
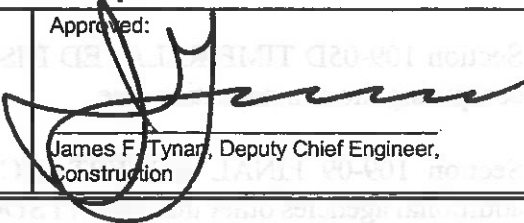


To: SUPERSEDED BY EFFECTIVE 11/1/01 E101-018		New York State Department of Transportation ENGINEERING INSTRUCTION	EI 00-041
Title: Revisions to Section 100 of the Standard Specifications			
Distribution: <input checked="" type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Main Office (30) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Regions/Agencies (32)	<input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Contractors (39) <input type="checkbox"/> ()	Approved:  James F. Tynan, Deputy Chief Engineer, Construction	12-12-01 Date

ADMINISTRATIVE INFORMATION: This Engineering Instruction (EI) is effective with projects submitted for the lettings of May 3, 2001 and may be implemented earlier at the discretion of the Region. This EI does not supersede any previous issuances.

PURPOSE. This Engineering Instruction issues Revisions to Addendum No. 1 of the Standard Specifications

TRANSMITTED MATERIALS. Shelf Notes to implement the following specification changes. These shelf notes will be incorporated into the next reprinting of the Standard Specifications or addendum.

1. Section 102-17 SAMPLE FORM OF AGREEMENT, Article 1, clarifying the assumptions made when bidding the contract. The Contractor agrees they have made no assumptions that specifications will be waived, dispensations granted or value engineering proposals approved.
2. Section 102-17 SAMPLE FORM OF AGREEMENT, Article 9, informs the Contractor that additional agencies other than the NYSDOT may review and accept the work performed by the Contractor.
3. Section 104-03 CONTINGENCIES, EXTRA WORK, DEDUCTIONS, to eliminate duplicate language. Deletes the last sentence of the first paragraph which is repeated in the next paragraph.
4. Section 105-01 STOPPING WORK, adds guidance and consequences should a Contractor choose to disregard a written stop work order from the Engineer.
5. Section 105-14 A.3 of DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS, by eliminating the third and part of the fourth sentence of the second paragraph strictly limits the Contractor's time frame for notifying the Department.
6. Section 105-14 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS, reinforcing the Departments rights and the Contractor's obligations under the contract.
7. Section 107-09 DAMAGE, to insure prompt handling of public claims of damage to personal property.

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8. Section 108-03 FAILURE TO COMPLETE WORK ON TIME, to reflect the increased cost of delay to the traveling public.
9. Section 109-03 PAYMENTS ON CONTRACTS, advises the contractor that payment may be made by more than one agency.
10. Section 109-05D TIME RELATED DISPUTE COMPENSATION, stipulates the method of computing the compensation due.
11. Section 109-09 FINAL ACCEPTANCE OF THE WORK, informs the Contractor that additional agencies other than the NYSDOT may review and accept the work performed by the Contractor.

BACKGROUND. The Department is involved in a continuous improvement effort to clarify our specifications. This effort began with the adoption of Addendum No. 1 to the Standard Specifications. The following is a continuation of that effort. These changes provide additional clarifications to the specifications.

ACTIONS BY MAIN OFFICE. The attached revisions to Section 100 will be included as shelf notes to the proposal by Main Office DQAB for all contracts let beginning May 3, 2001.

CONTACT. Direct questions concerning this EI to Charles K. Stone at 518-485-1835.

Make the following changes to Addendum No. 1 (Adopted April 8, 1999) of the standard Specifications of January 2, 1995

1. Page 1-24, line 27

Add the following paragraph to the end Article 1 Section 102-17 SAMPLE FORM OF AGREEMENT Work to be Done:

The Contractor further agrees their bid proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for Specified Construction Materials and Methods will be allowed; or any Value Engineering Proposals will be approved by the New York State Department of Transportation.

2. Page 1-26, Line 17

Make the following revision to Article 9 FINAL ACCEPTANCE OF THE WORK, add the following paragraph after the first paragraph of Article 9.

“Prior to the final acceptance of the work by the Commissioner or his designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance”.

3. Page 1-50, line 34

Delete the last sentence of the first paragraph under Section 104-03 CONTINGENCIES, EXTRA WORK, DEDUCTIONS.

4. Page 1-52, line 22

Add the following sentence to the end of Section 105-01 STOPPING WORK

Any work completed in violation of a written stop order will not be paid for even if subsequently determined to be acceptable.

5. **Page 1-59, line 40**

Make the following changes to §105-14. Add the following third paragraph before “ A. TIME RELATED DISPUTES.”

The notification and record-keeping provisions in this Contract must be strictly complied with for disputes of any nature and are a condition precedent to any recovery. This affords the New York State Department of Transportation the opportunity to initiate measures that will mitigate damages to all parties and/or to agree to terms and conditions for timely payment for any eligible added costs. Disputes of any nature must be made in strict accordance with the contract provisions. In the case of any dispute, it shall be the Department’s right to modify specifications or delete portions of the work being disputed to mitigate damages. In addition, the Contractor is encouraged under the contract, when raising a dispute, to provide information concerning measures that may be taken for mitigating the damages. If the Contractor fails to strictly comply with either the notification or the record keeping provisions of this section, any claim of the Contractor with respect thereto shall be deemed waived.

6. **Page 1-60 lines 22 through 40**

Make the following change to Section 105-14 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS, § 105.14 A.3. Delete the first and second paragraphs and replace with the following:

3. Except for situations that come within the terms of Section 109-16, subsection 2, Suspensions of Work, within ten work days after the Contractor has knowledge or should have had knowledge of an event, matter or occasion that will result in time related damages, the Contractor must provide the Engineer with written notice of a dispute for time related damages.

The Department shall have no liability and no adjustment will be made for any time related damages which accrued more than ten (10) working days prior to the filing of such a notice with the Engineer. Failure of the Contractor to give such written notice in a timely fashion will be grounds for denial of the dispute and the Department does not have to show prejudice to its interest before such denial is made. In the event the Contractor fails to provide the required written notice within the ten work day period and in the event the Contractor fails to maintain and submit such specified records set forth in these provisions, the Contractor hereby agrees to waive the dispute for compensation, notwithstanding the fact that the Department may have actual notice of the facts and circumstances which comprise such dispute and is not prejudiced by said failure.

7. **Page 1-76, line 37**

Make the following change to Section 107-09 - DAMAGE. Add the following

E. Prompt Response to Claims by the Public. The Contractor's responsibility for the project site applies to the full limits of the contract regardless of the extent or nature of contract work at a particular location. This obligation begins when the contract is awarded and continues until final acceptance of the work. The Contractor shall promptly address all written damage claims of the public and, if not addressed directly, claims shall be promptly turned over to the Contractor's insurance carrier without prejudicing the validity of the claim. There should be an interval of no more than ten (10) working days between receipt of a written claim by the Contractor and receipt by the carrier. The Contractor and/or the Insurance Carrier are expected to investigate, determine and adjust such claims promptly and fairly with notice to the Engineer. The Engineer will monitor claims by the public. If the Contractor fails to provide satisfactory resolution through a timely claims adjustment process or denies the claim without proper cause and justification, the Department may invoke Article 8 of the contract or utilize other remedies referenced in the contract specification.

8. **Page 1-82, line 13**

Replace **Table 108-1 Schedule of Liquidated Damages** with the following revised table:

Table 108-1 Schedule of Liquidated Damages		
Original Contract Amount		Liquidated Damages per Calendar Day
From More Than	To and Including	
\$0	\$ 100,000	\$ 500
\$100,000	\$500,000	\$1,000
\$500,000	\$2,000,000	\$1,500
\$2,000,000	\$5,000,000	\$2,000
\$5,000,000	\$10,000,000	\$2,500
\$10,000,000	\$20,000,000	\$4,000
\$20,000,000	-	\$7,000

9 **Page 1-84, line 39**

Make the following revision, add the following paragraph as the second paragraph of § 109-03 PAYMENTS ON CONTRACT.

As set forth in supplemental information to bidders (CONR-9I), this contract may be funded by monies from other governmental or non-governmental entities which may include municipalities, counties, towns, villages, or authorities. If the contract is funded by monies from the New York State Thruway Authority as set forth in Supplemental Information Available to Bidders, (CONR 9i), separate payment may be made by both the State of New York and the New York State Thruway Authority.

10. **Page 1-90, line 29**

Make the following change to Section 109-05D TIME RELATED DISPUTE COMPENSATION, change line 29 to read:

they are actual and reasonable. Any such adjustment shall be made via order-on-contract and in accordance with the provisions of Section 109-05 B of the Standard Specifications.

11 **Page 1 - 94, line 14**

Make the following revision §109-09 FINAL ACCEPTANCE OF THE WORK, add the following to the end of the section.

“Prior to the final acceptance of the work by the Commissioner or his designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance”.