

(b) **Provisions of Termination:** Termination will be in accordance with the following:

1. Disturbed areas shall be promptly placed in an acceptable condition as directed by the Engineer. Payment for such work will be made at the contract unit prices or, in the absence of contract unit prices, in accordance with the requirements of Section 104.03.
2. Payment will be made for the actual number of units or items of work completed at the contract unit price, or as mutually agreed, for items of work partially completed. No claim for loss of anticipated profits will be considered, and the provisions of Section 104.02 will not apply.
3. Reimbursement for organizing the work when not specified in the Contract and moving equipment to and from the job will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the contract unit prices.
4. At the option of the Engineer, materials the Contractor obtains for the work that have been inspected, tested, and accepted by the Engineer and that have not been incorporated in the work may be purchased from the Contractor at actual costs as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Engineer.
5. The termination of the Contract or a portion thereof shall not relieve the Contractor of his responsibilities for the completed work, nor shall it relieve his surety of its obligation for and concerning any just claims arising out of the work performed.

#### **108.15—Termination of Contractor’s Responsibilities.**

The Contract will be considered complete upon final acceptance. The Contractor will be notified in writing of the final acceptance, and his responsibility will then cease except as set forth in his bond.

### **SECTION 109—MEASUREMENT AND PAYMENT**

#### **109.01—Measurement of Quantities.**

Work specified in the Contract will be measured by the Engineer according to U.S. Standard Measure. The methods of measurement and computations to be used to determine quantities of material furnished and work performed will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface computations will be made horizontally, and transverse measurements will be the surface measure shown on the plans or ordered in writing by the Engineer. Individual fixture areas of 9 square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured according to neat lines shown on the plans.

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which they are placed.

Allowance will not be made for surfaces placed over a greater area than shown on the plans or for any material moved from outside the area of the cross section and lines shown on the plans.

When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

- (a) **Measurement by Weight:** Materials that are measured or proportioned by weight shall be weighed on accurate scales. When material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the Engineer and shall be bonded to the Commonwealth of Virginia in the amount of \$10,000 for the faithful observance and performance of the duties of the weighperson required herein. The bond shall be executed on a form having the exact wording as the Weighpersons Surety Bond Form furnished by the Department and shall be submitted to the Department prior to the furnishing of the tonnage material. No payment will be made for materials delivered in excess of the legal load limits established for each truck.

The Contractor shall have the weighperson perform the following:

1. Post and furnish a weekly tare weight of each truck used and keep a record of them for 12 months.
2. Furnish a signed weigh ticket for each load that shows the date, truck number, load number, plant name, size and type of material, project, schedule or purchase order number, and the weights specified herein.
3. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.
4. Submit by the end of the next working day a summary of the number of loads and total weights for each type of material by contract.

Trucks used to haul material being paid for by weight shall display the truck uniform identification number and legal gross and legal net weight limits. These markings shall be no less than 2 inches high and perma-

nently stenciled on each side of the truck with contrasting color and located as to be clearly visible when the vehicle is positioned on the scales and observed from normal position of the weighperson at the scale house.

Trucks used to haul material shall be equipped with a cover suitable to protect the material and to protect the traveling public.

The truck tare to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the nearest 20 pounds. At the option of the Contractor, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of materials that subsequently pass through a stationary mixing plant.

Scales shall conform to the requirements for accuracy and sensitivity as set forth by the *National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices*. Scales used in the weighing of materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least 18 months, and copies of all scale service representative test reports shall be forwarded to the Department.

The quantity of materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall conform to the requirements of Section 211.11 and shall print the net weight of each load. The weigh ticket shall also show the legal gross weight for material weighed on truck scales and the legal net weight for material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for 48 hours provided satisfactory visual verification of weights can be made. The written permission of the Engineer will be required for the operation of scales after 48 hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the materials in place and unit weights determined by the Engineer or by other methods deemed appropriate to protect the interests of the State.

- (b) **Measurement by Cubic Yard:** Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except streambed gravel, will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for streambed gravel. Such vehicles may be of any size or type acceptable to the Engineer provided the body is of such shape that the actual contents can be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity.

When approved by the Engineer in writing, material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before they are used.

- (c) **Measurement by Lump Sum:** When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit (in effect, lump sum work) is specified as the unit of measurement, the unit will be construed to include necessary fittings and accessories. The quantities may be shown on the plans for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only. Items that are to be measured as complete units will be counted by the Inspector in the presence of a representative of the Contractor.

(d) **Specific Items:**

1. **Concrete:** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.
2. **Excavation, embankment, and borrow:** In computing volumes of excavation, embankment, and borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.
3. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60 degrees F using the following correction factors:

- a. 0.00035 per degree F for petroleum oils having a specific gravity 60/60 degrees F above 0.966
- b. 0.00040 per degree F for petroleum oils having a specific gravity 60/60 degrees F between 0.850 and 0.966
- c. 0.00025 per degree F for emulsified asphalt

Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60 degrees F:

$$V^1 = V/K(T - 60) + 1$$

Where:

$V$  = volume of asphalt to be corrected;

$V^1$  = volume of asphalt at 60 degrees F;

$K$  = correction factor (coefficient of expansion); and

$T$  = temperature in degrees F of asphalt to be corrected.

When asphalt is delivered by weight, the volume at 60 degrees F will be determined by dividing the net weight by the weight per gallon at 60 degrees F.

When specified in the Contract, asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the work.

When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

Only the quantity of asphalt actually placed in the work and accepted will be considered in determining the amount due the Contractor.

4. **Timber:** Timber will be measured in units of 1,000 foot-board-measure actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
5. **Equipment rental:** Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the project or source of supply and the project except when another method of measurement is specified.

**109.02—Plan Quantities.**

When specified in the Contract, items will be measured and paid for on the basis of plan quantities. The quantities allowed for compensation will be those shown on the plans with deductions from or authorized additions to such quantities resulting from deviations from the plans. In the case of excavation, only excavation within the cross-section prism will be paid for on a plan quantity basis.

If the Contractor believes that any plan quantity is incorrect, he may solicit, at his own expense, the aid of a certified Professional Engineer to check the quantity or he may request the Department in writing to check computations of the quantity. Written requests for a quantity check by the Department shall be accompanied by calculations, drawings, or other evidence indicating why the plan quantity is believed to be in error. If any item of the Contract is found to be in error, payment will be made in accordance with the corrected plan quantity.

If the Department determines during construction that there is an error in the plan quantity, or that conditions vary from those anticipated in the design to the extent that an actual measurement of a plan quantity item is warranted, the Department will make such measurement. Payment will then be based on the measured quantity in lieu of the plan quantity.

**109.03—Scope of Payment.**

Payments to the Contractor will be made for the quantities of contract items performed in accordance with the plans and the requirements of the Specifications. If, upon completion of the construction, these quantities show either an increase or decrease from the quantities shown in the Contract, the contract unit prices shall prevail unless they have been modified by work orders.

Quantities appearing on the proposal are estimated quantities for the basic design shown on the plans. With the approval of the Department, the Contractor may furnish other design(s) that may involve changes in quantities or the use of different materials. However, payment will be made for plan quantities only and in the units of measure given in the proposal for the basic design unless the dimensions for the basic design would have had to have been changed by an authorized modification to conform to field conditions encountered. In this event, modified plan quantities will be used for pay quantities at contract unit prices for the items listed on the proposal.

The Contractor shall accept the compensation provided for in the Contract as full payment for the following:

- (a) furnishing all materials, labor, tools, equipment, and incidentals necessary to complete the work
- (b) performing all work contemplated under the Contract

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- (c) all loss or damage arising from the nature of the work or from action of the elements or any other unforeseen difficulties that may be encountered during prosecution of the work and until its final acceptance
- (d) all risks of every description connected with the prosecution of the work
- (e) all expenses incurred in consequence of the suspension of the work as herein authorized
- (f) any infringement of patent, trademark, or copyright
- (g) the completion of the work in accordance with the requirements of the Contract

If the payment clause in the specifications relating to any unit price in the Contract requires that the unit price cover and be considered compensation for certain work or material essential to the item, the work or material will not be measured or paid for under any other item except as provided in Section 106.05.

The payment of any partial estimate or any retained percentage prior to final acceptance of the project as provided for in Section 105.15 shall in no way affect the obligation of the Contractor to repair or renew any defective parts of the construction or to be responsible for all damages attributable to such defects.

### **109.04—Compensation for Altered Quantities.**

When the accepted quantities of work vary from the estimated quantities set forth in the Contract but such variance is within the percentage limits set forth in Section 104.02 whether or not there have been any changes in the plans, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit prices for the accepted quantities of work performed. No allowance or other adjustment except as provided for in Section 104.02 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting directly from either such alterations or unbalanced allocation among the contract items of overhead expense on the part of the Contractor and subsequent loss of expected reimbursements therefor or from any other cause except the payment for the actual quantity performed at the original contract unit price.

Alterations of plans or character of work involving extra work orders as provided for in Section 104.02 will be paid for in accordance with the requirements of Section 104.02. If prices cannot be agreed on, the Contractor shall proceed with the performance of the work on a force account basis in accordance with the requirements of Section 109.05.

**109.05—Extra and Force Account Work.**

Extra work performed in accordance with the requirements of Section 104.03 will be paid for at the unit prices or lump sum specified in the work order. In lieu of such agreement, the Department may require the Contractor to do such work on a force account basis to be compensated in the following manner:

- (a) **Labor:** Unless otherwise approved, the Contractor will receive the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, foremen, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Contractor's most recent payroll. If workers performing the class of labor needed have not been employed on the project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the project, if applicable. An amount equal to 45 percent of the approved force account payroll will be included in the payment for labor to cover administrative costs, profit, and benefits and/or deductions normally paid by the Contractor.
- (b) **Insurance and Tax:** The Contractor will receive an amount equal to 25 percent of the approved force account payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes of force account work.
- (c) **Materials:** The Contractor will receive the actual cost of materials accepted by the Engineer that are delivered and used for the work including taxes, transportation, and handling charges paid by the Contractor, exclusive of labor and equipment rentals as herein set forth, to which 15 percent of the cost will be added for administration and profit. The Contractor shall make every reasonable effort to take advantage of trade discounts offered by material suppliers. Any discount received shall accrue to the Department. Salvageable temporary construction materials will be retained by the Department, or their appropriate salvage value shall be credited to the State, as agreed on by the Department.
- (d) **Equipment:** The Contractor shall provide the Engineer a list of all equipment to be used in the work. For each piece of equipment, the list shall include the serial number; date of manufacture; location from which equipment will be transported; and, for rental equipment, the rental rate and name of the company from which it is rented. The Contractor will be paid hourly rental rates for pieces of machinery, equipment, and attachments necessary for prosecution of the work that are approved for use by the Engineer. Hourly rental rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Blue Book* rate adjustment tables that are current at

the time the force account is authorized. Adjustment factors or rate modifications indicated on area maps in the *Blue Book* will not be considered when acceptable rates are determined. Hourly rental rates for equipment held in ready will be at 50 percent of the rate paid for equipment in use.

Payment will be made for the total hours the equipment is in use. When equipment is in use less than 40 hours for any given week and is held in ready, payment for held-in-ready time will be allowed for up to 40 hours, minus hours in use. Payment will not be made for the time that equipment is on the project in excess of 24 hours prior to its actual use in the force account work. An amount equal to the *Blue Book* estimated operating cost per hour will be paid for all hours the equipment is in use. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Engineer.

The Contractor will be paid freight cost covering the moving of equipment to and from the specific force account operation provided such cost is supported by an invoice showing the actual cost to the Contractor. However, such payment will be limited to transportation from the nearest source of available equipment. If equipment is not returned to the nearest equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the storage lot.

The rates for equipment not listed in the *Blue Book* schedule shall not exceed the hourly rate being paid for such equipment by the Contractor at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the work is contemplated shall be used.

If the Contractor does not possess or have readily available equipment necessary for performing the force account work and such equipment is rented from a source other than a company that is an affiliate of the Contractor, payment will be based on actual invoice rates, to which 15 percent of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, it will be converted to an hourly rate, and an amount equal to the *Blue Book* estimated operating cost per hour will be added for each hour the equipment is in use.

- (e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for equipment as defined in the *Blue Book*, general superintendents, timekeepers, secretaries, the use of small tools, or other costs for which no specific allowance is herein provided. The Contractor will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific force account work as determined by the Department. The Contractor shall supply documented evidence of such costs.

- (f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Contractor as payment in full for work performed on a force account basis. At the end of each day, the Contractor's representative and the Inspector shall compare and reconcile records of the cost of work done as ordered on a force account basis.

If all or a portion of the force account work is performed by an approved subcontractor, the Contractor will be paid 10 percent of the subcontract net force account costs before additives are applied to cover his profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required by (g) herein shall be submitted on a form that separates the subcontracted portions of the force account labor, materials, and equipment from the other force account costs.

- (g) **Statements:** Payments will not be made for work performed on a force account basis until the Contractor has furnished the Engineer duplicate itemized statements of the cost of such work detailed as follows:
1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreman, and superintendent
  2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of equipment
  3. quantities of materials, prices, and extensions
  4. transportation of materials

Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

#### **109.06—Eliminated Items.**

If any item in the Contract is determined to be unnecessary for the proper completion of the work contracted, the Department may, upon written notice to the Contractor, eliminate such item from the Contract. Payment will not be made for such item except that the Contractor will be compensated for the actual cost of any work performed for the installation of such item and the net cost of materials purchased, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit.

**109.07—Partial Payments.**

Partial payments will be based on a monthly progress estimate consisting of approximate quantities and value of work performed as determined by the Engineer. When the method of measurement for a contract item is in units of each or lump sum, the value of work accomplished for partial payment will be determined on a pro rata basis. Partial payments will be made once each month for the work performed in accordance with the contract requirements except when the net receivable amount is less than \$500. In this case, no partial payment will be made and the value of such work will be carried over to the next monthly progress estimate. The Contractor will be given the opportunity to review the monthly progress estimate prior to each partial payment. Upon final acceptance, a semifinal estimate will be prepared and any additional partial payment will be vouchered for payment, regardless of the value.

The monthly progress estimates for contractors on the Department's prequalification list will be prepared in accordance with the following schedule:

- (a) **Contractor companies whose name begins with the letter *A* through *F*:** The monthly progress estimate will be prepared on the 4th day of each month, beginning on the first 4th day following the date of the Notice to Proceed, and on the same day of the succeeding months as the work progresses.
- (b) **Contractor companies whose name begins with the letter *G* through *P*:** The monthly progress estimate will be prepared on the 11th day of each month, beginning on the first 11th day following the date of the Notice to Proceed, and on the same day of the succeeding months as the work progresses.
- (c) **Contractor companies whose name begins with the letter *Q* through *Z*:** The monthly progress estimate will be prepared on the 20th day of each month, beginning on the first 20th day following the date of the Notice to Proceed, and on the same day of the succeeding months as the work progresses.

Monthly progress estimates for joint venture contracts will be prepared in accordance with the aforementioned schedule by using the name of the first Contractor, from left-to-right order, as it appears in the Contract.

Partial payments will be made for the work shown on the monthly progress estimate subject to the limitations established herein. If the Engineer determines that the Contractor has been overpaid, the Department will deduct such overpayments from any future payments due the Contractor.

The Department will deduct an amount equivalent to 5 percent of the monthly progress estimate and will retain such monies until final payment is made in accordance with the requirements of Section 109.09. The balance less all previous partial payments will be vouchered for payment. After 50 percent of the total contract value

has been completed and 5 percent has been retained on this amount, the Department will make the remaining partial payments in full provided the Contractor is maintaining a satisfactory rate of progress. *Total contract value* will be considered to mean the original amount of the Contract except when the Contract is increased or decreased by more than 20 percent, in which case the adjusted total will be considered as the total contract value.

If the Contractor's progress falls more than 10 percent behind the latest approved progress schedule, the progress will be considered unsatisfactory and the normal 5 percent retainage will be withheld for each month the Contractor is behind the progress schedule by more than 10 percent.

When the dollar value of the work completed has reached 90 percent of the total dollar value indicated on the Contractor's latest approved progress schedule, the progress will be determined at the time of the monthly progress estimate by comparing the percentage of time used with the percentage of work completed. When the percentage of time used exceeds the percentage of work completed by more than 10 percent, the Contractor's progress will be considered unsatisfactory and the normal 5 percent retainage will be withheld for each month the percentage of time used exceeds the percentage of work completed by more than 10 percent.

When the Engineer determines that the Contractor's progress is considered satisfactory in accordance with these requirements, the remaining monthly progress estimate payments will be made in full. However, retainage previously withheld will not be released on subsequent monthly progress estimates.

For contracts without a payment bond, the Contractor shall submit a letter from each materials supplier and sub-contractor involved to the Engineer that the Contractor has paid or made satisfactory arrangements for settling all bills for materials and subcontracted work that was paid on the previous month's progress estimate. The Department will use the source of supply letter and approved subletting request to verify that certifications have been received for work that was paid on the previous monthly estimate. The Contractor shall furnish these and other certificates as are required as a prerequisite to the issuance of payment for the current monthly estimate. The Department may withhold the payment of any partial or final estimate voucher or any sum(s) thereof from such vouchers if the Contractor fails to make payment promptly to all persons supplying equipment, tools, or materials; for any labor he uses in the prosecution of the contract work; or for any other cause as determined by the Engineer.

At the time the Contractor submits a bid, he will have the option to use the escrow account procedure for the use of funds retained by the Department by so indicating in the space provided on the proposal. If the Contractor elects to use the escrow account procedure, the Escrow Agreement Form included in the proposal and Contract shall be executed and submitted to the Department within 15 calendar days after notification. If the Escrow Agreement Form is not submitted, the Contractor shall forfeit such rights to the use of the escrow account procedure. In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent, and the

surety shall execute an Escrow Agreement Form and submit it to the Department for approval. The Contractor's escrow agent shall be a trust company, bank, or savings and loan institution with its principal office located in the State. The Escrow Agreement Form shall contain the complete address of the escrow agent and surety. The executed escrow agreement will be authority for the Department to pay the retained funds to the escrow agent. After approving the agreement, the Department will pay to the escrow agent the funds retained as provided herein except for funds retained for lack of progress or other deficiencies on the part of the Contractor. The escrow agent, in accordance with the stipulations contained in the escrow agreement, may invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided such funds are fully secured by approved securities.

Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the Department. When the final estimate is released for voucher, the Department will direct the escrow agent to settle the escrow account by paying the Contractor or the Department monies due them as determined by the Department. The Department may recall retained funds and release them to the surety upon receipt of a written request from the Contractor or in the event of default.

#### **109.08—Payment for Material on Hand.**

When requested in writing by the Contractor, payment allowances may be made for material secured for use on the project. Such material payments will be for only those actual quantities identified in the contract, approved work orders, or otherwise documented as required to complete the project and shall be in accordance with the following terms and conditions:

- (a) **Structural Units:** An allowance of 100 percent of the cost to the Contractor for structural steel materials for fabrication not to exceed 60 percent of the contract price may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the project. An allowance of 100 percent of the cost to the Contractor for superstructure units, not to exceed 90 percent of the contract price, may be made when they have been fabricated. Prior to the granting of such allowances, the structural steel materials and fabricated units shall have been tested or certified and found acceptable to the Department and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by the Engineer and will be subject to the retainage requirements of Section 109.07.
- (b) **Other Materials:** For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of 100 percent of the cost to the Contractor for materials, not to exceed 90 percent of the contract price, may be made when such material is deliv-

ered and stockpiled or stored in accordance with the requirements specified herein. However, no allowance will be made for cement, seed, plants, fertilizer, and other perishable material. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the Department. Allowances will be based on invoices, bills, or the estimated value of the material as approved by the Engineer and will be subject to the retainage provisions of Section 109.07.

- (c) **Excluded Items:** No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the finished construction.
- (d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, the Contractor shall repair or replace them. If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store materials within the limits of the project, the Engineer may approve storage on private property or, for structural units, on the manufacturer's or fabricator's yard. Requests for payment allowance for such material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the materials from the property without cost to the State.

- (e) **Materials Inventory:** If the Contractor requests a payment allowance for properly stored material, he shall submit a certified and itemized inventory statement to the Engineer no earlier than 5 days and no later than 2 days prior to the progress estimate date. The statement shall be submitted on forms furnished by the Department and shall be accompanied by invoices or other documents that will verify the material's cost. Following the initial submission, the Contractor shall submit to the Engineer a monthly-certified update of the itemized inventory statement within the same time frame. The updated inventory statement shall show additional materials received and stored with invoices or other documents and shall list materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If the Contractor fails to submit the monthly-certified update within the specified time frame, the Engineer will deduct the full amount of the previous statement from the progress estimate.

At the conclusion of the project, the cost of material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

**109.09—Final Payment.**

When final acceptance has been duly made by the Engineer as provided for in Section 105.15, the Engineer will prepare the final statement of the quantities of the classes of work performed. Thereafter, the Contractor will be afforded 10 days in which to review the final estimate before payment. The time may be extended by mutual agreement, and the extension added to the 90-day criteria set forth hereinafter.

The Contractor shall certify to the Department that he has paid or made satisfactory arrangements for settling all bills for materials, labor, equipment, supplies, and other items entering into or used on the work and shall furnish other certificates as are required by the Department as a prerequisite to the issuance of final payment. However, the certification regarding payment will not be a prerequisite to the issuance of final payment on contracts that require a payment bond.

Upon review of the final estimate by the Contractor and approval by the Engineer, the Contractor will be paid the entire sum due after previous payments are deducted and other amounts are retained or deducted under the provisions of the Contract. Final payment will become due and the final estimate paid within 90 calendar days after final acceptance.

Upon written request from the Contractor, annual interest will be paid on the balance that has not been paid due to the fault of the Department within 90 calendar days after final acceptance. The rate of interest will be the base rate on corporate loans (prime rate) at large U.S. money center commercial banks as reported daily in *The Wall Street Journal*. When a split rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest paid exceed the rate of interest established pursuant to Section 58.1-1812 of the *Code of Virginia* 1950, as amended, and the rate effective on the 91st day following final acceptance will be applicable throughout the period of time for which interest is paid. The period subject to payment of interest will begin on the 91st calendar day after final acceptance and will extend through the date of the payment of the final estimate.

Failure by the Contractor to provide required information and certifications will extend the 90-day period for final payment by the number of days equivalent to the delay attributable to the Contractor.

When the payment date is delayed beyond the 90-day period by the fault of the Contractor and monies are due the State, the Contractor will be assessed annual interest on the balance due the State for the time delay attributable to the Contractor. The rate of interest will be determined as specified hereinbefore.

Monies resulting from the final estimate and owed to the Department will become due and payable within 30 days of receipt by the Contractor or his escrow agent of a certified letter giving notification of the amount owed. The Contractor will be assessed annual interest at the rate determined as specified hereinbefore for any balance that remains unpaid after 37 days from receipt of the letter.