

SECTION 105 - CONTROL OF WORK

Make the following amendments to said Section:

- (I) **Amend 105.02(B) Working and Shop Drawings** by revising the last sentence of the fifth paragraph to read as follows:

"The Engineer will not consider delays caused by the Contractor's failure to submit the working and shop drawings on time a justifiable reason for contract time extensions."

- (II) **Amend 105.08 Authority and Duties of Project Engineer** by revising the first sentence to read as follows:

"105.08 Authority and Duties of Project Engineer. As the direct representative of the Engineer, the Project Engineer has immediate charge of the engineering details of its construction project and is responsible for the administration and completion of the project."

- (III) **Amend 105.12 Removal of Unacceptable and Unauthorized Work** to read as follows:

"105.12 Removal of Unacceptable and Unauthorized Work.

(A) **Unacceptable Work.** The Engineer will consider work not conforming to the contract as unacceptable work. The Contractor is directed to Subsection 105.03 - Conformity with the Contract.

Remove unacceptable work found to exist before the final acceptance of the work. Replace the work according to the contract. Unacceptable work includes poor workmanship and use of defective materials.

The Engineer may remedy such unacceptable work and deduct the costs from monies due or to become due the Contractor if the Contractor fails to comply as specified by the Engineer.

(B) **Unauthorized Work.** The Engineer will consider work done contrary to the specifications of the Engineer, work done beyond the lines as given, or extra work done without authority as unauthorized. The Engineer will not make payment for such work. The Engineer may order such work removed or replaced at no cost to the State."

- (IV) **Amend 105.18 Claims for Adjustments and Disputes** to read as follows:

"105.18 Claims for Adjustments and Disputes. The Contractor may give notice in writing to the Engineer for claims that extra compensation, damages, or

an extension of time for completion is due the Contractor for one or more of the following reasons:

- (1) Requirements not clearly covered in the contract, or not ordered by the Engineer as an extra work;
- (2) Failure between the State and the Contractor to agree to an adjustment in price for a contract change order issued by the State; or
- (3) An action or omission on the part of the Engineer requiring performance changes within the scope of the contract.

The Contractor shall continue with performance of the contract in compliance with the directions or orders of the Engineer, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The notice in writing be given:
 - (a) Before the commencement of the work involved, if at that time the Contractor knows of such requirements or the occurrence of such actions or omissions; or
 - (b) Within 30 calendar days after the Contractor knows of such requirements or the occurrence of such action or omission if the Contractor did not have such knowledge before the commencement of the work; or
 - (c) Within 30 calendar days after receipt of the written contract change order that was not agreed upon by both parties; or
 - (d) Within such further time as may be allowed by the Engineer in writing.
- (2) The notice shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which the Contractor is entitled; and afford the Engineer every facility for keeping records of the actual cost of work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim.

The Engineer will review the notice and render a decision. The

Engineer's decision shall be final and conclusive unless, within 30 calendar days from the date of the decision, the Contractor mails or otherwise furnishes a written appeal to the Director. The decision of the Director shall be final. Later notification of such claims shall not bar the Contractor's claim unless the State is prejudiced by the delay in notification. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given before final payment under this contract. Any adjustment in the contract price made pursuant to this clause shall be determined according to Subsection 104.09 - Price Adjustment.

The provisions of this Subsection shall not be construed as establishing any claims contrary to the terms of Subsection 104.02 - Alteration of Plans or Type of Work.

Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any state officers and any Contractors from acting in collusion or bad faith in issuing or performing contract change orders which are clearly not within the scope of the contract."

(V) Amend 105.19(A) General by revising the first sentence to read as follows:

"(A) General. The Contractor and the Department will establish a Disputes Review Board (Board) when the proposal amount is more than fifty million dollars (\$50,000,000) or the completion time is more than 360 working days."

END OF SECTION