

be made to the next lowest responsible bidder, or the work may be re-advertised and constructed under contract or otherwise, as the Division may decide.

103.10-PRECONSTRUCTION CONFERENCE:

As soon as possible after the award of each Contract a preconstruction conference will be arranged by the Division. The Contractor, their superintendent, or an authorized agent shall be present at the conference and shall present the proposed schedule of work, list of proposed subcontractors, if any, and a list of suppliers from whom materials are anticipated to be purchased. The information so presented shall be on forms submitted to the Contractor with the letter of contract award. The Division will make arrangements for utility representatives to be present.

SECTION 104 SCOPE OF WORK

104.1-INTENT OF CONTRACT:

The intent of the Contract is to provide for the construction and completion in every detail of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Plans, Specifications, and terms of the Contract.

Should any misunderstanding arise as to the intent or meaning of the Contract, or any discrepancy appear, the decision of the Commissioner shall be final.

104.2-ALTERATION OF PLANS OR CHARACTER OF WORK:

Under no circumstances shall alterations of Plans or the nature of the work involve work beyond the termini of the proposed construction except as may be necessary to satisfactorily complete the project.

In addition to the above, alterations in Plans or increased quantities of items may be made necessary at a time when the contract or the items involved in the operations are substantially completed, the related contractor organization demobilized, and related equipment essentially removed from the project.

Under these circumstances, if it is demonstrated that the unit cost to the Contractor has increased, additional compensation may be allowed by the Engineer and the additional work performed as prescribed in 104.3 as "Extra Work."

Any adjustment in compensation because of a change(s) resulting from one or more of the conditions described above will be made in accordance with the provisions of 109.3. Any adjustment in contract time because of such change(s) will be made in accordance with the provisions of 108.6.

104.3-EXTRA WORK:

The Contractor shall perform unforeseen work for which there is no price included in the Contract, whenever it is deemed necessary or desirable in order

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to complete fully the work as contemplated. The work shall be performed in accordance with the Specifications and as directed, and will be paid for as provided by a written supplemental agreement on a unit price or lump sum basis. In the event the Engineer and the Contractor are unable to agree upon the terms of the supplemental agreement, the Contractor shall proceed with the work and receive payment therefore in the manner and amount prescribed in 109.4.

104.4-TEMPORARY STRUCTURES:

In contracts for bridges only, the Contractor will not be required to construct or maintain temporary structures unless the construction and maintenance of such structures are stipulated in the Contract or ordered as extra work by the Engineer. If the building of temporary structures is included in the Contract, or added by extra work order, the responsibility of the Contractor for accidents to the public or to their employees, arising from their construction or maintenance, shall extend to such structure and its roadway approaches.

104.5-MAINTENANCE OF TRAFFIC:

The Project, while undergoing improvement, shall be kept open to all traffic by the Contractor in such condition that both local and through traffic will be adequately and safely accommodated. All construction operations shall be scheduled to keep traffic delay to a minimum. The Division has adopted, and the Contractor shall follow the Standard, "Traffic Control for Street and Highway Construction and Maintenance Operations," published by the West Virginia Division of Highways.

All expenses for the following items shall be borne by the Contractor without extra compensation except when the Proposal provides for payment under 636, Maintaining Traffic:

- i. The construction and maintenance of temporary detours, temporary structures, temporary approaches, crossings and intersections with streets and roads, including the furnishing and application of aggregates for maintenance of traffic and liquid asphalt oil, calcium chloride, or water for use as dust palliative.
- ii. The furnishing of flaggers and pilot trucks and drivers.
- iii. The furnishing, erection, and maintenance of warning devices, such as signs, auxiliary barriers, channelizing devices, hazard warning lights, barricades, flares and reflective markers.

If actual field conditions are not illustrated in the Plans, engineering judgment and discretion shall be exercised to select devices that will be adaptable, but the general policies prescribed shall be adhered to. Final responsibility for the installation of adequate safety devices for the protection of the traveling public and employees, as well as for the safeguard of the work in general, shall rest with the Contractor.

During any suspension of work, the Contractor shall make passable and shall

open to traffic such portions of the project and temporary roadways or portions thereof as may be agreed upon between the Contractor and the Engineer for the temporary accommodation of necessary traffic during the anticipated period of suspension. Thereafter, and until an issuance of an order for the resumption of construction operations, the maintenance of the temporary route or line of travel agreed upon will be by and at the expense of the Division. When work is resumed, the Contractor shall replace or renew any work or materials lost or damaged because of such temporary use of the project and shall remove, to the extent directed by the Engineer, any work or materials used in temporary maintenance thereof by the Division and shall complete the project in every respect as though its prosecution had been continuous and without interference.

All additional work caused by such suspensions, for reasons beyond the control of the Contractor, will be paid for by the Division at contract prices or by extra work.

The Division will provide all necessary snow removal.

104.6-RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK:

The Contractor, with the approval of the Engineer, may use on the project such stone, gravel, sand, or other material determined suitable by the Engineer, as may be found in the excavation and will be paid both for the excavation of such materials at the corresponding contract unit price and for the pay item for which the excavated material is used. The Contractor shall replace at their own expense with other acceptable material all of that portion of the excavation material so removed and used which was needed for use in the embankments, backfills, approaches, or otherwise. No charge for the material so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the highway location which is not within the grading limits, as indicated by the slope and grade lines, without written authorization from the Engineer.

Unless otherwise provided in the Contract, the material from any existing old structures and pipes shall become the property of the Contractor and shall be removed from the project.

104.7-FINAL CLEAN UP:

Before final acceptance is made, the Contractor shall clear the highway, waste areas, borrow pits, and all ground occupied by the Contractor during the construction, of all rubbish, excess materials, temporary structures and equipment. The Contractor shall restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the work; and shall leave the highway or bridge site, including streams and their banks, in a neat and presentable condition in accordance with applicable laws of the State. All excavated material or falsework placed in stream channels shall be removed, and all material from around piers and abutments shall be replaced and compacted to the level of the original surface.

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104.8-BRIDGE PLATE:

A bronze plate, carrying the project number, the number of the bridge, and the year of the bridge construction, will be furnished and placed by the Contractor without extra compensation. The nameplate on through steel bridges shall be placed on the end posts about eight feet (2.5 meters) vertically above the floor. On other bridges, they shall be placed in the railings as shown on the plans or as designated by the Engineer. The plate shall be a minimum of 8 in. by 10 in. (200 by 250 mm) wide, with letters and numbers of 3/4 in. (20 mm) minimum height raised 1/8 in. (3 mm) above the surface of the plate. The information on the plate shall be arranged as follows:

(Project No. on first line)

BRIDGE No. _____

BUILT (Year of construction) _____

104.9 - 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 the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of their determination whether or not an adjustment of the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

The Contractor shall promptly notify the 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 Division that changed the Contract terms and 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 or orally follow up in writing in 48 hours by the Engineer.

- B. Immediately notify the Engineer verbally of the alleged change or extra work occasioned by site conditions or actions by the Division, and in writing within five calendar days of the date the

alleged change or action was noted. Thereafter, the Contractor shall provide the following information to the Engineer in writing within 15 calendar days of the written notice.

1. The date of occurrence and the nature and circumstances of the occurrence that constitute a change.
 2. Name, title, and activity of each Division 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.
 6. Particular elements of Contract performance for which additional compensation may be sought under this Section including:
 - a. Pay item(s) that has been or may be affected by the claimed change.
 - b. Labor or materials, or both, that will be added, deleted, or wasted by the claimed change and what equipment will be idled or required.
 - c. Delay and disruption in the manner and sequence of performance that has been or will be caused.
 - d. Adjustments to Contract price(s), delivery schedule(s), staging, and Contract time estimated due to the claimed change.
 - e. Estimate of the time within which the Department must respond to the notice to minimize cost, delay, or disruption of performance.
- C. Following submission of the notification to the Engineer, and in the absence of directions received to the contrary from an authorized representative of the Division, the Contractor shall continue diligent prosecution of the work under the Contract to the maximum extent possible.

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Within 15 calendar days after receipt of the written notice and required information, the 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 Engineer for further review. The Division will respond to such additional information within 15 calendar days of receipt from the Contractor.

104.10 - SUSPENSION OF WORK ORDERED BY THE ENGINEER:

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary or inherent in 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 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.

Upon receipt, the Engineer will evaluate the Contractor's request. If the 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 Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

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.

104.11 - 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.

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.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term "significant change" shall be construed to apply only to the following circumstances:

- a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- b) When a major item of work, (any item having an original contract value in excess of 10 percent of the original contract amount or \$50,000 dollars), is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

104.12 - VALUE ENGINEERING:

The Contractor may submit to the Engineer, in writing, Value Engineering Proposals (VEP) for modifying the plans, specifications or other requirements of the contract for the purpose of reducing the total cost of construction without reducing design capacity or quality of the finished product. If accepted by the Division, net savings resulting from the VEP will be shared by the Contractor and the Division on a fifty-fifty basis.

This subsection applies to all VEPs initiated and developed by the Contractor and which are identified as such by the Contractor at the time of their submission to the Engineer; however, nothing shall be construed as requiring the Engineer to consider or approve a VEP submitted hereunder.

As a minimum, the following information shall be submitted, in quadruplicate, with each VEP:

- i. a statement that this proposal is submitted as a VEP;
- ii. a description of the difference between the existing contract requirements and the proposed change;
- iii. a statement concerning the basis for the VEP and benefits to the Division together with an itemization of the contract items and

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- requirements affected by the VEP;
- iv. separate detailed cost estimates for both the existing contract requirements and the proposed change;
- v. an itemization of plan details, design standards or specifications to be changed if the VEP is adopted;
- vi. an estimate of the effect on collateral costs to the Division. Collateral costs are defined to be reduced costs of operation, maintenance or repair and extended useful service life; and
- vii. a statement of the time by which approval must be issued to obtain the total cost reduction during remainder of Contract, noting any effect on contract completion time or delivery schedule.

The Division will process the VEP in the same manner as prescribed for any other proposal which would necessitate issuance of a Contract change order. The Division may accept in whole or in part any VEP by issuing a change order which will identify the VEP on which it is based. The Division will not be liable to the Contractor for failure to accept or act upon any VEP submitted pursuant to this provision nor for any delays to the work attributable to any such proposal. Until a proposal is effected by change order, the Contractor shall remain obligated to the terms and conditions of the existing contract. When an executed change order has not been issued by the date upon which the Contractor's proposal specifies that a decision should be made, or such other date as the Contractor may subsequently have specified in writing, such proposal shall be deemed rejected.

The change order effecting the necessary Contract modification will establish the estimated net savings agreed upon, will provide for adjustment in the Contract prices and will indicate the net savings be equally divided between the Contractor and the Division. The Contractor shall absorb all costs incurred in preparing a VEP for submission to the Division. All reasonably incurred costs of reviewing and administering the VEP will be borne by the Division. The Division reserves the right to include in the change order any conditions it deems appropriate for consideration, approval and implementation of the proposal. The Contractor's fifty-percent share of the net savings shall constitute full compensation for effecting all changes pursuant to the change order.

Acceptance of the VEP and performance of the work thereunder will not change the Contract completion date as a result of the VEP, unless specifically provided for in the change order authorizing the VEP.

The Division expressly reserves the right to adopt a VEP for general use in contracts administered by the Division when it determines the VEP is suitable for application to other contracts without obligation or compensation of any kind to the Contractor.

Proposed changes in the basic design of a bridge or pavement type, or which require different right-of-way limits, will not normally be considered as an acceptable VEP.

The Engineer shall be sole judge of the acceptability of a VEP.

When a VEP is accepted by the Division, the provisions of 104.2 pertaining

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to adjustment of Contract unit price due to alterations of Contract quantities will not apply to the items adjusted or deleted as a result of effecting the VEP by change order.

The cost of the revised work, as determined in the value engineering change order, will be paid on current estimates.

In addition to such payment, the Contractor will be paid, on a Lump Sum basis by a separate item, one half of the difference (net savings) of the cost of the original contract work and the final cost of the new work listed in the change order.

One fourth of the estimated net savings will be paid to the Contractor upon approval of the change order. The remainder of the net savings due the Contractor will be paid upon completion of all items of work included in the change order. This final Lump Sum payment will be determined by the actual quantities for items paid by the unit. Final payment for other lump sum or proposal quantity items will be the change order amount, subject to 109.2.

104.13 - FUNDING SOURCE IDENTIFICATION SIGNS:

104.13.1 - General:

Funding Source Identification Signs shall be furnished by the Contractor if the Total Contract Bid Amount of the construction exceeds \$500,000 or otherwise noted on the plans, and shall be erected during mobilization of the project. The cost of furnishing, erecting, maintaining, and removal of these signs shall be incidental to the cost of construction of the project.

104.13.2 – Location:

Funding Source Identification Signs shall be located as directed by the Engineer. The Contractor shall promptly remove each sign at the completion of the project for which the sign was erected.

104.13.3 - Sign Content:

The content of each sign and the size of letters and the size of board shall be as required by the Engineer. The funding agencies and the dollar amounts involved will be furnished to the Contractor by the Engineer.

104.13.4 - Sign Construction:

The materials for Funding Source Identification Signs, such as for the sign panels, their supports, and for the legend and background, are to be of a type and method of fabrication that will be consistent with the conditions and estimated period of use. Signs shall have black letters for the legend on a white background. Reflective sheeting will be permitted, but not required. Mounting, transverse location, height, and similar features for Funding Source Identification Signs shall be consistent with practices used for the installation of other informational signs either on wooden or steel U-channel supports to comply with small sign support safety practices. The sign shall be mounted as directed by the Engineer.