

103.01

Section 103. SCOPE OF THE WORK

103.01. Intent of the Contract. The intent of the contract is to provide for the successful performance and completion of the work. The Contractor must perform the work as specified in the contract.

103.02. Revisions to the Contract.

A. **General.** The Department reserves the right to revise the contract at any time. Revisions to the contract neither invalidate the contract nor release the surety, and the Contractor agrees to perform the work as revised. The Contractor must not proceed with the revised work until directed to do so by the Engineer, but must continue with all work unaffected by the revision. The Engineer will provide a work order for the revised work when requested by the Contractor.

The Department will pay the Contractor for revisions to the contract in accordance with subsection 109.05, and grant time extensions for revisions to the contract in accordance with section 108.

If the Contractor believes that one of the following subsections applies, the Contractor must notify the Engineer in accordance with subsection 103.03.B. If the Engineer and the Contractor do not agree as to whether one of the following subsections applies, the Contractor is directed to follow the provisions of subsection 104.10.

B. **Significant Changes in the Character of Work.** If alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work, or by affecting other work, cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment must be agreed upon prior to the performance of the work in accordance with subsection 109.05.

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

1. When the character of the work, as altered, differs materially in kind or nature from that involved or included in the original proposed construction.
2. When a major pay item, as defined in subsection 101.03, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for increase in quantity will apply only to that portion in excess of 125 percent of original pay item quantity, or in case of a decrease below 75 percent, to the

actual amount of work performed. For decreases below 75 percent, the maximum allowable adjustment will not exceed an amount equal to 75 percent of the original contract quantity times the contract unit price.

3. When the Engineer increases the quantity of a minor pay item such that the revised quantity meets the criteria for a major pay item. The Department will make an adjustment in the contract unit price that applies only to the quantity of that pay item that exceeds the quantity meeting the criteria for a major pay item.

C. Differing Site Condition. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions must promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

Upon written notification from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted in accordance with subsection 103.03.C.

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

No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

D. Suspension of Work Ordered by the Engineer. If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or contract time is due as a result of such suspension or delay, the Contractor must submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request must set forth the reasons and support for the adjustment in accordance with subsection 103.03.B.

103.02

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time required for the performance of the contract has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any tier, and the suspension was not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted in accordance with subsection 103.03.C.

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

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

E. **Extra Work.** The Engineer may, at any time during the progress of the contract, order extra work. The Engineer will provide the Contractor with a work order stating the location, kind, and estimated quantity of the extra work the Contractor is to perform.

F. **Eliminated Work.** The Engineer may eliminate all or a portion of any pay item.

The Department will compensate the Contractor a fair and equitable amount for all direct costs incurred on the item prior to the elimination of the pay item.

103.03. Contractor-Engineer Communication.

A. **General.** The specified time limits may only be extended through a written, jointly signed agreement between the Contractor and the Engineer.

B. **Written Notice, by Contractor.** The written notice required by subsection 103.02 should include the following:

1. A description of the situation;
2. The time and date the situation was first identified by the Contractor;
3. The location of the situation, if appropriate;
4. A clear explanation of why the situation requires a revision to the contract, including appropriate references to the pertinent portions of the contract;
5. A statement of the revisions deemed necessary in the contract price(s), delivery schedule(s), phasing, time, etc. Because of its

preliminary nature, the Department recognizes that this information may rely on estimates;

6. An estimate of the time by which the Engineer must respond to minimize cost or delay, and, if applicable; and
7. Anything else that will help achieve timely resolution.

C. Written Response, by Engineer. Within 7 calendar days of receiving the Contractor's written notice, or sooner if possible, the Engineer will provide a written response that includes one of the following:

1. Confirmation of the need for a revision to the contract and a statement of the applicable subsections of section 108 and subsection 109.05 under which the revision is determined. If the work covered by the revision is complete at the time of the response, the Engineer will include the applicable contract modification in the response. A time extension, if one is necessary, will be determined in accordance with section 108 and the result included. Compensation for the revision, if any is necessary, will be determined in accordance with subsection 109.05 and the result included.
2. Denial of the request for a revision to the contract, in which case the Engineer will make clear, through reference to the contract, why the issue does not require a revision to the contract.
3. A request for additional information, in which case the Engineer will state clearly what is needed and by when; the Engineer will issue a final response within 7 calendar days of receiving the additional requested information, or sooner if possible.

D. Contractor's Recourse. If the Contractor disagrees with the Engineer's final written response or the Engineer's response is untimely, the Contractor may pursue a claim in accordance with subsection 104.10.