

SECTION 105 CONTROL OF THE WORK

105.1 Engineer's Authority

- (1) The engineer decides all questions regarding:
 1. Interpretation of the contract.
 2. The quantity, quality, and acceptability of materials furnished and work performed.
 3. Rate of progress of the work.
 4. Payment, contract administration, and the acceptable fulfillment of the contract.
 5. Disputes.
 6. Mutual rights under the contract.
- (2) The engineer may suspend the work in writing for any reason at any time during the contract. Except as specified in 104.2.2.3 for engineer-ordered suspensions, the department will allow no additional payment or time extension due to a suspension of work.
- (3) The engineer will determine estimated quantities for progress payments as specified in 109.6.

105.2 Supplemental Plans and Drawings

- (1) Submit to the engineer supplements to the approved contract plans, shop drawings, and the computations necessary to control the work. Do not change the approved contract plans without the engineer's written authorization.
- (2) If sufficient detail is not provided on the structure plans produced by the department, submit to the engineer plans, shop drawings, and the computations required to successfully prosecute the work.
- (3) If required in the contract, submit plans for temporary structures, cribs, cofferdams, falsework, shoring, and form work. Ensure that these plans and accompanying drawings and computations are signed and sealed by a registered professional engineer.
- (4) Include a transmittal letter with each submittal made under 105.2. Indicate on shop drawings all deviations from the contract drawings and itemize these deviations in the transmittal letter. The department will file and may review these submittals. The department's review does not relieve the contractor of the responsibility for obtaining satisfactory results, for the accuracy of dimensions and details, or for conformity of these drawings with the contract. The contractor may begin work on associated items without the department's review.
- (5) Include the cost of furnishing all shop drawings in the unit price for one or more associated bid item.

105.3 Conformity with the Contract

105.3.1 General

- (1) Perform all work the contract specifies. Produce quality work within limits of precision reasonably expected of good construction. Produce work conforming to the lines, grades, cross-sections, dimensions, and material requirements the contract specifies or the engineer establishes. Monitor construction operations to identify potential unacceptable work as defined in 101.3. Promptly remove and replace, or otherwise correct, unacceptable work at no expense to the department.
- (2) The contractor may request a plan dimension change between US standard and SI metric dimensions for a portion of the work. The engineer will only consider this dimension change if the modified work is essentially equivalent to the specified work. The department will pay for this modified work as specified in item 4 of 109.1.1.1(2). Do not proceed with the modified work without the engineer's written permission.
- (3) The contract may specify specific values with allowable tolerances, ranges, minimums, or maximums. Control operations to produce work that falls within the specified tolerance or range, falls above a specified minimum, or falls below a specified maximum. If the contract does not specify a tolerance, range, minimum, or maximum value, control operations to produce work conforming to the contract within accepted manufacturing or construction industry standards.
- (4) The contract may specify standard manufactured items such as fences, wire, plates, rolled shapes, pipe conduit, etc. If these items are identified by gauge, unit weight, section, dimensions, etc., these identifications are nominal weights or dimensions.

105.3.2 Nonconforming Work

105.3.2.1 Engineer-Accepted Nonconforming Work

- (1) If the work does not conform to the contract, the engineer will determine the circumstances under which that nonconforming work may be accepted and allowed to remain in place. The engineer will document the basis of acceptance and may execute a contract change order to adjust the contract unit prices for the nonconforming work. If the contract does not specify a price adjustment, the engineer may adjust the price.

105.3.2.2 Unacceptable Work

- (1) The engineer will issue a written order to remove and replace or otherwise correct nonconforming work that the engineer deems unacceptable, as defined in 101.3. If the contractor does not comply with the engineer's written order, the engineer may effect a remedy and deduct the cost from payments due the contractor.

105.3.2.3 Unauthorized Work

- (1) Unauthorized work is work performed as follows:
 1. Without the lines and grades being given.
 2. Beyond the lines and grades the contract shows or the engineer provides.
 3. Without the engineer's prior approval.
 4. After the inspector has temporarily suspended the work in writing as specified in 105.8.
 5. In violation of a written direction the engineer issues.
- (2) The department may elect to not measure or pay for unauthorized work. The engineer may issue a written directive to remove unauthorized work at no expense to the department. If the contractor does not comply with the engineer's written directive, the engineer may remove unauthorized work and deduct the cost from payments due the contractor.

105.4 Coordination of the Contract Documents

- (1) All documents included under the definition of contract in 101.3 are essential parts of the contract. A requirement occurring in one is binding as though occurring in all. These documents provide for and describe the complete contract. These documents are available to the contractor at no cost.
- (2) During the progress of the work, the contractor may request that the engineer interpret or provide information relative to the contract.
- (3) If there is a discrepancy between documents, the governing order is as follows:
 1. Addenda.
 2. Special Provisions.
 3. Plans.
 4. Additional Special Provisions
 5. Standard Specifications.
- (4) If there is a discrepancy on a drawing, the drawing dimensions, unless obviously incorrect, govern over scaled dimensions. If there is a discrepancy in the plans, the typical sections or details govern over the standard detail drawings.
- (5) Neither the contractor nor the department may take advantage of an apparent error or omission in the contract. Inform the engineer immediately as specified in 104.3 upon discovering an error or omission. The engineer will offer an interpretation and make the necessary corrections.

105.5 Coordination with the Contractor

105.5.1 Contractor Obligations

- (1) Give the work the constant attention necessary to promote the progress of the work. Promptly supply the materials, tools, plant, equipment, labor, and incidental items required to perform the work.
- (2) Cooperate with the engineer and with third parties engaged upon or near the work. If the department grants a third party a permit to do utility work, the engineer may issue a change order directing the contractor to make or repair required roadway openings. The department will pay the contractor as specified in 104.2 for extra work.

- (3) Maintain one copy each of the plans and specifications at the site of work at all times. The engineer will supply the contractor with copies of the contract. If the department has electronically computed estimated grading quantities, the department will furnish that information to the contractor upon request.
- (4) Supervise and direct the work competently and efficiently. Devote the attention and apply the expertise necessary to perform the work as the contract specifies. Monitor the work in progress to ensure that the work conforms to the contract. The contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction. The contractor is not responsible for the negligence of others in the design or specification of specific means, methods, techniques, sequences, or procedures of construction described in and expressly required by the contract.
- (5) Employ a competent superintendent or designate a representative capable of reading and understanding the contract and experienced in the type of work being performed. The superintendent or designated representative shall be the authorized agent of the contractor and shall have full authority to execute the engineer's directions or instructions without delay. Ensure that the superintendent or designated representative is on the project or accessible to the engineer during all hours of each work day. Notify the engineer promptly when replacing the superintendent or designated representative.

105.5.2 Cooperation Between Contractors

- (1) The department may, at any time, contract for or perform other work on or near the work covered by the contract. Cooperate with other contractors engaged upon or near the work.
- (2) The contractor shall, or the engineer may, direct the contractor to:
 1. Schedule and conduct the work to avoid interference with the operations of other contractors engaged upon or near the work.
 2. Perform the work in the proper sequence in relation to that of other work in the area.
 3. Join the work to that of others in a manner consistent with accepted manufacturing or construction industry practices.
 4. Conduct operations and maintain the work so that adequate drainage is provided at all times.
- (3) The contractor is responsible for damage done by the contractor or the contractor's agents to work performed by other contractors. The engineer will resolve disputes between 2 or more contractors, engaged upon or near the work, regarding the rights of each under their respective contracts.

105.6 Construction Staking

105.6.1 General

- (1) The department is responsible for errors or discrepancies found in previous department surveys, plans, specifications, special provisions, or work constructed under other department contracts. The department will pay for further studies and redesign required due to these errors or discrepancies.
- (2) The department will furnish and set original horizontal and vertical control points. Prosecute the work using these points for field control. Maintain all required stakes and marks. The department will deduct, from payment due the contractor, \$100 per hour for the cost of the work required to replace engineer's stakes or marks destroyed or disturbed. The department will administer this deduction under the Replacing Construction Stakes administrative item.
- (3) The engineer and contractor shall agree on the meaning of all stakes, measurements, and marks before the contractor begins work.

105.6.2 Department Performed Staking

- (1) The department will perform the staking required to lay out and construct the work except for the staking required under section 650 for the individual construction staking bid items the contract includes.
- (2) The department is responsible for the accuracy of lines, slopes, and grades it provides under 105.6.2.
- (3) During construction, the contractor may submit requests for staking to the engineer. The department is responsible for staking delays only if the engineer receives that request at least 72 hours before related work begins.

105.6.3 Contractor Performed Staking

- (1) In addition to department provided staking, furnish and set the following:
 1. Additional staking or markings that might be needed to support the contractor's specific method of operations.

2. Staking required under section 650 to lay out and construct the work for the individual construction staking bid items the contract includes.
- (2) The contractor is responsible for the accuracy of lines, slopes, and grades the contractor provides. Construct the work conforming to the lines, grades, cross sections, and dimensions the contract specifies or the engineer establishes.
- (3) Notify the engineer immediately when finding errors or discrepancies in previous surveys, plans, specifications, special provisions, or work constructed under other contracts. Suspend related operations until the engineer gives approval to proceed.
- (4) The engineer may check the control of work, as established by the contractor, at any time. The engineer will provide the results of these checks to the contractor, but by doing so in no way relieves the contractor of the responsibility for the accuracy of their layout work.
- (5) Correct or replace deficient layout and construction work resulting from:
 1. Inaccuracies in the contractor's staking operations.
 2. Not reporting inaccuracies found in work done by the department or by others.
- (6) If, due to the inaccuracies in 105.6.3(5), the department is required to make further studies, redesign, or both, the department will deduct all expenses incurred from the payment due the contractor.

105.7 Authority and Duties of Project Engineer

- (1) As the engineer's direct representative, the project engineer has immediate charge of the engineering details of each construction project. The project engineer is responsible for field administration of the project. The engineer authorizes the project engineer to reject defective material and to suspend all work being improperly performed. The engineer may delegate additional authority, granted under 105.1, to the project engineer.

105.8 Authority and Duties of Inspectors

- (1) As the engineer's authorized representatives, inspectors may inspect all work done and all materials furnished.
- (2) The department authorizes inspectors to:
 1. Call the contractor's attention to work or materials that do not conform to the contract.
 2. Reject materials until the engineer is notified and decides all questions at issue.
 3. Temporarily suspend work, in writing, until the engineer is notified and decides all questions at issue.
- (3) The department does not authorize inspectors to do the following unless the engineer specifically delegates:
 1. Revoke, alter, or waive any requirements of the contract.
 2. Approve or accept any portion of the completed project.
 3. Act as foreperson or perform other duties for the contractor.
- (4) The engineer may delegate additional authority to the inspector.

105.9 Inspecting Work

- (1) The engineer may inspect, at any time, all materials and all parts of the work. This inspection may include the preparation, fabrication, or manufacture of materials or components on or off the project site. Allow the engineer safe access to all parts of the work. Furnish the information and assistance needed to make a complete inspection.
- (2) If the engineer requests, uncover or remove portions of finished work for inspection. After inspection, restore that work to the contract requirements. If the department finds the work acceptable, the department will pay for uncovering, removing, and restoring that work as extra work. If the department finds the work unacceptable, the contractor shall pay for uncovering, removing, and restoring that work.
- (3) Failure to reject defective work or materials does not prevent the department from rejecting defective work once it is discovered.

105.10 (Vacant)

105.11 Inspection and Acceptance

105.11.1 Partial Acceptance

- (1) Upon completion of a portion of the work, the contractor may request partial acceptance of that work. The engineer will conduct an inspection to determine if the contractor has satisfactorily completed operations in that area. Within 5 business days, the engineer will grant, in writing, partial acceptance for that portion of the work or reject the contractor's request. If the engineer grants partial acceptance, the engineer will, designate in writing, what portion of the work is partially accepted and the effective date for that partial acceptance.
- (2) Partial acceptance will relieve the contractor of maintenance responsibility for the designated portion of the work. By relieving the contractor of maintenance, the department does not relieve the contractor of responsibility for defective work or damages caused by the contractor's operations. Do not construe partial acceptance to be final inspection, final acceptance of any part of the work, or a waiver of any legal rights specified under 107.16.

105.11.2 Final Acceptance

105.11.2.1 Inspection

- (1) Notify the engineer when the project is substantially complete as defined in 105.11.2.3. As soon as it is practical, the engineer will inspect the work and categorize it as one of the following:
 1. Unacceptable or not complete.
 2. Substantially complete.
 3. Complete and accepted as final.

105.11.2.2 Unacceptable or Not Complete

- (1) The engineer will identify, in writing, work that is unacceptable or not complete. Immediately correct or complete that work. The engineer will assess contract time until the work is corrected or completed.
- (2) Proceed as specified in 105.11.2.1 until the work is complete and accepted as final.

105.11.2.3 Substantially Complete

- (1) The project is substantially complete and the engineer will no longer assess contract time if the contractor has completed all contract bid items and change order work, except punch-list and cleanup work. As applicable, the following must have occurred:
 1. All lanes of traffic are open on a finished surface.
 2. All signage and traffic control devices are in place and operating.
 3. All drainage, erosion control, excavation, and embankments are completed.
 4. All safety appurtenances are completed.
- (2) The engineer will identify in writing the punch-list, required cleanup work as specified in 104.9, and required document submittals. Immediately correct or complete that work. The engineer may restart assessing contract time if the contractor does not complete the punch-list and cleanup work within 5 business days of receiving the engineer's written notice. The engineer and contractor may mutually agree to extend this 5-day requirement.
- (3) Proceed as specified in 105.11.2.1 until the work is complete and accepted as final.

105.11.2.4 Complete and Accepted as Final

- (1) When the engineer determines that the project is complete and accepted as final, the engineer will give the contractor written notice of final acceptance effective on the date of the final inspection. If the contractor has not submitted the required documents or materials tests are not complete at the time of the final inspection, the engineer will grant conditional acceptance subject to receipt of the required documents and satisfactory test reports. Failure to discover defective work or materials at the time of final inspection does not prevent the department from rejecting defective work once it is discovered. The department may revoke its final acceptance if the department discovers defective work after it has accepted the work.

105.12 (Vacant)

105.13 Claims Process for Unresolved Changes

105.13.1 Notice of Claim

- (1) If the contractor has followed the procedures for revising the contract specified in 104.2 and provided the notification specified in 104.3, but still disagrees with the engineer, the contractor may pursue the issue as a claim. File a notice of claim with the engineer concerning the disagreement within 10 business days of receiving the engineer's 5-day written response described in 104.3.6. Update the previously submitted information if something has changed that may affect the engineer's previous decision.
- (2) The engineer may deny the applicable portion of a claim if the contractor does not do the following:
 - 1. File the notice of claim within 10 business days as specified in 105.13.1(1).
 - 2. Give the engineer sufficient access to keep a record of the actual labor, materials, and equipment used to perform the claimed work.
- (3) Upon filing the notice of claim, maintain records as specified for force account statements in 109.4.5.1(3). Unless the engineer issues a suspension, the contractor shall continue to perform the disputed work. The department will continue to make progress payments to the contractor as specified in 109.6.

105.13.2 Submission of Claim

- (1) Submit the claim to the project engineer as promptly as possible following the submission of the Notice of Claim, but in no event later than 60 calendar days after final acceptance of the project as specified in 105.11.2. If the contractor does not submit the claim within those 60 calendar days, the department may deny the claim. The contractor and the project engineer can mutually agree to extend this 60-day submittal requirement.

105.13.3 Content of Claim

- (1) Include the following 5 items in the claim.
 - 1. A concise description of the claim.
 - 2. A clear contractual basis for the claim. This should include reference to 104.2 on revisions to the contract and as appropriate, specific reference to contract language regarding the bid items in question.
 - 3. Other facts the contractor relies on to support the claim.
 - 4. A concise statement of the circumstances surrounding the claim and reasons why the department should pay the claim. Explain how the claimed work is a change to the contract work.
 - 5. A complete breakdown of the costs used to compile the claim. Include copies of all blue book equipment rental rate sheets used, with the applicable number highlighted.
- (2) The department may refer the claimant of a false claim to the appropriate authority for criminal prosecution. Certify the claim using the following form:

The undersigned is duly authorized to certify this claim on behalf of (the contractor).

(The contractor) certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of (the contractor's) knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which (the contractor) believes that the department is liable.

(THE CONTRACTOR)

By: _____
(Name and Title)

Date of Execution: _____

105.13.4 Review by the Region

- (1) In the initial review phase, the contractor and the region will have up to 30 calendar days, from the contractor's submission of the claim, for the contractor to submit all additional information required and for the region to review the claim and conduct all meetings. The region may request, in writing, that the contractor submit additional information related to the claim. The contractor shall submit that additional information, or notify the region in writing to base its decision on the information previously submitted. Either party may request a meeting to present their views. Before the meeting, the region will distribute written ground rules for the meeting to both parties.
- (2) The contractor and the region can mutually agree to extend this 30-day initial review period. Upon completion of the initial review phase, the region will notify the contractor in writing that it has begun the decision phase.

- (3) In the decision phase, the region will have up to 30 calendar days to render a written decision. The region will consider both parties' written and oral submissions and may consider other relevant information in the project records. The region and contractor can mutually agree to extend this 30-day decision period. The region will provide the following in its decision:
 1. A concise description of the claim.
 2. A clear, contractual basis for its decision that includes a reference to 104.2 on revisions to the contract and as appropriate, specific reference to language regarding the bid items in question.
 3. Other facts the region relies on to support its decision.
 4. A concise statement of the circumstances surrounding the claim and reasons for its decision. If the region rejects the claim in whole or in part, the region will explain why the claimed work is not a change to the contract work.
 5. The amount of money or other relief, if any, the region will grant the contractor.
- (4) In the appeal phase, the contractor will have up to 30 calendar days from the date of the region's decision to appeal to the bureau. If the contractor does not file a written appeal within those 30 days, the region's decision is final. If the region does not render a decision within the 30 calendar days specified in 105.13.4(3), the claim will be automatically appealed to the bureau for review as if the region had rejected the contractor's claim.
- (5) In lieu of review by the bureau, the department and contractor can mutually agree to an alternate dispute resolution process.

105.13.5 Review by the Bureau

- (1) If the contractor appeals the region's decision or if the region does not act on the contractor's claim, the bureau will review the claim. The region will forward the claim to the bureau and give the bureau all documents and evidence regarding the claim previously submitted to the region. At this point or a subsequent point in the bureau's review, the department may waive the bureau's review and refer the claim directly to the review panel.
- (2) In the initial review phase, the contractor and the bureau will have up to 30 calendar days, from the date of the appeal, to submit all additional information required to review the claim and to conduct all meetings. The bureau may request, in writing, that the contractor submit additional information related to the claim. The contractor shall submit that additional information, or notify the bureau in writing to base its decision on the information previously submitted. Either party may request a meeting to present their views. Before the meeting, the bureau will distribute written ground rules for the meeting to both parties.
- (3) The contractor and the bureau can mutually agree to extend this 30-day initial review period. Upon completion of the initial review phase, the bureau will notify the contractor in writing that it has begun the decision phase.
- (4) In the decision phase, the bureau will have up to 30 calendar days to render a written decision. The bureau will consider both parties' written and oral submissions, and may consider other relevant information in the project records. The bureau may affirm, overrule, or modify, in whole or in part, the region's decision. The bureau and contractor can mutually agree to extend this 30-day decision period.
- (5) In the appeal phase, the contractor will have up to 30 calendar days, from the date of the bureau's decision, to appeal to the review panel. If the contractor does not file a written appeal within those 30 days, the bureau's decision is final. If the bureau does not render a decision within the 30-day period specified in 105.13.5(4), the claim will be automatically appealed to the review panel for review as if the bureau had rejected the contractor's claim.
- (6) In lieu of review by the review panel, the department and contractor can mutually agree to an alternate dispute resolution process.

105.13.6 Review Panel

- (1) If the contractor appeals the bureau's decision, the bureau waives its review, or the bureau does not act on the contractor's claim, the review panel will review the claim. The bureau will forward the claim to the review panel. The region will give the review panel all documents and evidence regarding the claim previously given to the bureau. The review panel may request that the contractor and the region submit additional evidence or documents related to the claim. The review panel will consider both parties' written and oral submissions, and may consider other relevant information in the project records.

- (2) The review panel will conduct a hearing with the contractor and the region. Before the hearing, the department will distribute written ground rules for the hearing to both parties.
- (3) The review panel may affirm, overrule, or modify, in whole or in part, the region's decision or the bureau's decision. The review panel will render a decision within 60 calendar days from the date of the appeal. Within 14 calendar days of the review panel's decision, the contractor shall accept or reject their decision in writing. If the contractor does not respond within those 14 calendar days, the review panel's decision is final. The review panel and contractor can mutually agree to extend this 14-day response period.
- (4) If the contractor disagrees with the review panel's decision, the contractor may initiate a legal action pursuant to state statutes.