constitute the basis of any claim against the Department for delay or for other costs.
 6. The proposed work shall not contain experimental features but shall be proven features that have been used under similar or acceptable conditions on other projects or locations acceptable to the Department.

7. Value Engineering Proposals will not be considered if equivalent options are already provided in the Contract.
 8. The savings generated by the Value Engineering Proposal must be sufficient to warrant a review and processing.
 9. A Value Engineering Proposal changing the type and/or thickness of the pavement structure will not be considered.
 10. Additional information needed to evaluate Value Engineering Proposals shall be provided in a timely manner. Untimely submittals of additional information will result in rejection of the Value Engineering Proposal. Where design changes are proposed, the additional information could include results of field investigations and surveys, design computations, and field change sheets.
- (d) **Payment.** If the Value Engineering Proposal is accepted, the changes and payment will be authorized by Change Order. Reimbursement will be made as follows:
1. The changes will be incorporated into the Contract by changes in quantities of unit bid items, and/or new agreed price items, as appropriate, under the Contract.
 2. The cost of the revised work as determined from the changes will be paid directly. In addition, the Department will pay the Contractor 50 percent of the savings to the Department as reflected by the difference between the cost of the revised work and the cost of the related construction required by the original Contract computed at Contract bid prices. The 50 percent Value Engineering cost savings will be paid to the Contractor in a lump sum as soon as savings have been earned and quantities ascertained.
 3. Costs for development, design, and implementation of the Value Engineering Proposal are not eligible for reimbursement.
 4. The Contractor may submit Value Engineering Proposals for an approved subcontractor. Subcontractors may not submit a Proposal except through the Contractor.

104.18. RAILWAY-HIGHWAY GRADE SEPARATION STRUCTURES AND APPROACHES THERETO.

- (a) **General.** The construction of grade separation structures and approaches thereto is a joint undertaking of the Department and the Railway Company whose tracks are crossed, and representatives of the Railway Company shall have full authority to make inspections of the work as it progresses.

Unless otherwise specified in the Contract for a project, or a separate right of entry agreement between the Contractor and the Railway Company, the Contractor shall notify the Railway Company or companies listed on the Plans and at their office so indicated, in writing, at least ten (10) days in advance of starting work on the Railway Company's property. Additional notification shall be given to the Railway Company forty-eight (48) hours in advance of the starting of construction of falsework over the tracks of the Railway Company or the construction of piers adjacent thereto or as may be required by the Contractor's right of entry agreement with the Railway Company.

In all phases of the work affecting the Railway Company, the Contractor shall cooperate with them to the fullest extent possible. The Contractor shall plan and execute the work so that there

will be the least possible interference with the traffic and operations of the Railway Company. The Contractor will be required to maintain a clearance area for the maintenance of railway traffic during construction and said clearance area shall be kept free at all times from any falsework, equipment, materials or other obstructions. Unless otherwise specified on the Plans, or a separate right of entry agreement between the Contractor and the Railway Company, the minimum vertical clearance shall be 22 feet (6.6 meters) above the top of the highest rail and the minimum horizontal clearance shall be 8½ feet (2.6 meters) on each side of and measured at right angles to the centerline of the tracks. It shall be a responsibility of the Contractor not to disrupt the normal operation of the track drainage system. No equipment or materials shall be allowed to remain in the ditches in such a manner as to obstruct the flow of water. Any material spilling into the ditches shall be removed immediately.

In case the Contractor, by written agreement with the Railway Company, is permitted to encroach upon the clearance specified herein in, a separate right of entry agreement between the Contractor and the Railway Company or on the Plans, he/she shall at his/her own expense take such precautions and shall erect and maintain such telltales or warning devices as the Railway Company requires.

In the event the Contractor is required or elects to haul material across the Railway Company's tracks, he/she shall make his/her own arrangements with the Railway Company for necessary private crossings and all costs incurred in the installation, maintenance, use or protection of such crossings shall be borne by the Contractor.

The Contractor shall take the required precautions necessary to ensure the safety of the railway operations. He/She shall prepare, and submit for approval by the Department and the Railway Company, detailed plans for all falsework over the tracks and caissons or sheetings for piers, or abutments adjacent to or under the tracks before doing any work on same. After obtaining approval from the Bridge Engineer and the Railway Company of such plans, said falsework, sheeting and caissons shall be constructed strictly in accordance with the Contractor's plans. By approval of the Contractor's plans, the Department neither accepts nor assumes any liability for defects or error in the Plans. The Department makes no warranty either expressed or implied as to the accuracy or fitness of the Contractor's plans.

The Contractor will be responsible to the Railway Company for all damages to railroad property resulting from the Contractor's operations and may be subject to such additional conditions as are specified in the Railway Company's right of entry agreement. Contractor's final estimate will not be paid until the Contractor provides satisfactory evidence in the form of a photocopy of a letter sent by the Contractor to the Railway Company by certified mail, notifying the Railway Company of completion and acceptance of the work required by the Contract and providing the Railway Company with a thirty (30) day time in which to notify the Contractor and the Department of potential claims, to the Resident Engineer that this requirement has been fulfilled. Upon completion of the work, Contractor shall remove all equipment, unused materials, rubbish, and temporary structures, and shall leave the premises in a neat and satisfactory condition.

When specifically permitted by the Plans and the Contract, certain construction operations may necessitate the suspension of railway traffic. In order to avoid any disruptions of train schedules, such construction operations will necessarily have to be completed in as short a time as pos-

- sible. Before starting such a construction operation, the Contractor shall fully advise the Railway Company and the Department as to the method he/she proposes to follow, the amount and character of equipment which he/she proposes to use and the probable time required to complete the operation, all of which shall be subject to the approval of the Resident Engineer and the Railway Company. Such approval, however, shall not be considered as relieving the Contractor of the responsibility for the safety of his/her method or equipment or from carrying out the work in full accordance with the Contract.
- (b) **Overpass (Highway Overhead Bridge).** The Department will provide a vertical clearance of 50 feet (15 meters) measured from the base of the rail, for telegraph, telephone and signal services. In the event that the Contractor desires more clearance, such additional clearance shall be made at his/her own expense.
 - (c) **Underpass (Railroad Overhead Bridge).** The Department will provide a vertical clearance of 30 feet (9 meters) measured from the base of the rail, for telegraph, telephone and signal services crossing over the proposed construction. In the event that the Contractor desires more clearance, such additional clearance shall be made at his/her own expense.
 - (d) **Railway Company Requirements.** The Railway Company may as a condition for working on or over railroad right-of-way impose both vertical and horizontal clearance requirements. Clearance requirements for working on or over railroad right-of-way will be contained in the right of entry agreement between the Contractor and the Railway Company.

104.19. RAILROAD FLAGGING.

The Contractor shall reimburse the Railway Company directly for the cost of all railroad flagging required by the Railway Company due to construction on their property. The cost of flagging shall be included in the unit prices bid by the Contractor for other items of work. There will be no additional payment to the Contractor for this cost.

The Contractor's final estimate will not be paid until the Contractor provides satisfactory evidence in the form of a notarized certificate by Contractor that he/she has wholly reimbursed the Railway Company for flagging services.

SECTION 105 CONTROL OF WORK

105.01. AUTHORITY AND DUTIES OF THE RESIDENT ENGINEER.

The Resident Engineer will decide all questions regarding the quality and acceptability of materials furnished, work performed, and the rate of progress of the work, the interpretation of the Contract, and the acceptable fulfillment of the Contract by the Contractor.

- (a) The Resident Engineer will suspend the work wholly or in part for the Contractor's failure to:
 - 1. Correct conditions unsafe for the project personnel or general public, or
 - 2. Carry out provisions of the Contract, or
 - 3. Carry out orders of the Resident Engineer.