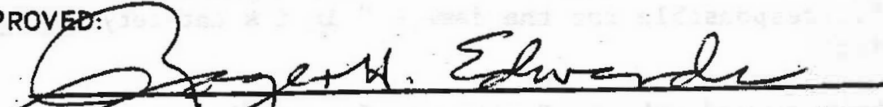
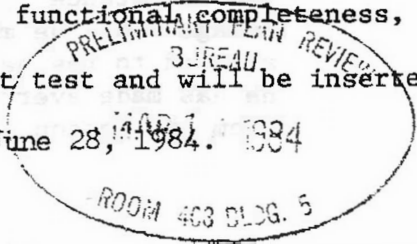


TO: SUPERSEDED BY EI 86-001 EFFECTIVE 5/15/86	ENGINEERING INSTRUCTION NEW YORK STATE DEPARTMENT OF TRANSPORTATION
Distribution: <input checked="" type="checkbox"/> Main Office <input checked="" type="checkbox"/> Regions <input type="checkbox"/> Special	Code: <u>EI 84-14</u>
APPROVED: 	Date: <u>3/9/84</u> Supersedes:
SUBJECT: SUBSECTION 107-09 DAMAGE Subject Code: 7.27-1-107-09	

We are transmitting, herewith, a special note titled "Damage." This special note modifies Subsection 107-09 of the Standard Specifications of January 2, 1981, and Addendum No. 1 thereof.

§107-09, Damage of the Standard Specifications covers how, and for what the contractor will be paid in the event damage occurs as a result of motor vehicle accident. As that section was written for the 1981 Standard Specifications, it allowed for payment only when an eligible item had been completed. This was subsequently changed by page 4 of Addenda No. 1 so that as long as the item was completed to the point where it could serve its intended function, regardless of whether or not it was totally complete, it would be eligible for a damage payment.

As a result of the October, 1983 AGC meeting, the list of eligible items was replaced with a more general description. Inadvertently, the earlier change which established the test of functional completeness, was omitted. The attached note restores that test and will be inserted in contracts beginning with the letting of June 28, 1984.



DAMAGE

Make the following changes to the Standard Specifications of January 2, 1981:

Page 1-39

107-09 Damage delete, subsection 107-09A which begins "A. Payment shall be made..." and ends "...responsible for the damage." in its entirety and substitute the following:

"A. Payment shall be made to the Contractor for repair or replacement of any permanent element of the highway which is completed to the stage of serving its intended function and is subsequently damaged by accident by public traffic. The Contractor must supply satisfactory evidence that such damage was caused by a public traffic accident and not by vandalism or by the Contractor's equipment. Satisfactory evidence shall generally be limited to: accident reports filed with the Motor Vehicle Department, police agencies or insurance companies; statements by reliable, unbiased eye witnesses; identification of the vehicle involved in the accident. Physical evidence that the damage was caused by a motor vehicle (such as tire marks or broken headlight glass) will not be sufficient unless it can be shown that the damage was not caused by the Contractor's vehicles or by vandalism.

Work for which there is a bid item will be paid for at the unit price for that item. Work for which there is no bid item will be paid for at an agreed price or by means of force account. Payment will not be made for repair or replacement in any way connected with untimely failure of any portion of the highway under public traffic, and the determination regarding this matter shall be made by the Regional Director, taking into consideration the normal life and the amount of normal wear of the element involved. This provision does not relieve the Contractor of the responsibility of maintenance and protection of traffic for the contract or the responsibility of having a wholly complete and acceptable job at the time of final inspection and acceptance of the entire contract. Payment for such damage shall be made only after the Contractor has demonstrated to the satisfaction of the Regional Director that he has made every reasonable effort to collect the costs from the person or persons responsible for the damage."