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T E N N E S S E E

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March 1, 2006

Supplemental Specifications - Section 100
of the
Standard Specifications for Road and Bridge Construction
March 1, 2006

Subsection 101.13, Second paragraph, first sentence, **Delete** “Revisions and Additions.”

Subsection 101, **Add** the following definition

“**Amendment.** A revision to the electronic bid file which may include adjusting a quantity, adding, deleting, or revising a pay item(s).”

Subsection 101.47, Second sentence, **Replace** “**Revisions and Additions**” with “**Supplemental Specifications**”

Subsection 101.57, **Delete** the entire paragraph and replace with the following

“A company authorized to guarantee a bidder’s proposal and a contractor’s performance and payment obligations under a contract and which is authorized to do business in the State of Tennessee.”

Subsection 102.01, **Replace the entire subsection with the following:**

102.01-Prequalification Questionnaire and Competency of Bidders. Each prospective bidder and subcontractor will be required to file a document entitled “Prequalification Questionnaire.” The foregoing shall be filed on a form provided by the Department. The form must be filled out completely, and the truth and accuracy of the information provided must be certified by a sworn affidavit signed by an officer, partner, owner or other authorized representative of the applicant who has authority to sign contracts or other legal documents on behalf of the applicant. A prospective bidder must be prequalified by and in good standing with the Department prior to the issuance of a proposal form; however this standing does not prohibit any person from requesting or obtaining a void proposal form for any purpose other than submitting a proposal to the Department. A prospective subcontractor must be prequalified by and in good standing with the Department prior to being approved as a subcontractor. Each prospective bidder or subcontractor shall notify the Department if there is any subsequent change in the name, organization or contact information provided.

Prospective bidders’ “Prequalification Questionnaire” shall be filed with the Department at least fourteen (14) days prior to the date of opening bids on any letting in which the applicant intends to submit a bid to the Department, or at least fourteen (14) days prior to the date on which the applicant requests approval as a subcontractor under a contract awarded by the

Department. Bidders intending to submit proposals consistently shall complete and submit the prequalification application annually; however, this document may be changed during such period upon submission of additional favorable reports or upon receipt by the Department of substantiated evidence of unsatisfactory performance. The Department reserves the right to request additional information and documentation to clarify and/or verify any information submitted in an applicant's prequalification application.

Prospective subcontractors will be required to pre-qualify prior to approval of the subcontracts by the Department and must also submit a prequalification application annually.

The Department reserves the right to refuse to issue a proposal form when a bidder is in default or delinquent for any of the following reasons:

- a) When a "Prequalification Questionnaire" has not been filed with and examined by the Department or when the bidder, in the opinion of the Commissioner, is not qualified.
- b) Default of existing contract (s).
- c) When a bidder has an existing incomplete contract (s) with the Department which is behind schedule to the extent that it may hinder or prevent prompt completion of any additional contract (s).
- d) When a bidder has been suspended, debarred, or otherwise excluded under the Department's rules governing contractor debarment and suspension, Chapter 1680-5-1, or under applicable Federal rules governing the suspension and debarment of contractors.

Subsection 102.02 Contents of Proposal Forms, Revise entire subsection to the following:

102.02-Contents of Proposal Forms. Upon request, the Department will furnish the Bidder an electronic proposal form which will contain an "Instructions to Bidders" form, Supplemental Specifications, Special Provisions, and proposal guaranty form. The proposal form will state the location and description of the contemplated construction. The proposal form will state the time in which the Work must be completed, the amount of the Proposal Guaranty, and the date, time and place for the opening of Proposals. The Plans and Specifications are as much a part of the Proposal form as if they were bound therein. All of the documents that are bound therein are part of the Proposal.

The prospective bidder will be required to pay the Department the sum stated in the Instructions to Bidders for each electronic proposal form. Plans will be available for the sum stated in the notice to Contractors.

Subsection 102.03 Interpretation of Quantities in Bid Schedule, Revise entire subsection to the following:

102.03-Interpretation of Quantities in Bid Schedule. The quantities appearing on the electronic bidding file are approximate only and are prepared for the comparison of bids and award of Contract. The Department does not guarantee or assume any responsibility that quantities indicated on the Plans or given in the electronic bidding file will hold in the construction of the project and the Contractor shall not plead deception or misunderstanding because of variation from these quantities or of variation from the location, character or any other conditions pertaining thereto. Payment to the Contractor will be made only for the actual quantities of work performed and accepted, and materials furnished in accordance with the Contract. The schedule of quantities of work to be done and materials to be furnished may be increased, decreased, or omitted as hereinafter provided under **Subsection 104.02.**

Subsection 102.05 Preparations of Proposals, Revise entire subsection to the following:

102.05-Preparation of Proposals. A document entitled "Instructions to Bidders" is bound into the electronic proposal form. The proposal form shall be electronically signed in exact accordance with these instructions using the electronic bidding file furnished by the Department. The proposal guaranty form shall be handled similarly. The completed electronic bidding file, inclusive of the proposal form as described in **Subsection 102.02** and the bid prices described below, shall then be submitted to the Department in exact accordance with the applicable part of these instructions.

The electronic bidding file contains the contract bid items and associated estimated quantities. The following stipulations shall apply to electronic bidding:

- (a) It is the bidder's responsibility to compare the bid quantities indicated on the plans to those contained on the electronic bidding file to ensure they are the same. Any discrepancies are to be called to the Department's attention immediately.
- (b) Any revisions to the Contract Proposal regarding bid items or quantities will be accompanied by an amendment to the electronic bidding file with the revision date indicated. The amended electronic bidding file is to be utilized in the formulation of the bid.

Some proposals may contain numerous alternates. The Contractor will be required to bid on only 1 alternate for each construction item unless otherwise specified. The proper procedure for entering alternate bids is to enter prices for the intended alternate item(s) of construction and leave the undesired alternate item(s) of construction blank. The electronic bidding program allows only for 1 alternate to be bid. If prices are entered for more than 1 alternate, the electronic bidding program will not tabulate the total. Instructions for electronic bidding are available from the Headquarters Construction office and the method of entering alternates is explained therein.

The electronic bidding program will perform all extensions of the estimated quantities and unit or lump sum prices, calculate the total bid and allow the printing of a complete set of bid item sheets with appropriate subtotals and grand total bid price.

Subsection 102.06 Delivery of Proposals, Revise entire subsection to the following:

102.06-Delivery of Proposals. Each Proposal must be submitted via the Internet using the electronic bidding program.

No proposal will be considered or accepted which has not been received by the Department previous to the hour of the date and at the place set forth for the opening thereof in the Advertisement or Instruction to Bidders.

Subsection 102.07 Withdrawal of Proposal, Revise entire subsection to the following:

102.07-Withdrawal of Proposal. Any Bidder may withdraw his Proposal through the electronic bidding program prior to the hour of bid opening as indicated in the Advertisement for Bids and in the Instruction to Bidders

Subsection 102.08 Public Opening of Proposals, Revise entire subsection to the following:

102.08-Public Opening of Proposals. Proposals will be opened and either read publicly or bid totals will be furnished and posted on the date, time, and place indicated in the Advertisement for Bids and Instruction to Bidders. Bidders, authorized Agents, and interested parties are invited to be present.

Subsection 102.09 Rejection of Proposals, Revise entire subsection to the following:

102.09-Rejection of Proposals. Proposals will not be rejected if they condition their consideration upon the elimination of other proposals submitted by the same bidder, provided that any selection of awards will be made by the Department. A Bidder may tie the acceptance or rejection of 2 or more of his proposals on the condition that either all of his proposals are accepted or that they are all rejected, in which case his bids must be the lowest responsible bid on each project before they will be considered.

Proposals may be rejected by the Commissioner if any of the unit prices contained therein are obviously unbalanced, either excessive or below the reasonable cost analysis value.

Proposals will be rejected as being irregular if they are not prepared on the prescribed forms; if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind; or if they fail to contain a unit price for each item listed. In the case of authorized alternate items, a unit price on only 1 of the alternates will be required, unless otherwise specified in the Contract.

Proposals will be rejected as irregular if they are not electronically signed by an authorized representative of the bidder. The electronic signature on the electronic bidding file serves as signatures for the Proposal form, Proposal Certification form and the Proposal Bond form, if applicable. If the bidder elects to submit the Proposal Guarantee, the Proposal Guarantee Form must be signed by written signature and in the possession of the Department prior to the formal opening of the Proposal. The Agent or Attorney-in-Fact representing a Surety Company shall electronically sign the electronic Proposal Bond, if applicable. An original, dated and valid Power of Attorney for the Attorney-in-Fact must accompany the Proposal and the Contract. The accompanying Power of Attorney must be dated, and the date must be the exact same date as the date on the Proposal Guaranty Bond. The Proposal and the Proposal Guarantee Bond, including the attached Power of Attorney shall be valid and binding for 60 days subsequent to the date of opening bids. As an alternative, Surety Companies may submit an original, unnumbered Power of Attorney suitable for photocopying to the Department. Surety Companies choosing this alternative will be required to furnish the Department with a letter on the company letterhead and signed by an officer of the company authorized to appoint Attorneys-in-fact. A draft copy of this letter is available from the Department upon request.

Proposals will be rejected as irregular when submitted by a bidder who has not qualified as required by the Commissioner under the authority given him by Tennessee Code Annotated.

Reasonable grounds for believing that any Bidder is interested in more than 1 Proposal on the same project or that there has been collusion among the Bidders will cause a rejection of all Proposals in which the Bidders involved are interested.

A Proposal will be rejected, at the discretion of the Commissioner, if a Bidder or any member of the firm, partnership, or corporation represented in his Proposal is related either by blood or

marriage within the fourth degree, computing by the civil law, to any member of the Department, or if any member of the Department will have any financial interest in the Contract.

The right is reserved to reject a Proposal from a Bidder who has not paid or satisfactorily settled all legal debts due on former contracts in force at the time of the letting.

All Proposals will be rejected that do not contain the Proposal Guaranty of the character and amount indicated in the proposal form.

Until the execution and approval of the Contract by the Department, the right is reserved to reject any and all Proposals and to waive technical errors

Subsection 103.01 Consideration of Proposals, Revise entire subsection to the following:

103.01-Consideration of Proposals. The Internet bid shall be recognized as the only official bid.

After the Proposals are opened and read, they will be compared based on the summation of the products of the unit bid prices and the approximate quantities. The results of such comparisons will be made available to the public.

The right is reserved to reject any or all Proposals, to waive technicalities or to advertise for new Proposals, if in the judgment of the awarding authority, the best interest of the Department will be promoted thereby.

Section 104-SCOPE OF WORK, Add the following to the Table of Contents **“104.02- Alterations in Plans or in Character of Construction.”**

Subsection 104.02, Significant Changes in the Character of Work, (4), Revise subsection to the following:

4. An adjustment of the contract terms in accordance with number 2 above will be made only if the Engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. 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 is increased or decreased by more than 25 percent of the original contract quantity (adjustments shall apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed).

The above provides for adjustments resulting from formal change orders by the Engineer, in writing. Either party may initiate an adjustment and both must be in agreement before the work is performed.

Subsection 104.03 Remove and replace entire subsection to the following:

104.03-Extra Work. When unforeseen work results for any reason and is not handled as prescribed elsewhere herein, the Engineer and the Contractor will attempt to agree on equitable prices. When such prices are agreed upon, a Change Order will be executed, and a Construction Change will be issued by the Engineer. When equitable prices are not agreed upon mutually, the Engineer may issue a written order that the Extra Work be completed on a force account basis and paid for as provided in **Subsection 109.04.**

When the Change Order process is initiated, the Contractor shall be required to submit to the Project Supervisor detailed breakdowns for Materials, Labor, Equipment, Profit and Overhead. Profit and Overhead shall not exceed 15% of the subtotal of Materials, Labor and Equipment. When the Change Order is initiated for subcontractor items, the Prime Contractor's administrative cost shall not exceed 5% of the subcontractor's total (materials, labor, equipment, profit & overhead).

The requirement for detailed cost breakdowns may be waived when a Bid Item History exists for the proposed item(s), and the contractor's requested price is within 10% of the Regional, 3 year historic cost for that item. In any case, the Department reserves the right to request detailed information from the Contractor for any Change Order request.

Subsection 104.04 Maintenance of Traffic, Delete "with 30,000 or greater Average Daily Traffic or any interstate routes," from the third paragraph. **Change** "three (3)" to "seven (7)" in the third paragraph. **Delete** "(these restrictions apply to state routes with 30,000 or greater Average Daily Traffic or any interstate route):" from the fifth paragraph. **Add** "without the written consent of the Engineer." to the end of the fifth paragraph. **Delete** "In addition, any state routes less than 30,000 ADT shall have no lane closures, or any lane restrictions of any type will be allowed on Good Friday, Labor Day, Memorial Day, July 4th , and the working day immediately preceding and including the holidays of Thanksgiving, and Christmas Day without the written consent of the Engineer." from the sixth paragraph.

Subsection 104.06 First sentence, **Replace** the word "sectiot", **should read** "section"

Subsection 104.11. Revise entire subsection to the following:

104.11-Final Cleanup. Before final acceptance of the Work, the entire rights-of-way, all material pits, all waste areas, all areas and access roads used by the Contractor, all streams in or over which he has worked, and all ground occupied by the Contractor, in connection with the Work, shall be cleaned of all forms, falsework, temporary structures, temporary erosion control measures, excess materials, equipment, rubbish, and waste, and all parts of the work shall be left in a neat and presentable condition. The entire right-of-way, all material pits, all waste areas, all areas and access roads used by the Contractor shall be final stabilized per the TN NPDES Construction General Permit criteria or per the agreed upon Reclamation Plan. Final cleanup shall include the mowing of the rights-of-way as required. If the project was graded under a previous Contract, final cleanup will be performed within the construction limits of work being performed and other areas disturbed or otherwise requiring cleanup due to the Contractor's operations. No rubbish, waste or debris shall be deposited on or in sight of the rights-of-way. All damage to private and public property shall be replaced, repaired, or settled for.

Subsection 104.12 Add the following to Section 104 of the Standard Specifications.

104.12- Value Engineering Change Proposal (VECP).The Contractor may request a modification to the plans, the specifications or other contract requirements based on a Value Engineering Change Proposal (VECP) submitted to the Department specifying a cost reduction change. This will not apply to a proposal unless it is identified as a VECP at the time of its submittal.

Value Engineering Change Proposals (VECP) are those which would require a change in the contract and would result in an immediate net savings to the Department without impairing

essential functions and characteristics of the project, including but not limited to the service life, reliability, economy of operation, maintenance and safety features. VECP's that propose a total savings of less than \$25,000 (twenty-five thousand dollars) will normally not be considered unless there are other non-monetary savings to be realized.

The Contractor may submit for review a "VECP Concept" provided that it contains enough information to clearly define the work involved and the benefits to be realized. The "VECP Concept" shall state all applicable design criteria that will be used in the VECP design. Written notification by the Department that the review has been completed and that the "VECP Concept" appears to be favorable merely indicates that the engineering and plan development may continue for submittal of the VECP proposal and is not authorization for any construction work to begin. Should the final design not reflect the expected benefits, the Department may reject the "VECP Concept" and the VECP without recourse by the Contractor.

The following information, as a minimum, shall be submitted with each proposal to the Engineer, allowing adequate time for Department analysis and processing without interference with project schedules:

- (a) A description of the difference between the existing contract requirements and the proposed change, and the comparative advantages and disadvantages of each.
- (b) An itemized list of the contract changes required if the VECP is accepted, and any recommendation as to how to make each such change.
- (c) A separate detailed cost estimate for (1) the affected portions of the existing contract requirements and (2) the VECP.
- (d) A prediction of any effects the proposed change will have on other Department costs, such as costs of maintenance and operation.
- (e) A statement of the time by which a supplemental agreement must be issued in order to obtain the proposed cost reduction for the project, noting any effect on the contract completion time or delivery schedule.
- (f) The date(s) of any known previous or concurrent submissions of the same proposal and any previous actions by the Department.
- (g) The contract items of work affected by the proposed change, including any quantity changes.

Proposed construction changes in pavement design, right of way, relocation of bridges, etc. or changes in the environmental impact statement will not normally be considered as an acceptable VECP. The Department may determine at any point during the evaluation process that the VECP is not cost effective and summarily reject the VECP.

While a VECP is being considered by the Department, the contractor shall continue to perform the work in accordance with the requirements of the contract. The Department has no obligation but to review the VECP and shall not be liable for failure to accept or act upon any VECP or for any delays to the work due to the submitted proposal. The Department shall be the sole judge of the acceptance or rejection of a VECP, either wholly or in part. If an agreement has not been reached by the date that the contractor's VECP specifies that a decision should be made, or such other date as the contractor may have specified in writing, the VECP shall be deemed rejected.

The Contractor shall have no claim against the Department for additional costs or delays resulting from the rejection of a VECP, including but not limited to, "VECP Concept" acceptance, engineering and development costs, loss of anticipated profits, and increased material or labor costs.

The Department will not accept a VECP that is similar to a change in the plans or specifications under consideration by the Department for the project at the time the proposal is submitted; nor will the Department accept a proposal based upon, or similar to, standard specifications, general use special provisions or standard drawings adopted by the Department after the advertisement for the contract. The Department reserves the right to make such changes without compensation to the Contractor under the provisions of Subsections 104.02 and 104.03 of the standard specifications.

The Department will determine the estimated net savings from the adoption of all or any part of the VECP. In determining the estimated net savings, the Department may disregard the contract bid prices if, in the judgment of the Department, such prices do not represent a fair measure of the value of the work to be performed or to be deleted.

In the event the Department accepts the VECP the contractor thereby grants to the Department all rights to adoption of the proposal for general use on other contracts without obligation or compensation of any kind.

Acceptance of a VECP will be by supplemental agreement incorporating the changes necessary to permit the VECP, or any part of it, to be put into effect. The supplemental agreement shall also set forth the estimated net savings to the Department and further provide that the contractor be paid 50 percent of the actual net savings.

The cost to the contractor to develop and implement the VECP and any design (including redesign by a Tennessee licensed engineer, preparation of new reproducible plans, etc. and any other information requested by the Department to facilitate its review) shall be incidental to the contractor and shall in no way affect the VECP payment herein before specified. The cost to the Department to review the VECP shall be incidental to the Department and shall not affect the VECP payment.

The actual net savings will be determined when the work in the VECP and Supplemental Agreement is completed. If upon completion of the work proposed in the VECP it is determined that the supplemental agreement did not adequately address a change in quantities for other pay items that were either increased or decreased substantially as a result of the change proposal, those additional costs or savings shall be included in the actual net savings determination. A single payment will be made to the contractor representing fifty percent (50%) of the actual net savings once all items are considered.

If the completed VECP results in an increase in cost such that there is no net savings, those costs above the original contract costs as proposed in the VECP and supplemental agreement will be reimbursed at a rate of fifty percent (50%).

The preparation of the VECP, its acceptance and performance of the work shall not extend the contract completion time unless the supplemental agreement provides an extension.

Subsection 105.02 Add the following as the first paragraph:

All contractors and subcontractors directly engaged in the erection or removal of falsework, temporary structures, structural steel, precast prestressed or mild steel reinforced concrete bridge beams or girders over active highway traffic lanes, on any route, railroad or any stream deemed navigable to commercial or pleasure water craft, shall be required to submit an erection plan

prepared and stamped by a Tennessee registered engineer. Falsework (steel stay-in-place forms, overhang jacks, etc.) for bridge deck construction shall be installed in accordance with the manufacturer's recommendation and will not require a submittal. See also Subsection 602.41, 602.42, and 604.06.

Subsection 105.09 Construction Stakes, Revise the 12th paragraph to the following:

All staking shall be performed by qualified engineering or surveying personnel who are trained, experienced and skilled in construction layout and staking of the type required under the contract and who are acceptable to the Engineer. The personnel shall perform this staking under the direct supervision of a Tennessee licensed Professional Engineer or a Tennessee Registered Land Surveyor experienced in the direction of such work and acceptable to the Engineer.

Subsection 105.10. Revise entire Subsection to the following:

105.10-Authority and Duties of Inspectors. Inspectors employed by or contracted with the Department will be authorized to inspect all work done and all materials furnished. Such inspection may extend to any part or to all of the Work and to the preparation, fabrication, or manufacture of materials to be used including offsite waste and/or borrow areas. The Inspectors will have the authority to reject defective material and to suspend any construction that is being improperly done, subject to final decision by the Engineer. Inspectors will not be authorized to revoke, alter, enlarge, or relax the provisions of the Specifications, nor will they be authorized to approve or accept any portion of the completed project, or to issue instructions contrary to the Plans and Specifications. At the request of the Contractor, instructions from an Inspector may be had in writing on important items.

Subsection 105.11. Revise entire subsection to the following:

105.11-Inspection of Work. All materials and each part or detail of the Work shall be subject to inspection by the Engineer, or his representative including waste and /or borrow areas. He shall be given free access to all parts of the Work at all times and shall be furnished all information, facilities, and assistance by the Contractor as may be required to make complete and detailed inspection. Any work done or materials used without supervision or inspection by an authorized Department representative may be ordered removed and replaced at the Contractor's expense unless the Department representative failed to inspect after having been given reasonable notice in writing that such portion of the Work was to be performed.

At any time before acceptance of the Work, the Contractor shall remove or uncover such portion thereof as may be directed. If examination discloses that the Work is acceptable under the terms of the Contract, the Contractor shall return it to the original condition, and the cost of exposing the Work for examination and of returning it to the original condition shall be paid for as Extra Work. If the Work exposed and examined does not prove acceptable, the cost of uncovering, or removing, or replacing all of the material involved, in full accordance with the Specifications and Plans, and of restoring the Work, shall all be at the expense of the Contractor. When any unit of government or political subdivision or any railroad corporation is to pay a portion of the cost of the Work covered by the Contract, its respective representatives shall have the right to inspect the Work. Such inspection shall in no sense make any unit of government or political subdivision or any railroad corporation a party to the Contract, and shall in no way interfere with the rights of either party hereunder.

Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this Subsection, the Engineer will have authority to cause unacceptable work to be remedied or removed and to deduct the costs from any monies due the Contractor. In the event that monies due or to become due the Contractor are not sufficient to defray the costs of such repairs or replacements, then the Department will hold the Contractor's Surety liable for the costs incurred. Any Construction performed by the Department under these provisions will not waive any provisions of the Contract nor relieve the Contractor in any way the responsibility for the construction performed by him.

Subsection 105.13. Revise entire Subsection to the following:

105.13-Completion of Specific Sections of a Project. The Department may accept a section or sections of a project before the entire project is completed. Such section(s) shall be of reasonable length, as determined by the Engineer, and shall be completed in full accordance with the Plans, Specifications and all other applicable provisions of the Contract. When such section(s) is fully completed, the Engineer, after final inspection, will accept the section(s) and the Contractor will be relieved of any further work in connection therewith or any cost of maintenance thereof.

The Department may require a specific section or sections of a project to be completed prior to the completion of the entire project. Such section(s) shall be completed in full accordance with the Plans, Specifications and all other applicable provisions of the Contract. All provisions of the above paragraph regarding final inspection, acceptance, further work and maintenance shall apply.

After any offsite waste and/or borrow area (s) are no longer needed, the contractor shall ensure that the disturbed area is stabilized per the TN NPDES Construction General Permit criteria or per the agreed upon Reclamation Plan. After the area has reached final stabilization, the contractor shall request a meeting with the Engineer to perform a final inspection. Once the area is deemed acceptable, the contractor is responsible for terminating any Contractor obtained permits.

The acceptance of a section or sections of a project shall in no way void or alter any of the terms of the Contract.

Subsection 105.15. Revise entire Subsection to the following:

105.15-Acceptance. Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed to his satisfaction, then that inspection shall constitute the final inspection and the Engineer will make the final acceptance and notify the Contractor in writing of his acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Engineer will give the Contractor the necessary instructions for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the Work, another inspection will be made which shall constitute the final inspection, provided the Work has been satisfactorily completed. In such event, the Engineer will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

If exclusive offsite waste and/or borrow area(s) were used as part of the project, the Contractor must provide the Engineer proof of permit termination for all waste and/or borrow area(s) before the Engineer can start the process for final acceptance of the project. If the Contractor wishes to continue use of the waste and/or borrow area(s), the contractor shall provide the Engineer with a letter indicating the intended use and updated documentation.

Subsection 105.18 Method of Measurement, Remove and Replace Payment Schedule Table with the following:

PAYMENT SCHEDULE

Estimate Number or Percent of Total Contract Amount of Previous Estimate	Total Percent of Construction Stakes, Lines, and Grades Lump Sum Bid Item
Estimate # 1	20%
Estimate # 2	40%
10%	50%
20%	60%
40%	70%
60%	80%
80%	100%

Subsection 106.04, Fourth paragraph, **Insert** the word “notarized” in the first sentence, as follows

“A notarized Certificate of Compliance...”

Section 107-Legal Relations And Responsibility, Left out “**107.02-Load Restrictions on Projects Under Construction.**”

Subsection 107.02 Load Restrictions, **Revise** entire Subsection to the following:

107.02-Load Restrictions.

- (a). Delivery of Materials. The gross weight of trucks delivering material to construction projects shall be governed by State Law as set forth in Tennessee Code and Federal Law. All delivery trucks shall conspicuously display the tare weight, the allowable gross weight for State Highways, and the allowable gross weight for the Interstate System on the side of each truck. The Bridge Formula shall be used to determine allowable Interstate System gross weights as defined in the Federal Highways Administration’s publication, *Bridge Formula Weights*.

The operation of equipment of such weight, or so loaded, as to cause damage to structures, the roadway, or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damages done by equipment used in construction of the project.

In such cases where it is necessary to haul material over a structure, other than structures with posted load limitations, the Contractor shall be required to limit the gross loads to the weights listed below. The loads posted for structures with weight limitations shall not be exceeded unless adequate shoring is provided and written permission is granted by the Department’s Division of Structures.

Maximum axle load	32,000 lbs.
.....	(14,515 kg.)
Maximum load per axle on tandem axles	24,000 lbs
.....	(10,886 kg.)
Maximum total load.....	90,000 lbs.
.....	(40,824 kg.)

The contractor will be further required to place approved temporary guides on the bridge floor, as directed by the Engineer, in order to position the wheel loads as nearly as possible directly over the bridge girders. He shall keep the bridge floor clean so as to reduce impact forces. The maximum speed permitted will be 15 miles(25 kilometers) per hour.

Upon completion of hauling over the bridge, the Contractor will be required to clean the bridge floor, curbs and rail in a manner acceptable to the Engineer.

- (b). Construction Loads. Construction loads include all material, component, equipment, and personnel loads applied to the structure other than those which are a consequence of permanent elements of the structure in their final state of construction. All construction loads not essential to the active construction work shall be prohibited from placement on the structure. Construction loads on bridges applied anytime subsequent to the placement of girders shall not exceed 50 pounds per square foot based on a uniform distribution of load. Loads characterized as non-uniform in nature shall be reconciled either by analysis equating load to an effective uniform load or employment of timbers or other means approved by Engineer to distribute construction loads. Length of load distribution may be taken as the bridge beam spacing (or slab span between walls for concrete culverts) occurring at the location of load application. The Contractor will be responsible for submitting to the Engineer all analysis and supplementary support details required to effect proper construction load distribution. Contractor is advised that if concrete is mounded ahead of the screed machine during placement of the deck, that any portion extending above the screed elevation is considered a construction load in applying the provisions of this section. Construction loads shall be placed as optimally as reasonable to minimize loads on the structure. When the area occupied by construction loads in any structure span exceeds 25% of the area of that span the Contractor shall be required to submit a diagram detailing the location, character, sequence and weight of all construction loads applied to the structure to TDOT Division of Structures for approval. This submittal shall be executed a minimum of 30 days in advance of the planned operation. These provisions supplement those of Subsection 604.28.

Subsection 107.06 Federal Aid Provisions (b). Revise Subsection b to the following:

All waste and borrow areas outside the project right-of-way must be in compliance with Section 106 of the National Historic Preservation Act. The Contractor must furnish the TDOT Engineer and the Environmental Division with an Archaeological Clearance certified by the State Historic Preservation Office on all non-commercial material sources requiring excavation and/or fill.

Regardless of prior certification, if prehistoric remains or human burial sites are encountered at any time during construction, such operations shall be suspended and the Engineer and the State Historic Preservation Office shall be notified immediately.

All waste and borrow areas from outside the project right-of-way must comply with Section 7 of the Endangered Species Act. The contractor must furnish the TDOT Engineer and the Environmental Division with Threatened and Endangered Species Clearance from the Tennessee Wildlife Resource Agency and the U.S. Fish and Wildlife Service on all waste and borrow sites located outside project right-of-way.

The Archaeological Clearance certification, and the Threatened and Endangered Species Clearance from the Tennessee Wildlife Resource Agency and the U.S. Fish and Wildlife Service, must be furnished to the TDOT Engineer and the Environmental Division Permits Section, 30 days prior to work being started on all waste/borrow sites outside of the project right-of-way.

Subsection 107.20 No Waiver of Legal Rights, Delete and replace with the following:

107.20-No Waiver of Legal Rights. The Department shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion of the Work or by final acceptance of the Work according to **Subsection 105.15** from showing the true amount and character of the Work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor from showing that the Work or materials do not in fact conform to the Contract. The Department shall not be precluded or estopped, notwithstanding any such measurement, estimate, certificate and payment, or acceptance in accordance therewith, from recovering from the Contractor or his Sureties, or both, such overpayment or damages as it may sustain or damages due to the Contractor's failure to comply with the terms of the Contract. The Department shall retain and apply monies owed to the Contractor under any Department Contract, or claim and recover by process of law such sums, in order to correct any error or make good any defects in the Work or materials.

Neither the acceptance by the Department, or any representative of the Department, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver by the Department of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

Subsection 108.06- Determination of Time for Completion, Replace entire subsection with the following:

108.06-Determination of Time for Completion. The Contractor shall complete the Work in full accordance with **Subsections 104.01** and **105.03** within the number of working days or calendar days or by the completion date stipulated in the Proposal. If a number of working days

govern in connection with a specific Contract, the Engineer will apprise the Contractor, monthly, of the number of accumulated working days charged against him. Protest by the Contractor, in such connection, shall be filed within five working days of receipt of the information. The Engineer will review such protest and the supporting information and will render decision either affirming or correcting the accumulated number of working days previously reported.

When the contract time is on a calendar day basis, it shall consist of the number of calendar days stated in the Contract counting from the effective date of the Engineer's order to commence work, including all Sundays, holidays and non-work days. All calendar days elapsing between the effective dates of any orders of the Engineer to suspend work and to resume work for suspensions not the fault of the Contractor shall be excluded.

When the Contract completion date is a fixed calendar date, all work on the project shall be completed on or before that date.

If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the proposal, the contract time allowed for performance may be proportionally increased for major items only, as defined in section 101.64, if the Engineer determines that the increase in quantities for the major items has affected the completion of the project. If the contract requires a mandatory Critical Path Method (CPM), or contains an incentive clause, or a bonus clause for early completion, the Engineer shall not proportionately increase the working time. The Engineer will determine if the added work or increased quantities impact the submitted critical path workflow and will adjust the working time accordingly, but the incentive clause date or the bonus clause date will not be adjusted unless otherwise allowed in the Contract.

If the Contractor finds it impossible for reasons beyond his control to complete the Work within the contract time as specified or as extended in accordance with the provisions of this Subsection, he may, at any time prior to the expiration of the contract time specified or as extended, make a written request to the Engineer for an extension of time setting forth therein the reasons which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the Work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion by a properly executed Supplemental Agreement in such amount as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion except incentive clause date or the bonus clause date will not be adjusted unless otherwise allowed in the Contract.

Final acceptance will be made by the Engineer as prescribed in Subsection 105.15 and in accordance with the following:

State Funded Projects:

Upon presumptive completion of the project and due notice from the Contractor, the Engineer will make an inspection. If all items of work are completed to his satisfaction, the Engineer will accept the project and stop time charges as of the date of the inspection. However, if the inspection reveals that some items of work remain to be completed, the Engineer will direct the Contractor to complete these items and continue charging time until all work has been satisfactorily completed, regardless of the number of inspections required prior to project acceptance.

Federal-Aid Projects:

The procedure for Federal-aid projects will be the same as noted above for wholly State funded projects except that time charges will be suspended during the time interval between presumptive acceptance by the Engineer and the date of inspection by the Federal Highway Administration (FHWA). Should the FHWA Engineer find any work unsatisfactory, time charges will be resumed the day after the inspection during which such determination is made until correction of such work.

In the event further inspections by FHWA are required, the procedure described herein will be repeated until final acceptance of the project.

Subsection 108.07-Failure to Complete Work on Time, Remove entire subsection and **replaced** with the following:

108.07-Failure to Complete the Work on Time. For each calendar day over and above the stipulated completion date on which any portion of the Work remains incomplete, a sum of money shall be deducted from monies due the Contractor, not as a penalty but as liquidated damages. The amounts to be deducted shall be as set forth below.

<u>Original Contract Amount</u>		<u>Daily Charge</u>
\$0 -	\$500,000	\$170.00
>500,000 -	1,000,000	\$420.00
>1,000,000 -	2,000,000	\$740.00
>2,000,000 -	10,000,000	\$1,000.00
>10,000,000 -	20,000,000	\$1,600.00
>20,000,000		\$1,800.00

Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Department of any of its rights under the Contract.

Subsection 108.08(a) Default, Replace the first sentence with the following:

The Department reserves the right to terminate, by a written Contract Termination Notice, any Contract, of which these Specifications are a part, if the Contractor:

Subsection 108.08(b) Without Fault, Replace the first sentence to the following:

The Department may, by a written Contract Termination Notice, with the approval of the Federal Highway Administration where applicable, terminate any Contract or a portion thereof after determining that for reasons beyond the control of the Contractor, the work contracted for cannot be completed. Such reasons for termination may include, but need not necessarily be limited to one of the following:

Subsection 108.08(c) New, Insert (c) Convenience with the following paragraphs.

(c) Convenience

The Department may, by a written Contract Termination Notice, with the approval of the Federal Highway Administration where applicable, terminate any contract, or any portion thereof for the Department's convenience, when the Engineer determines that, a termination is in the best interest of the Department.

A termination of the contract for convenience may be directed at any time after the Department has made a determination to award a contract. Such reasons for termination may include, but are not limited to:

1. Insufficient funds by the Department due to extenuating circumstances;
2. Orders from duly constituted authorities relating to energy conservation;
3. Restraining orders or injunctions obtained by third party citizen action resulting from federal or state environmental protection laws or where acts or omissions or persons or agencies whether or not the Contractor primarily caused the issuance of such order or injunction;
4. Occurrence of an environmental situation of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly mitigation;
5. Occurrence of a previously undiscovered error in the bid documents;
6. Any other circumstances determined by the Department to be in the best interest of the Department and/or public.

In addition to the general reservation of the right to terminate for convenience under this section, the bidding documents may provide for a termination of the contract for convenience under this section upon the occurrence or non-occurrence of a specified event after bid opening.

Under any of the above circumstances for termination, the Engineer will deliver to the Contractor and the Surety a written Contract Termination Notice for reasons that will be set forth therein. The Notice shall specify the extent to which performance of work is terminated under the Contract and the effective date of termination. Unless otherwise directed by the Engineer, upon receipt of a Contract Termination Notice, the Contractor, or his Surety, shall immediately:

1. Stop work as directed in the Notice.
2. Place no further orders or subcontracts for materials, services or facilities except as approved by the Engineer to complete work not terminated.
3. Terminate all orders and subcontracts for the terminated work.
4. Deliver to the Engineer completed or partially completed plans, drawings, information and other property required to be furnished under the contract.
5. Take any action that the Engineer directs to protect and preserve contract-related property that is in the possession of the contractor in which the Department has or may acquire an interest.
6. Provide all other information included in this section and/or as requested by the Engineer.
7. Complete all work not terminated.

If the Contract or any portion thereof is terminated before completion of all items of work in the contract; payment will be made for the actual number of units of items of work completed at the contract unit prices and as mutually agreed for items or work partially completed. No claim for loss of overhead or anticipated profits, including anticipated earnings on usage of owned equipment, and impact, delay, or other direct or indirect costs resulting from this termination, will be compensated as part of any settlement. Items that are eliminated in their entirety by the termination, will be paid according to **subsection 109.05**.

Completed or partially completed work will be paid for at the contract unit prices of the actual number of units or items of contract work completed prior to the effective date of the termination, or on a force account basis, as determined by the Engineer.

Reimbursement for organization of the Work (when not otherwise included 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, the intent being that an equitable settlement will be made with the Contractor. The Department may consider reimbursing the Contractor for actual work done and actual costs incurred by the Contractor before notification. It may include only such cost items as mobilization, subcontractor costs not otherwise paid for, actual idle equipment costs only for any time the work is stopped in advance of the termination date, and guaranteed payments for private land usage as part of the original contract (when not otherwise included in the contract). Any claim request for additional costs, not covered in this section or elsewhere in the contract, shall be submitted within 60 calendar days of the effective termination date.

Acceptable materials, obtained by the Contractor for the Work, that have been inspected, tested, and accepted by the Engineer, and that are not incorporated in the Work, may, at the option of the Engineer, be purchased from the Contractor. The Contractor shall submit the proof of actual cost, as shown by receipted bills and actual cost records. The Engineer, as shown by actual cost records, may designate all actual costs for delivery at such points of delivery to be added to this cost. If the Engineer and the Contractor do not agree to purchase such materials, the Department may reimburse the Contractor for any reasonable restocking fees and handling costs incurred by the Contractor in returning said materials to the vendor. In the event that only portions of the contract work are eliminated, the Department may stop delivery and payment for materials made unnecessary.

Termination of a 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.

Subsection 109.02 Add the following to the end of Subsection 109.02:

The prime contractor must pay each subcontractor for work performed under its subcontract no later than 30 days from the date the prime contractor receives payment for the work from the Department. The prime contractor must pay each material supplier for materials supplied to the project no later than 30 days from the date the prime contractor receives payment for the material from the Department. In addition, all subcontractors, at all tiers, must make payment no later than 30 days to each subcontractor and material supplier for work and/or material provided for the project once they receive payment from the prime contractor or subcontractor. The prime contractor shall provide monthly payment certification to the Department entitled "Prompt Payment Certification Form". An officer of the prime contractor shall sign the "Prompt Payment Certification Form". The Department will withhold estimate payments if information is not

submitted. The Department will withhold estimate payments for subcontracted items if subcontractors, at any tier, or materials suppliers are not paid. Also, all required certifications must be in the field office and accepted before such work is deemed satisfactorily completed. Any delay or postponement of payment from the above referenced time frame will result in accrual of interest as provided under TCA, Section 12-4-707(b).

The prime contractor, or subcontractors, at any tier, shall not withhold any retainage from progress payments made to their subcontractors.

Subsection 109.04-Methods of Payment for Extra Work, (a) Labor, Add “for profit and overhead” to the end of the second sentence.

Subsection 109.04-Methods of Payment for Extra Work, (c) Materials, Add “for profit and overhead” to the end of the sentence.

Subsection 109.04-Methods of Payment for Extra Work, (d) Equipment, Revise to the following:

(d) Equipment

Equipment used for Force Account work shall be of the size, type and number necessary to perform the required work in an economic and expeditious manner.

The Contractor shall submit for approval a list of all contractor owned equipment or equipment rented from another contractor (i.e. an entity not in the commercial rental business), including the manufacturer, make, model, year of manufacture, type of fuel, and other necessary information to determine proper hourly payment rate. The hourly rate shall not exceed the Monthly rate less the regional adjustment and age adjustment, as published in "*The Rental Rate Blue Book for Construction Equipment*" published by Equipment Watch, Prism Business Media, divided by 176. The contractor shall also submit for approval the hourly operating cost for all equipment. The hourly operating cost shall include all costs and labor for routine maintenance and servicing, including but not limited to fuel, lubrication, filters, blades, belts, pumps, lines, hoses, teeth, tires, tracks, etc.. The hourly operating costs shall not exceed the rates published in "*The Rental Rate Blue Book for Construction Equipment*". The rental rates will be paid for the actual time that the equipment is in operation. The weekly, daily or hourly premium equipment rates shown in the Blue Book shall not be used.

Contractor owned equipment or equipment rented from another contractor that has been approved for force account work that remains idle or on standby will be paid at a rate of 50% of the hourly rate calculated above. Idle equipment shall not be paid for more than 8 hours in a day or 40 hours in a week or on days of inclement weather when no other work is taking place. Equipment that is inoperable will not be paid idle time. The Department will determine if it will be more cost effective to pay idle time on approved equipment or for multiple mobilizations.

For equipment being used to complete force account work for part of the day and idle for a part of a day, the total hours that can be charged will be 8 hours, unless the equipment is in operation for more than 8 hours. Idle time will not be paid for any equipment which operates more than 8 hours in a day

Equipment that is rented or leased from a commercial rental company will be paid for at actual invoice price, provided the prices are fair and reasonable but not to exceed

the monthly rate published in "The Rental Rate Blue Book for Construction Equipment". The Department will pay a mark up of 15% for all rented/leased equipment for profit and overhead. The contractor shall also submit for approval the hourly operating cost for all rented/leased equipment if the rent/lease agreement does not include these expenses. The mark up will not apply to hourly operating costs. Rented or leased equipment will not be subject to payment for idle time. The Department will determine if it will be more cost effective to leave the equipment on site idle paying invoice price or pay for multiple mobilizations.

Subsection 109.04-Methods of Payment for Extra Work, (e) Transporting Equipment, Revise to the following:

(e) Transporting Equipment

When it is necessary to bring approved equipment to the project site, the contractor will be reimbursed for these costs and the costs to return it to its original location. The cost to return shall not be more than the cost to deliver. If a piece of equipment is delivered to the project site and used for other contract pay items then return costs will not be reimbursed.

If the equipment is transported by the contractor, then payment will be by hourly rate as calculated in 109.04 (d) for other equipment. If the equipment is transported by common carrier, then payment will be the actual invoiced amount with no markup.

Subsection 109.04-Methods of Payment for Extra Work, (f) Subcontracting and Professional Services, Revise to the following:

(f) Subcontracting and Professional Services.

The contractor will be paid an administrative fee of 5% for all approved force account work completed by subcontractors and for approved special services associated with the force account work. Invoices shall be submitted for all subcontracted and professional services rendered.

Subsection 109.04-Methods of Payment for Extra Work, (g) Miscellaneous, Revise to the following:

(g) Miscellaneous.

No additional allowance will be made for general superintendence (Superintendent), time keepers, the use of small tools, or other costs for which no special allowance is herein provided.

Subsection 109.04-Methods of Payment for Extra Work, (h) Compensation, Revise to the following:

(h) Compensation.

The Contractor's representative and the Engineer shall compare records of the cost of work done as ordered on a force account basis at the end of each day's work.

Subsection 109.04-Methods of Payment for Extra Work, (I) Statements, Revise to the following:

(i) Statements.

No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with duplicate certified itemized statements of the cost of such force account work detailed as follows:

1. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices, and extensions.
4. Transportation of materials.
5. Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security tax.

Statements shall be accompanied and supported by receipted invoices for all materials used, including 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 and transportation claimed represent the actual cost to the Contractor.

Subsection 109.06, Remove and Replace the entire subsection with the following:

When requested in writing by the Contractor and approved by the Engineer, partial payment of non-perishable materials that will be permanently incorporated into the project may be made. These materials must be stockpiled in an approved manner on or near the project site or in special cases at an off-site location because of fabrication. These off-site locations should be limited to special cases where the material cannot be readily stockpiled at the project site such as steel structure components, prefabricated bridge components, etc. Material stored at an off-site location shall be clearly marked with the project information. A map noting the location shall be provided to the Project Supervisor. The material stockpiled on the project site shall be stored in an approved manner so that the quality of the material is not compromised. No payment will be made prior to inspection and documentation by a TDOT representative. Material, whether stored on-site or off-site, shall be readily identifiable in order to reference the quantity and assigned project.

Materials that may be included in partial payments: aggregates (stored on project, not at quarry), reinforcing steel, bridge piling, structural steel (fabricated units or steel delivered to fabricator if designated for particular project), precast concrete structures, traffic signal equipment, electrical equipment, fencing materials, sign materials, guardrail, and others as approved by the Project Supervisor.

Materials that may not be included in partial payments: Living or perishable plant materials, seed, fuel, used materials, form lumber, falsework, temporary erosion items, and other temporary items that will not become part of the completed work.

The payment for stockpile materials is initiated by the Contractor with a request to the Project Supervisor. The request shall be made in writing and shall contain the following information:

1. Request for stockpile payment that includes the following information:
 - a. Contract and Project Numbers
 - b. Item Number and Description as stated in the Contract Proposal
 - c. Quantity and Unit of measure
 - d. Conversion factor, if applicable
2. Written statement of assurance that material will be used on the specific project
3. Written consent of Prime Contractor's surety
4. Copy of certified paid invoice (in order to certify, a representative of the supplier must mark the invoice as paid in full, sign and date)
5. If the certified paid invoice is unavailable, a stockpile payment may be conditionally approved with receipt of the Surety's consent and a copy of the unpaid invoice. However, the contractor must submit the certified paid invoice within 30 days following the date of the progress payment for which the stockpiled material was paid. If the certified paid invoice is not submitted, the stockpile payment will be deducted from the following progress payment. In addition, any further requests for stockpile payment of that item must be accompanied by a certified paid invoice, or stockpile payment will not be paid.
6. Material certifications/Test reports for the material.

Partial payment will only be considered for an invoice or accumulation of invoices totaling \$5,000.00 for each eligible pay item. Individual invoices shall not total less than \$2,500.00. Invoices may include tax and freight. Partial payment shall not exceed 100% of the invoice amount or 75% of the contract unit price, whichever is less.

Stockpile payments shall not exceed the contract amount, unless the contract amount is increased by an approved change order. Payments will not be made for items that will be incorporated permanently into the project within 30 days from request of stockpile payment.

The Contractor shall assume full responsibility for the stockpiled materials from the elements and against loss or damage by any cause. In the event any of these stockpiled materials become lost, stolen, impaired or damaged after partial payment has been made, the monetary value of the lost, stolen, impaired or damaged material as may have been paid for in a current estimate will be deducted from the next estimate, and no further payment will be made until such material has been satisfactorily replaced in accordance with specification requirements.

The department will not withhold retainage from the Contractor. No monthly estimate or partial payment will be made when the total value of the work done since the last previous monthly estimate amounts to less than \$1000.00.

After the first partial payment, the Department reserves the right to withhold any subsequent partial payments until it has been completely satisfied by the Contractor that his labor, material, and equipment costs and any claims for other reasons are paid on a current basis. Should any defective construction or material be discovered, or should a reasonable doubt arise as to the satisfactory quality of any part of the construction completed prior to final acceptance and payment, there will be deducted from the first estimate rendered after the discovery of such defective or questioned construction, and if necessary, from subsequent estimates, an amount sufficient to insure the replacement of such work by the Contractor or by others as may prove necessary.

Subsection 109.08 New, insert the following:

109.08-Payment of Costs Owed to the Department.

The Contractor, without prejudice to the terms of the Department Contract, shall be liable to the Department for any or all of the following: fraud or such gross mistakes as may amount to fraud, the Department's rights under any warranty or guarantee, or any latent defects in the work.

The Department reserves the right to set off against any amount otherwise due the Contractor or his Sureties, or both, under this Contract or under any other contract or arrangement, including payment obligations under **Section 109.04** of these Specifications, that the Contractor or his Sureties, or both, has with the Department, the following:

1. any costs that the Department has incurred due to noncompliance with this contract by the Contractor or his Sureties, or both, and
2. any other amounts that are due and payable from the Contractor or his Sureties, or both, to the Department