SECTION 101

DEFINITIONS AND TERMS

101.01 GENERAL

The Standard Specifications are written to the Contractor. They define the Contractor's responsibility in meeting each specification. The short sentences, written in the active voice, explain what the Contractor must do. The Specifications outline the expectations of the Department, and explain what the Contractor must provide the Department. Unless otherwise noted, all actions are to be performed by the Contractor. "Will" statements mean the Department is responsible or will perform the action.

The Standard Specifications are written in dual units with English units first, followed by Metric units in parenthesis. The contract will be in one of the two units. All submittals and documentation provided to the Department must be in English or Metric units as shown in the contract.

The active voice writing style is recommended by the Federal Highway Administration Technical Advisory 5080.16. Examples of the writing styles are as follows:

A. Passive Voice: The Contractor shall construct the temporary detour as specified in the contract.

B. Active Voice: Construct the temporary detour as specified in the contract.

The titles and headings of the sections, subsections, and sub-parts are for the convenience of reference and do not necessarily have a bearing on their interpretation.

When a publication is specified, it refers to the most recent date of issue, including interim publications, before the date of bid receipts for the project unless the issue of a specific date or year is specified.

101.02 ACRONYMS AND ABBREVIATIONS

Whenever the following acronyms and terms are used in the contract, the intent and meaning is interpreted as follows:

AAN .....American Association of Nurserymen
AAR .....Association of American Railroads
AASHTO .....American Association of State Highway and Transportation Officials
ACI.....American Concrete Institute
AGC.....Associated General Contractors of America
AISC .....American Institute of Steel Construction, Inc.
AISI.....American Iron and Steel Institute
ANSI .....American National Standards Institute, Inc.
ARA .....American Railway Association
AREA.....American Railway Engineering Association
ARM.....Administrative Rules of Montana
ARTBA.....American Road and Transportation Builders Association
ASC .....Activities Schedule Chart
ASCE.....American Society of Civil Engineers
ASME.....American Society of Mechanical Engineers
ASTM.....American Society for Testing and Materials
ATTSA .....American Traffic Safety Services Association
AWPA .....American Wood Preservers Association
AWS.....American Welding Society
AWWA .....American Water Works Association
BMP .....Best Management Practice

CAS .....Construction Administration Services
CES .....Construction Engineering Services
CFR .....Code of Federal Regulations
CMP.....Corrugated Metal Pipe
CO .....Change Order
COE.....U.S. Army Corps of Engineers
CPM.....Critical Path Method
CRSI .....Concrete Reinforcing Steel Institute
CTEP .....Community Transportation Enhancement Program
CUF .....Commercially Useful Function
CWI.....Certified Welding Inspector
D/A .....Dust to Asphalt ratio
DBE .....Disadvantaged Business Enterprise
DCE .....District Construction Engineer
DEQ.....Montana Department of Environmental Quality
DMS.....District Materials Supervisor
DNRC .....Montana Department of Natural Resources and Conservation
EBS .....Electronic Bid System
EEO .....Equal Employment Opportunity
EPA .....Environmental Protection Agency
ESAL .....Equivalent Single Axle Load
FETS .....Flared End Terminal Section
FHWA.....Federal Highway Administration
FSS.....Federal Specifications and Standards
FWP.....Montana Department of Fish Wildlife and Parks
HDPE.....High Density Polyethylene Pipe
IES.....Illuminating Engineering Society
IMSA.....International Municipal Signal Association
ITE.....Institute of Transportation Engineers
MASH .....Manual for Assessing Safety Hardware
MCA.....Montana Code Annotated
MDT.....Montana Department of Transportation
MPDES.....Montana Pollutant Discharge Elimination System
MSDS .....Material Safety Data Sheet
MT .....Montana Test Method
MUTCD.....Manual on Uniform Traffic Control Devices
NBS .....National Bureau of Standards
NCHRP.....National Cooperative Highway Research Program
NEC .....National Electric Code
NEMA .....National Electrical Manufacturers Association
NOI .....Notice of Intent
NPDES .....National Pollutant Discharge Elimination System
OHV.....Off Highway Vehicles
OSHA .....Occupational Safety and Health Administration
PCC .....Portland Cement Concrete
PCCP.....Portland Cement Concrete Pavement
PCI .....Pre-stress Concrete Institute
PGAB.....Performance Graded Asphalt Binder
PTW.....Presently Traveled Way

PVC .....Polyvinyl Chloride Pipe
QA.....Quality Assurance
Q&A .....Contractor's Question and Answer Forum
QPL.....Qualified Products List
RAP .....Recycled Asphalt Pavement
RCP .....Reinforced Concrete Pipe
ROW or R/W ..Right of Way
SAE.....Society of Automotive Engineers
SHPO.....State Historic Preservation Office
SPA.....Stream Protection Act
SSPC .....Society for Protective Coatings
SWPPP.....Storm Water Pollution Prevention Plan
TESC .....Temporary Erosion and Sediment Control
TMECC .....Test Methods for Evaluating Compost and Composting
TMP .....Traffic Management Plan
TRM.....Turf Reinforcement Mat
UL .....Underwriters Laboratory
USASI .....United States of America Standards Institute
VE.....Value Engineering
VFA.....Voids Filled with Asphalt
VMA.....Voids in Mineral Aggregate
VTM .....Voids in the Total Mix
WASHTO .....Western Association of State Highway Transportation Officials
WAQTC .....Western Alliance for Quality Transportation Construction
WN.....Written Narrative
WWPA .....Western Wood Products Association

The Department uses the following abbreviations in the Schedule of Items for the respective units of measurement:

TABLE 101-1
MEASUREMENT ABBREVIATIONS

English		Metric		English		Metric	
Length				**Area**			
inch	in.	millimeter	mm	square inch	in^2	square millimeter	mm^2
foot	ft.			square foot	ft^2		
yard	yd.	meter	m	square yard	yd^2	square meter	m^2
mile	mi.	kilometer	km	acre	acre	hectare	ha
course mile	CR. mi.	course kilometer	CR km	square mile	mi^2	square kilometer	km^2
Volume				**Weight**			
cubic inch	in^3	cubic millimeter	mm^3	ounce	oz.	gram	g
cubic foot	ft^3			pound	lb.	kilogram	kg
cubic yard	yd^3	cubic meter	m^3	ton	t.	metric tonne	MT
Liquid Measure				**Temperature**			
ounce	fl. oz.	milliliter	ml	degree Fahrenheit	°F	degree Celsius	°C
gallon	gal.	liter	L				
Speed				**Pressure**			
miles per hour	mph	kilometers per hour	kph	pounds per square inch	psi	kilopascals	kPa

101.03 DEFINITIONS

ACTUAL COST

The cost incurred by the Contractor in the performance of work. Actual cost includes labor, material, actual ownership cost of equipment determined from the owner's records, or invoiced rental rates, and administrative overhead.

ADDENDUM OR AMENDMENT

Contract revisions developed after advertisement and before opening proposals.

ADDITIONAL WORK

Additional work is an increase in the quantity of a contract item.

ADMINISTRATOR

The District Administrator, or the authorized representative, is responsible for the administrative oversight of the project.

ADVERTISEMENT

The public announcement inviting proposals for the advertised work.

AWARD

The acceptance of a proposal by the Commission.

AQUATIC RESOURCES

Aquatic resources may include, but are not limited to, wetlands, springs, streams (perennial, ephemeral, and intermittent drainages), rivers, lakes, ponds, reservoirs, agricultural irrigation systems and associated riparian areas.

BASE

One or more layers of specified material placed on the subgrade to support the surface course.

BIDDER

Any individual or entity submitting a proposal for advertised work.

BID DOCUMENTATION

Any writings, working papers, computer printouts, computer generated and/or computer stored information, electronically stored information, charts, schedules of any kind (e.g. CPM, bar chart, etc.), and any data compilations, computerized or not, used by the bidder to determine the bid submitted for a contract. Bid documents includes, but is not limited to, the following:

- Bidder equipment internal rates for ownership;
- Bidder overhead rates;
- Labor rates;
- Cost coding;
- Equipment and manpower loading of activities;
- Efficiency or productivity factors;
- Scheduling calculations;
- Review or analysis of the site of work;
- Analysis of how the work should be performed
- Arithmetic extension;
- Worksheets used to prepare the bid (identifying by name and edition any software programs used to prepare them); and
- All quotations to the extent that these items were used in formulating and preparing the amount of the bid.

Bid Documents also includes identification of all manuals used by the bidder in preparing the bid for this contract, referenced by title, author, edition, date, and page or section number. The term does not include bid documents provided by the owner (e.g. plans, specifications, etc.) for use by the bidder in preparation of the bid proposal. Convert electronic information into paper copies for submittal purposes.

BRIDGE

A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads and a length measured along the center of roadway exceeding 20 feet (6.1 m) between under-copings of abutments or extreme ends of openings for multiple boxes.

The bridge length is the overall length measured along the line of survey stationing between backs of abutment backwalls or between ends of the bridge floor, but never less than the total clear opening of the structure.

The bridge roadway width is the clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curb between the bottoms of the lower risers.

BUSINESS DAY

All days are considered business days except Saturdays, Sundays and holidays.

CALENDAR DAY

Every day shown on the calendar, beginning and ending at midnight.

CHANGE ORDER

A written order issued to the Contractor covering changes to the original contract, and establishing the agreed-upon basis of payment and time adjustments for the work affected by the changes.

CHIEF ENGINEER

The Highways Engineering Division Administrator is designated “Chief Engineer” for the Department who establishes engineering policy, resolves technical issues and resolves Contractor disputes.

CLAIMS REVIEW BOARD

The Board consists of the Chief Engineer, the Preconstruction Engineer and the Chief Counsel, with the CES Engineer as Secretary to the Board. The FHWA Field Operations Engineer and Construction Engineer are non-voting members.

COMMISSION

As provided by Section 2-15-2502 MCA, (as amended), the Transportation Commission is a quasi-judicial board assigned to the Department of Transportation for administrative support only.

COMPLETION DATE

The fixed calendar date that all work on the project is to be complete.

CONFORMITY

Is compliance with:

A. Reasonable and customary manufacturing and construction tolerances where working tolerances are not specified; or

B. The specified working tolerances.

CONTRACT

The written agreement between the Commission and the Contractor detailing the obligations of the parties for the performance of the prescribed work.

The contract includes the proposal; contract form; contract bond; specifications; general and detail plans; Detailed Drawings; Notice to Proceed; Materials Manual; and all change orders, extra work orders, including authorized contract time extensions, that are required to complete the project.

CONTRACT BOND

The approved security on the Department’s form, executed by the Contractor and its surety or sureties, guaranteeing the complete execution of the contract and all supplemental agreements thereto and payment of all legal debts pertaining to the construction of the project.

CONTRACT ITEM (PAY ITEM)

A specific unit of work for which a price is provided in the contract.

CONTRACT TIME

The number of working days, calendar days, or the fixed completion date allowed for completing the contract, including authorized time extensions.

CONTRACTOR OR PRIME CONTRACTOR

The individual or legal entity contracting with the Commission to perform the prescribed work. When used in the specifications, Prime Contractor has the same meaning as Contractor.

CULVERT

Any structure not classified as a bridge that provides an opening under the roadway.

DELAY

Any event, action, force, or factors that causes the contract work to extend beyond the specified contract time.

A. Compensable Delay. An excusable delay for which the Contractor may be entitled to additional compensation.

B. Excusable (Non-compensable) Delay. A delay to the contract or milestone/phase completion date that was beyond the Contractor's control and for which a contract or milestone time extension may be granted.

C. Non-excusable Delay. A reasonably foreseeable delay to the contract completion date within the Contractor's control. No monetary compensation or time extension will be granted.

DEPARTMENT OF TRANSPORTATION

The State of Montana, Department of Transportation, acting through the Director and the Commission when the State is the awarding authority. Where Department is used alone, it means the Montana Department of Transportation. The Department's mailing address is: Montana Department of Transportation, 2701 Prospect Avenue, P.O. Box 201001, Helena, MT 59620-1001.

DETAILED DRAWINGS

An edition of special drawings, including necessary detailed instructions that pertain to certain items of work contained in Department projects.

DIFFERING SITE CONDITIONS

Subsurface or latent physical conditions at the site that:

A. Differ materially from those indicated in the contract; or

B. Differ materially from conditions normally encountered or, those conditions generally recognized as inherent in the nature of the work required in the contract; or

C. Unknown physical site conditions of an unusual nature. This does not refer to non-physical conditions (e.g. working relationships, etc.)

DIRECTOR

The chief administrative officer of the Department, as established by law and the Director's authorized agents.

ENGINEER

The highest ranking professional engineer in the district office, usually the administrator, DCE, or their authorized representative, responsible for engineering and administrative supervision of the project.

EQUIPMENT

All machinery, tools, apparatus, and supplies necessary for the upkeep, maintenance, construction, and completion of the project.

EQUITABLE ADJUSTMENT

An adjustment in the contract price or time.

EXTRA WORK

Work added to the original contract required for the completion of the contract.

EXTRA WORK ORDER

A written agreement amending the contract that identifies work to be paid for at agreed prices or by force account under Subsection 109.04.

FORCE ACCOUNT WORK

A basis of payment to perform extra work when procedures of negotiation are unsuccessful. Force account work will be paid for under Subsection 109.04.2.

HOLIDAYS

Legal holidays are defined in the State of Montana laws (Section 1-1-216 MCA). All holidays are defined as No Work Days, unless approved by the Engineer.

INSPECTOR

The Engineer or Project Manager's authorized representative assigned to make inspections of work and materials furnished.

INVITATION FOR BIDS

The advertisement for proposals for work or materials on which bids are requested. The advertisement goes out to interested parties to allow potential bidders an opportunity to examine the site, material sources, etc. It will indicate the estimated quantities and location of the work to be done or character and quantity of the material to be furnished and the time and place of the opening of proposals.

JOINT VENTURE

An agreement between two or more persons or entities to be jointly and severally responsible for the performance of a contract.

LABORATORY

The Department testing laboratory or other testing laboratory designated by the Engineer.

MAJOR ITEM

Individual bid items having an original contract value equal to or exceeding 5% of the total original contract amount.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)

The FHWA *Manual on Uniform Traffic Control Devices* its current edition and its revisions. It includes the basic principles for the design and use of traffic control devices, but recognizes that engineering judgment is essential to the proper use of traffic control devices. The manual may be supplemented by Standard or Supplemental Specifications, Special Provisions, and by project circumstances when approved by the Engineer (See MUTCD, Section 2A.03 Standardization of Application).

MATERIALS

Substances specified for use in the construction of the project. Furnish new materials unless otherwise specified or approved.

MEDIAN

The portion of a divided highway separating the traveled ways for traffic in opposite directions. Separation may be by open ground, raised median, or paint not including centerline stripping.

NO WORK DAYS

No work days are holidays, Sundays, or during the winter shutdown. Work on holidays or Sundays must be approved by the Engineer. Travelway maintenance, stormwater BMP maintenance, and providing protection for the public are exempt and this work may be accomplished on no work days without assessment of contract time. Do not work after 12:00 noon on Friday, or on Saturday and Sunday prior to Memorial Day (last Monday in May) and Labor Day (first Monday in September). Do not work after 12:00 noon on Friday, or on Saturday or Sunday prior to Independence Day (July 4th) when July 4th is on a Saturday, Sunday, or Monday.

NOTICE TO PROCEED

Written notice to the Contractor to proceed with the contract work including the starting date of contract time.

OFF-HIGHWAY VEHICLE

A vehicle that exceeds legal weight limits, or cannot be legally registered or licensed to operate on public roadways.

PAVEMENT STRUCTURE

The combination of base course and surface course placed on a subgrade to support and distribute the traffic load to the roadbed.

PLANS

The approved contract drawings showing the location, type, dimensions, and details of the work required under the contract.

PROFILE GRADE

The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

PROJECT

The specific section of the highway or location on which construction is to be performed under the contract.

PROJECT MANAGER

The Project Manager is the authorized representative of the Engineer. The Project Manager is responsible for direct oversight and documentation of the project. The Project Manager is the Contractor's first contact for all project related issues unless another person or agency is specifically stated in the contract.

PROJECT RECORDS

All correspondence, reports, proposals, minutes, articles, logs, calendars, diaries, computations, tabulations, computer printouts, bills, statements, invoices, vouchers, bills of lading, schedules, purchase orders, contracts, agreements, accounts, checks, tape recordings, photostats, video recordings, photographs, sketches, drawings, charts, graphs, transcripts, and other similar objects, any of which pertains to a project or project costs, of a Contractor and its subcontractors.

PROPOSAL

A written offer by a bidder, on Department furnished forms, to complete the project at the quoted prices within the specified contract time. Also called "Bid Proposal."

PROPOSAL FORM

The approved form on which bids must be prepared and submitted.

PROPOSAL GUARANTY

The security furnished with a proposal to guarantee that the bidder enters into the contract if its proposal is accepted.

QUALITY ASSURANCE

A. **Acceptance Plan.** A statistically based procedure for evaluating acceptance test results.
B. **Lot.** A discrete quantity of material evaluated for acceptance.
C. **Price Reduction.** A pre-established decrease in payment to the Contractor for a contract bid item in which the quality and workmanship, determined by statistical means is at the lower limit of the acceptance range.
D. **Quality Assurance.** A statistical based process to determine the acceptability of a given product. Also known as “lot by lot” or “lot” basis or system.
E. **Quality Incentive Allowance.** A pre-established increase in payment to the Contractor for a contract bid item in which a superior level of quality and workmanship, determined statistically, was performed.
F. **Random Sampling.** A selection procedure in which all potential samples have an equal chance of being selected for testing.

QUALITY CONTROL

A. **Quality Control.** Operational techniques and activities used to control the quality of a product or service in order to satisfy given requirements.
B. **Quality Control Plan.** A Contractor prepared plan describing the type and frequency of Contractor inspection, sampling, and testing necessary to measure and control the various properties governed by the contract specifications.

RENTAL RATES

Hourly rates approved by the Department for furnishing and operating various types of construction equipment.

RESOURCES

The labor, equipment, and material necessary to perform work on a contract bid item or other contract work element.

RESPONSIVE BID

A bid that meets all requirements of the Proposal and Instructions to Bidders.

RESPONSIBLE BIDDER

A bidder that the Department determines has the skill, ability, and integrity to perform the project. The Department’s standards of responsibility are in Section 18.3.201, ARM.

RIGHT-OF-WAY

Land, property, or interest, acquired for or devoted to a highway.

ROAD, HIGHWAY OR STREET

A public way for vehicular travel, including the entire area within the right-of-way.

ROADBED

The graded portion of a highway within the top and side slopes prepared as a foundation for the pavement structure and shoulders.

ROADSIDE

The areas between the outside edges of the shoulders and the right-of-way boundaries and other areas within the right of way not intended for motorized travel.

ROADSIDE DEVELOPMENT

Those items necessary for:

A. The preservation of landscape materials and features;

B. The rehabilitation and protection against erosion of areas disturbed by construction through seeding, sodding, mulching, composting, and the placing of other ground covers; and suitable plantings; and

C. Other improvements that increase the effectiveness and enhance the appearance of the highway.

Unless specified different in the contract, the following are the roadside areas:

A. **Area 1.** Areas with slopes of 3:1 and flatter.

B. **Area 2.** Areas with slopes steeper than 3:1.

C. **Area 3.** A 15.0-foot (4.5 m) wide strip adjacent and parallel to the finished pavement, along both roadsides.

ROADWAY

The portion of a highway within the limits of construction.

SHOULDER

The portion of the roadway adjacent to the traveled way for accommodation stopped vehicles for emergency use and for lateral support of base and surface courses.

SIDEWALK

That portion of the right of way constructed for pedestrian use.

SPECIAL PROVISIONS

Modifications to the Standard and Supplemental Specifications applicable to an individual project.

SPECIFICATIONS

The compilation of provisions in this book, the Supplemental Specifications, and Special Provisions for the performance of the project.

STATE

The State of Montana acting through its authorized representative.

STRUCTURES

Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the work.

SUBCONTRACTOR

An individual or legal entity, to which a Contractor subcontracts, assigns or otherwise disposes of any part of the work. This includes subcontractors at any contract tier, such as sub-subcontractors, etc.

SUBGRADE

The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.

SUBSTRUCTURE

All of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

SUPERINTENDENT

The Contractor's authorized representative in responsible charge of the work.

SUPERSTRUCTURE

The entire structure except the substructure as defined in this section.

SUPPLEMENTAL SPECIFICATIONS

Approved additions and revisions to the standard specifications.

SURETY

The legal entity or individual, other than the Contractor, executing a bond furnished by the Contractor (see Section 28-11-401 MCA).

SURFACE COURSE

One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "wearing course."

TITLES (OR HEADINGS)

The titles or headings of the divisions, sections, and subsections are for convenience of reference and do not have any bearing on their interpretation.

TOPSOIL

Topsoil under Section 203 is soil that supports normal plant growth.

Topsoil under Section 610 is soil that supports normal plant growth and meets Subsection 713.05 requirements.

TRAVELED WAY OR PRESENT TRAVELED WAY

The existing paved or graveled roadway section in use including the shoulders and auxiliary lanes. Also referred to as the PTW.

UNBALANCED BID

A. **Materially Unbalanced.** A bid that generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid results in the lowest ultimate cost to the Department.
B. **Mathematically Unbalanced.** A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

UNUSUALLY SEVERE WEATHER

Unusually severe weather is weather that is more severe than the adverse weather anticipated for the season or location involved.

WINTER SHUTDOWN

All calendar days from November 16th through April 15th, inclusive.

WORK

The furnishing of all resources necessary to complete the project.

WORKING DAY

All days are considered working days except Saturdays, no work days, and days on which the Contractor is specifically required by the contract to suspend construction operations. Working days will be charged during no work days for each day construction activities occur that have any impact on the traveling public, exclusive of traffic flowing unimpeded on approved detours or emergency and maintenance repairs to the project, when the time requirements under Subsection 104.05.2 are met.

WORKING DRAWINGS

Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or other supplementary plans or similar data that the Contractor is required to submit to the Project Manager.

SECTION 102

BIDDING REQUIREMENTS AND CONDITIONS

102.01 JOINT-VENTURE BIDS

Execute a “Declaration of Joint Venture and Power of Attorney” form, available from the Department’s Contract Plans Bureau, to submit bid packages for highway construction as a joint venture. Designate the joint venture business name and specifically authorize a person to execute all bid packages and contracts with the Transportation Commission on behalf of all individuals and legal entities of the joint venture. Authorize this person to receive all monies due under the contract and issue binding receipts and releases with the Department. Include joint-venture affidavits in the proposal.

Joint venture firms do not need to separately incorporate.

102.02 CONTENTS OF BID PACKAGE

The bid package ordinarily includes the following:

1. Proposal;
2. DBE Requirements;
3. Schedule of Items;
4. Special Provisions;
5. Current Supplemental Provisions;
6. Wage rate schedules;
7. Other documents included by reference but not attached;
8. FHWA Form 1273 (Required Contract Provisions for Federal-aid Construction Contracts), when applicable;
9. EEO Affirmative Action Requirements on Federal and Federal-aid Construction Contracts; and
10. Contract Plans.

102.03 CONTRACTOR REGISTRATION

Montana law requires all contractors to register with the Montana Department of Labor & Industry.

Register before executing a contract on federal-aid projects.

Register before submitting a bid on state-funded projects.

Contact the Department of Labor & Industry at (406) 444-7734 for more information.

102.04 ISSUANCE OF PROPOSALS

The Department reserves the right to refuse to issue a bid package to a bidder for any of the following reasons:

A. Uncompleted work that the Department determines might hinder or prevent the prompt completion of additional work;
B. Default under previous contracts;
C. Failure to reimburse the Department for an overpayment made on any contract or contracts after written notification of the overpayment that is due;
D. Failure to pay, or satisfactorily settle, all bills due for labor and material on any contract in force at the time of issuance of proposals;
E. Unsatisfactory performance on a previous or current contract; or
F. Misconduct that is of such a serious nature as to adversely affect the Contractor’s ability to perform future work.

Request bid packages from the Department.

Pay the Department the sum stated in the Invitation for Bids for each copy of the bid package.

102.05 QUANTITIES OF WORK IN THE PROPOSAL

Submit unit bid prices for the estimated quantities.

Estimated quantities may be increased or decreased under the contract.

Payment is made for the actual quantities of work performed and accepted or materials furnished and accepted under the contract.

102.06 EXAMINATION OF DOCUMENTS AND SITE OF WORK

Examine the proposed work site including the existing field staking and documents before submitting a proposal. Submitting a proposal is an affirmative statement by the bidder that the bidder has examined the site and is satisfied with the conditions to be encountered in performing the work and the bid package requirements.

The Department is not bound by any statement or representation concerning conditions or description of the work unless included in the bid package. Do not rely on oral explanations or instructions given by Department employees or agents before award of the contract. Accept these as non-binding oral explanations or instructions and relying on them is solely at the Bidder's risk.

Mass diagrams and dirt runs are for informational purposes only and are not part of the contract. The Department does not guarantee the accuracy of these documents. The information contained in the mass diagrams and dirt runs are only one example of how the project can be built.

The Contractor is responsible for using its own means and methods for determining how the job is to be built. The Contractor's reliance on these documents is at their own risk.

Immediately submit any request for an explanation of the meaning or interpretation of the bid package to the Department's Q & A Forum found at http://www.mdt.mt.gov.

The records of any subsurface investigation conducted by the Department are available for inspection as a public document. When not included in the bid package, inspect available records at the Materials Bureau, Bridge Bureau in Helena, or the District where the project is located.

The records of subsurface investigations are not a part of the bid package or contract, but are available to all bidders for informational purposes only. There is no warranty or guaranty, either expressed or implied, that the subsurface investigation records disclose the actual conditions that will be encountered during the performance of the work. Department subsurface investigation results may differ from a bidder's independent subsurface evaluation due to different sampling techniques, the date of the investigation, etc. Using or relying on Department subsurface investigations is at the bidder's risk. The bidder must perform and rely on its independent subsurface evaluation made before submitting a bid proposal. Submittal of a bid is an affirmative statement that an independent subsurface evaluation was made and Department subsurface investigations were not relied on. Individual test boring log data included in the Department's subsurface investigation records apply only to that particular boring taken on the date indicated. The character of any material or conditions between or around test borings on the date of the site examination is not conclusive.

Submission of a bid waives any potential claim of the above, including a claim of justifiable reliance on such information or materials.

Do not take advantage of an apparent error, omission or ambiguity in the bid package. Upon discovery, immediately submit the discovery to the Department's Q & A Forum found at http://www.mdt.mt.gov if an error, omission, or ambiguity exists and why it appears erroneous, omitted, or ambiguous. Advise bidders submitting a subcontract quotation of this obligation and

clarify their responsibility to include this information with their subcontract quotation. The Department will clarify the error, omission, or ambiguity and, if necessary and possible, issue an addendum to all prospective bidders before opening bid packages.

Do not submit a bid proposal or a subcontract quote without receiving clarification. Failure to provide written notification is a waiver of the error, omission or ambiguity, and additional compensation or contract time will not be allowed.

The Department, for most projects, prepares preliminary bid packages (plans and special provisions) to provide advance notice to prospective bidders of the general requirements for those projects. Preliminary packages are not in final form, and there may be substantial changes between the preliminary and final bid package released for bid letting. Use the preliminary packages only for general familiarization with the project. Request final bid packages for use in bidding. Do not base any bid on a preliminary package.

102.07 BIDDING REQUIREMENTS

Submit bids only using the Electronic Bid System (EBS) that generates the required Proposal, Schedule of Items, DBE requirements, and indicates acknowledgement of addenda if applicable.

A. Distribution Procedures. The Department will make electronic bid files and addendum files available to prospective bidders. Bidders may obtain EBS packages free of charge from the Department's Contractor's System Internet Site, http://www.mdt.mt.gov. Hardcopy bid packages are available for a fee from the Contract Plans Bureau.

B. Bidding Requirements. Ensure bids submitted using the EBS format contain a Proposal guarantee, an EBS generated Proposal, Schedule of Items, and DBE requirements when applicable.

Ensure the EBS Schedule of Items is a single continuous printout for each individual bid, evidenced by all Schedule of Items sheets having the same check number. Written changes to the Schedule of Items, or a bidder's non-submission of every page from the Expedite Bid EBS file, (including all Schedule of Items pages and all DBE pages), automatically renders the bid non-responsive, and the bid will not be read or considered.

Acknowledge addenda using the amended EBS project file to generate the Proposal, Schedule of Items and DBE requirements. The printout indicates acknowledgment of receipt of addenda when the correct project file is used. Return a computer disk containing the complete project files for all projects bid with the bid package. It is the bidder's responsibility to ensure that they acquire and apply addenda files when applicable.

C. Determination of Bid Responsiveness. Bids are opened at the designated time and inspected to determine if the following requirements are met:

1. **Schedule of Items.** Unit Prices are provided for all required bid items. A complete and verifiable Schedule of Items is provided. Each sheet of the Schedule of Items must contain the same check number, to ensure that the unit bid prices correspond with the total. There are no written changes to the Schedule of Items.
2. **Proposal Guarantee.** The bid bond is on the most current version of the Department-furnished form; is signed and sealed in the proper places; a copy of the agent's Power of Attorney for the insurance company is attached; and contains the correct and complete project number; all signatures are original (stamped signatures are unacceptable). If using Bid Submission via Internet and Bid Express™, a qualified Surety Company must verify the Contractor bond.

An electronic bid bond may be filed in lieu of completing the paper Bid Bond area of the Proposal Bid form. Submit on the most current Department-provided hard copy Electronic Bid Bond Form CPB_102_07.

3. **Addenda.** All addenda are acknowledged by using the correct electronic file.
4. **Proposal.** The proposal is signed and notarized in the designated places or in acceptable digital format; and all signatures are original (stamped signatures are unacceptable).

A bid is non-responsive if any of the above requirements is not met.

For non-responsive bids, only the Contractor's name, and the reason for the non-responsiveness determination, will be announced at the letting. The Department retains non-responsive bids.

Submission of a bid is a statement by the bidder that sufficient time was available to adequately prepare a Proposal and conduct a complete investigation of the work site and all contract documents.

102.08 REJECTION OF BID PROPOSALS

The Commission reserves the right to reject bid Proposals, waive technicalities, or advertise for new Proposals.

A Proposal is irregular and will be rejected as non-responsive for any of the following:

A. Failure to complete the bid bond form, or Proposal, provided by the Department, by all specified persons, including notaries, in the correct blocks.

B. There are unauthorized additions, conditional or alternate bids, or irregularities that make the bid package incomplete, indefinite, or ambiguous.

C. The Proposals for two or more projects advertised separately are connected or made contingent one upon the other so that the Proposal for one project carries a provisional deduction in the bid price on one or more of the other projects.

D. Any unauthorized provisions are added reserving the right to accept or reject an award or to enter into a contract pursuant to an award.

E. More than one Proposal for the same work from an individual, firm, corporation, partnership, or joint venture under the same or different name is submitted using the same format.

F. Evidence of collusion among bidders exists. Participants in collusion will not receive recognition as bidders, either singly or as a joint venture, for future Department work until reinstated as qualified bidders.

G. Bidder fails to properly complete and sign, by original signatures, on the most current Department-furnished Proposal and appropriate bid bond forms. Stamped signatures are not authorized.

H. Failure to acknowledge receipt of electronic addenda by using the correct electronic files.

I. Failure to provide a complete Schedule of Items, or an unverifiable Schedule of Items. Each sheet of the Schedule of Items must contain the same check number, to ensure that the unit bid prices correspond with the total.

J. The bidder does not submit all pages from the Expedite Bid EBS file.

A bid Proposal is considered irregular and may be rejected as non-responsive for any of the following:

A. The Department-furnished Proposal is altered.

B. Bidder fails to include a name and mailing address.

C. The unit prices contained in the Proposal are mathematically and/or materially unbalanced.

D. Information entered in the Proposal by the bidder is not legible.

E. There are changes in the Proposal such as erasures, strikeouts, and whiteouts that are not initialed in ink.

F. Non-compliance with the DBE requirements.
If Bid Express™ Software indicates an error, the Department will determine if the Proposal is non-responsive.

102.09 PROPOSAL GUARANTY

Make the Proposal guaranty unconditionally payable to the Department for no less than 10% of the Proposal. Provide the guaranty by bid bond with the Proposal. The guaranty must be a bid bond executed by a surety corporation authorized to do business in the State of Montana.

102.10 DELIVERY AND PUBLIC OPENING OF PROPOSALS

Bid Proposals are opened and read publicly at the place, time, and date specified in the "Invitation for Bids."

Deliver by the date and hour set for the opening of bid Proposals to the Department officials conducting the bid opening. Bid Proposals received after the specified time are returned to the bidder unopened.

The clock designated by the Department bid opening officials determines the bid opening time.

Do not submit bid Proposals by facsimile machines.

A Proposal not properly addressed and identified is returned to the bidder after it is opened.

A. Bid Submission by Sealed Envelope. Place the bid Proposal in a sealed envelope plainly marked to indicate the contents. Proposals must be received by the Department's official conducting the bid opening before the bid opening time. Bids may be delivered to: Montana Department of Transportation, Contract Plans Bureau, 2701 Prospect Avenue, Helena, Montana.

If mailed, the Department's mailing address is: Montana Department of Transportation, Contract Plans Bureau, P.O. Box 201001, Helena, Montana 59620-1001.

The Contractor is solely responsible for the Proposal's delivery to the Department's official conducting the bid, prior to bid opening.

B. Internet Bid Submission Via the Internet and Bid Express™. (Optional Bid Submission Procedure)

1. Access to the electronic bidding information is available on Bid Express™ at www.bidx.com and the MDT Contractors System Internet Site at http://www.mdt.mt.gov.
2. When installing the Bid program, enter the vendor code that was issued by the Department. Before running the electronic bidding programs, read the on-line help documentation for the Expedite software.
3. Acknowledge all addenda in the electronic bid submitted.
4. Select tools and then check bid from the Windows Expedite menu to check the bid and ensure there are no errors prior to submitting the electronic bid. The electronic bid may be changed and resubmitted electronically to Bid Express ™ as many times as desired before the advertised cutoff time. The last bid submitted for a given Bid opening as of the cutoff time will be the only bid considered. If a bidder chooses to submit Proposal using Bid Express™ and also submits a hard copy bid, the electronic copy of the bid controls.
5. Make no claim against the Department in the event it is unable to submit its bid to Bid Express™ and/or Bid Express™ is unable to submit the bid(s) to the Department. The Department reserves the right to postpone or cancel the public opening and reading of bids in the event of internet, Bid Express™ or Department technical difficulties.

102.11 WITHDRAWAL OF PROPOSALS

Submit withdrawal requests to the Department in writing before the time set for opening bid proposals. A bidder may withdraw any Proposal in person or through an authorized agent before any bid Proposal on that project is read.

If a bidder discovers a material (factual, not judgmental) mistake in its bid after the bids have been opened, the bidder understands and agrees that it may either perform the contract as originally bid or request permission from the Transportation Commission to withdraw its bid.

The request must be received by the Contract Plans Bureau no later than 4:30 p.m. 2 business days after the day of the bid opening (not counting the day of the opening). The notice must be by a notarized affidavit, under penalty of false swearing, signed by the bidder and accompanied by all worksheets used in the preparation of the bid, requesting relief from forfeiture of the bid bond and the responsibilities of award. The affidavit must describe the specific error(s), how they were made and who made them, and must certify that the worksheets provided are those that were used in preparing the erroneous bid.

The Department will make its recommendation to the Commission, who will review the request to determine if a mistake occurred, was material and factual, and whether the bid should be allowed to be withdrawn. If the Commission does not concur in the error or determines that the error has not been sufficiently proven, it may award the contract. If the bidder refuses to execute the contract as it was bid, the bid bond will be forfeited as stated under Section 18-1-204 MCA.

102.12 DEBARMENT

Federal statutes and regulations adopted pursuant to federal statutes, require that any firm or individual submitting a bid on a federal-aid project certify compliance with Part XI of FHWA Form 1273 (Required Contract Provisions - Federal-aid Construction Contracts) and that firm or individual must obtain and furnish the Department certification that all subcontractors, material suppliers, vendors, and other lower tier participants used are in compliance with Part XI of FHWA Form 1273.

Make certification part of each subcontract, material supply agreement, purchase order, and other covered lower tier transaction. Covered lower tier transactions include primary material purchases for contract items incorporated into the work.

The Department's debarment policies and procedures begin at Section 18.3.101 ARM.

102.13 MATERIALS GUARANTY

The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials to be used in the construction of the work, together with samples to be tested for conformance with the contract requirements. Include the costs of furnishing the statements and samples in the bid.

102.14 RESERVED

102.15 VENUE

In the event of any dispute concerning a project, whether over its advertisement, bidding, award, execution, or claim, any litigation filed by or against the Department has venue only in Lewis and Clark County.

102.16 CONSENT TO CONTRACT PROVISIONS

The submission of a bid is an affirmative statement that the bidder and its proposed Subcontractor(s) consent to the entire bid package provisions upon which the bidder has submitted its bid. That consent extends to all portions of the bid package and applies to all the bidder's subcontractors. Do not submit a bid proposal unless consent to all the bid package provisions is given.

102.17 PUBLIC WORKS CONTRACT

Department projects under these specifications are public works contracts. Projects under these specifications require Contractors to provide all resources necessary to complete the project, fully complying with its plans and specifications. They are not “sales”, nor are they sales of “goods”, as those terms are used in Montana’s Uniform Commercial Code (UCC). The UCC, particularly its Chapter 2, does not apply to these projects, and the contractor concurs with that by submitting its bid.

SECTION 103

AWARD AND EXECUTION OF CONTRACT

103.01 CONSIDERATION OF PROPOSALS

Bid proposals will be compared on the basis of the summation of the item total prices shown in the bid schedule.

103.02 AWARD OF CONTRACT

The contract will be awarded within 45 calendar days after the bid opening to the lowest responsive, responsible, and qualified bidder whose bid proposal complies with all the requirements. The successful bidder will be notified in writing of the acceptance of the proposal and the award of the contract.

If the contract is not awarded within 45 calendar days, all bid proposals are void. The Commission can extend the 45-day time period.

In the event two or more qualified bids are exactly equal for the lowest bid, the successful bidder will then be determined by totaling the major bid items listed on their schedule of items. The contract will be awarded to the bidder having the lowest total of major bid items. A major bid item is defined in Subsection 101.03.

103.03 ASSIGNMENT OF CLAIMS

In consideration of being awarded the contract, the Contractor, on its own behalf and on behalf of its subcontractors, assigns to the Department all claims or causes of action for any antitrust law violations, or damages arising there from, as to goods, materials, and services purchased under the terms of the contract or any change order that may result from the contract.

103.04 CANCELLATION OF AWARD

The award of the contract may be canceled at any time before the execution of the contract by all parties without liability against the Department.

103.05 RELEASE OF PROPOSAL GUARANTY

All proposal guaranties will be void immediately following opening and checking of the proposals. The successful bidder's proposal guaranty will be void after a satisfactory contract bond has been furnished and the contract has been executed.

103.06 CONTRACT BOND

Furnish an executed contract bond or bonds in a sum equal to the contract amount under Subsection 103.07. Use a form provided by the Department and executed by a surety company authorized by law to transact business in the State.

The contract bond will remain in effect until the certificate of completion is executed and the contract is accepted by the Commission, plus any time period specified by Montana law.

The statutory time for filing claims against the contract bond is 90 calendar days from the date of the Commission acceptance of the project. See Sections 18-2-201 to 18-2-208 MCA.

103.07 EXECUTION AND APPROVAL OF CONTRACT

Return to the Contract Plans Bureau in Helena no later than 5:00 p.m. on the 20th calendar day after receipt, not counting the date of receipt of the contract documents:

1. The signed contract; and

2. The contract bond.

A proposal is not binding unless all the above requirements have been satisfied.

Do not begin work before:

- **a.** The contract is executed;
- **b.** Contract bond is completed; and

c. Evidence of the required insurance is provided.

The contract, bond, and insurance are subject to legal approval after execution by the Contractor and Surety.

103.08 FAILURE TO EXECUTE CONTRACT

Upon failure to execute the contract and file acceptable bonds within 20 calendar days after receipt of the contract, under Section 18-1-204 MCA, the award will be canceled and the proposal guaranty forfeited. Award may then be made to the next lowest responsive, responsible and qualified bidder, or the work may be re-advertised. If, due to circumstances entirely beyond the control of the bidder, the bidder is unable to file acceptable bonds and insurance policies within the time specified above, the commission at its sole discretion may waive cancellation of the award and forfeiture of the proposal guaranty.

103.09 BID DOCUMENTS

103.09.1 General

The following requirements apply when submission of bid documents is required by the contract. The Department agrees to safeguard the bid documents, and all information contained therein, against disclosure to the fullest extent permitted by law.

103.09.2 Bid Documentation Inventory Affidavit and Escrow Agreement

Use the most current Department Form CSB103_09A “Bid Documentation Inventory Affidavit” with the bid documentation. Follow all directions for the bid documentation listed on Form CSB103_09A.

Use the most current Department Form CSB103_09B “Escrow Agreement” when completing the bid documents escrow procedure. Follow all directions for the escrow procedure listed on Form CSB103_09B. Modified versions of the “Escrow Agreement” provided by the escrow agent may be used with written approval by the CES Engineer.

The forms must be signed by an authorized agent for the bidder. These forms are available at the following web page: http://www.mdt.mt.gov/publications/forms.shtml#contract.

103.09.3 Escrow of Bid Documents

Once identified as the apparent low bidder on a contract requiring submission of bid documents, submit all bid documents to an approved escrow agent located in Helena, Montana. Convert electronically formatted information into paper copies. Include these paper copies as part of the bid documentation. Provide written notification including copies of the Bid Documentation Inventory Affidavit and the Escrow Agreement to the Contract Plans Bureau within 7 business days, including the day of bid opening. The copy of the Escrow Agreement submitted to the Contract Plans Bureau must contain signatures from the Escrow Agent and representative of the bidder. The Department will review the documents and return a copy of the Escrow Agreement with a signature of a Department representative to the Escrow Agent.

An approved escrow agent includes any business such as a banking institution or other bonded storage facility which provides a deposit box, vault, or other secure accommodation.

Place the bid documents and completed Bid Documentation Inventory Affidavit in the container provided by the escrow agent. Clearly label the face of the container “Bid Documents” and include the bidder’s name, the date of submittal, the contract name, and the contract number.

If the apparent low bidder, for whatever reason, is not awarded the contract, the apparent second low bidder will be told they have 7 business days from the date of its verbal notification (followed immediately in writing) to comply with the above requirements.

103.09.4 Bid Responsiveness

The copies of the Bid Documentation Inventory Affidavit and Escrow Agreement submitted as part of the escrow notification will be reviewed for completeness and responsiveness. If the forms are incomplete or are not submitted, the bid will be considered non-responsive. The second low, responsive responsible bid will then be reviewed and the bidder will be required to meet the above requirements.

103.09.5 Release of Bid Documents to the Department

The bid documents in escrow are and will remain the property of the Contractor unless a Certified Claim is filed by the Contractor or litigation or arbitration is initiated under the contract. In the event that the Contractor submits a Certified Claim or litigation or arbitration is initiated under the contract; the bid documents included in the escrow become the property of the Department for its use, specifically including use in preparing for and conducting of all claims, disputes, arbitration or litigation. Failure to submit all bid documents as defined in Subsection 101.03 and the Bid Documentation Inventory Affidavit as required, or failure to include the items indicated by the Bidder on the Bid Documentation Inventory Affidavit in the documents that are placed in escrow, will be a material breach of the contract, is a failure to comply with a condition precedent to filing a claim or lawsuit, acts as a total and final waiver of all claims or disputes involving matters that would have been included (e.g. claims of delay, changed site conditions, loss of productivity, etc.), and subjects the Contractor to action under Section 18.3.101 ARM et seq.

Upon the Department's receipt of the bid documents, the Contractor will be notified and must have a representative present during the opening, unless the representation is waived. Failure to appear at the date and time designated for the opening will be considered a waiver.

103.09.6 Release of Bid Documents to the Contractor

Except as provided for in Subsection 103.09.5, the bid documents will remain in the storage location during the life of the contract. After a certificate of completion has been issued for the contract, the Department will notify the escrow agent and the Contractor that the bid documents may be released. It is the Contractor's responsibility to obtain necessary signatures and retrieve the bid documents from the Escrow Agency.

103.09.7 Method of Measurement and Basis of Payment

Escrow of Bid Documents is measured and paid as lump sum. Payment will be made on the first progress estimate. Payment at the contract unit price is full compensation for all resources necessary to complete the item of work under the contract.

SECTION 104

SCOPE OF WORK

104.01 INTENT OF CONTRACT

Furnish all resources required to complete the work under the contract within the specified time, and for the amount bid.

104.02 DIFFERING SITE CONDITIONS, SUSPENSION OF WORK, AND SIGNIFICANT CHANGES IN THE CHARACTER OF WORK

104.02.1 Differing Site Conditions

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 they are disturbed and before the affected work is performed.

Upon written notification, the Project Manager will investigate the conditions. If the Project Manager determines 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 loss of anticipated profits will be made and the contract modified in writing accordingly. The Project Manager will notify the Contractor of the determination whether or not an adjustment of 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.

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

104.02.2 Suspensions of Work Ordered by the Project Manager

If the performance of all or any portion of the work is suspended or delayed by the Project Manager 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 and/or contract time is due as a result of such suspension or delay, the Contractor must submit to the Project Manager in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. Set forth the reasons and support for such adjustment in the request.

Upon receipt, the Project Manager will evaluate the Contractor's request. If the Project Manager 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 conditions 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 Project Manager will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Project Manager's determination as to whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the 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 the contract.

104.02.3 Significant Changes in the Character of Work

The Project Manager 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 do 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 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 on unperformed work, will be made to the contract. The basis for the adjustment must be agreed upon before the work is performed. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Project Manager may determine 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” applies when one or more of the following circumstances is met:

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.

B. When a major item of work, as defined in Subsection 101.03, is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity will apply only to that portion in excess of 125% of the original contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed.

C. When an item of work, not defined as a major item in Subsection 101.03, is increased in excess of 150% or decreased below 50% of the original contract quantity. Any allowance for an increase in quantity will apply only to that portion in excess of 150% of the original contract item quantity, or in case of a decrease below 50%, to the actual amount of work performed.

104.02.4 Change Orders

Change orders will include the following information:

A. A description of the altered, increased, or decreased work or description of other change necessitating the change order;

B. An estimate of the types and quantities of work to be performed and a listing of the agreed prices and contract unit prices at which payment will be made; and

C. Contract time adjustments in accordance with Subsection 108.07.5.

Change orders must be executed by both parties to the contract and become a part of the contract.

Payment for the work will be made for the actual quantities of work performed at the prices specified in the change order.

104.03 EXTRA WORK

Perform unanticipated work, not included in the contract, if the work is related to the contract items and is ordered before the final acceptance date. Perform extra work as directed. Payment for extra work is made in accordance with Subsection 109.04.

104.04 MISCELLANEOUS WORK

This is any minor work or material that is necessary to the work.

Miscellaneous work, as provided for in the contract, is measured by the respective unit for either the material or work performed, as directed in writing by the Project Manager.

Payment for miscellaneous minor work is at agreed prices or on a force account basis.

104.05 MAINTENANCE OF WORK

104.05.1 General

Perform maintenance work on completed and uncompleted parts of the project until approval in accordance with Subsection 105.17.2.

Maintenance includes, but is not limited to the following:

1. Patching chuck holes with asphalt mix;
2. Reshaping the subgrade, side slopes, ditch sections, or aggregate courses, as necessary;
3. Cleaning debris from drainage courses, culverts, and inlets;
4. Removing rocks or earth from the roadway and ditch sections;
5. Removing debris resulting from construction activities;
6. Providing access to residences, businesses, and roads and keeping the present accesses open;
7. Repair or replace minor damaged parts of the work;
8. Repair or replace extensive damage, not by Contractor negligence, in accordance with Subsection 104.02.4;
9. Maintenance of the constructed roadway in accordance with Subsection 203.03.5;
10. Disposing of removed matter;
11. Maintenance of irrigation water in accordance with Subsection 104.05.6; and
12. Other maintenance-type work not specifically described but necessary for the maintenance and protection of traffic or of completed and uncompleted portions of the project.

Maintenance work performed before approval in accordance with Subsection 105.17.2 is incidental to other contract items.

104.05.2 Failure to Properly Maintain Roadway or Structure

The Project Manager will immediately notify the Contractor if it fails to maintain the project. Failure to begin to remedy unsatisfactory maintenance within 4 hours of notification may result in:

- The Department performing the required repair. The cost of the repair will be deducted from monies due or to become due to the Contractor, or otherwise be billed to the Contractor.
- Contract time being charged. Contract time will be charged starting on the day of the Department's initial notification and will continue until the repairs are made and the Project Manager approves the repairs.

104.05.3 Maintenance for Traffic and Detours

A. **Maintenance for Traffic.** Keep the road open to traffic during the work or provide detour roads as specified or directed.

Maintain the work under construction to accommodate traffic. Construct and maintain all accesses to parking lots, garages, businesses, residences, farms, etc. The cost of this work is incidental to other items of the contract.

Provide traffic control meeting the approved traffic control plan, Section 618, and the MUTCD.

B. **Special Detours.** When the contract has the bid item Detour - Construct, Maintain, and Remove, it includes constructing and maintaining the detour, including constructing and removing temporary bridges, pipes and associated work and obliterating the detour road.

Do not use all or any portion of an existing structure, as defined in Subsection 101.03, without the Engineer's approval. Do not modify existing structures or construct temporary

structures without Department approval before starting work. This work is incidental to the contract item.

The Department will provide the right-of-way for temporary detours or bridges specified in the contract.

104.05.4 Maintenance for Traffic During Work Suspensions

A. **Temporary Suspension.** Make passable and open to traffic all portions of the project, connections, and temporary roadways before temporary work suspensions. Maintain parts of the project, connections, temporary roadways, and detours under traffic at Contractor expense during work suspensions.

B. **Winter Suspension.** Be responsible for all traffic control and maintenance during winter weather shutdowns, including the time between November 16th and April 15th. Be responsible for all snow removal, sanding, and de-icing for all roadways not completed through the first lift of plant mix surfacing. Furnish all necessary supervision, personnel, and equipment to maintain the road in a safe condition and at the highest level of service to traffic.

The Department is not responsible for any repairs or maintenance to the project that results from snow plowing, sanding, and de-icing on any roadway not completed through top lift of plant mix surfacing.

The Contractor may request that the Department furnish all resources to perform snowplowing, and sanding, de-icing during winter suspension. This work would be detailed in a written agreement. Be responsible for all maintenance, traffic control, or other work not detailed in the agreement. Reimburse the Department, under an accounts receivable, for all Department plowing, sanding, and de-icing expenses according to the terms of the signed agreement.

Attend a meeting scheduled by the Department to review the project to develop the agreement details prior to the winter suspension.

Inspect the project at least once every 14 calendar days. Submit form CSB104_05_4 to the Project Manager within 3 calendar days of the inspection.

Failure to maintain the project under these requirements will invoke Subsection 104.05.2.

Repair or replace all work and materials lost or damaged due to temporary use of the project. Maintenance work for acts of God or acts of the public enemy, or that are outside the Contractor's control during work suspensions is paid for at contract unit prices or as extra work.

104.05.5 Reserved

104.05.6 Maintenance of Irrigation Water

Construct or move irrigation structures, boxes, channel changes, and culverts to maintain irrigation water flow at Contractor expense.

Do not shut off irrigation water in an irrigation ditch without the water-master or ditch owners written permission.

104.06 MATERIAL AND PROPERTY RIGHTS

104.06.1 Rights in and Use of Materials Found on the Project

Apply for and obtain the Project Manager's written approval prior to using excavated materials for other contract items. Designate in the request which contract item the second payment is for. Only one item will be eligible for payment when more than one field measurement by the Department would be required. Replace the removed material with acceptable material at Contractor expense.

104.06.2 Use of Department Property

Do not use Department property outside the project limits for contractor operations, such as staging, without Department approval. Submit an encroachment permit to the Department's Maintenance Division for approval. The encroachment permit request form is available from the Department's website or the Project Manager. Be responsible for all requirements within the encroachment permit and obtain associated environmental permits prior to the use of the property.

Restore the property in accordance with the contract and encroachment permit requirements no later than the encroachment permit end date. Obtain seed blend mix designs and allowed seeding time frames from the Project Manager for any re-vegetation required to the area. Repair damaged areas in a timely manner.

The Department will revoke the use of Department property if the requirements of the contract or the encroachment permit are not being met. The use of Department property outside the project limits, including any required restoration or repair work is not measured for payment. Contractor failure to fulfill the encroachment requirements is cause for the Department to perform or have corrective actions performed and deduct those costs from monies due or that may become due the Contractor.

104.07 FINAL CLEANING UP

Clean the highway, borrow pits, and all ground used in performance of the work of all rubbish, debris, excess materials, temporary structures, and equipment before final acceptance.

Meet the requirements of Subsection 106.02.5 for final cleanup of borrow and aggregate sources.

The final cleanup work of the project area and the pits, borrow areas, or quarries is not paid for directly but is incidental to other contract items.

Specify the conditions for final cleanup in all landowner agreements. Complete all cleanup conditions before final project acceptance.

104.08 VALUE ENGINEERING PROPOSALS

Cost savings generated on the contract from cost reduction proposals offered by the Contractor and approved by the Department will be shared.

The Contractor is encouraged to submit proposals for modifying the contract that reduces the total cost of construction. The cost reduction proposal must not impair the essential functions or characteristics of the project including but not limited to service life, economy of operation, ease of maintenance, reliability, desired appearance, and safety.

Submit the proposal in writing and include the following information:

1. A description of both the existing work and proposed changes for performing the work with a discussion of the comparative advantages and disadvantages;
2. An itemization of the necessary changes to the contract if the proposal is accepted;
3. A detailed cost estimate for performing the work under the existing contract and under the proposed change detailing quantities and dollar amounts for each work item;
4. An estimate of the effect the proposed changes would have on other costs to the Department;
5. A time frame within which the Department must make a decision;
6. The dates, project numbers and the action of the Department if the proposal was previously submitted; and
7. A statement of the effect implementation of the proposal would have on the contract completion time.

The Department is not required to consider a proposal or be liable to the Contractor for failure to accept or act on a proposal submitted under this specification including delays to the

work attributable to the proposal. Proposals that are similar to a change in the contract that are under consideration or have been adopted by the Department before the submittal will not be accepted. The Department reserves the right to make these changes without compensation to the Contractor.

Continue to perform the work according to the contract requirements until the Department has taken final action on the proposal. Consider the proposal rejected if the Department's final decision is not received within the time frame specified in the Contractor's submittal.

The Department will determine the acceptability and the estimated net savings in construction costs from the adoption of all or part of a proposal. The Department will disregard the contract unit prices if these prices do not represent a fair measure of the value of work to be performed or to be deleted. The Department's costs for reviewing and implementing proposals including any increased costs to the Department resulting from its application will be deducted from the total estimated cost saving to arrive at the net savings.

Costs incurred by the Department during a preliminary review will not be charged to the Contractor. If the proposal is advanced to the detailed review stage, costs incurred by the Department during the detailed review stage will be shared equally by the Department and the Contractor. The submittal of a formal proposal constitutes the Department's authority to deduct these costs from any monies due or that may become due to the Contractor under the contract. The Department costs for researching and defending claims related to an accepted VE Proposal will not be shared equally. These costs will be deducted from progress payments.

Proposals accepted by the Department in whole or in part will be by a change order. The change order will incorporate the changes in the contract necessary to implement the proposal and will include any conditions placed on the approval by the Department. The change order will establish the estimated net savings in the cost of performing the work attributable to the proposal and provide for payment of 50% of the estimated net savings to the Contractor.

Acceptance of proposals does not extend the contract time unless specifically provided for in the change order.

The payment amount specified in the change order constitutes full compensation to the Contractor for the proposal and the performance of the work.

The Department reserves the right to apply a proposal for general use on other contracts administered by the Department. When an accepted proposal is applied for general use, only the Contractor who submitted the initial proposal is eligible for compensation and this compensation applies only to those contracts awarded to the Contractor before submission of the accepted proposal. Proposals that are identical or similar to previously submitted proposals are eligible for consideration and compensation under this specification if the proposals were not previously adopted for use in other contracts administered by the Department. Subject to these provisions, the Department reserves the right to use all or any part of any submitted proposal without obligation or compensation to the Contractor.

This specification applies only to the Contractor awarded the contract.

No consideration will be given to, and no payment made for any claims for additional compensation for changed conditions that are attributable to the approved proposal.

SECTION 105

CONTROL OF WORK

105.01 AUTHORITY OF THE ENGINEER

The Engineer will decide all questions regarding the quality and acceptability of materials furnished, work performed, the rate of progress of the work, the interpretation of the contract, and the acceptable fulfillment of the contract. Contract time will continue to be charged during suspensions in accordance with Subsection 105.01(A) and Subsection 105.09(2).

A. The Engineer will suspend the work wholly or in part for failure to:
  1. Correct conditions unsafe for project personnel or the public; or
  2. Carry out provisions of the contract; or
  3. Carry out orders of the Engineer.

B. Work may also be partially or wholly suspended for:
  1. Periods necessary due to unsuitable weather; or
  2. Conditions unsuitable for the prosecution of the work; or
  3. Any condition or reason determined to be in the Department's interest.

105.02 CONTRACTOR FURNISHED DRAWINGS AND SUBMITTALS

The plans show the details of structures, lines, grades, typical roadway cross sections, location and design of structures, and a summary of items appearing in the bid package.

Furnish the Department with Contractor prepared working drawings that detail required work not included in the contract plans. Prepare all working drawings using English or Metric units as shown in the contract. Upon request, submit manufacture literature describing the materials and equipment to be incorporated into the work. This requirement to submit drawings and literature applies to all items not specifically requested elsewhere in the contract.

The Department has 20 business days to review the submittals before returning them to the Contractor. The Department has 20 business days to review drawings returned for correction and that are re-submitted for review. The Department will consider extending contract time should the Department review exceed the 20 business day review time limit and the delay can be shown to affect the Contractor's operation based on the current schedule.

The Department's approval of the fabricator's shop detail drawings is verification that the fabricator and Contractor have correctly interpreted the intent of the contract documents and the details reflect the material and connection requirements. "Approval" does not relieve the Contractor or fabricator of the responsibility for accuracy of design, dimensions, completeness or adherence to the requirements of the contract, nor does it permit deviations from the contract without the Department's documented consent.

The Department will perform an engineering review of the first submittal at no cost to the contractor. If the Department determines that the submittal fails to meet generally accepted engineering standards, it will return the submittal for correction. The Department will perform reviews of re-submittals with its own personnel when possible. If Department staff does not have time available to perform reviews, at the Department's sole option it may hire a consultant engineer from outside the Department to finish the review process.

The Department will charge for reviews of resubmittals for its staff time and at the rate charged by a hired engineering firm for its staff time, if the Department hires one. The Department will subtract the charges from contractor payments.

Working drawings and falsework plans for facilities open to public travel are to be signed by a professional engineer registered in the State of Montana before submittal to the Project Manager.

Check and approve working drawings and submittals before submittal to the Project Manager. Show the Contractor's approval on the drawings and submittals.

105.03 CONFORMITY WITH PLANS AND SPECIFICATIONS

105.03.1 General

Perform work and furnish materials to meet the contract requirements.

Provide materials and workmanship uniform in character and meeting the plan dimensions and contract specifications.

When a contract item does not meet the contract requirements but is adequate to serve the design purpose, the Contractor will be notified in writing of the deficiency. The Contractor will be given the choice to remove and replace the deficient work, correct the work at no expense to the Department, or accept a reduction in the contract unit price. If the Contractor chooses to accept a price reduction, the Project Manager will determine the amount of the reduction and will apply the reduction using a line item adjustment to the contract. The Project Manager may document the basis of the acceptance by change order.

When a contract item does not meet the contract requirements resulting in work inadequate to serve the design purpose, remove and replace or correct the work by and at Contractor expense.

105.03.2 Items Designated for Acceptance on a Lot Basis (Quality Assurance)

Contract items listed in Table 105-1 are designated for acceptance on a lot-by-lot basis. The elements in the table are evaluated and the contract items accepted under this provision. All other contract items are evaluated for acceptance under the specifications covering those items.

An element of a lot will be evaluated for conformance when results of one or more tests are outside specified tolerance limits for that element.

All the individual test results in the lot for the element to be evaluated will be averaged, and the percent of price reduction for the lot determined by the applicable formula.

1. The formula **P = (Xn + aR - Tu) x F** will be used if a maximum limit only is specified; or when the average of the test values is above the midpoint of a specified band or above a job mix target value.
2. The formula **P = (TL + aR - Xn) x F** will be used if a minimum limit only is specified; or when the average of the several test values is below the midpoint of a specified band or below a job mix target value.

TABLE 105-1
CONTRACT ITEMS - EVALUATION ELEMENTS

Elements Evaluated				
Item	**Aggregate Gradation**	**Fineness Modulus**	**Compaction**	**Fracture**
Selected Surfacing	X			
Sand Surfacing	X			
Crushed Base Course Type A	X			X
Crushed Base Course Type B	X			
Crushed Top Surfacing Type A	X			X
Crushed Top Surfacing Type B	X			
Crushed Aggregate Cover Material	X			X
Cement Treated Base	X		X	
Plant Mix Surfacing and Base	X		X	X
Portland Cement Concrete Paving	X	X		

Where:

P is the percent of reduction in contract unit price.

Xn is the average of the several test values from samples taken from the lot, with n indicating the number of values.

A is a variable factor to be used as n changes according to the following: when n is 3, a = 0.45; n is 4, a = 0.38; n is 5, a = 0.33; n is 6, a = 0.30; and n is 7, a = 0.28.

R is the difference between the highest and lowest values in the group of several test results from the lot.

Tu is the upper or maximum tolerance limit permitted by the specifications.

TL is the lower or minimum tolerance limit permitted by the specifications.

F is the price reduction factor to be applied for each element as shown in Table 105-2.

TABLE 105-2
TABLE OF PRICE REDUCTION FACTORS

Element	Factor "F"	
100% size sieve	1	
½-inch (12.5 mm) sieve and larger	1	
No. 100 to ⅜-inch (0.150 to 9.5 mm) sieve, inclusive (except 100% size sieve)	3	
No. 200 (0.075 mm) sieve	6	
Fine aggregate fineness modulus	12	
Compaction	Non-Commercial	Commercial
	12	6
Compaction - CTB	6	
Fracture	2	

If P is less than 3 or a negative quantity, the lot will be accepted as being in conformance. If one or more elements for a contract item show a positive P value, the positive values will be added and the resulting sum used to determine whether the lot is in conformance. If the total P value is between 3 and 25, the Project Manager may require correction or accept the lot at a reduced price. If P is greater than 25, the Project Manager may:

1. Require complete removal and replacement with specification material at Contractor expense;
2. Require corrective action to bring the material into conformance at Contractor expense; or
3. Where the finished product is found to be capable of initially performing the intended purpose but with a reduced service life expectancy, permit leaving the material in place with an appropriate price adjustment calculated using a P value ranging between 25 and 50.

Immediately halt production following written notification when either of the following has occurred:

1. Three consecutive lots for a contract item have an individual total P value of 5 or more.
2. Beginning with the second lot, when three tests within one lot have one or more elements outside the specification bands and the total P value for the lot is 5 or more.

Make adjustments to bring the product within the specification limits before resuming production. The Contractor does not have the option of accepting a price reduction in lieu of producing specification material. Continued production of non-specification material is prohibited. Material that is obviously defective may be isolated and rejected without regard to sampling sequence or location within a lot.

The Project Manager may allow the adjustments to be made without halting production.

105.03.3 Quality Incentive Allowance

Quality incentive allowances will be used to offset any price reductions.

All quality incentive allowance remaining after all price reductions have been deducted will be paid as a lump sum when all work on the item is complete.

A. Plant Mix Volumetric Properties. Outlier determination and payment adjustments are for properties only. If suspect test values are noted during construction, the Department will check plant production information, test equipment, processes, calculations, etc. for

errors. If a problem is noted in the plant production, sampling or other process controlled by the Contractor, the test result will be considered valid until production is complete. If a problem is found with the testing or other Department process, the test result will be corrected or the test redone on material from the same sample, if possible. If a non-correctable testing problem is found, the result will be discarded, if possible another sample will be taken and the new result used in its place. If re-sampling is not possible, the Department may discard the test results for a sub-lot considered to be an outlier and recalculate the incentives and disincentives using the remaining results in the lot. The Department may follow standard QA guidelines to adjust lot sizes.

If no identifiable problem is found, no corrections will be made until production is complete.

The following outlier evaluation only applies to projects with 10 or more QA sub-lots.

After all production of this product is completed, the Department will determine the standard deviation and mean of all the Department's test results for each property representing material produced after the initial targets were set. For each property test, the Z value is defined as the absolute value of the difference between the test value and the mean, divided by the standard deviation. If the average of the Z values of the four properties in a sub-lot is greater than 2.00, the Department may consider the sub-lot an outlier. If more than one sub-lot outlier is identified in a lot, the test results will not be considered outliers. The Department will not adjust for outliers within the last lot of production.

The Department will discard the test results for a sub-lot considered to be an outlier and recalculate the incentives and disincentives using the remaining results in the lots. The Department will follow standard QA guidelines to adjust lot sizes.

B. Density. A 1.08 pay factor will be applied to the lots of plant mix surfacing when the average density for the lot (Xn) is from 94% to 95%, inclusive, of the Maximum Specific Gravity (Rice's Method) and the range (R) is 3 or less.

C. Ride Specification. The surface smoothness will be measured using the International Roughness Index (IRI). The surface smoothness will be evaluated in each travel lane for the entire length of the project. The following project category pay factors will be applied to each lane:

TABLE 105-3
MAXIMUM ALLOWABLE VARIANCE AND DIVERGENCE

Project Category	Actual IRI (Inches/mi)	Pay Factor
Category I	< 35	1.25
	35 – 45	2.125– 25/1000 * IRI
	> 45 – < 55	1
	55 – 75	1.825 – 3/200 * IRI
	> 75 – 90	0.7
	> 90	Corrective Action (Initially assumed zero pay)
Category II	< 50	1.1
	50 – 55	2.100 – 1/50 * IRI
	> 55 – < 60	1
	60 – 95	1.343 – 1/175 * IRI
	> 95	Corrective Action (Initially assumed zero pay)
Category III	<40	1.25
	40 – 55	1.918 – 1.67/100 * IRI
	>55 - <70	1
	70 – 100	1.700 – 1/100 * IRI
	>100	Corrective Action (Initially assumed zero pay)

Notes: 1. The pay factor is the same whether the plant mix is measured in English or metric units. Final pay factors are rounded to 2 decimals and used in calculating the value of the incentive/disincentive.
2. The IRI used to calculate the Pay Factor is the average of 2 runs on each travel lane evaluated.

The incentive or disincentive for surface smoothness will be calculated based on the ride category and entire length the project in each travel lane or measured section using the following equation. The calculated value will be applied as a line item adjustment to the plant mix item on the estimate. Calculate the pay adjustment as follows:

Pay adjustment = (Pay Factor -1) x L x Unit Cost
Pay Factor = Calculate using the formulas for the appropriate project category
L = Length of the lane measured
Unit Cost = Use appropriate value from the table below

TABLE 105-4
UNIT COST

Category	Description	Unit Cost/ft.
I or III	Reconstruction or rehabilitation section with 0.3 ft. or greater plant mix surfacing	$6.425
I, II, or III	Reconstruction, rehabilitation, or overlay section with 0.2 to 0.29 ft. plant mix surfacing	$4.283
I, II, or III	0.19 ft. or less thin lift overlay	$3.213

Note: Isolation lifts are not considered to be part of the surfacing section when determining the appropriate overlay depth.

Incentives will be reduced based on the percentage of density tests that do not meet minimum plant mix pavement density requirements as determined by Table 105-5 Ride Incentive Reduction.

TABLE 105-5
RIDE INCENTIVE REDUCTION TABLE

Project Size	Percent of Density Tests not Meeting Specifications		
	No Reduction of Ride Incentive	Incentive Reduced	No Incentive Allowed
0 to 25,000 Tons	0 to 10%	(% failing tests) * 6.667-66.67	25%
> 25,000 Tons	0 to 5%	(% failing tests) * 6.667-33.34	20%

Note: Final incentive reductions are rounded to 2 decimals.

Payment at the contract unit price is full compensation for all necessary resources to complete the item of work under the contract.

105.03.4 Table of Contractor Submittals

To assist in identifying all required submittals and clarifying the submittal process, the contract may include a Table of Contractor Submittals as a Special Provision.

The table may not be all-inclusive and does not include submittals required by other Special Provisions.

Provide all submittals required by the contract, including those not listed in the table.

If a discrepancy exists, submittals required by other Special Provisions in the contract take precedence over the Table of Contractor Submittals.

Electronic submittals to the Department will be accepted if they are in a format accessible by the Department's software and legible once opened. Verify acceptable electronic format types with the Project Manager prior to submittal.

When a specification requires submittal of a form, submit the most current Department form. Forms are available from the Project Manager or on the Department's Contractor's system Internet site at http://www.mdt.mt.gov.

105.04 COORDINATION OF CONTRACT PROVISIONS

All documents referred to in Subsection 101.03 (Contract) are essential parts of the contract, and a requirement occurring in one is binding as though occurring in all. They are complementary and describe and provide for a complete contract. If a discrepancy exists, the governing ranking is:

Dimensions

1. Plan
2. Calculated
3. Scaled

Information

1. "Question and Answer Forum" Information
2. Special Provisions
3. Table of Contractor Submittals
4. Plans
5. Supplemental Specifications
6. Standard Specifications
7. Supplemental Detailed Drawings
8. Detailed Drawings

105.05 COOPERATION BY CONTRACTOR

The Department will furnish the Contractor at least 15 sets of contract documents. Keep at least one set available on the project at all times.

Cooperate with the Engineer, Project Manager, the Inspectors, and other Contractors during the contract work.

Staff the project with a Superintendent experienced in the type of work to be performed under the contract. Provide the Superintendent's name in writing before work starts. Ensure the Superintendent, when not physically on the project, has the ability to communicate with Department representatives by phone, cell phone, radio, or other electronic means. This contact must be maintained during all work suspensions, including winter suspension.

Maintain a Contractor representative having the Superintendent's authority, when the Superintendent is not physically on the project or available for immediate communication. Notify the Project Manager in writing of the identity and contact information of that representative before that person assumes the authority.

Give the Superintendent the authority to execute orders or instructions of the Project Manager or authorized representative and the authority to obtain all resources to complete the contract, including directing all Subcontractor operations.

The Project Manager or authorized representative will issue instructions to the superintendent.

Notify the Project Manager in writing at least 24 hours in advance of changes in the Contractor's representative.

Failure to maintain a Contractor's Superintendent or authorized representative on the project is cause for the Project Manager to stop work until one is assigned. All costs associated with the delay are at Contractor expense.

Failure to maintain the ability to be contacted within 2 hours during times of work suspension will result in contract time being charged. Time will be charged for the day the Department first attempts to make contact and each additional day that the Contractor's designated representative cannot be contacted.

105.06 COOPERATION WITH UTILITIES

Underground, overhead, and non-utility facilities will be relocated or adjusted to clear conflicts with the contract. Some or all of these facilities may be relocated or adjusted during the contract work. Perform the contract work without damaging these facilities.

Conduct on-project meetings on a weekly or biweekly basis with utility company representatives having facilities within the project limits and the Project Manager. Have the first meeting on the project before grading and excavation work begins to discuss the utility locations and progress on utility relocation work. A list of utility representatives is furnished in the contract.

Cooperate with utility owners in the removal and rearrangement of utility facilities to minimize interruption to utility service and duplication of work by the utility owner.

Submission of a bid is an affirmative statement that the Contractor has considered in the bid proposal all permanent and temporary utility facilities in the present or relocated positions as specified in the contract and as revealed by its site investigation. No additional compensation is allowed for delays, inconvenience, or damage sustained due to interference from the utility facilities or their re-location work.

The contract indicates utility items to be relocated or adjusted and who is to perform the work. The contract indicates the means of adjudication, if any, if the utility owners fail to relocate or adjust the facilities.

105.07 COOPERATION BETWEEN CONTRACTORS

The Department reserves the right to contract for and perform other or additional work on or near the work for the project.

Conduct the work without interfering with or hindering the progress or completion of the work by other Contractors. Cooperate with other Contractors working within the limits of the project.

Each Contractor involved must accept all liability, financial or otherwise, in connection with the contract and protect and hold harmless the Department from damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other Contractors working within the limits of the same project.

Coordinate and sequence with the work of other contractors. Do not store materials, tools, machinery, and other equipment in locations that interfere with the work of other Contractors.

105.08 CONSTRUCTION STAKES, LINES AND GRADES

Maintain all survey controls required to control alignment and grade using survey personnel that are trained, experienced, and skilled in construction layout and staking. Do not hire Department personnel to perform any survey work.

Staking requests must be submitted on form CSB105_08_1. Department construction staking will be performed once for a given type and location. If construction staking is required more than once, submit an additional request to the Project Manager in writing with justification.

105.08.1 Department Furnished Survey and Layout

Unless otherwise stated, the Department will furnish the following:

- All right of way and monumentation surveys
- Centerline coordinates
- Benchmarks at the beginning, end and near midpoint of the project
- Construction stakes for establishing lines, slopes and profile grade (excluding finish grade control)
- Construction stakes for culverts, structures and appurtenances
- Wetland delineation

Preserve and protect Department furnished control points and replace any that may be damaged, displaced or removed. Replace any stakes that are obliterated by the Contractor or by construction activities.

Use provided controls as the field control to perform the work. Verify accuracy of all Department furnished controls before any layout staking or grading is performed. Request all Department furnished construction staking in writing.

105.08.2 Contractor Survey and Layout

When required by the contract, furnish all surveys and calculations necessary to layout and control the work to specified lines, grades, and tolerances. Provide surveys with accuracy and control equal to or better than the requirements of the Montana Department of Transportation Survey Manual (Survey Manual).

Protect Department-furnished control points. Set or reset destroyed control points, conduct all right-of-way and monumentation and public land monumentation surveys under the responsible charge of a Registered Land Surveyor licensed in Montana per Section 70-22-115 MCA. The Department will measure quantities for payment, except items specified under pre-determined quantities.

Identify Department set control points. Verify accuracy of the Department – furnished controls before any layout staking is performed.

A. Survey Plan. At least 14 calendar days prior to beginning survey work, submit two copies of a survey plan to the Project Manager that details each proposed survey operation including:

1. Methods for initial layout to include accuracy, references, independent verification and checks.
2. Methods for control surveys to include number and type of controls for various items and measurement tolerances and accuracy.

The plan will be reviewed for compliance with the requirements of the Survey Manual. The plan will be returned for correction if it does not meet or exceed requirements of the Survey Manual.

Do not begin survey operations until the survey plan has been reviewed and approved by the Project Manager.

B. Staking. Set all stakes necessary to control all work under the contract. This includes, but is not limited to:

- Bridges
- Centerline stations
- Clearing limits
- Drainage structures
- Fencing
- Pavement
- Reference points
- Retaining structures
- Right-of-way lines and monuments
- Sewers and waterlines
- Signs, pavement markings, guardrail
- Surfacing courses
- Wetland delineation
- Any other items of work included in the contract
- Special conditions for specific layout items

Determine the slope stake catch point and provide copies of the slope staking notes to the Department. Replace any stakes that are obliterated by the Contractor or by construction activities. Do not begin grading operations until all slope stakes within a balance or at least 20% of the project have been set.

C. Culverts. Take cross sections and profiles. Adjust culvert locations to match existing field conditions. Use form MDT-CON-603-1 to submit the list of proposed culvert lengths to the Project Manager. Profiles, cross sections, adjustments and culvert lengths must be approved by the Project Manager before culverts are ordered.

D. Bridges. Include a check of the bridge location relative to railroads, streams, roads, or fixed features in the initial layout. Report discrepancies before performing any bridge construction activities. Survey controls for the following are required as a minimum:

- Foundations

- Pile layout and cutoff
- All substructure elements
- Girder seat elevations
- Girder profiles
- Deck forms and placement
- Curbs, rails, joints

E. Plan Errors. Notification must be made immediately of any apparent errors, including but not limited to grade, alignment, location, dimensions and quantities. Changes to the plans must be approved in writing by the Project Manager.

F. Inspection. The Department may conduct inspections and random checks of any portion of the layout and control work. The Project Manager may order work not performed with sufficient accuracy to be corrected. No compensation will be allowed for corrective work.

The Contractor is responsible for securing proper dimensions, lines, grades, and elevations for all parts of the work and Department inspection will not relieve the Contractor of this responsibility.

G. Survey Notes. Submit survey notes, including electronic notes, to the Project Manager every 10 business days and upon completion of each survey function.

H. Extra Work. Survey required for extra work may be performed by the Contractor or by the Department, as determined by the Project Manager.

I. Predetermined Pay Quantities. Quantity sheet amounts for items described under Sections 203 and 209 will be considered final quantities for payment. Requests for adjustment of bid schedule quantities for these items may be initiated by the Contractor or by the Project Manager if evidence indicates the total actual required in-place quantity varies from the bid schedule quantities by more than 5%.

Not taking cross section elevations during slope staking waives any adjustment to pre-determined pay quantity items, including borrow.

The party requesting the quantity adjustment must notify the other party in writing and furnish acceptable survey data and calculations to accurately establish any quantity adjustments. Load counts will not be considered acceptable for excavation and borrow items. The quantity adjustment will only apply for the amount greater than 5% of the bid schedule quantity.

Quantity adjustments due to changes ordered and approved in writing will be determined by measurement, calculation or both. These quantities will be added or deducted from bid schedule quantities without regard to the 5% limitations outlined herein.

105.08.3 Finish Grade Control

Provide all finish grade control required to establish the surfacing sections shown in the plans. Calculate the finish grades for the subgrade and each surfacing course using the plan information and the furnished staking notes. Special borrow is a surfacing course for finish grade control purposes.

Run a level circuit to check the project benchmarks on each roadway section where finish grade is being controlled.

Use a finish grade control method that provides positive horizontal and vertical alignment control for the required surfacing sections and ride quality.

105.08.4 Bridge Survey

The Department will establish control points defining median or roadway centerline, bridge centerline, and benchmarks for elevation control.

Establish and maintain all other survey controls required to control bridge alignment and grade meeting the plan dimensions and elevations using survey personnel trained, experienced, and skilled in construction layout and staking. Do not hire Department personnel to perform survey work.

Furnish horizontal and vertical control meeting the Department's Survey Manual requirements. Furnish the original survey notes upon request. Furnish the notes showing the initial layout and primary controls and references and the method of independent check before starting work on the substructure units. Submit a copy of the structure excavation cross-section notes. The Project Manager reserves the right to re-survey any pay item area.

Make calculations from the plan information to control alignment and elevation. Correct all incorrect locations, misalignments, and incorrect elevations caused by Contractor calculations, layouts, and surveys at Contractor expense. Submit the proposed method of correction for approval. Do not begin the corrective work until the proposal has been reviewed and approved.

105.08.5 Materials and Equipment

Furnish all materials and equipment required to perform this work.

Keep survey notes in a standard field notebook, written in a clear, orderly, neat manner meeting the Department's Survey Manual requirements and standard surveying practice. If survey notes are generated electronically, produce notes in a format meeting these requirements. The Project Manager will inspect the field notes for acceptance. The finished notes become the Department's property.

105.08.6 Survey Tolerances and Inspection

The Department will perform finish grade checks based on the following:

A. Subgrade. Three random stations per 1,000-foot (300 m) section will be checked. The 1,000-foot (300 m) section will be accepted if 80% or more of the points checked are within a vertical tolerance range of + 0.05 to - 0.10 foot (+ 15 to - 30 mm), and the horizontal alignment is within 0.30 foot (90 mm) of the true line. If not within required tolerances, rework the entire 1,000-foot (300 m) section. Three new random stations will be checked after rework is completed. Random checks will be performed for finish ditch grade control to ensure proper drainage.

B. Special Borrow. Three random stations per 1,000-foot (300 m) section will be checked. The 1,000-foot (300 m) section will be accepted if 80% or more of the points checked are within a vertical tolerance range of + 0.05 to - 0.10 foot (+ 15 to 30 mm), and the horizontal alignment is within 0.30 foot (90 mm) of the true line. If not within required tolerances, rework the entire 1,000-foot (300 m) section. Three new random stations will be checked.

C. Aggregate Surfacing. Six random stations per 1,000-foot (300-m) section will be checked. Each 1,000-foot (300-m) section will be accepted if 85 percent or more of the points checked meet the requirements listed in Table 301-1, and the horizontal alignment is within 0.30 foot (90 mm) of the true line. If not within required tolerances, rework the entire 1,000-foot (300 m) section. Six new random stations will be checked.

Sections that are obviously defective may or may not be checked prior to rejection.

A station check consists of centerline, shoulders, any break in cross slope, and intermediate points not to exceed intervals of 20 feet (6 m). All elevation checks are taken on the material, not on the finish grade control. The Project Manager may increase or decrease the number of stations being checked. After receiving notification of a completed section, the Project Manager will perform the finish grade check by the close of the following business day. Contract time will be extended day for day, without any other compensation, for Department caused delays beyond the allotted time to perform the finish grade check.

105.08.7 Method of Measurement

A. Finish Grade Control. Finish grade control is measured by the course foot (km) along the roadway centerline. A course foot (CR km) is one foot (1 km) for each two-lane roadway including shoulders and ditches. Each traffic lane is considered as one-half course foot (one-half CR km) including the adjacent shoulder, ditch, parking, turning, median lanes, and chain up areas.

The subgrade and each surfacing course requiring finish grade control are measured separately by the course foot (CR Km) for each roadway section, ramp, intersecting roadway, PTW connection, temporary detour, and each frontage road. Finished grade control for approaches is not measured for payment.

B. Contractor Survey and Layout. Contractor survey and layout is measured by the lump sum.

C. Bridge Survey. Bridge survey is measured by the lump sum.

105.08.8 Basis of Payment

Payment for the completed and accepted quantities is made as follows:

Pay Item	Pay Unit
Finish Grade Control	Course Foot (km)
Contractor Survey and Layout	Lump Sum
Bridge Survey	Lump Sum

Correct all deficient work due to incorrect finish grade control or bridge survey and reset reference points lost or destroyed by traffic or construction at Contractor expense.

Payment at the contract unit price is full compensation for all resources necessary to complete the item of work under the contract.

105.09 AUTHORITY AND DUTIES OF PROJECT MANAGER

Each project will be staffed with a Project Manager who is the Engineer's direct representative. The Project Manager has immediate charge of the engineering details of each construction project and is responsible for the administration and satisfactory completion of the project.

The Project Manager can:

1. Reject defective material.
2. Suspend work being improperly performed.
3. Execute any authority delegated to the Project Manager by the Engineer.

The Project Manager will be identified before work begins.

105.10 AUTHORITY AND DUTIES OF INSPECTORS

Department Inspectors are authorized to:

A. Inspect all work being done and materials furnished. Inspection extends to all or any part of the work and to the preparation or manufacture of the materials to be used. Inspection does not relieve the Contractor's obligation to perform the work as specified in the contract.

B. Reject materials or suspend the work until the issue can be referred to and decided by the Project Manager.

Inspectors, Technicians, and Aides cannot:

A. Revoke, alter, enlarge, or relax any requirements of the contract.

B. Final approve or accept any portion of work.

C. Issue instructions contrary to the contract.

Only the Project Manager is authorized to make contract changes, waive or alter the contract specifications, and then only if it is made in writing. Ensure that the change, waiver, or alteration is in writing before taking action on it.

105.11 INSPECTION OF WORK

All work is subject to Department inspection. Inspectors may not be at all work activities nor available for all work shifts for each work activity. Perform the work meeting the contract requirements regardless of inspection.

Allow the Inspector access to all parts of the work and furnish information and assistance necessary to make a complete and detailed inspection. Provide a safe environment for the Inspector during the inspections.

Inspection of the work does not relieve the Contractor of its responsibility to meet the contract requirements. The Inspector cannot waive contract requirements.

Remove or uncover portions of the finished work as directed. Once examined, restore the work to the contract requirements. If the work is acceptable, the uncovering, or removing and replacing the covering or making good the parts removed is paid for as extra work. If the work is unacceptable, the uncovering, removing, and replacing the covering or making good the parts removed is at Contractor expense.

Work done or materials used without inspection by an authorized Department Inspector may be ordered removed and replaced at Contractor expense.

When a government agency, political subdivision, a utility or railroad is to accept or pay a portion of the cost of the work covered by the contract, the organization's representatives may inspect the work. The inspection does not make that entity a party to the contract nor permit it to interfere with the rights of either party to the contract.

105.12 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

Work not meeting the contract requirements is unacceptable, unless determined acceptable under Subsection 105.03.

Remove and replace any unacceptable work before final acceptance at Contractor expense. This requirement has full effect regardless of the fact that the unacceptable work or defective materials were known or overlooked by the Inspector.

Work done contrary to instructions received, or beyond the plan limits, or extra work done without the permission of the Project Manager will not be considered for payment. Work so done may be ordered removed, restored or replaced at Contractor expense.

Neither the Contractor nor the Department incurs any liability by reason of any verbal directions or instructions received from the Project Manager. The Department will not be liable for extra materials furnished or used, or for extra work or labor done, unless required by written order from the Project Manager.

If the Contractor fails to follow any order made under this subsection, the Project Manager has the authority to remove, replace, or restore the work and deduct the costs from any monies due or to become due the Contractor.

105.13 RESERVED

105.14 RESERVED

105.15 COMPONENT INSPECTION

Upon notice of completion for a project component with a contract specific warranty (non-manufacturer), a milestone, or defined phase or unit of construction, the Project Manager will arrange to make an inspection of that work. Seal Coat warrantees will be administered in accordance with Section 409.

If the contract work is found satisfactorily completed, the inspection will constitute the component inspection. If the inspection discloses unsatisfactory work, the Project Manager will issue written instructions to the Contractor on the necessary corrections. When the deficiencies are corrected, another inspection will be made which constitutes the component inspection.

Upon completion of the component inspection, submit a completed "Contractor's Component Inspection" (form CSB105_15_1). The form is available from the Department's website or the Project Manager. The Contractor's project superintendent must sign the form. The form must state that:

1. The Department and the Contractor have completed a component inspection of the work, and the Contractor verifies that the work was completed in full accordance with the specifications and the requirements of the contract.
2. If applicable, the component has an associated incentive or disincentive, and they have been assessed.
3. If applicable, the component has an associated warranty and what the expiration date is.

Contract time assessment will not cease until all contract-specific warranties have expired, but may be suspended under Subsection 105.17.2. Within 14 calendar days of being notified of necessary warranty repairs, submit a plan detailing repair procedures, the expected date activities will begin, and expected duration of repair work. The time suspension will be rescinded and contract time charged if a repair plan is not provided within the allotted 14 calendar days.

The time suspension will be rescinded and contract time charged beginning on the date that repair activities begin or the date provided in the repair plan, whichever is earlier, and continue until repairs are complete.

Completion and approval of the Contractor's Work Component Inspection is not a statement or commitment by the Department that all work meets the contract requirements, and does not waive or alter any of the contract's terms.

105.16 CLAIMS FOR ADJUSTMENT AND DISPUTES

105.16.1 Notice of Claim

Submit a notice of claim using the Department's Notice of Claim Form CSB105_16_1A no later than the next business day of disagreements that are to be the subject of a claim for additional compensation, time extension, contract change, or other remedy. Provide full details in the written notice why additional compensation, time extension, contract change, or other remedy is warranted. Attach to the notice of claim all documentation showing the history of the disagreement.

Upon submission of the written notice, immediately begin keeping and maintaining complete and specific daily records using the Department's Claim Cost Record Form CSB105_16_1 of all details and costs directly related to the disagreement. The form is available from the Project Manager or the Department's website. Base equipment costs on internal rates for ownership, depreciation, and operating expense. Provide the Project Manager with updates of details and costs related to the disagreement as they develop.

Failure to timely provide the written notice as required waives the Contractor's right to make any claim for the disagreement. Ensure that any notice of disagreement is fully and completely explained and documented, as the Department expects and requires early notice to mitigate costs and to fully document any potential costs.

The Project Manager will attempt to resolve the disagreement after the written notice is submitted. The Project Manager will issue a written response no more than 14 calendar days after receipt of the written notice.

105.16.2 Submission of Certified Claims

If an agreeable resolution is not reached within 14 calendar days of the written notice, the Contractor may submit a Certified Claim using the Certified Claim Form CSB105_16_2 to the Project Manager no more than 7 calendar days after receipt of the Project Manager's response. The form is available from the Project Manager or the Department's website. Include all Claim Cost Records to date with the Certified Claim. Provide copies to the DCE and the CES Engineer of the Engineering Division. The Project Manager will continue to attempt to resolve the disagreement after the Certified Claim is submitted.

Detail the following in the Certified Claim:

A. Reasons for each requested remedy, referenced to the applicable contract provisions;
B. Objections to the Project Manager's response; and
C. Basis for and amount of any additional compensation, extension of time, contract change, or other remedy, including any potential solutions.

If the claim includes requests for delay compensation, follow all procedures in Subsection 108.07.6.

The Prime Contractor must verify the claim data and certify the claim. Claims from a subcontractor or supplier will not be accepted. Only the Prime Contractor may submit the Certified Claim.

Failure to timely submit the completed Certified Claim form or the Claim Cost Records as required is a material breach of contract and waives the Contractor's right to make any claim for the disagreement or be entitled to any compensation, time extension or contract change related to the disagreement.

Allow the Project Manager access to and provide copies of all records when requested by the Department. Make other project records available for technical and audit evaluation during the project and after the claim-related work has been performed. Promptly furnish written clarification and any additional information or data requested by the Department.

After the Certified Claim is submitted, continue keeping and maintaining complete and specific daily records using the Department's "Claim Cost Record" form of all details and costs directly related to the claim. Base equipment costs on internal rates for ownership, depreciation, and operating expense.

Submit claim updates every month until the claim is resolved. Include all costs incurred and any other pertinent information discovered after the Certified Claim was submitted, and include copies of all Claim Cost Records for that month.

For claims over $100,000, all claim costs must be certified by a certified public accountant (CPA) prior to the claim being resolved.

Do not change the basis of a claim after submitting the written notice. Do not supplement a faulty submission to rebut or dispute a decision made by the Project Manager. Claims that have changed in basis or that have been supplemented due to an original faulty submission will not be considered, and are waived by the Contractor.

The Contractor waives the claim and any compensation, time extension, or contract change for any of the following:

1. Not filing a timely, complete written notice;
2. Not submitting a timely and complete Certified Claim form;
3. Not submitting monthly claim updates as required; or
4. Not keeping and submitting timely and complete Claim Cost Records.

105.16.3 Decision on Claims

The Prime Contractor must verify the claim data and certify the claim. Claims from a subcontractor or supplier will not be accepted. The DCE will provide a written decision no more

than 30 calendar days after receipt of the Certified Claim for Contracts that do not require Escrow of Bid Documents. The DCE will provide a written decision no more than 45 calendar days after receipt of Bid Documents for Contracts that do require Escrow of Bid Documents. If additional time is required to research and evaluate the Claim, the DCE can extend the time period 14 calendar days by notifying the Contractor in writing.

To advance the claim, appeal the DCE's decision to the Claims Review Board (Board). Submit the "Request for Appeal" Form CSB105_16_3H to the CES Engineer no more than 30 calendar days after the date of the DCE's decision. Provide a copy of the appeal to the DCE. The DCE's decision is final unless appealed no more than 30 calendar days after the date of the decision. If appealed, the DCE will forward the original claim, supporting documents or evidence, and the District's evaluation to the CES Engineer.

The CES Engineer will submit the claim to the Board. Board meetings are scheduled on a quarterly basis, with the schedule available on request from the CES Engineer. Claim appeals received less than 60 calendar days in advance of the next scheduled Board meeting may not be presented to the Board until the following scheduled meeting.

The Board will only review those documents and evidence submitted in the original claim, its supporting documents, and the District's evaluation, but may request further information from the DCE or the Contractor.

The Board may affirm, overrule, or modify, in whole or in part, the decision of the DCE. The decision of the Board is the Department's final decision.

The Contractor or Department may request non-binding, independent third party mediation. The Contractor's request for third party mediation must be submitted to the Construction Engineer on the Request for Mediation Form CSB105_16_3E no more than 30 calendar days after the date of the Board's decision. If the Department and Contractor both agree to mediation, they must mutually agree on a mediator and a mediation date within 14 calendar days of the date of the request for mediation. All costs associated with mediation will be shared equally between the Contractor and the Department.

105.17 PROJECT FINALIZATION

105.17.1 Final Walk-through Process

When all physical work has been completed in accordance with the contract requirements, a final walk-through process will be completed to inspect the work and identify and resolve all punch-list items. If all work is complete but deferment of the final walk-through is necessary for causes outside the Contractor's control, the Project Manager will suspend contract time.

The following describes the process between the Project Manager and the Contractor:

1. The Contractor requests a final walk-through inspection using form MDT-CON-105_17_1B. Submit the preliminary MPDES/NPDES storm water permit package, if applicable, for review with this form if not previously submitted.
2. A final walk-through inspection is conducted between the Project Manager, DCE and Contractor. The final walk-through process may be postponed due to project conditions outside of Contractor control.
3. A final storm water walk-through is conducted between the Project Manager, District Environmental Engineering Specialist, Contractor, and Maintenance or local entity as appropriate.
4. Punch-list items are identified; including site work deficiencies, outstanding materials and/or Civil Rights requirements, environmental permit compliance issues, and outstanding claims. A written list of punch-list items is submitted to the Contractor within 30 calendar days of the request for the final walk-through inspection.
5. The Contractor submits the final MPDES/NPDES storm water permit package.

6. When punch-list items are completed and/or resolved, the Contractor requests a final verification using form MDT-CON-105_17_1C. The Department is exercising some operational control of the MPDES/NPDES storm water permit when the requested changes are completed.
7. The Project Manager will grant Conditional Final Acceptance within 30 calendar days of the request for the final walk-through verification. The final acceptance is granted with the condition that all contract-specific warranties have expired and all warranty issues have been resolved. If the punch-list items are fully resolved, no further action is required. If deficiencies still exist, payment will be deducted from the estimate as appropriate.

Contract time assessment will not cease until all contract-specific warranties have expired, but may be suspended under Subsection 105.17.2.

105.17.2 Final Acceptance

When the Final Walk-through Process is complete, all project-specific warranties have expired, and all warranty issues have been resolved, submit the Contractor's Certificate of Work Complete using form MDT-CON-105_17_2. Before the form will be approved by the Department, the contractor's representative must provide a sworn and notarized certification that the following items have been completed:

1. The work has been completed in accordance with the contract's specifications, and the required materials have been used, both in quality and quantity.
2. The Department and the Contractor have completed the final walk-through process, and the Contractor has corrected all deficiencies to the satisfaction of the Project Manager or payment will be deducted for outstanding deficiencies.
3. The project has been inspected for compliance with the MPDES/NPDES Storm Water Permit, all necessary corrective actions taken.
4. There are no pending investigations referencing alleged nonpayment to subcontractors or suppliers.
5. There are no pending labor compliance or nonpayment claims on the contract.
6. There are no known environmental violations. The Contractor is responsible for any violations issued for damages or non-compliance with permit requirements and conditions prior to the transfer of the MPDES/NPDES Storm Water Permit. The Contractor will defend and hold the Department harmless from any violations, claims, enforcement actions, penalties or fines issued for Contractor activities or recordkeeping that occurred prior to the transfer of the MPDES/NPDES Storm Water Permit; this does not include activities specifically directed by the Department in writing.
7. Liquidated damages have or have not been assessed, and damages that have been assessed either are or are not disputed by the Contractor.
8. The contract does or does not include any contract specific warranties (non-manufacturer). If it does, all contract specific warranties have expired and all corrective actions have been completed.

If any of the above is not completed in full before the certification form is submitted, the Project Manager will reject the form.

Contract time assessment will not cease until all warranty issues are corrected and the Contractor's Certificate of Work Complete form has been received and approved. The Project Manager may suspend contract time for punch-list items provided the roadway is in a safe and convenient condition. The date the form is approved is the Final Acceptance. Maintain the insurance specified in Subsection 107.13 until the Final Acceptance.

Completion and approval of the Contractor's Certificate of Work Complete form is not a statement or commitment by the Department that the work meets all contract requirements, and does not waive or alter any of the contract's terms.

105.17.3 Final Estimate Process

When the contract has reached the Final Acceptance under Subsection 105.17.2, the contract documents will be finalized and the final estimate processed within 90 calendar days. The final estimate will include the amount and value of each class of work performed and any extra work and materials. Errors made in previous partial payments will be corrected in the final estimate.

When the final estimate is prepared and all required documentation (such as material certifications, labor dispute resolutions, etc.) has been received, the Construction Administration Services Bureau will send a copy of the final estimate to the Contractor for review. The Contractor has 10 calendar days to notify the Project Manager in writing if the final estimate is acceptable. If no response is received within that timeframe, concurrence will be assumed.

To dispute the final estimate, submit the items disputed and justification to the Construction Administration Services Bureau. Provide a copy to the Project Manager. The Construction Administration Services Bureau will provide a written decision on the disputed items.

The Department reserves the right to withhold all or part of the final payments earned under the contract until all taxes and assessments due and owing to the State of Montana for any reason have been paid in full unless a written release is received from the Department or the state agency having a claim against the Contractor.

SECTION 106

CONTROL OF MATERIAL

106.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

The contract specifies the basis of acceptance for materials and assemblies.

106.01.1 Source of Supply

Use only materials that meet the contract requirements. Submit a list of the names and addresses of the suppliers, producers, manufacturers and fabricators furnishing products for the contract. Itemize the list as shown in the contract schedule of items.

Material may be inspected and tested at the source of supply before delivery to the project. All materials may be inspected, tested, and possibly rejected before incorporated into the work.

Perform sampling of any material to be tested in accordance with the contract. The Department will decide if a sample was taken correctly. Samples not properly taken may be rejected and may not be accepted for testing.

Determine the quality and quantity of materials produced at or developed from any source based on the contract documents and by conducting an independent source investigation.

If payments due the owner of a materials source become delinquent and the owner notifies the Department, a sum equal to the amount of the delinquent payments may be withheld from estimate payments due the Contractor.

106.01.2 Samples, Tests, and Cited Specifications

A. Materials accepted by Certification. Ensure all required certifications for materials are furnished to the Department and the Department has inspected and accepted the certification before incorporating the materials into the work.

The Project Manager may grant written permission to place materials before receiving certifications for materials only under the following conditions:

1. Not placing the materials poses immediate danger to traffic or the general public; or
2. Not placing the materials would cause a delay in the work resulting in damage to the project or adjacent property.

The Project Manager may require that materials be removed and replaced at Contractor expense if the certification(s) are not furnished.

B. Materials Accepted by Department Testing. Do not incorporate material into the work until it is inspected or sampled by the Department.

Reference to a specification or test designated in AASHTO, ASTM, Federal Specifications, or other recognized, nonproprietary national organization, is the specification or test method that is current on the date of advertisement for bids and as amended by the Department's Test Method Manual. Copies of individual Montana test methods (MT Methods) are available from the Department's website: www.mdt.mt.gov.

Department material tests are by and at the Department's expense. Where there is a difference in the test methods, the order of precedence for tests is:

1. The Department's Standard Material Test Methods in the Materials Manual
2. AASHTO
3. ASTM

Submit representative preliminary material samples in the specified quantities for testing upon request. The testing of preliminary samples does not constitute acceptance of the materials. Only materials delivered for incorporation into the work will be accepted or rejected based on the test results specified in the contract.

106.01.3 Unacceptable Materials

All materials not meeting the contract requirements will be accepted or rejected under Subsection 105.03.

106.02 LOCAL MATERIAL SOURCES

106.02.1 General

Local aggregate, borrow and topsoil materials sources include prospected sources, Contractor-furnished sources, and mandatory sources.

Provide the source for obtaining local materials unless mandatory sources are specified. When prospected sources are identified in the contract, use the prospected sources or locate other sources of material. Contractor-furnished sources must be approved by the Department. The Contractor must:

A. Provide an approved reclamation plan meeting Subsection 106.02.5 before using any materials source;

B. Comply with Section 106 of the National Historic Preservation Act; and

C. Adhere to state and federal requirements and obtain clearance from the State Historic Preservation Officer before using material from surfacing and borrow sources.

106.02.2 Prospected Sources

Each District/Area lab has historical information regarding potential prospected sources. This information typically includes the source location, owner, and some test results of samples taken from the source. To view or obtain this information for sources near a project, contact the Area Lab Supervisor. The phone numbers for the District area offices are in Table 106-1.

TABLE 106-1
DISTRICT/AREA LAB PHONE NUMBERS

Area	Phone Number
Missoula	(406) 523-5800
Kalispell	(406) 751-2000
Butte	(406) 494-9600
Bozeman	(406) 556-4700
Great Falls	(406) 454-5880
Havre	(406) 262-5500
Glendive	(406) 345-8200
Wolf Point	(406) 653-6700
Miles City	(406) 233-3600
Billings	(406) 252-4138
Lewistown	(406) 538-1300
Helena	(406) 444-6300

The Department is not responsible for the quantity or quality of materials indicated in the prospected source reports. Test data included in the reports are based on the samples tested from the exact locations shown using standard tests. No interpretation is made or intended by the Department. Any interpretation is the judgment of the person examining the tests. See Subsection 102.06 concerning verifying quantity and quality by an independent subsurface investigation before submitting a bid. Make arrangements with landowners for sampling and obtaining material from the prospected material sources.

Do not sell or use material from Department-owned or Department-optioned sources for anything other than the designated project without a written agreement from the landowner and Department approval. Other than those requirements specified in a written agreement between

the landowner and Department, any arrangements between the landowner and the Contractor are solely between them. Submit copies of all correspondence and agreements with the landowner to the Project Manager.

Notify the Department in writing if a prospected source is to be used and list the contract items for which that material will be used.

Pay all royalties, obtain all required permits and follow their requirements. Coordinate with the landowner to determine the access routes that are allowed for use and any additional landowner requirements. Adhere to all agreed stipulations, including contouring of pits, topsoil conservation and replacement, seeding, repair or obliteration of haul roads, cattle guards, and fencing; the cost of which is incidental to and included in the materials cost.

106.02.3 Contractor-Furnished Sources

Acquire the rights to take materials from Contractor-furnished sources and pay all related costs, including costs due to increased haul length, exploring and source development.

Furnish material that meets all statutory and regulatory requirements for being non-toxic and non-hazardous. Do not furnish material from mine tailings and waste, slag, sources within state and federal superfund sites, or sources within areas known or suspected to be contaminated with toxic substances or petroleum products unless laboratory reports from an approved laboratory indicate the material meets these requirements.

Obtain Department approval for any special borrow or aggregate source prior to use. Arrange with the Project Manager for representative samples to be taken and witnessed by the Department at least 30 calendar days before beginning production. Provide all equipment and labor necessary for the sampling. See Subsection 106.10 for the number of Department furnished tests at Department expense.

The Department's approval of the source does not release the Contractor from the responsibility to produce materials meeting all specified acceptance requirements.

A. Borrow Source Approval. The 85th percentile of the samples taken from the source(s) must meet the R-value and/or the soils classification specified in the contract.

Furnish a minimum of 8 Department-witnessed samples at the locations and depths designated within the limits of the proposed source(s).

Samples will be tested for R-value according to AASHTO T 190. The R-value at a 300 psi (2,068 kPa) exudation pressure will be used for evaluation. Samples will be tested for soils classification according to MT 214. If the source is approved, it may be limited to certain areas, layers, or soil classes within a source, during or after source approval testing. Approval of the source does not preclude the Department from sampling from the roadway.

B. Aggregate Source Approval. The Department will process and test samples to determine the suitability of the material in accordance with Subsections 701.02.1 and 701.03.1.

Passing wear and sand equivalent test results are mandatory for Department approval of bituminized material aggregate sources. Passing wear test results are mandatory for Department approval of untreated aggregate sources.

Assume all risk for producing aggregate from sources not meeting the wear test (MT 209) and sand equivalent test (AASHTO T 176). The Department will randomly test stockpiled aggregate for wear and sand equivalent.

106.02.4 Mandatory Material Sources

Use of materials from mandatory sources is a condition for preparing a bid and executing a contract. Follow the conditions in the contract for producing materials from mandatory sources.

106.02.5 Reclamation Requirements

A. General. Reclaim all land used in constructing the project as required by the approved reclamation plan. Comply with the pertinent statutes relating to open cut mining (Section 82-4 MCA); hard rock mining (Section 82-4-3 MCA); water quality (Section 75-5 MCA); stream bank preservation (Sections 82-5-5 and 75-5 MCA); the Montana County Noxious Weed Management Act Section 7-22-21 MCA; and all other applicable federal, state, and local statutes, regulations and ordinances.

The DEQ has final responsibility for administration of the Open Cut Mining Act and the Hard Rock Mining Act and must review and approve all reclamation plans and reclamation work. Follow all directives and instructions issued by the DEQ with regard to reclamation work.

B. Reclamation Plan. Submit a copy of the approved reclamation plan before removing earth, quarried rock, sand, gravel, or other substance from any materials source. Follow the DEQ "Format for Reclamation Plan" and "Mapping Guidelines" when developing reclamation plans. The format and guidelines are available from:

Department of Environmental Quality
Permitting and Compliance Division
Industrial and Energy Minerals Bureau
Open Cut Mining Section
Helena, MT 59620-0901

The time allowed for approval of reclamation plans is included in the Open Cut Mining Act, Section 82-4-434 MCA.

C. Reclamation Work. Perform reclamation immediately after removing the necessary material. Leave all slopes in a stable condition and, if topographic conditions permit, grade to no steeper than 3H:1V after final grading. Grade the excavated area to maintain the natural contour of the land and blend into the surrounding terrain. Remove or grade all outcroppings to daylight where possible.

Strip and stockpile all topsoil and overburden from the material source, stockpile site, crushing area, and equipment parking areas before excavating material. Salvage all topsoil from all new or widened haul, access, and service roads before grading or surfacing. Reclaim all roads when removal operations are complete. Store overburden or subsoil separately from topsoil and replace before topsoil is replaced on reclaimed areas. Uniformly re-distribute all topsoil to the entire reclaimed area.

Seed all re-top soiled areas during the first seeding season following grading and topsoil replacement. Contour-seed all slopes steeper than 3H:1V.

Fence newly seeded, reclaimed areas including roads where required to protect from livestock. Use Type F-3M fence.

Do not locate material sources in a flowing stream or on a stream floodway at a location likely to develop a new channel to the stream during flooding. Leave the final floor elevations of material sources high enough to not be impacted by fluctuations in the groundwater table, unless addressed in the approved reclamation plan. Provide protection and safety of persons and property adjacent to the work.

D. Method of Measurement and Basis of Payment. Reclamation of material sources is incidental to the materials cost.

106.02.6 Protection of Livestock and Property

Prevent livestock from straying into or out of any materials source.

Protect all irrigation facilities from construction operations. Promptly repair or replace damaged irrigation facilities to the landowner's satisfaction at Contractor expense.

106.02.7 Rejects (Excess Fines)

Material referred to as "rejects" are inherent in a rock pit, gravel pit, or quarry, or accumulated during crushing and screening operations. Stockpile rejects, from material sources owned or optioned by the Department and not acceptable for use on the project, at a site selected or approved by the Project Manager when requested. Stockpiled reject material is paid for at 15 cents per ton mile (10 cents per MT- km) for haul in excess of 200 feet (61 m) from the crusher site to the stockpile.

Retain title to all rejects accumulated during aggregate production from Contractor-furnished sources. Department purchased rejects are paid for at an agreed purchase price.

106.03 CERTIFICATION OF COMPLIANCE

A certification of compliance states the material meets the contract requirements. A manufacturer's authorized representative must sign the certificate. Clearly identify each lot of certified materials or assemblies delivered to the work in the certificate of compliance. Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time. Materials not meeting contract requirements will be rejected.

106.03.1 Product Data Sheet

A product data sheet describes the mechanical, thermal, physical, chemical, and specific properties of the product. Product data sheets must contain relevant standards, test methods, and results for applicable materials and subcomponents showing products to be in compliance with contract requirements.

106.04 PLANT INSPECTION

Meet the following conditions if materials are Department inspected at the source of supply or manufacture:

A. Provide the Inspector full cooperation and assistance during inspections.
B. Provide the Inspector full entry to all parts of the plant used in the manufacture or production of the materials.
C. Furnish the facilities to determine if the material furnished meets contract requirements.
D. Provide and maintain adequate safety measures.

Materials inspected at the source may be re-inspected before incorporation into the work. Materials not meeting the contract requirements will be rejected.

106.05 FIELD LABORATORY

The Department will furnish all field offices and laboratories.

Furnish and install electrical power to field offices and laboratories as directed:

- A continuous 200-ampere, 220 to 230 volt, single phase, 60-hertz power supply using a four wire connector; or
- A 110 to 120 volt alternating current of sufficient capacity.

Have the source connected by a Montana licensed electrician.

Furnish a potable water supply to operate all testing equipment for the offices and laboratories.

Notify the Project Manager at least 2 business days prior to producing material to be tested in the field laboratory. Do not begin production until the test trailer is fully operational.

No additional payment will be made for providing power and water to the field office and laboratories. Include these costs in the other items on the project.

106.06 QUALIFIED PRODUCTS LIST

The Department's Materials Bureau maintains a QPL. Obtain further information and requirements on the QPL website, located at http://www.mdt.mt.gov contracting/consultant link.

The QPL is limited to certain types of items. Different types of products may be added to, or deleted from the QPL. Procedures for qualifying, listing, and de-listing products are available on the QPL website.

Materials listed as approved on the QPL at the time the materials are delivered to the project may be accepted as a pre-approved QPL item in lieu of the normal sampling and testing procedures.

Submit the documentation required by the QPL.

Work to qualify or list products on the QPL is not measured for payment.

106.07 HANDLING AND STORAGE OF MATERIALS

Store and handle materials to preserve their quality. Stored materials are subject to inspection and re-testing before incorporating into the work. Locate stored materials for ease of inspection.

Obtain approval to use portions of the right-of-way for storage and placing the plant and equipment.

Obtain additional required space at Contractor expense. Do not use private property for storage without the landowners or lessees written permission. Furnish copies of the written permission to the Project Manager. Restore all storage sites to original condition at Contractor expense.

Transport bulk materials in vehicles that do not cause material loss or segregation.

106.08 DEPARTMENT FURNISHED MATERIAL

Department furnished material will be delivered or made available at the locations specified.

Include the cost of handling and placing Department-furnished materials in the contract unit price for the item.

Be responsible for all Department furnished material. Deductions will be made from any monies due for shortages, deficiencies, and damage that occur after delivery. Demurrage charges, resulting from failure to accept the material at the designated time and location will be deducted from monies due the Contractor.

106.09 DOMESTIC MATERIALS

Furnish domestic steel or iron materials for applicable products as defined in MT 601. Notify the Project Manager and obtain clarification for any materials containing steel or iron components prior to their incorporation if not clearly defined in MT 601. Domestic material is material produced by manufacturing processes, including coating of steel or iron, that have occurred entirely in the United States. Pig iron, and processed, pelletized and reduced iron ore may be manufactured outside the United States. As required, furnish certification from the original steel producing mill documenting the manufacturing processes, including coatings of covered materials, as performed in the United States.

Buy America requirements apply to all manufactured products composed predominantly of steel or iron materials. A product is considered to be manufactured predominantly of steel or iron if the product consists of at least 90% steel or iron content, as determined by the Department, when it is delivered to the job site for permanent incorporation. For purposes of addressing precast or pre-stressed items, the job site encompasses locations where the precast operations occur. Buy America requirements do not apply to miscellaneous steel or iron components, subcomponents, or hardware; such as cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts (excluding high strength and anchor bolts), nuts, screws, tie wire, spacers, chairs,

lifting hooks, faucets, or door hinges that are commonly available as off-the-shelf products or minor items that are necessary to encase, assemble and construct project materials.

Do not incorporate steel or iron materials into the project until a completed Form 406 with all required documentation is submitted to the Department. Ensure that suppliers understand the Buy America and contract requirements to supply the required documentation. Submit documentation to the Department in a clear, organized, legible manner or it will be returned. Clarify which material certifications are for which items. The Department will review the submitted documentation one time at no cost to the contractor. If the Department determines that the submitted documentation is inadequate or fails to meet the contract requirements, the submitted documentation will be returned for clarification or correction. The cost for the Department's re-review of the same submittal is the contractor's responsibility, and may be deducted from contractor payments.

The Department will not pay for items installed until the submitted Form 406 and supporting documentation has been reviewed and is found to be in accordance with the contract requirements. Insufficient or unavailable documentation or documentation showing products to contain steel of foreign origin are grounds for removal and replacement at the contractor's expense.

Material inspection of pre-cast products, prefabricated steel products, or prefabrication plants will take place at the point of manufacture. The District Materials Lab, Helena Materials Bureau, or Department representative will inspect the manufacturing of these items and verify that the fabricator is maintaining supporting documentation. All precast products containing steel and prefabricated steel products delivered to the project must be accompanied by certification from the end product manufacturer or prefabrication plant which states that all steel used in the product has been melted/recycled and manufactured entirely in the United States and they have maintained supporting documentation. Submit a Form 406 with certification by the end product manufacturer or prefabrication plant that all steel incorporated has been melted/recycled and manufactured entirely in the United States. All supporting documentation must be maintained by the fabricator and made available to the Department as requested.

A minimal quantity of foreign manufactured steel and iron material may be used if the cost of the material, including delivery costs to the project, does not exceed one-tenth of 1% of the total contract amount or $2,500.00, whichever is greater. Submit a request to use a minimal quantity of foreign manufactured steel and iron a minimum of 5 business days before incorporation into the work. Include in the request the dollar amount of the steel for this request, and the cumulative dollar amount requested to date. Provide documentation, typically in the form of invoices, showing product and delivery cost. Failure to do so will require removal and replacement of all foreign steel and iron with domestic steel and iron. If the foreign steel and iron cannot be positively distinguished from any domestic material used, then all of the material must be removed and replaced with domestic steel and iron at the contractor's expense.

106.10 MIX DESIGNS AND TESTING OF MATERIAL SOURCES

The Department will furnish the number of mix design verifications or tests shown in Table 106-2, at no cost to the Contractor.

TABLE 106-2
NUMBER OF MIX DESIGNS VERIFICATIONS OR TESTS FURNISHED AT NO COST

Description	Number Furnished Per Contract
Plant Mix Surfacing Mix Design Verification	2 per grade
Portland Cement Concrete Mix Design Verification	1 per class
Cement Treated Base Mix Design Verification	2 per grade
Special Borrow Testing Package	1 per 65,000 cubic yard (50,000 m^3) of plan quantity
Surfacing Material Testing Package Indicated source(s) shown on plans Surfacing source(s) furnished by the Contractor	 2 2

Requests for additional verification or testing will be processed in the order received, with a minimum 30 calendar day turnaround. The Contractor will be charged the Department's cost for each additional mix design verification or testing package. The total cost will be deducted from the progress estimate payments.

SECTION 107

LEGAL RELATIONS AND RESPONSIBLITIES TO THE PUBLIC

107.01 LAWS, RULES AND REGULATIONS TO BE OBSERVED

Observe and comply with all of the following:

A. Federal and state laws and regulations;

B. Local laws and ordinances; and

C. Regulations, orders and decrees of bodies or Tribal ordinances having any jurisdiction or authority.

Protect and indemnify the Department and its representatives against any claim or liability arising from the violation of any of the above listed items, whether violated by the Contractor, a Subcontractor, material man, or supplier, or any of their employees or agents.

Follow all rules and regulations of federal, state, and local health officials. Do not require an employee of the Contractor or Subcontractor(s) to work in surroundings, or under conditions that are unsanitary, hazardous or dangerous to health or safety. Admit any Inspector of the OSHA or other legally responsible agency involved in safety and health administration without delay and without presentation of an inspection warrant to all areas of the work and project site upon presentation of proper credentials.

Comply with and enforce all federal, state, and local safety standards (e.g. the Montana Scaffolding Act, etc.) for Contractor's workers and its Subcontractor's workers on the project, protecting and indemnifying the Department and its representatives from all claims, suits, damages or liabilities from all accidents or safety violations, and ensuring the public's safety. The Contractor is not to enforce safety standards for Department employees.

Follow federal, state and local laws, rules and regulations regarding unlawful employment practices including race, religion, color, sex or national origin discrimination, and that define actions required for Affirmative Action and Disadvantaged Business programs.

Work within a state or national forest is under the regulations of the authority having jurisdiction governing the forest.

Immediately notify the Project Manager in writing if any discrepancy or inconsistency is discovered between the contract and any law, ordinance, regulation, order or decree.

107.02 PERMITS, LICENSES AND TAXES

Obtain all legally required permits, authorizations, and licenses, pay all charges, fees, taxes, and fuel taxes giving all notices necessary and incidental to the lawful prosecution of the work.

107.03 PATENTED DEVICES, MATERIALS AND PROCESSES

Do not use any design, device, material, or process covered by letters of patent or copyright, without a legal agreement with the patentee or owner. Indemnify and hold harmless the Department, any affected third party, or political subdivision from all claims for infringement for the use of any patented design, device, material or process, or trademark or copyright. Indemnify the Department of all costs, expenses, and damages obligated for payment by reason of an infringement during the prosecution or after the completion of the project.

107.04 RESTORING SURFACES OPENED BY PERMIT

The Department may grant permits to construct or re-construct a utility facility in the highway or street for authorities of the municipality in which the work is done. Do not allow any individual, firm, or corporation to make an opening in the street without a Department permit. Do not allow any person or persons to make an opening unless authorized by the Department. Parties bearing permits may make openings in the street. When requested by the Project Manager,

repair these openings. The work is paid for under Subsection 104.03 or as provided in the contract. Repair to the same standards as the original work.

107.05 FEDERAL AID PARTICIPATION

Federal laws, rules, or regulations in conflict with any provisions of a federally assisted contract prevail and take precedence over conflicting contract provisions.

Federally assisted work is under Department supervision and subject to inspection and approval of the United States Government. Inspections by authorized Federal representatives do not make the United States a party to the contract and do not interfere with the rights of the contract parties.

107.06 PUBLIC CONVENIENCE AND SAFETY

Conduct construction with minimum obstruction to traffic. Provide safety and convenience to the public and protect persons and property including, but not limited to, items specified in Subsection 104.05 and Section 618.

High-visibility safety apparel must be worn by all workers within the right-of-way of all projects. Use high-visibility safety apparel that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107 publication entitled *American National Standard for High-Visibility Safety Apparel and Headwear*.

Workers include all persons on the project at the request of, employed by, or for the benefit of the Contractor. This includes suppliers and subcontractors at every tier including volunteers.

A workers failure to wear required apparel may result in the worker's immediate and permanent ejection from the project, and/or a suspension of work in that area, at the discretion of the Project Manager. No claim for compensation or delay costs may be made by or through the Contractor in such a case.

Provide complete protection at all times to the travelling public crossing under any structure. Employ positive means such as netting, tarpaulins, wood, or metal covering to prevent tools, materials, etc. from falling onto the roadway below. Positive protection may include traffic control methods, or other approved means to ensure complete protection.

Submit the proposed method and any modifications of the proposed method of traffic protection for approval to the Project Manager a minimum of 2 days prior to the start of this work. Do not begin work until the protection plan is approved and installed to the satisfaction of the Project Manager. Failure to maintain such safeguards in an effective manner may result in an immediate shutdown of work until corrected.

Do not close public roads without the Engineer's permission.

Providing protection to underlying roadways is not measured for payment.

107.07 RAILWAY-HIGHWAY PROVISIONS

Responsibilities for work involving railway property are:

A. Contractor. Perform work on railroad right-of-way without interfering with the movements of trains or traffic on railway property. Do not cross the railway right of way or tracks except at temporary or existing, open public grade crossings.

Furnish signed copies of the *Contractor Requirements and Acknowledgment for Working on Railroad Right of Way* found in the contract to the railroad and Project Manager before entering railroad property and starting work.

Provide advance notice, as agreed to between the Contractor and railway officials, before working on railway property, hauling across railway tracks, or blasting within 1000 feet (305 m) of railway property.

Comply with Section 204 and Subsection 107.18 when blasting or performing other work on or near railway property.

Furnish insurance for all work performed as required by Subsection 107.13 or the contract. Make arrangements with the railway company for railway crossings not specified in the contract at Contractor expense.

Reimburse the railroad company for all costs of railway flagging, other protective services, and installation of temporary crossings for haul roads for Contractor-furnished material sources based on billings submitted by the railway company.

B. Department. The Department will:

1. Enter into an agreement with the Contractor and the railway company when required by the railway company;
2. Arrange for railway crossings specified in the contract and pay for the crossings, railway flagging and other protective services necessary for work performed on or near railroad right of way, including haul road track crossings to Department-optioned or owned material sources; and
3. Forward billings for flagging, track crossings, and other protective service billings for Contractor-requested crossings, submitted to the Department by the railway company.

C. Railway. Railway companies must:

1. Furnish all flagging or other protective service as necessary for the safe operation of trains or traffic on railway property, and
2. Construct, maintain, protect, and remove temporary crossings and submit billings for flagging or other protective services to the Contractor or Department.

107.08 LOAD RESTRICTIONS

Do not exceed legal load restrictions when hauling material and equipment on public roadways and bridges within and beyond the project limits and on all new and existing Portland cement concrete roadways, completed and accepted gravel surfaces, treated base courses, bituminous surfacing lifts and courses, including plant mix base, plant mix surfacing, and seal and cover.

Do not place loads on a concrete pavement, treated base, or structure before the curing period has been achieved.

Repair damaged roadways and structures resulting from construction operations at Contractor expense.

Measure and analyze truck legal load limits by the bridge formula before hauling any material over existing or newly paved roadways and bridges. Furnish a drawing showing distances between axles, truck tare weight, and the overall length of each truck prior to hauling or placing operations.

Show a minimum of two applications using the bridge formula on the drawing. Include on the first application the overall length between axles. For the second application, do not consider the steering axle, and add the value obtained from the bridge formula to the anticipated load on the steering axle. Use the lesser of the two values obtained as the legal load. Retain a copy of the appropriate drawing in each truck. Do not exceed established legal load weights for single axle and tandem axles.

If raising a retractable or tag axle results in the truck being over the maximum legal weight, only raise the axles when backing to unload at a chip spreader, windrow, or plant mix paver. Back the minimum distance possible while over legal weight restrictions. Do not exceed the legal weight on the steering axle by more than 25% or tandem axles by more than 50% while backing with retractable or tag axles lifted.

The weight on a truck in excess of the maximum legal weight as determined above will be deducted from the quantity considered for payment.

Comply with this provision and all applicable laws, rules, and regulations related to operation of motor vehicles on public roads.

Trucks operated on public roads may be checked by the Department's Motor Carrier Services Division and fines levied for exceeding legal loads.

Do not use existing bridges, new bridges, or bridges to be removed but still in use by the public as work platforms, work bridges, or to support or move equipment without the Department's written approval.

Approval will be granted only where load analysis and review of traffic control, safety, and convenience show it to be in the public interest.

No additional compensation will be considered or allowed for any violation of these provisions.

107.09 RESERVED

107.10 PROTECTION AND RESTORTATION OF PROPERTY AND LANDSCAPE

107.10.1 Public and Private Property

Preserve all public and private property when performing work. Do not disturb or damage land monuments and property markers until witnessed or referenced by the Project Manager.

Be responsible for all damage to public and private property resulting from any act, omission, neglect, or misconduct in the manner or method of executing work until the project is accepted. This responsibility includes damage caused by compaction, vibratory, and impact equipment.

Replace or restore damaged property to its original condition at Contractor expense.

Conduct a review of all public roadways to be used by Contractor equipment, including haul operations, before work begins. Arrange for a local road authority representative and the Project Manager to attend the review.

The parties are to review and document the roadways existing condition and determine a dispute resolution process if an agreement on roadway restoration cannot be reached.

Once the roadway is no longer in use by the Contractor, conduct another review by the same parties. The parties are to reach an agreement on what is required to restore the roadway comparable to its original condition.

Perform all work required to restore the roadway comparable to its original condition and obtain the Project Manager's approval of the work once completed.

Roadway restoration is not measured for payment.

107.10.2 American Legion Fatality Markers

Take inventory of all American Legion Fatality Markers (fatality markers) within the project limits prior to construction activities. Identify the fatality marker's route, reference post, and side of road it is located on. Identify fatality markers in conflict with proposed construction activities and those that are not.

A. **Fatality Markers in Conflict with Construction Activities.** Prior to construction activities in vicinity of fatality markers, remove and locate fatality markers to a safe location. Upon completion of construction activities, return the fatality markers to the same route as close as practical to the original reference post and side of road, at an offset distance established by the Department.
B. **Fatality Markers not in Conflict with Construction Activities.** Do not disturb fatality markers not in Conflict with construction activities.

Be responsible for all damage to fatality markers resulting from any act, omission, neglect, or misconduct in the manner or method of executing work until the project is accepted. Replace or restore damaged fatality markers to their original condition at Contractor expense. All costs

incurred to meet the American Legion Fatality Marker requirements are incidental to other items of the contract.

107.11 ENVIRONMENTAL PROTECTION

107.11.1 General

Follow all state, local, tribal, and federal laws and regulations controlling pollution of the environment. Take precautions to prevent pollution of aquatic resources from silt, fuels, oils, bitumen, chemicals, or other harmful materials. Take precautions to prevent pollution of the atmosphere from particulate and gaseous matter.

Do not begin work in areas covered by the permits, authorizations, or notifications until all are received from the regulatory agency. Allow a minimum of 45 calendar days to receive required permits, authorizations, or notifications from the date of the submittal of a complete request, unless a different timeframe is specified by the regulatory agency. The Department is not responsible for delays caused by incomplete or inaccurate submittals by the Contractor.

Obtain and submit one copy to the Project Manager of all required environmental permits, authorizations, and notifications necessary for activities relating to construction activities, including those secured for sites outside of the project limits before construction activities start in permitted area. Submit to the Project Manager, within 7 calendar days of sending or receiving, all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

107.11.2 Water Pollution Control Regulations

Refer to Section 208 for other requirements relating to water pollution control and aquatic resource protection.

A. Construction De-watering Permit. A Construction De-watering General Permit Authorization is required for any construction activity that discharges sediment-laden water from the work area, such as cofferdams, trenches, excavation pits, or other work types identified in the permit, to state waters. Obtain authorization from the Water Protection Bureau, DEQ before discharging into any state waters. If sediment-laden water is land-applied and will not reach state waters, then a discharge permit is not required.

B. Short-term Turbidity Standard (318 Authorization). Obtain authorization as required under Section 75-5-318 MCA, for any activity that will cause a short term increase in turbidity.

C. Section 404 - Nationwide Permit (NWP) and Individual Permit (IP). Follow the provisions of the Federal Clean Water Act, including the requirements of Section 404.

Temporary facilities and construction activities in and around waters of the U.S. may be covered by a COE 404 Permit. Adhere to applicable permit conditions and/or NWP Fact Sheets, Regional Conditions, and 401 Certification requirements. Obtain a 404 Permit for temporary facilities and/or construction activities that are not covered by the 404 Permit obtained by the Department for permanent structures. These construction activities may include, but are not limited to, temporary work bridges, work pads, cofferdams, diversions, temporary fills and berms, haul roads, and other work that involves the placement of fill or dredged materials into waters of the U.S.

Prepare the application and submit to the Project Manager for Department review and submittal to the COE. The contract may include additional conditions and requirements for applicable Section 404 permits.

D. Section 10 Rivers and Harbors Act Permits. Follow the requirements of the Rivers and Harbors Act, including requirements of Section 10. COE permits are required for structures or work in, over, under or affecting navigable waters of the U.S. In Montana,

navigable waters of the U.S. include, but are not limited to the: Kootenai River, Missouri River, and Yellowstone River. Section 10 permits can be issued concurrently with the Section 404 permits described above. Adhere to applicable permit conditions and/or NWP Fact Sheets, Regional Conditions, and 401 Certification requirements.

E. General Storm Water Permits. Follow the requirements of the NPDES and MPDES Storm Water Permits. Coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (General Storm Water Permit) is required for any construction activity that disturbs an area of at least one acre or has the potential of discharge. DEQ administers the MPDES permit. If the project is located on one of Montana's Indian Reservations, NPDES permit authorization is issued by the EPA. Permit authorization is obtained by submitting a complete application package, including the Notice of Intent (NOI) to the appropriate regulatory entities. The EPA allows electronic submittal of the NOI. Obtain the permit authorization directly from the DEQ or EPA.

F. SPA 124 Notification. Follow the requirements of the Montana Stream Protection Act (SPA). The SPA is administered by FWP.

Obtain an SPA 124 for temporary facilities and/or construction activities that are not covered under the SPA 124 obtained by the Department. These activities may include, but are not limited to, work bridges, work pads, cofferdams, temporary detours, diversions, removal and disposal of existing structures, access, sequencing, and construction methodology.

Prepare the application and submit it to the Project Manager for Department review and submittal to FWP. The contract may include additional conditions from the SPA 124 obtained from Contractor submittal.

G. Tribal Permits. Work within reservations may require additional permits and submittals to tribal authorities. Coordinate with the Department to determine requirements and receive assistance in obtaining permits.

The Aquatic Lands Protection Ordinance (ALPO) #90-A provides regulation of all waters and aquatic lands on the Blackfeet Reservation in order to prevent or minimize their degradation. Obtain an ALPO permit for any project within or near aquatic resources.

The Shoreline Protection Office of the Confederated Salish and Kootenai Tribes (CSKT) Tribal Council administers the following Tribal Ordinances:

1. Shoreline Protection Ordinance 64A, which deals with any work along the shoreline of Flathead Lake.
2. Aquatic Lands Conservation Ordinance (ALCO) 87A, which is required for the alteration of aquatic lands, wetlands, or Flathead Reservation waters from activities such as dredging, filling, irrigation diversions and returns, drainage ditches, and maintenance repairs of these resources.

Tribal Permits are required for construction activities within the project limits and may be required for temporary facilities outside the project limits. If required, coordinate with the Department and obtain tribal permits from the tribal office for additional activities and facilities not covered by tribal permits obtained by the Department.

H. Floodplain Permit. Follow the requirements of the Montana Floodplain and Floodway Management Act. Any construction project within a designated 100-year floodplain is required to have a floodplain development permit prior to the start of construction. The DNRC administer this permit through the Floodplain Management Section or local floodplain administrators.

The Department obtains this permit for permanent facilities. Obtain the Floodplain Permit from the DNRC or the local floodplain administrator for temporary facilities if required.

107.11.3 Air Quality

Operate all equipment including, but not limited to, hot-mix paving plants, concrete batch plants, generators, aggregate crushers and screens, etc. to meet the minimum air quality standards and applicable requirements established by federal, state, tribal, and local agencies. Secure necessary air quality permits from the appropriate regulatory entity.

Use reasonable precautions to prevent or reduce dust on the project caused by construction operations or traffic, to be in compliance with all federal, state, tribal, and local laws and regulations.

Use water, liquid magnesium chloride, liquid calcium chloride, or other dust palliative approved by the Project Manager. Use only Contractor owned water sources or water that is obtained under a purchased water right according to applicable laws.

Dust control for compliance with all laws and regulations is not measured for payment. Include the cost for dust control in the item of work being performed that results in dust. Any violations or fines associated with dust control/dust control operations are the responsibility of the Contractor.

No additional payment will be made for the use or installation of dust or smoke control devices, for the disruption of work or loss of time occasioned by the installation of such control devices, or for any other related reasons.

107.11.4 Noise Pollution

Adhere to local noise ordinances, laws and regulations, and follow all requirements contained in the contract regarding noise pollution.

107.11.5 Noxious Weed Management

Follow the requirements of the County Noxious Weed Management Act, Section 7-22- 21 MCA, Section 80-7-912 MCA and all county and contract noxious weed control requirements. Determine the specific noxious weed control requirements not specified in the contract of each county where the project is located before submitting a bid.

Any product containing forage per Section 80-7-903 MCA must be certified noxious weed seed free by the Montana Department of Agriculture.

Noxious weeds include those species designated by the Montana Department of Agriculture. The most recent list of designated noxious weeds is available from the Montana Department of Agriculture, or local county Extension Service or Weed District. The Montana Department of Agriculture web site with noxious weed information is: www.agr.mt.gov/weedpest/noxiousweeds.asp.

Clean all equipment and vehicles prior to their transport into the project area. Equipment or vehicles with visible dirt or plant parts will not be allowed into the project area until they are cleaned to the satisfaction of the Project Manager.

All costs incurred to meet the county weed control requirements are incidental to other items of the contract.

107.11.6 Noxious Weed Control

When Noxious Weed Control is included as a bid item, provide noxious weed control to all lands within the right-of-way within the project limits.

Monitor the construction, borrow and staging areas at intervals necessary to prevent noxious weeds from developing viable seed. Noxious weeds may be controlled through hand-pulling or

herbicide application. Select the most effective and appropriate means of control based upon the species and size of infestation and environmental conditions.

If the control is accomplished with the application of herbicides, use only a licensed commercial pesticide applicator certified to apply general and restricted-use herbicides. Use herbicides that meet all applicable state and federal pesticide laws and that are registered with the Montana Department of Agriculture as required by the Montana Pesticide Act. Apply herbicides in a manner that provides immediate control, but does not jeopardize or cause potential harm to final reclamation objectives. Follow all applicable state and federal pesticide laws. If it is determined that herbicide application caused or contributed to the failure of reclamation, take corrective action at no additional cost to the Department.

Do not perform noxious weed control on areas that have received final seeding.

Noxious Weed Control within the project limits is measured by force account methodology. Noxious Weed Control in areas outside of the project limits is not measured for payment.

Work performed within the project limits is paid by units of Noxious Weed Control.

107.11.7 Plant and Animal Protection

A. Migratory Bird Treaty Act. Complete operations in compliance with the Migratory Bird Treaty Act. Migratory birds of any kind (including but not limited to swallows and other song birds) are protected under the Migratory Bird Treaty Act. It is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Direct disturbance of an occupied migratory bird nest (with birds or eggs) is prohibited under the law.

The Migratory Bird Treaty Act does not prohibit the destruction of most unoccupied (without birds or eggs) migratory bird nests, provided that no possession occurs during the destruction. The destruction of unoccupied nests of eagles and other threatened and endangered species is not allowed.

Contact the Department District Biologist if further instruction, clarification or consultation is required prior to or during construction.

Compliance with the Migratory Bird Treaty Act is incidental to performance of the work and no additional payment is made.

B. Bald and Golden Eagle Protection Act. Complete operations in compliance with the Bald and Golden Eagle Protection Act. The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald eagles, including their parts, nests, or eggs. The act provides criminal penalties for persons who “take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle or golden eagle, alive or dead, or any part, nest, or egg thereof.” The act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.”

For purposes of this contract, “disturb” means: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle; 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

In addition to immediate impacts, this definition also covers impacts that result from human induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle’s return, such alterations agitate or bother

an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death, or nest abandonment.

Violation of the act can result in a fine of $100,000 ($200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this act is a felony.

C. Endangered Species Act (ESA). Complete operations in compliance with the ESA (16 U.S.C 1531 et seq.). The ESA provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. The ESA prohibits any taking of a threatened or endangered species. The definition of "take" includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.

107.11.8 Protection of Aquatic Resources

Unless permitted or authorized, do not impact any aquatic resources located adjacent to the project. Avoid all equipment traffic, fill material, staging activities and other disturbances to all aquatic resources.

In areas adjacent to any water body including streams or irrigation ditches crossing the highway, and any wetland areas; or in areas immediately adjacent to the highway susceptible to sediment transport, conduct construction, staging and paving operations in a manner to avoid placement of materials in these areas.

Any impacts to these areas and associated consequences, without the proper permitting, are the responsibility of the Contractor. The Contractor must secure the appropriate permits or authorizations prior to working in these areas. If complete avoidance of these areas is not possible, contact the Project Manager who will coordinate the permitting effort with the District Biologist or the District Environmental Engineering Specialist.

107.12 FOREST PROTECTION

Observe sanitary laws and regulations regarding the performance of the work within or adjacent to state or national forests and parks. Keep all areas in a neat condition, dispose of all refuse, and obtain permits for the construction and maintenance of construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures.

Prevent, suppress, and assist in preventing and suppressing forest fires, and immediately notify a forest official of the location and extent of any fire discovered.

Maintain spark arresters to meet the forest Supervisor's requirements on all steam, gas, or diesel-driven machinery and on all flues at construction camps.

107.13 INSURANCE REQUIREMENTS

Meet the timing requirements of Subsection 103.07.

107.13.1 Insurance on All Contracts

A. Commercial General Liability Insurance. Obtain commercial general liability insurance with a general aggregate limit of $2,000,000; an occurrence limit of $1,000,000; and products and completed operations limit of $1,000,000. The policy must name the State of Montana, its agents, employees, and officers as an additional named insured.

B. Owners and Contractors Protective Liability Insurance. Obtain an Owner's and Contractor's Protective (OCP) liability insurance policy for all work to be done, on behalf of the owner (State of Montana, the Department, and its agents, employees and officers) to be submitted with the contract when executed, with a general aggregate limit of not less than $2,000,000 and an occurrence limit of not less than $1,000,000.

C. Insurance Policies. Insurance policies must:

1. Provide coverage on an occurrence basis and not on a claims-made basis;

2. Not contain exclusions for explosion, collapse, or underground damage hazards; and
3. Provide that all insurance or self-insurance maintained by the State, its agents, employees, and officers is in excess of the required insurance and does not contribute with it.

Maintain commercial general liability insurance in full force from the effective date stipulated in the Notice to Proceed until Commission acceptance of the project, unless written approval is given by the CAS Engineer to cancel the policy. Maintain Owner's and Contractor's liability insurance in full force from the effective date stipulated in the Notice to Proceed until the Final Acceptance (form MDT-CON-105_17_2) is approved by the Department.

Obtain all policies from an insurer with a Best rating of A- or better on the date the policy is written.

The insurance requirements are a condition precedent to the contract. Failure to obtain and maintain all required insurance is considered a material breach of the contract.

Reinstate the policies listed above if a return to the project is required to complete additional work. Do not begin work until the policies are reinstated and submitted to the Construction Administration Services Bureau in Helena.

107.13.2 Insurance Involving Railroads

Furnish railroad protective liability insurance on behalf of the railroad when equipment or personnel are located or work is done on any railroad right of way.

The limits of liability are specified in the contract.

Maintain railroad protective liability insurance in full force until the Final Acceptance (form MDT-CON-105_17_2) is approved by the Department.

Submit copies of the railroad insurance policies as specified in the contract for transmittal to and approval by the railroad. Do not use or enter railroad property until railroad approval is received and the policies are in effect. This applies to all work done as a part of the project.

Reinstate the railroad protective liability insurance if a return to the project is required to complete additional work. Do not begin work until the policy is reinstated and submitted to the Construction Administration Services Bureau in Helena.

107.13.3 Insurance Requirements When Utilities Are Present

When working below the ground surface, ensure a comprehensive $2,000,000 insurance policy covering underground work and resulting damage to underground utilities is in effect.

Maintain insurance in full force until the Final Acceptance (form MDT-CON_105_17_2) is approved by the Department.

107.13.4 General

Furnish insurance policies with an endorsement that prohibits canceling, altering, amending or reducing coverage without giving a minimum of 30 calendar days written notice by the insurance company to the insured and the Department. A Montana resident agent must countersign all insurance policies issued under the contract. If the State where the insurance is purchased has a reciprocal agreement with the State of Montana and the insurance company is licensed to do business in the State of Montana, a countersignature by a Montana resident agent is not required.

107.14 THIRD PARTY BENEFICIARY CLAUSE

It is specifically agreed between the parties to the contract that it is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the contract to maintain an action for damages pursuant to the terms or provisions of the contract.

107.15 RESPONSIBILITY FOR DAMAGE CLAIMS

Indemnify and hold harmless the Department and the Department's officers and employees from all actions or claims brought because of injuries or damages to persons or property caused by the actions or omissions of the Contractor's employees or agents.

107.16 OPENING SECTIONS OF PROJECT TO TRAFFIC

The Project Manager may open certain sections of the work before completion or acceptance of the contract. Opening these sections does not constitute acceptance of the work, or waive any contract requirement.

Pending completion and acceptance of the roadway, complete all repairs or removals on sections of opened roadway caused by defective materials, work or by causes other than ordinary wear and tear meeting Subsection 107.17 requirements.

If shoulders, drainage structures, or other elements of the work are not completed on schedule, the Project Manager may order all or a portion of the project open to traffic. Liability and responsibility for maintaining the work before final acceptance remains in effect. Complete the remaining work with minimum interference to traffic.

107.17 CONTRACTOR'S RESPONSIBILITY FOR WORK

Protect the work against loss, injury, or damage caused by the elements, traffic, or any other cause, including, but not limited to, fire, theft, pilferage, vandalism, or third-party negligence until final acceptance. Repair all damage to any project work, or the project site, caused by the Contractor or anyone performing any project work at no expense to the Department.

Rebuilding, repairing, and restoring damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor (including, but not restricted to: acts of God such as earthquake, flood, tornado, or other cataclysmic phenomenon of nature or acts of the public enemy or of governmental authorities) will be paid for under Subsection 104.03. This does not excuse, or allow compensation or repayment for any act or omission by the Contractor or its subcontractors, either in violation of law, regulation, ordinance, etc., or for any act or occurrence, which could have or should have been foreseen.

Expect probable adverse weather and stream flow conditions to occur. The cost of delay, loss, injury, or damage occurring to dikes, cofferdams, caissons, work bridges, haul bridges, or any other construction item or equipment, caused by adverse weather and stream flow conditions is the Contractor's responsibility.

The above requirements do not apply if the contract has reached the Final Acceptance under Subsection 105.17.2.

Provided the damage was not caused by the Contractor or Subcontractor, repair to items that have been accepted as complete is extra work under Subsection 104.03 and will be paid for under Subsection 109.04. A building is considered complete when it is fully functional, and is open to the public.

Payment for repair of damages resulting from public traffic and use does not entitle the Contractor to:

A. The release of any part of unpaid contract funds; or
B. Relief from responsibility for defective workmanship or materials; or
C. A waiver of any contract provision.

Conduct the work to ensure maximum convenience and safety to the general public and to the property owners adjacent to the work.

Maintain access for adjacent property owners at all times.

Take precautions to prevent damage to the project during work suspensions. Provide for drainage and erect all necessary temporary structures, signs, or other facilities at Contractor expense.

107.18 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

Protect railway, telegraph, telephone, and power company properties or other property from damage, loss or inconvenience from construction before starting work. Cooperate with the utility owners in the removal and rearrangement of underground or overhead utility lines or facilities to minimize interruption to service and duplication of work by the utility owners.

Call the Utilities Underground Location Center (1-800-424-5555) or other notification system, UDIG (1-800-551-5344) if in Flathead or Lincoln County, for the marking and locating of the utilities before excavation.

The Department will locate existing Department owned utilities. If utilities are relocated or installed as part of the contract, the location of the relocated or newly installed utilities is the responsibility of the Contractor. The Contractor remains responsible for the relocated or newly installed utilities until the utility is functioning and in use by the traveling public.

Obtain insurance covering underground work per Subsection 107.13.

Provide and maintain temporary drainage facilities if existing surface drainage, sewers, or underdrains are interrupted at Contractor expense until permanent drainage facilities are completed. Protect and preserve existing tile drains, sewers, other subsurface drains, conduits, and other underground structures affected by construction that can remain in use without any change.

Immediately stop work if a utility line, cable, pipe or other facility is exposed or damaged during the work. Notify the Project Manager and the utility company of the damage and its location. Cooperate with the utility company if utility services are interrupted due to an accidental break until service has been restored. The Project Manager will stop work in the area of the damaged utility should the Contractor not stop work voluntarily. Resume work upon notice from the Project Manager. No compensation is made for delays associated with utility damage caused by the contractors work.

The Department will withhold monies from estimates due or to become due the Contractor for all utility damage and related costs not reimbursed by the Contractor under this Subsection.

Do not begin work around fire hydrants until provisions for continued service have been made and approved by the local fire authority. Provide continuous repair until service is restored if water service is interrupted.

Repairs to damaged utility facilities or structures resulting from construction operations and negligence is at Contractor expense. Be responsible to the utility owners and operators for damage, injury, expense, loss, inconvenience, delay and for any legal suits, actions, or claims that may result from the work.

The Commission may require the Contractor to furnish protective public liability and property damage insurance to each corporation, company, partnership, or individual owning or operating the properties affected.

107.19 FURNISHING RIGHT OF WAY

The Department will obtain all right-of-way for the project.

Exceptions will be noted in the bid proposal and award of the contract may not be made until right-of-way is obtained. The submission of a bid is an affirmative statement that the bidder accepts this condition and waives any damage that could be claimed.

Claims for damage or loss of anticipated profits because of this delay will not be considered by the Department. Consideration will be given for an appropriate extension of the contract time if the award is substantially delayed.

107.20 PERSONAL LIABILITY OF PUBLIC OFFICIALS

The Department, and its authorized representatives are acting solely as agents and representatives of the State when carrying out or exercising the power or authority granted under the contract.

There is no liability on them either personally or as officials of the State.

107.21 NO WAIVER OF LEGAL RIGHTS

Final Walk through under Subsection 105.17.1 does not prevent the Department from correcting any measurement, estimate, or certificate made before or after contract completion and from recovering from the Contractor, or surety, or both overpayments sustained for failure to fulfill the obligations under the contract. A Department waiver of any breach of any part of the contract does not constitute a waiver of any other or subsequent breach.

Be liable to the Department for latent defects, fraud, or gross mistakes as may amount to fraud, or with regards to the Department's rights under any warranty or guaranty.

107.22 PROTECTION OF ARCHEOLOGICAL AND HISTORICAL FINDINGS

Submit written evidence that no historic or pre-historic sites on or eligible for listing in the National Register of Historic Places are located on property used for construction activities that are outside of the Department obtained right of way, easements, material sites, or other areas designated in the contract before construction starts. These areas include but are not limited to staging areas, Contractor furnished material sites, or other related areas to be used for the work.

Submit the legal descriptions, the area involved, a description of the work activity, a site plan, and a description of the ground surface of all sites not included in the contract plans. Within 10 business days, the Department will notify the Contractor if the presence of or potential for cultural resources exists in the areas and recommend if a professional cultural resource survey is needed or not needed. If a survey is not recommended, no further cultural resource work is required.

If a survey is recommended, hire a professional cultural resource contractor to perform a survey. A directory of cultural resource contractors is available from the Department Archeologist.

If the survey does not identify any historic or pre-historic site within the area of proposed disturbance, the Department will issue a notice to proceed with the work. If the cultural resource contractor or the Department identifies any historic or pre-historic sites within the proposed area of disturbance, the Department, in concert with SHPO will determine whether the site(s) may be eligible for listing in the National Register of Historic Places.

Choose one of the following options if a site is eligible:

A. Do not use or disturb the proposed site.

B. Request the Department to proceed with the steps to comply with 36 CFR 800. Use a professional cultural resource contractor to perform all field work, surveys, etc. required to complete the process identified by the Department. No additional compensation or delay considerations are allowed under these requirements.

Immediately stop work if archeological or historical artifacts are encountered. Immediately notify the Project Manager of the find. The Project Manager will stake the area to remain undisturbed until further notice.

107.23 DISCOVERY OF UNDERGROUND STORAGE TANKS

Take the following action if an underground storage tank or tanks are encountered, the existence or location which was previously unknown to the Department or Contractor, on the project within the project limits.

A. Immediately stop work in the vicinity and notify the Project Manager.

B. Immediately notify the local fire authority and protect people and property from fire, explosion, vapor, and other potential hazards, and prevent further release of the tank's contents. Take all action requested by the Project Manager.

C. Notify the DEQ within 24 hours if there is evidence of soil or groundwater contamination resulting from a tank leak or pipe leak, at:

Underground Storage Tank Program
Department of Environmental Quality
Environmental Remediation Division, Petroleum Technical Section
1-800-457-0568

D. Perform the tank removal and closure work as permitted by DEQ.

E. Do not resume work in the immediate vicinity of the tank or piping until approved by the Project Manager.

Costs incurred from the discovery of underground storage tanks within the project limits will be paid for as extra work in accordance with Subsection 104.03. Costs from the discovery of underground storage tanks outside the project limits are not the Department's responsibility.

107.24 DISCOVERY AND REMOVAL OF UNKNOWN HAZARDOUS MATERIALS

If hazardous material is discovered within the project limits, the existence or location of which was previously unknown to the Department or the Contractor or not identified in the contract, immediately stop work in that area and notify the Project Manager. Hazardous material includes, but is not limited to; contaminated soil, contaminated water, asbestos, PCBs, petroleum, PCPs, hazardous waste or radioactive material. If the area is determined to pose a hazard to the traveling public, close off all access to the area as directed. Work may continue in unaffected areas believed to be safe.

Once notified of the contaminated site, the Department will determine whether a separate Contractor will be used to assess and clean up the contaminated site before permitting the Contractor to resume work in the contaminated area. If the Department determines that the Contractor can perform the work, meet the requirements of Subsection 107.26. The work will be paid for under Subsection 104.03. Obtain all necessary clearances (procedures, permits, etc.) from the regulatory agencies before starting any work.

If the Contractor does not perform the work, it waives any potential claim for itself, its subcontractors, and suppliers for damages for delay from the Department's securing another Contractor to perform the clean-up work.

The Department will equitably compensate the Contractor under Subsection 109.04.3 for costs associated with the delay to work in the affected area.

107.25 ACCESS TO CONTRACTORS RECORDS

Allow access by the Department or its authorized representative, and the FHWA to all project records, and the project records of all Subcontractor's, under Section 18-1-118 MCA, by the Legislative Auditor and Legislative Fiscal Analyst to determine compliance with the contract terms.

107.26 LIABILITY FOR CERCLA/CECRA CLAIMS

The Department will indemnify, protect, and hold harmless, the Contractor for any actions which the Department specifically directs or reasonably requires the Contractor to perform only if said action is the subject of litigation or administrative action under CERCLA, 42 U.S.C. Section 9601, et seq., or CECRA (Section 75-10-701 et seq. MCA), and it does not fall within the exceptions below.

Indemnify, protect, and hold harmless the Department for any omissions or actions not specifically directed by the Department if said omissions or actions are the subject of litigation or

administrative action pursuant to CERCLA or CECRA. Actions or omissions which are chosen either in type, scope, location, amount or method by the Contractor are not “specifically directed or reasonably required” by the Department.

Further indemnify, protect, and hold harmless, the Department for any negligent actions by the Contractor, its subcontractors, their employees or agents, including any actions that may be the subject of litigation or administrative action pursuant to CERCLA or CECRA.

When the Contractor is directed by the contract to obtain hazardous material liability insurance coverage for a project; that contract requirement controls and has priority over this specification.

107.27 DIESEL FUEL USED ON THE PROJECT

Use taxed clear fuel as required by state law to construct the project.

Violation of state law may result in a six-month suspension of the violating firm from participation in Department contracts not already awarded on the date of suspension. Prime Contractors are responsible for compliance of their own equipment, and the equipment of all Subcontractors and their Subcontractors.

SECTION 108

PROSECUTION AND PROGRESS

108.01 SUBCONTRATING OR ASSIGNMENT OF CONTRACT

108.01.1 Subcontracting

Do not subcontract, assign, or otherwise dispose of more than 60% of the original contract cost without the written consent of the surety and the Department.

Table 108-1 illustrates when an executed subcontract is required. The table is not all-inclusive, but shows examples. When required, a final determination will be made by the CAS Engineer.

TABLE 108-1
SUBCONTRACT REQUIREMENTS

Activity	Subcontract Required	Payroll Required
Physical work within the project limits	Yes	Yes
Material application (dust palliative, water, oil products, etc.)	Yes	Yes
Commercially supplied materials	No	No
Owner/Operator of heavy haul trucks	No	*
Crushing operations at a site dedicated to the project	Yes	*
Concrete pump truck (no labor by operator)	No	No
Equipment rentals (w/operator)	No	Yes
Work performed by a Contractor on the prime's payroll	No	Yes
Survey work	Yes	*
Consultant services within project limits	Yes	*
Consultant services not within project limits	No	No

*Contact the Department's Civil Rights Bureau for a determination.

The same criteria apply to work added by a change order. A subcontract is required for work performed by a Subcontractor at any level (second-tier, third-tier, etc) of the contract.

Include in the written subcontract or assignment or in a separate written document with the subcontract or assignment the following language:

> "In consideration of being awarded this subcontract, and in consideration of having this subcontract approved by the State of Montana, the Subcontractor hereby assigns to the State of Montana any and all claims or causes of action for any antitrust law violations, or damages arising there from, as to goods, materials, and services purchased under the terms of this subcontract or any change order that may result from this subcontract."

Do not hire or use in any manner a person or organization that performed any part of the design work for the Department unless first approved by the Department in writing.

108.01.2 Contract Performance

Perform at least 40% of the original contract cost with the Contractor's organization. The price of items designated in the contract as "Specialty Items" will be subtracted from the original contract price before the amount required to be performed by the Contractor is calculated.

Where an entire item is subcontracted, the percentage of the work subcontracted is based on the original contract item unit price. When a portion of an item is subcontracted, the percentage of the work subcontracted will be based on either the subcontract item unit price or on an

estimated percentage of the contract item unit price, determined by the CAS Engineer. An item will not be considered partially subcontracted unless the prime contractor performs a portion of the work (equipment, materials or labor). If the same item is subcontracted at multiple levels, the cost is only accounted for at the first level. When an item added by change order is subcontracted, the cost of the item does not count towards the required contract performance in Subsection 108.01.1.

Do not allow a Subcontractor at any contract tier to start work until its subcontract is consented to by the CAS Engineer. Include one executed and certified copy of the subcontract, a letter from the surety consenting to the subcontract, and the Subcontractor's Checklist.

Inform the Subcontractor of all the contract provisions, and that the Subcontractor is bound by all terms of the prime's contract with the Department. Provide the Subcontractor a copy of all the contract provisions including the applicable prevailing wage rates and FHWA 1273. Include in the subcontract the following language:

> "The Subcontractor agrees to comply with all of the labor provisions contained in the attached Special Required Contract Provisions and Davis Bacon Wage Decision."

All subcontractors are agents of the Contractor. The Contractor is responsible for all work, material furnished, project documentation provided by, and indebtedness incurred by its subcontractors.

Written consent to subcontract, assign or transfer the contract does not release the Contractor from liability under the contract and bond.

108.01.3 Subcontractor Payments

Submit payment information for all Subcontractors to the Civil Rights Bureau within 30 calendar days of the payment. This information can be submitted electronically on the Department's website.

108.02 NOTICE TO PROCEED

Work is to begin and time charges start on the date stipulated in the Notice to Proceed. Do not begin actual work nor permit subcontractors to begin work until all Subsection 103.07 requirements are met.

If work cannot begin on the date in the Notice to Proceed due to reasons beyond the Contractor's control, these conditions, dates, and reasons will be recorded in the weekly Assessment of Contract Time report and no time will be charged. Begin work when the Project Manager determines and issues a notice to resume work and that assessment of contract time will start.

108.03 PROSECUTION OF WORK

108.03.1 General

Begin obtaining all air quality, water quality and storm water runoff permits, approval of reclamation plans, and archaeological and historical clearances immediately upon receipt of the notice of contract award letter from the Department. Furnish the completed applications to secure permits, approvals or clearances as they are submitted to the respective agency. Furnish approved permits, reclamation plans and clearances necessary to complete the work in conformance with all federal, state and contract requirements.

The Department will reimburse all reasonable costs incurred in securing the permits, approvals and clearances if the Department does not execute the contract for reasons outside its control.

A pre-construction conference will be held on a mutually agreed date between the Contractor, Department and other parties interested in the work before work within the project limits begins no later than 20 calendar days after the Notice to Proceed date. The Contractor's superintendent in charge of the project must attend the conference. Encourage subcontractors to attend. Submit a schedule meeting all requirements of Subsection 108.03.2 or 108.03.3 at or before the pre-construction conference. No other work, except obtaining permits, may begin until the schedule requirements have been met. No payments will be made on the contract until the pre-construction conference has been held and the submitted schedule reviewed.

Obtain written approval before starting night work. Provide work area flood lighting for night work and do not rely solely on equipment lights. Night work approval may be rescinded at any time.

Suspending and resuming work on all or a part of the contract will be by Subsection 105.01.

Work may be suspended on working day contracts for unsuitable weather or for other conditions that are detrimental to the work accuracy and quality. Prevent damage and repair damaged work that was not protected during the suspension at Contractor expense. No time extensions will be approved for work to correct non-protected work.

Store materials to protect against damage and without obstructing, endangering or impeding traffic.

Do not allow water to pond on the roadway or within the construction limits, excluding environmental protective devices. Open ditches and shoulder drains, and take other actions to protect the public and the work.

The Department does not authorize project suspension by the Contractor and time will be charged during unauthorized project suspensions. If the Contractor suspends the project, provide written notification of the suspension to the Project Manager 7 calendar days before the suspension. The Contractor is responsible for all maintenance required during unauthorized suspensions and for all work and materials required due to the suspension.

108.03.2 Project Schedules

For projects not subject to Subsection 108.03.3 requirements, submit 2 copies of an ASC, and 2 copies of a WN that details the work and time (working days, calendar days or completion date) to complete the contract. The initial schedule must show that the work will be completed in the time frame specified in the contract.

The Contractor may use a CPM schedule as the ASC if it meets the requirements described in Subsection 108.03.2 herein and results in no additional cost to the Department.

A. Include in the ASC:
- **1.** A bar chart chronologically sequenced and to time scale showing the following:
  - **a.** All work activities with a completion duration of 5 or more working days. (For this requirement, working days does not exclude the period from November 16th through April 15th.)
  - **b.** Any work activity that has an impact on completion of the project.
- **2.** The relationship of each work activity listed in Subsection 108.03.2(A)(1) to other work activities, permits, plans, submittals and approvals required to complete the project.
- **3.** Work activity durations by working days or calendar days as appropriate. Indicate non-working periods exceeding 3 days on each activity bar.

B. Include in the WN:
- **1.** The proposed work process sequence describing the relationship of the work activities listed in Subsection 108.03.2(A) required to complete the contract, including

shop drawing submittals, permits (including estimated maximum waiting periods for all required permits), fabrication and delivery activities.

2. A detailed description and the progress time of each work activity listed in Subsection 108.03.2(A) measured by working day or calendar day, as appropriate.
3. A detailed description of the ASC, including holidays, planned workdays per week, number of shifts per day, hours per shift, size of work crews and resources used.
4. The Contractor's anticipated number of days during each month that weather will affect operations.

Submit an updated ASC and WN every month in which work is performed, one week before the end of the project's monthly estimate cycle. The ASC and WN should show current progress and all revisions or modifications that reflect changes in the method or manner of the work, specification changes, extra work, changes in duration, changes in shifts, work crews or resources. If the work is not proceeding consistently with the Contractor's most recently reviewed ASC and WN, the Project Manager may require that the Contractor submit 2 copies of an updated ASC and WN that accurately reflect the Contractor's progress, resource allocation for the project, and revised schedule. Submit the updated ASC and WN within 1 working day of the Project Manager's request. Ensure that the WN and ASC submitted meet the above requirements and accurately reflect the work progress. The Project Manager may suspend work under Subsection 105.01(A) if the WN and ASC do not accurately reflect the actual progress of the work; the suspension may continue until accurate WN and ASC are submitted.

Any delay in beginning or prosecuting work that is caused by the Contractor's failure to provide an ASC or WN when and as required is solely the responsibility of the Contractor, and is not an excusable delay.

Prosecute the work with the resources required to complete the contract within the time shown in the Contractor's updated ASC and WN.

The Department may withhold 10% of each monthly progress estimate for failure to submit an original or updated ASC or WN on time and in the manner required. Payment withheld for violation of the schedule requirements will be included in the next progress estimate following the Contractor's submission of the required ASC and WN. The Project Manager's review does not attest to the validity of the ASC or WN.

108.03.3 CPM Scheduling

Develop, maintain and provide a detailed time-scaled computer generated progress schedule using the critical path method that is compatible with Primavera P6 or other Primavera product which generates a .xer file type.

Schedule all contract work including that of subcontractors, vendors and suppliers. The initial schedule must show that the work will be completed in the time frame specified in the contract.

Prepare the initial CPM schedule as an Activity On Node (AON) or Precedence Diagramming Method (PDM).

The Project Manager may withhold 10% of each monthly progress estimate for failure to submit an original or updated CPM schedule on time and in the manner required. Payment withheld for violation of the schedule requirements will be included in the next progress estimate following the Contractor's submission of the required CPM schedule. The Project Manager's approval of the CPM schedule does not attest to the validity of the Contractor's assumptions, logic constraints, dependency relationships, resource allocations, labor and equipment or other schedule aspects.

A. **Preparation and Submission of Schedule.** Prepare an initial schedule and submit an electronic file compatible with Primavera P6 or other Primavera product which generates

a .xer file type. Once an accepted baseline schedule is submitted, furnish one ANSI D (24-inch by 36-inch) paper copy. Submit all items listed in Subsection 108.03.3(C).

Attend a meeting scheduled by the Project Manager within 10 calendar days of the Project Manager's receipt of the CPM schedule to review, correct or adjust the CPM schedule if required.

Make all schedule adjustments and corrections discussed at the meeting and re-submit a disk with the revised schedule within 15 calendar days after the meeting. Plan and execute the work to meet project milestones and completion dates.

B. Initial Schedule Requirements. Include the requirements listed in Subsection 108.03.3(C) and the following:

1. Total float sort; responsibility/early start sort; area/early start sort;
2. 60-day look ahead bar charts by early start; and
3. Logic diagram having a maximum 100 activities for each ANSI D (24-inch by 36-inch) size sheet. Ensure each sheet includes project number, page number, title, match data or diagram correlation and key to identify all components used in the diagram.

C. Schedule Requirements. Submit schedules that include:

1. Activity identification numbers;
2. Project milestones;
3. Activity descriptions;
4. Appropriate relationships;
5. Activity durations appropriate for the work. Submit activity manpower, equipment, unit quantities and production rates to the Project Manager for review;
6. Procurement of permits;
7. Material procurement separated into at least two activities, fabrication and delivery. Include time for delivering all submittals and Department review of working drawing submittals as separate items in the schedule logic for all items requiring submittal, review and approval;
8. Activities coded to reflect the party performing each activity (only one party performs each activity) including subcontractors and suppliers and the area/location of each activity;
9. Work days per week, holidays, number of shifts per day, hours per shift and major equipment to be used;
10. Phasing (staging) details, if the work has phasing or is to be performed in phases;
11. Written narrative describing the anticipated work in an orderly sequence of the construction phasing, anticipated problems, and anticipated project completion dates, in a detailed description. Narratives that are a listing of the work will not be acceptable. Include written narratives with each submission;
12. Calendars, including weekends, holidays, or other Contractor non-work periods. All activities must be identified by entry of their appropriate calendar; and
13. The Contractor's anticipated number of days during each month that weather will affect operations.

Use only contractual constraints in the schedule logic. Do not use any other schedule constraints such as activity mandatory start and finish dates or mandatory zero float constraints.

Float is defined as the amount of time between when an activity "can start" and when it "must start". Total float is float shared with all other activities and is defined as the amount of time an activity can be delayed without affecting the overall time of project completion. Float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of float until it is depleted.

The critical path is defined as the longest continuous sequence of activities through the network schedule that establishes the minimum overall project duration. The submitted activity sequence and durations must generate a CPM schedule having a critical path. Keep multiple critical paths and near-critical paths to a minimum. Describe multiple critical paths and near-critical paths with thorough and reasonable justification in the written narrative.

Show the sequence and interdependence of all activities required for the complete performance of all items of work under this contract, including acquiring all the environmental permits. Show all network "dummies" on the diagram.

The Department reserves the right to limit the number of activities on the schedule to between 50 and 1000 activities.

Describe the activities so that the work is identifiable and the progress on each activity is measurable.

D. Schedule Updates and Progress Payments. Schedule and attend monthly project progress meetings to compare the schedule to the actual finish dates of completed activities, the remaining duration of uncompleted activities and the proposed logic and/or time estimate revisions. Provide the status of activities at these meetings, and the schedule updates based on this information, once it has been verified.

Each month of the project, one week before the end of the project's monthly estimate cycle, submit an electronic file using Primavera P6 or other Primavera product which generates a .xer file type containing:

1. Total float sort;

2. A narrative report describing the critical path, logic revisions or modifications to the schedule, including, but not limited to: changes in the method or manner of the work, changes in specifications, extra work, changes in duration, etc.; and

3. Any revised activity on node diagrams for the following:

- **a.** Delay in the completion of any critical activity;
- **b.** Actual prosecution of the work that is different than that represented on the CPM schedule; and
- **c.** The addition, deletion, or revision of activities required by contract modification or logic revisions.

The contract time will be adjusted only as specified in the contract. Furnish documentation to support requests for time extensions for milestone dates or the contract completion date.

108.03.4 Method of Measurement

CPM schedule is measured by the lump sum. Other scheduling requirements are not measured for payment.

108.03.5 Basis of Payment

Payment for all costs associated with CPM scheduling is included in the lump sum contract unit price for CPM scheduling. Payment for all costs associated with other scheduling requirements is included in the payment for other items of work.

Failure to submit a CPM schedule update to the Project Manager within 2 calendar days of its due date will result in a 10% deduct of the CPM schedule bid item for each update that is late.

Failure to submit a revised CPM schedule as specified may also result in withholding 10% of each monthly progress estimate. Payment withheld for violation of the schedule requirements will be included in the next progress estimate following the Contractor's submission of the required schedule.

Partial payments for CPM scheduling will be made based on the lump sum contract unit price as follows:

1. 50% when the initial schedule is finalized.
2. 75% when the overall project is 50% complete.
3. 100% when all updates have been submitted.

108.04 LIMITATION OF OPERATIONS

Conduct the work to minimize interfering with traffic and work already started. Finish a section of roadway before starting work on any additional sections if it is essential to public convenience.

108.05 CHARACTER OF WORKERS

Provide workers with the skill and experience to perform the work.

Remove any person employed who does not perform work in a proper and skillful manner or who is intemperate, disorderly, or verbally abusive. Employees may not return to the project or communicate with Department personnel without the written approval of the Project Manager.

Failure to remove the employee(s) or failure to furnish suitable and sufficient personnel to perform the work may result in a written notice to suspend the work.

108.06 METHODS AND EQUIPMENT

Use equipment of the size and mechanical condition to perform and produce the specified quality of work. Do not use equipment that damages the roadway, adjacent property, or other highways.

Operate all equipment with adequate lighting at night.

Do not use methods or equipment other than as specified unless requested in writing and authorized by the Project Manager. Include in the request a full description of the proposed methods and equipment to be used and the reasons for the change. Produce work meeting the contract requirements.

Discontinue use of alternate methods or equipment if the Project Manager determines that the work does not meet contract requirements. Remove and replace or repair deficient work with work of specified quality at Contractor expense. No change will be made regarding payment for authorizing a change in methods or equipment.

108.07 DETERMINATION OF COMPENSATION AND EXTENSION OF CONTRACT TIME FOR EXCUSABLE, NONCOMPENSABLE, AND COMPENSABLE DELAYS

Time allowed for completion of the contract is determined by the Completion Date, Calendar Day or Working Day provision in the contract.

108.07.1 Completion Date Contracts

Complete all work by the completion date specified in the contract. Begin work on the effective date stated in the Notice to Proceed.

The completion date will be extended for the following:

A. Extensions according to the calendar days added under Subsection 108.07.5; or
B. Suspensions of work authorized after the contract is awarded; or
C. Delays in the award of the contract.

The new completion date is determined by adding the calendar days added under Subsection 108.07.5; the number of calendar days during authorized suspensions; or the number of calendar days the award was delayed past the posted award date to the specified completion date.

The actual completion date is the date the Project Manager approves the Contractor's Certificate of Work Complete form under Subsection 105.17.2.

Contract time overruns for assessment of liquidated damages will be computed as the number of calendar days elapsing between the contract completion date and the actual completion date.

108.07.2 Calendar Day Contracts

Complete all work within the number of calendar days specified in the contract.

A calendar day is defined in Subsection 101.03. Begin work on the effective date stated in the Notice to Proceed.

Calendar days will be added for extensions added under Subsection 108.07.5.

Work on no work days will be considered a chargeable day and assessed against the contract time unless the work is an exempt work item defined in Subsection 101.03.

Contract time assessment will cease when the Project Manager approves the Contractor's Certificate of Work Complete form under Subsection 105.17.2.

Contract time overruns for assessment of liquidated damages will be computed as the number of calendar days the contract is not complete beyond the contract time specified.

108.07.3 Working Day Contracts

Complete all work within the number of working days specified in the contract.

A working day is defined in Subsection 101.03. Begin work on the effective date stated in the Notice to Proceed.

Working days will be assessed against the contract time except for days when work cannot be performed due to inclement weather. Days will not be assessed if inclement weather or the aftermath of inclement weather prevents the contractor from working at least six hours in a day. Inclement weather will not be considered when assessing time if the contractor is not actively performing work or is not scheduled to work.

Work on no work days will considered a chargeable day and assessed against the contract time unless the work is an exempt work item defined in Subsection 101.03.

A working day will not be assessed against the contract for work performed up until 12:00 noon on Friday prior to Memorial Day, Labor Day or Independence Day (July 4th).

Chargeable or non-chargeable working days will be determined daily by the Project Manager. Except during the winter shutdown, the Project Manager will furnish a weekly report every Monday showing the number of working days:

A. Charged for the preceding week;
B. Previously charged;
C. Specified for contract completion;
D. Approved time extensions; and
E. Remaining to complete the contract.

During winter shutdown, the Project Manager will furnish a report showing the information listed above for any week that the Contractor has chargeable days.

Submit a written protest to the Project Manager within the timeframe shown on the weekly report for any alleged discrepancies in the time assessed. Failure to file a protest is conclusive evidence that the time assessed is accepted as correct.

Contract time assessment will cease when the Project Manager approves the Contractor's Certificate of Work Complete form under Subsection 105.17.2.

Contract time overruns for assessment of liquidated damages will be computed as the number of working days assessed beyond the contract time specified.

108.07.4 Delays

The following delays will be considered for extensions of contract time:

A. Excusable or Non-compensable Delay. Contract time allowed for the performance of the work may be extended for delays caused by acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays not caused by the Contractor's fault or negligence. Provide project and site specific documentation to support the delay cause.

B. Compensable Delay. Contract time may be extended for delays caused by the Department under Subsection 108.07.6.

108.07.5 Extensions

Provide a written request detailing the reasons for requesting a time extension. A plea that insufficient contract time was specified is not a valid reason for a time extension. If the Department finds that the work was delayed because of conditions beyond the control of and not the fault of the Contractor, the contract time will be extended in the amount justified. The extended time for completion is in full force and effect as though it were the original time for completion.

Time extension requests must be made within 10 business days of the alleged delay. The time extension request must be accompanied with a written narrative and an updated schedule.

The contract time as awarded is based on the estimated quantities as defined in Subsection 102.05. No decrease in contract time will be made for any decrease in a contract item. The contract time will be increased based on the quantity and difficulty of added work and how it impacts the critical activities of the Contractor's operation as shown on the most current work schedule as required under Subsection 108.03.

The time extension will be to the nearest whole day.

No additional contract time will be allowed for:

A. Increases in percentages of asphalt in plant mix materials.

B. The addition of anti-stripping additives to bituminous materials.

C. The addition of or for increases in hydrated lime or mineral fillers to plant mix materials.

D. Increases in traffic control devices.

E. Delays for slow delivery of materials from the supplier or fabricator.

F. Material deliveries delayed for reasons of late ordering, financial considerations, or other foreseeable and preventable causes within the Contractor's control.

Delays in material deliveries for unusual market condition caused by an industry-wide strike, national disaster, or an area-wide shortage beyond the Contractor's control will be considered as a basis for granting additional time.

Submit written documentation substantiating the reasons for the late delivery or non-availability of materials. The documentation must be from the original supplier and document the dates the material was ordered by the Contractor and the reason for late delivery or non-availability of the material. Include a statement elaborating on the efforts to obtain materials from alternate suppliers.

108.07.6 Delay Compensation

Notify the Project Manager of the request for delay consideration. Keep daily records of all non-salaried labor, material costs, and equipment expenses for all operations affected by the delay.

Maintain a daily record of each operation affected by the delay. Identify the location, by stations, of the affected operations. Each Monday, prepare and submit written reports to the Project Manager containing the following information:

1. Number of days behind schedule;

2. A summation of all operations that have been delayed, or will be delayed;

3. An explanation for compensable delays and how the Department's act or omission delayed each operation;
4. An estimate of the time required to complete the project; and
5. An itemization of all extra costs incurred, including:
   a) Relating the extra costs to the delay and document how they are calculated and measured;
   b) Identifying all non-salaried project employees for whom costs are being compiled; and
   c) Summarizing the time charges for equipment, identified by manufacturer's number for which costs are compiled.

The Project Manager will maintain daily records of the operations by stations. At the end of each week, request a copy of the Project Manager's daily records, in writing. Compare the two records and provide a written summation of the comparison of the detailed reports to the Project Manager within 10 calendar days of receipt of the Project Manager's daily records. Identify all disagreements between specific records.

Failure to review the Project Manager's records or to report disagreements between the records is considered the Contractor's acceptance of the Project Manager's records as accurate.

Submit a written report to the Project Manager within 30 calendar days of completion of work allegedly delayed. All costs shown in the report submitted must be certified by a certified public accountant (CPA) and include the following:

1. A description of the delayed operations and the documentation and explanation of the reason for the delay, including all reports prepared for the Contractor by consultants, if used; and
2. An item-by-item measurement and explanation of extra costs requested for reimbursement due to the delay.

The Project Manager will provide a written decision to the Contractor within 14 calendar days of receiving the submittal.

In the case of compensable delays, if it is determined that the Department is responsible for delays to the Contractor's operations, the Project Manager's written decision will reflect the nature and extent of any equitable adjustment to the contract as specified in Subsection 109.04.3.

108.08 FAILURE TO COMPLETE ON TIME

If the contract time is exceeded, including approved adjustments, a daily charge will be made against the contract until final acceptance under Subsection 105.17.2. This daily charge, determined from Table 108-2, will be deducted from any money due the Contractor. This deduction is for liquidated damages for added Department contract administration costs, etc. for failure to complete the work on time.

TABLE 108-2
SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount		Daily Charge
From More Than	**To and Including**	**Working Day or Calendar Day**
$ 0	$ 100,000	$ 827
$100,000	$ 500,000	$ 1,251
$ 500,000	$ 1,000,000	$ 1,532
$ 1,000,000	$ 2,000,000	$ 1,993
$ 2,000,000	$ 5,000,000	$ 2,756
$ 5,000,000	$ 10,000,000	$ 4,242
$ 10,000,000	—	$ 5,428

Permitting the Contractor to continue and complete the work after the specified contract completion time or approved extensions granted, does not waive the Department's rights under the contract.

If the Contractor disputes the liquidated damages on the approved "Contractor's Certificate of Work Complete" form, the CAS Bureau will send a final notification in writing to the Contractor of the number of days to be assessed and the dollar amount of proposed liquidated damages. Submit any objections of the assessment to the CAS Bureau in writing within 30 calendar days of receipt of the Department's notification. Include with the objection the justification and all information to support an adjustment to the assessment. The Department will review the Contractor's information and perform a final analysis.

The Commission will review all liquidated damages and any disputes. The CAS Bureau will submit the Contractor's information and the Department's recommendation to the Commission. A copy of the Department's recommendation will be sent to the Contractor within 45 calendar days of receipt of the objections. The Contractor must state in writing within 14 calendar days of receipt of the Department's recommendation if an appearance before the Commission is requested. If an appearance is requested, the Department will notify the Contractor in writing of the date the Commission will review the liquidated damages recommendation. The Commission will not receive or hear new information at the meeting not already furnished in the Contractor's original response.

108.09 DEFAULT OF CONTRACTOR

The Contractor will be in default if it:

A. Fails to begin the work under the contract within the time specified in the Notice to Proceed.
B. Fails to perform the work with sufficient resources to promptly complete the work.
C. Fails to perform the work in accordance with the contract requirements or refuses to remove and replace rejected materials or unacceptable work.
D. Discontinues the prosecution of the work.
E. Fails to resume work that has been discontinued within a reasonable time after notice to resume has been given.
F. Becomes insolvent or is declared bankrupt or commits an act of bankruptcy or insolvency.
G. Allows a final judgment to remain unsatisfied for a period of 10 calendar days.
H. Makes an assignment for the benefit of creditors.
I. Fails to comply with contract requirements regarding minimum wage payments, EEO requirements, or any state or federally mandated affirmative action requirements.

J. For any other cause, fails to carry on the work in an acceptable manner.

The Engineer will give written notice to the Contractor and surety of such delay, neglect, or default. Failure to correct the delay, neglect, or default within 10 calendar days after the Engineer's written notice gives the Department full authority without violating the contract to take over prosecution of the work from the Contractor. The Department may appropriate or use any or all materials and equipment at the project site that is suitable and acceptable and enter into an agreement for completing the contract. The Department may use any methods determined necessary to complete the contract.

All costs and charges incurred by the Department, including the cost of completing the work under the contract, will be deducted from any monies due or that may become due the Contractor. If the expense exceeds the sum that would have been payable under the contract, then the Contractor and the surety are liable and must pay to the Department the amount of such excess.

108.10 TERMINATION FOR PUBLIC CONVENIENCE

108.10.1 General

The Department may terminate the contract in whole or part, whenever:

A. Work cannot proceed because of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.

B. Work cannot proceed because of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor.

C. It is determined that termination is in the best interests of the Department.

108.10.2 Payment

Payment will be made for the actual work performed at the contract unit prices for completed items of work when the contract is terminated under Subsection 108.10.1.

Payment will be made for materials delivered or stockpiled, or work performed, that comply with the contract's specifications or that have been inspected, tested, and accepted for use. Payment will only be made for materials that have been properly stored and maintained until they are delivered to the Department. An equitable adjustment will be made under Subsection 109.05 for partially completed items of work and disposal of materials.

Submit the termination costs to the Project Manager within 60 calendar days of the date of the notice of Termination for Public Convenience, under Subsection 108.10.1. Provide sufficient detail and make all project records available so the Engineer can determine the basis and amount of the termination costs. If a basis cannot be agreed upon, then an adjustment will be made in such amount as the Engineer may determine to be fair and equitable. Follow the requirements of Subsection 105.16 if the Engineer's equitable adjustment is disputed.

108.10.3 Responsibility of the Contractor and Surety

Termination of a contract does not relieve the Contractor of any contractual responsibilities for the work nor the Surety or Sureties of the obligations under the contract bond for the work performed.

SECTION 109

MEASUREMENT AND PAYMENT

109.01 MEASUREMENT OF QUANTITIES

Work completed under the contract will be measured using the United States standard measure or the metric system when specified.

Where the standard measure is given in the English system, approximate metric equivalents are shown in parentheses. No guarantee is provided, explicit or implicit, that the units are exact conversions. Work will be accepted on the basis of measures in the contract. Specified metric tolerances apply to metric contracts.

The method of measurement and computations used in determining quantities of material furnished and work performed are those methods recognized as conforming to sound engineering practice.

A station, when used as a term of measurement, is 100 feet or 100 meters.

Longitudinal and transverse measurements for surface area computations will be made horizontally using the neat plan dimensions. No deductions will be made for individual fixtures having an area of 9 square feet (0.8 m^2) or less.

Structures are measured using neat lines shown on the plans or as altered to fit field conditions.

Items that are measured by the foot (m, mm), such as pipe culverts, guardrail, underdrains, and the like, are measured parallel to the structure base or foundation.

Computing excavation volumes will be by the average end area method or by alternate methods involving three-dimensional measurements (delta surface).

The term “gauge”, when used for measuring plates, is the U.S. Standard Gauge. Galvanized sheets used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing are specified and measured as sheet thickness in inches (mm).

When the term “gauge” refers to measuring wire, it is the U.S. Steel Wire Gauge.

The term “ton” is the short ton consisting of 2,000 pounds (908 kg).

Measure or proportion weighed materials on certified scales at the designated locations.

Material shipped by rail may be accepted using the car weight provided that only the actual weight of material is paid for. Car weights are not acceptable for material that will be processed in mixing plants.

Obtain tare weights daily on haul vehicles, or as directed. Clearly mark each individual vehicle with a legible identification mark.

Haul materials measured by volume in approved hauling vehicles and measure materials at the point of delivery.

If approved, material specified to be measured by the ton may be weighed and converted to cubic yards (m^3). The Project Manager will determine the conversion factors from weight to volume subject to Contractor concurrence before using this method of measurement.

Net certified scale weights, based on certified volumes in the case of rail shipments, will be the basis of measurement, corrected for loss of bituminous material from the car or distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights or volume, subject to correction for loss or foaming, may be used for computing quantities.

Lump sum payment is complete payment for the work item described in the contract.

When a complete structure or structural unit (i.e. lump sum work) is specified as the unit of measurement, the unit includes all necessary fittings and accessories.

Rented equipment is measured in hours of actual working time and necessary equipment travel time within the project limits. Travel time and transportation to the project is measured for special equipment, ordered by the Project Manager for force account work.

When standard manufactured items are specified, such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., this identification is the nominal weight or dimension. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Other quantities are computed in the contract units using established engineering principles, without consideration of local rules or customs.

109.01.1 Weighing Equipment

Furnish accurate weigh equipment for material specified to be proportioned or measured for payment by weight. The weigh equipment must indicate the weight to within the smaller of:

1. Tolerances from correct weight adopted by the Montana Bureau of Weights and Measures; or
2. One-half percent of the correct weight.

Use weigh systems tested and certified by the Bureau of Weights and Measures before each use and after each scale set-up or when directed. The Project Manager will accept reports from a Montana certified scale service stating compliance with the applicable tolerances in lieu of State certification. Seal the weigh system after adjustment and testing. Evidence of tampering or scale adjustment is cause to suspend use of the scale until it is re-tested and certified.

All materials received after the last test and certification will be reduced by the percent of error in excess of the specified tolerances if the weigh system is found to overweigh (indicate more than the correct weight).

No adjustment is made for systems found to under-weigh (indicate less than the correct weight).

Repair and re-certify weigh systems under-weighing or over-weighing outside the specified accuracy limits before use.

Follow the weigh equipment manufacturer's procedures or the National Bureau of Standards Handbook No. 44 procedures for weigh system testing, witnessed by the Project Manager. Provide all equipment, tools, and labor necessary to perform the test. Test permanent scales at least annually.

The cost of furnishing, testing, operating and maintaining weigh equipment is incidental to and included in the payment for the work.

109.02 SCOPE OF PAYMENT

Receive and accept the specified compensation as full payment for furnishing all materials, performing all work under the contract in a complete and acceptable manner and for all risk, loss, damage, or expense arising from the work, subject to Subsection 107.21.

If the Basis of Payment clause for unit price in the contract requires that the unit price be full compensation for work or material essential to the item, this same work or material is not measured or paid for under any other pay item in the contract.

The payment of any current or final estimate or of any unpaid contract funds does not prejudice or affect the Contractor's obligation to submit for final acceptance a completed improvement meeting the contract specifications.

In accordance with the requirements of Section 15-50-101 MCA, for contracts exceeding $5,000, including approved modifications, the Department will withhold 1% of the dollar amount of all Contractor payments. All payments by a Prime Contractor to a Subcontractor are also

subject to this 1% gross receipts fee. The Prime Contractor must withhold 1% of all payments made to subcontractors.

109.02.1 Pay Unit Rounding

The Project Manager will determine the quantities of work performed for each pay estimate as outlined in Subsection 109.01. All quantity calculations will be rounded for payment as outlined in Table 109-1.

TABLE 109-1
ROUNDING CRITERIA

Pay Unit	Rounding
Foot (m)	1 (0.1)
Station	0.01
Mile (km)	0.01 (0.01)
Course Foot (km)	10 (0.01)
Square Foot (m^2)	1 (0.1)
Square Yard (m^2)	0.1 (0.1)
Acre (ha)	0.01 (0.001)
Cubic Yard (m^3)	0.01 (0.01)
Gallon (L)	1 (1)
Pound (kg)	1 (1)
Ton (MT)	0.001 (0.001)
Hour	0.1
Lump Sum	0.001
Each	1
Unit	1

All dollars will be rounded on progress and final estimates to $0.01.

109.03 COMPENSATION FOR ALTERED QUANTITIES

Accept payment for work quantities that vary from the contract quantities at the original contract unit prices. No allowance, except under Subsections 104.02 and 108.10, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense and subsequent loss of expected reimbursements or from any other cause.

Only those quantities of materials actually incorporated into the final work and accepted will be paid for.

109.04 PAYMENT FOR EXTRA WORK

109.04.1 Unit Price or Agreed Price

Extra work performed under Subsections 104.02 and 104.03 is paid for at the unit price or price agreed upon and specified in the change order.

Force account basis under Subsection 109.04.2 will be used if a change order with an agreed price is not signed by the Contractor.

109.04.2 Force Account Basis

Approved extra work paid for on a force account basis will be accounted for daily. The daily report sheets are the true record of extra work. The payments below are full compensation and include profit and overhead. No additional profit will be added. Extra work on a force account basis ordered by the Project Manager in writing, under Section 104, is paid for as follows:

A. Labor. The Contractor is paid the wage rates for all labor and foremen assigned exclusively to performing the extra work for the total hours worked plus at least 80% of the total. The 80% surcharge may be increased if certified documentation is submitted showing that a higher percentage surcharge is needed to cover labor costs. The wage rates used for the above computation include travel pay, if applicable, but must not include fringe benefits, whether or not paid directly to the employees. Payment as described above is full compensation for all labor related expenses incurred including but not limited to premiums for worker's compensation insurance, public liability and property damage insurance, social security, unemployment compensation, health and welfare expenses, and other expenses imposed by federal or state laws or both.

Submit evidence of the actual wage rates paid. Only labor on certified payrolls is eligible. The rate paid will be that which is listed on the certified payroll.

B. Materials. The Contractor will receive the actual delivered cost of all materials used based on invoices, plus 15%. The quantity of material used must be documented.

C. Equipment. The Contractor will receive the rental rate or invoice price, where applicable, for machinery or special equipment (other than small tools) used to perform the work plus 10%. Rental rates are calculated using the current issue of the Departments Equipment Rental Rate Guidelines. Rates and allowances for standby time, outside rented equipment, owner-operated equipment, and moving of equipment is determined under the Equipment Rate Guidelines.

D. Bond. The actual cost chargeable to force account work of premiums for the performance bond are paid. No surcharge is allowed for the performance bond. No payment will be made for additional performance bond premiums if the evidence is not submitted within 30 calendar days of completion of the force account work. Furnish evidence of the rate paid for the bond.

E. Miscellaneous. Accept the compensation provided for under Subsection 109.09.2 as full payment for extra work done.

F. Statements. Submit all statements for the extra work done on a force account basis on Department forms. Attach the original extra work order, material invoices and freight bills.

The Inspector will compile and forward to the Project Manager, at the end of each day, a daily record of extra work done on a force account basis. The Project Manager will forward the information to the Contractor.

G. Subcontracting. Extra work performed on a force account basis by a Subcontractor under an extra work order will include the percentage allowed in Table 109-2 for administrative expenses. This administrative allowance only applies to charges for labor and materials. The allowance is applied to all charges and added percentages specified in Subsections 109.04.2(A), (B), and (D). Bid items in the original contract are not eligible for this administrative allowance.

TABLE 109-2
SUBCONTRACTING - ADMINISTRATIVE ALLOWANCES

Extra Work - Subcontractor	Administrative Allowance
$0 to $1,000	10%
$1,000.01 to $10,000	$100 plus 5% of excess over $1,000
Over $10,000.01	$550 plus 3% of excess over $10,000

Approval of this additional percentage is made after the Contractor furnishes receipted invoices.

Administrative expenses are not paid for on a force account basis above the amount allowed the Prime Contractor and Subcontractor if the work is done by a sub Subcontractor.

109.04.3 Equitable Adjustment

The equitable adjustment provided for in Subsection 105.16 is determined as follows:

A. If the parties agree, the price is determined using unit prices or other agreed upon prices.

B. If the parties cannot agree, the price is determined by the Project Manager using unit prices or other means to establish cost.

The following limitations apply:

A. The rental rates must be actual cost not to exceed the rates established in Subsection 109.04.2 and in effect at the time the work is performed.

B. No claim for loss of anticipated profits on deleted or uncompleted work or consequential damages of any kind is allowed.

109.05 DELETED OR TERMINATED WORK

The Engineer may delete work by change order under Subsection 104.02.4 or may terminate the contract in whole or part, under Subsection 108.10. When the contract is terminated in part, the partial termination is treated as a deletion change order for payment under this section. Payment for completed items is at the contract unit prices.

When any item is deleted, in whole or in part, by change order or when the contract is terminated, in whole or in part, payment for deleted or terminated work is made as follows:

1. Payment will be made for the actual number of units of work completed and meeting all contract requirements at the contract unit prices unless the Project Manager determines the contract unit prices are inappropriate for the work actually performed. When that determination is made, payment for work performed will be as mutually agreed. If the parties cannot agree, the Project Manager will determine the amount or the equitable adjustment under Subsection 109.04.3.

2. Payment for partially completed lump sum items that meet contract requirements will be as mutually agreed. If the parties cannot agree, the Project Manager will determine the amount of the equitable adjustment under Subsection 109.04.3.

3. The Department will pay as part of the equitable adjustment those direct costs necessarily and actually incurred in anticipation of performing the work that has been deleted or terminated. Costs previously paid for by the contract unit prices for completed units of work are excluded.

4. The total payment for any one item in the case of a deletion or partial termination cannot exceed the contract unit price as modified by approved change orders less the estimated cost (including overhead and profit) to complete the work and less any amount paid to the Contractor for the item.

5. The total payment where the contract is terminated will not exceed the total contract price, as modified by approved change orders less those amounts paid before the effective date of termination.

No claim for damages of any kind or for loss of anticipated profits on deleted or terminated work is allowed because of the termination or change order.

Contract time will be adjusted as the parties agree. If the parties cannot agree, the Project Manager will determine the equitable adjustment for contract time.

Materials to be permanently incorporated into the work and ordered before the date the work was terminated under Subsection 108.10 or as deleted under Subsection 104.02, will either be purchased by the Department at the actual cost and become Department property, or the Contractor will be reimbursed for the actual cost of returning the materials to the suppliers.

109.06 PARTIAL PAYMENTS

Partial payments will be made once each month following the effective date on the Notice to Proceed, based on estimates of the value of the work performed and materials complete in place under the contract, including materials delivered under Subsection 109.07. No payments will be made for work performed or materials produced without the required permits and authorizations in place as required under Subsection 107.02.

The Department reserves the right to withhold all or part of any partial payments earned under the contract until all special fuel users tax payments due or owing to the State of Montana under Section 15-70-302 MCA or other statutory taxes are paid in full.

If the Contractor becomes delinquent in any monetary contractual obligations (e.g. prompt payment upon satisfactory completion of work, payment to owners of materials sources, etc.), the Department may withhold unpaid contract funds from each monthly estimate thereafter until the delinquency is resolved or the amount of the delinquency has been withheld. The amount of the withholding will not exceed the amount of known delinquency but, depending on the amount of the delinquency and the amount of the monthly estimate, may be in the full amount of that monthly estimate. In the event the delinquency involves nonpayment to a Subcontractor or supplier, the Department also may order forfeiture of the contract bond, or take action under Subsection 108.09.

The Department will release the withheld amounts to the Contractor upon the Engineer's receipt of a notarized statement from the entity to whom the delinquency was owed stating that the delinquency has been satisfied in full or, in the event the entity has received partial payment of the delinquency, that portion of the withheld amount may be released.

If the contract extends beyond the contract completion time, the sum specified in Table 108-2 will be deducted from any money due the Contractor.

109.06.1 Billing Cycle

In accordance with Section 28-2-2115 MCA, this contract provides that the Department will submit payment estimates in billing cycles other than once a month, when deemed necessary. Do not submit a request for routine payment and requests for payment of any item does not initiate any period for payment. Requests may be submitted for stockpiled material payments in accordance with Subsection 109.07.

In accordance with federal regulations, the Project Manager will issue estimates, usually monthly, for progress payments greater than $500 based on the documentation of approved work and the Project Manager's opinion of the percentage of completion, in accordance with specifications, of each of the project's Schedule of Items. The Department will review work performed for completeness, specification compliance, and quality assurance before it is given conditional approval for progress payment. Should work that was previously paid for any reason, such as stockpiled material under Subsection 109.07, be later found not to comply with quality

assurance or specification, such as compliance testing or any required material certification, that part of the work will be deleted from payment approval. In such case, future monthly estimates will be lessened by the reduced amount, or the Contractor will be required to repay the previously-paid amounts until the work is performed in full compliance with specification and quality assurance.

Notice of extended payment provision: this contract allows the Department to make payment within 30 calendar days after submission of estimates by the Project Manager.

The contract's final payment will not be made until:

- The Contractor has fully completed all work under the contract;
- All required documentation has been submitted to the Department's satisfaction; and
- The materials supplied and work performed has passed the Department's quality assurance testing.

Pay all subcontractors within seven days after receipt of a periodic or final payment from the Department, for the full amount due the subcontractor under the subcontract for work performed or materials provided that were included in the periodic or final payment according to the provisions of Section 28-2-2103(2)(a) MCA. A subcontract may not provide for a time longer than the law's mandated 7 days.

109.07 STOCKPILED MATERIALS

Materials delivered and stockpiled at the project site or other location approved by the Project Manager may be considered for partial payment, if the following requirements are met:

1. The requirements of Subsection 108.03 have been satisfied.
2. The material meets the contract requirements.
3. The material is a manufactured end product or a fully fabricated product. Aggregate must be produced and stockpiled to the final stage for incorporation into the specified mixture or the roadway. Riprap meeting the gradations specified in Table 701-19 for the class specified in the plans is considered a manufactured end product for this Subsection.
4. Material is stored to prevent damage and theft, without obstructing or impeding the traveling public. Department Inspectors must have access to the inventory sheets and the stockpiles at all times.
5. A written request is accompanied with an invoice(s) for all items received at least one week before the end of the monthly estimate cycle. Include the quantity for which payment is requested, the length of time the material is to be stored, the location for material stored off the project site, and sufficient detail to justify the costs. If the material is manufactured by the Contractor, include the manufacturing costs in the request.

   Submit a new request and invoice(s) to the Project Manager whenever items are added to the stockpile. Clearly identify the project number, location, designation and the entire inventory on these sheets. Keep each project's stockpiled material separated from stockpiles belonging to other projects. Only use stockpiled material for the designated project.

Steel or iron items meeting Subsection 106.09 may be stored at property owned or leased by the Contractor or approved Subcontractor if approved by the Project Manager. The property must be located in Montana and accessible to Department personnel at all times.

Payment made for material on hand does not constitute acceptance of the material.

If stored material is lost, stolen, or damaged, the material's value will be deducted from the subsequent estimate or estimates.

Payment of partial estimates for stored material, acceptance of the materials to be stored, or approval of the storage method does not relieve the Contractor's responsibility for all materials and work upon which payments have been made or the restoration of any damaged work. The

payments are not a waiver by the Department of any other contract provisions or of its rights to require fulfillment of all contract terms.

Partial payment will be made for the invoice price, or for the manufacturing costs incurred by the Contractor. Payment for stockpiled materials will not exceed the contract unit price or the amount justified to the Project Manager. When stockpiled material has been produced by crushing operations, payment will not exceed 40% of the contract unit price. Maximum payment for materials in storage will be based on quantities that will be measured for payment.

Obtain the Project Manager's written approval of off-project site storage locations for bridge prestressed beams, bridge structural steel members, concrete box structures, and other large structural items.

No payment is made for bridge deck re-surfacing materials having a manufacturer's expiration date passing before its scheduled incorporation into the work.

109.08 RESERVED

109.09 MOBILIZATION

109.09.1 General

Mobilization is the preparatory work and operations performed including, but not limited to, those necessary for:

1. The movement of personnel, equipment, supplies, and incidentals to the project site;
2. The establishment of all offices, buildings, and other facilities necessary for work on the project;
3. Premium on contract bonds;
4. Insurance for the contract;
5. Other work and operations that must be performed or costs incurred before beginning contract work;
6. Mobilization costs for subcontracted work; and
7. Submission of all forms, certifications, and documentation required by the Department to prepare the final estimate and issue a certificate of completion.

Mobilization is only to be used for these reasonably-anticipated expenses, and is not to be used either to front-load a bid in order to receive payment earlier, or to unbalance a bid.

109.09.2 Payment

The original contract amount is the total price of the contract as bid. The contract amount paid is the cumulative amount paid on progress estimates, excluding all price adjustments. Partial payments for mobilization will be made based on the lump sum contract unit price under Table 109-3. No payments will be made for mobilization until the requirements of Subsection 108.03 have been satisfied.

TABLE 109-3
MOBILIZATION PAYMENTS

Percent of Contract Amount Paid	Amount Paid (whichever is less)	
	Percent of Mobilization Bid Amount [1]	Percent of Original Contract Amount
First estimate after Notice to Proceed	99	1
5	25	3
10	50	6
25	60	8
50	90	10
70 or Conditional Final Acceptance, whichever occurs first	99	
Final Estimate	100	

Note: 1. This percentage is the cumulative amount paid to that point, not the amount paid on the progress estimate.

Payment at the contract unit price is full compensation for all necessary resources to complete the item of work under the contract.

109.09.3 Payment (SMP Contracts)

An exception to Subsection 109.09.2 is state maintenance stockpile contracts (SMP contracts). Mobilization will be paid for based on the percentage each stockpile site quantity bears in relation to the entire contract quantity, determined by the Department. The amount established as payment for mobilization for each site will be paid for in its entirety with the first estimate for each site.

109.10 OVERPAYMENTS

Overpayments on progress estimates will be deducted from subsequent progress estimate payments. If there are no subsequent progress estimate payments to be made, or the amounts to be paid are less than the overpayment, the Department may:

1. Notify the Contractor of the overpayment. The Contractor has 30 calendar days from the date of receipt of notification of overpayment to repay the money owed. If the money owed is not received by the Department before the 30-day period expires, interest will be charged on the overpayment beginning with the date of receipt of notification of overpayment. The interest rate charged will be the average Short Term Investment Pool (STIP) rate, determined by the Montana State Board of Investments, for the period in which the overpayment is not repaid.

   The Contractor may be barred from bidding on Department projects until the money that is owed has been received.
2. The Department may deduct the amount of overpayment and accrued interest from the progress estimate payment of any contract with the Department.

109.11 FUEL PRICE ADJUSTMENT

Notify the Project Manager in writing by the Notice to Proceed date or at the pre-construction conference, whichever comes first, of intent to participate in fuel price adjustment. Once the provision is invoked, it will not be reversed. Submit a list of contract items, according to Table 109-4, that are requested to be subject to fuel price adjustment. Submit the list to the Project Manager for approval by the Pre-construction Conference, using form CSB109_11.

TABLE 109-4
ITEMS SUBJECT TO FUEL PRICE ADJUSTMENT

Original Contract Amount	Maximum Number of Items
$0 to $8,000,000	10
$8,000,001 to $15,000,000	15
Greater than $15,000,000	20

When required by the Project Manager, provide actual diesel fuel, propane fuel and gasoline fuel costs along with the calculations used to determine the costs for the respective contract items. The accumulated diesel fuel, propane fuel and gasoline fuel costs may not exceed 20% of the contract unit price without additional justification acceptable to the Project Manager. Items measured on a lump sum basis will not be eligible for fuel price adjustment. No fuel price adjustment will be made for stockpiled materials.

Adjustments will be calculated using the increase or decrease between the base price and the monthly average price at the time the contract items are added to the progress estimate. The base price for the contract will be the average of the high and low price for the 5 business days before the bid opening. The base price for propane fuel will be the base price for diesel fuel divided by the difference in BTU/hr. for each fuel, or 1.5455 BTU/hr. The monthly average price will be the average of the high and low prices on Wednesday of each week in the adjustment period taken from Platt's Oilgram Price Report, or other fuel price report determined by the Department for unleaded gasoline and ultra-low sulfur diesel fuel. The average price for propane fuel will be the average monthly price for diesel fuel divided by 1.5455. The adjustment period for fuel price is from the Wednesday of the full week before the beginning of the estimate cycle to the Wednesday of the full week prior to the next estimate cycle. If the estimate cycle extends beyond the monthly estimate period, only the fuel prices from the month in which the item is added to the estimate will be used to generate the average price.

Adjustments will be made only when the monthly average price exceeds $0.25 per gallon more or less than the base price. The adjustments will be for the amount exceeding $0.25 per gallon.

The price adjustment for each type of fuel will be the change in cost from the base price (BP) to the monthly average price (AP) that exceeds $0.25, multiplied by the quantity (Q) of the item added to the progress estimate, multiplied by the fuel cost (FC).

Adjustments will be according to the following formulas:

$$Increase = \left(\frac{AP - BP - 0.25}{BP} \right) * FC * Q$$

$$Decrease = -\left(\frac{BP - AP - 0.25}{BP} \right) * FC * Q$$

Where:

AP= Monthly Average Price BP= Base Price
FC= Fuel Cost Q= Quantity

Include only the cost of fuel associated with the approved items in FC. Do not include additional costs related to items such as servicing of equipment, lubricants, tire and ground engaging component wear, depreciation, insurance, storage, licenses, inspection, etc.

Adjustments will be calculated for each type as described without regard to the grade or amount of fuel actually used. The total of the fuel price adjustments will be added to, or subtracted from, the monthly progress estimate.