
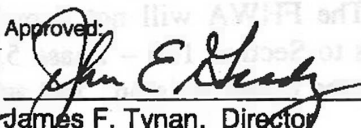


<p>MODIFIED BY <u>EI 06-007</u> SUPERSEDED EFFECTIVE <u>9/7/06</u> BY EB 06-057 EFFECTIVE <u>05/03/07</u></p>		<p>New York State Department of Transportation ENGINEERING INSTRUCTION</p>	<p>EI 05-011</p>
<p>Title: REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 – PHASE 5A</p>			
<p>Distribution:</p> <p><input checked="" type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Agencies (32) <input checked="" type="checkbox"/> Contractors (39) <input type="checkbox"/> _____ ()</p>		<p>Approved: _____  James F. Tynan, Director Construction Division</p>	<p><u>9/12/05</u> Date</p>

ADMINISTRATIVE INFORMATION:

- This Engineering Instruction (EI) is effective beginning with projects submitted for the letting of 05/05/05.
- This EI supersedes EI 05-005.
- The revisions issued with this EI will be incorporated into the next update of the Standard Specifications.

PURPOSE: This EI issues revisions to Section 100 of the Standard Specifications of January 2, 2002 as modified by Revisions to Section 100 – Phase 5.

TECHNICAL INFORMATION:

- §104-03, §104-04 and §104-05 contain the Federal changed condition clauses required for all Federal-Aid contracts. The revised versions of these clauses contained in EI 05-005 *Revisions to Section 100 – Phase 5*, while consistent with the intent of the Federal regulations, are not verbatim from the Federal Regulations.
- This EI reissues §104-03, §104-04, and §104-05 which include the requirements of the Federal regulations, verbatim, along with implementation language. The change is issued in two formats: (1) a 2 page revisions shelf note for amending contracts containing Section 100 – Phase 5; and, (2) a 147 page shelf note (i.e., Section 100 – Phase 5A) as a replacement for Section 100 – Phase 5.

IMPLEMENTATION:

- Main Office Design Quality Assurance Bureau will insert the complete Section 100 – Phase 5A standard specification shelf note in of place of Section 100 – Phase 5 at the earliest date practical.
- Main Office Design Quality Assurance Bureau will process an amendment for all Federal-Aid projects containing Section 100 – Phase 5.

TRANSMITTED MATERIALS:

- Section 100 – Phase 5A Revisions (2 pages) – §104-03, §104-04, and §104-05 revisions issued as a shelf note.
- Complete Section 100 – Phase 5A (147 pages) – Complete Section 100 – Phase 5 with revised §104-03, §104-04, and §104-05 from Phase 5A revisions.

EI 05-011 Page 2 of 2

Due to the size of Section 100 – Phase 5A (147 pages), only the Section 100 – Phase 5 Revisions shelf note (2 pages) is attached to this EI. The full text of the Section 100 – Phase 5A can be found on the Department website at www.dot.state.ny.us. Select Site Index > E > Engineering Directives, Instructions, Bulletins and the EIB Program > Engineering Instructions > Issued in 2005 > EI 05-011.

BACKGROUND: The FHWA will not approve Federal-Aid participation for projects containing the shelf note Revisions to Section 100 – Phase 5, because the required Federal changed condition clauses were not properly stated in the revision. The attached shelf note is acceptable to FHWA.

CONTACT: Direct questions regarding this issuance to Brian DeWald of the Construction Division via e-mail at BDeWald@dot.state.ny.us or at (518) 457-6472.

REVISIONS TO SECTION 100 – PHASE 5A

Make the following changes to Volume 1 of 3 of the Standard Specifications of 2002, as modified by EI 05-005:

§104-03 *Differing Site Conditions*: Insert the following immediately after the title:

“In accordance with 23 CFR 635.109(a)(1):

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 shall promptly notify the other party of the specific differing site conditions before the site is further disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the site 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 to the contract is warranted.

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

The Department will administer the above Federal regulations as follows:”

§104-04 *Significant Changes in the Character of Work*: Insert the following immediately after the title:

“In accordance with 23 CFR 635.109(a)(3):

The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of work under the contract, whether such alterations or changes are in themselves significant changes in the character of work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made by the Department, either for or against the Contractor, in such amount as determined to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term ‘significant change’ shall be construed to apply only to the following circumstances: 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 when a Major Item of work, as defined elsewhere in the contract, is increased in excess of 125-percent, or decreased below 75 percent of the original contract quantity. Any allowance for a change in unit price shall apply only to that portion of work in excess of 125 percent of the original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

The Department will administer the above Federal regulations as follows:”

REVISIONS TO SECTION 100 – PHASE 5A

§104-05 *Suspensions of Work Directed By the Engineer*: Insert the following immediately after the title:

“In accordance with 23 CFR 635.109(a)(2):

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, not customary, or not inherent to the construction industry) and the Contractor believes that it is due additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by circumstances beyond the control of and not the fault of the Contractor, its Suppliers or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment to the contract is warranted. 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 or excluded under any other term or condition of this contract. No contract adjustment will be allowed unless the Contractor has provided the required written request for adjustment within the time prescribed.

The Department will administer the above Federal regulations as follows: