



# **VDOT Road & Bridge Specifications Division 100 Revisions**

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## **102.04**

### ***Examination of Site of Work and Proposal***

- **Major changes proposed in VDOT revisions**
- **Would constitute significant shifting of risk and responsibility**

## *102.04 (b)*

### *Subsurface Data*

- Language edited to make distinction between **data** provided in proposal that VDOT warrants as accurate and **data** provided which VDOT does not warrant as accurate.
- VDOT does not warrant any conclusions drawn from data provided by the Department.

## **102.04 (c)**

### ***Notice of Alleged Ambiguities, Conflicts, Errors or Omissions***

- **Language amended to include “Conflicts, Errors or Omissions.”**
- **Questions must be submitted on the Contractor Advertisement Bulletin Board (CABB)**
- **The bidder shall not take advantage of Ambiguities, Conflicts, Errors or Omissions.**
- ***Trinkle v. Commonwealth, 170 Va. 429, 196 S.E. 652***

## ***102.04 (d)*** ***Utilities***

- **Utilities language from 102.03 moved here.**

## 102.08

### *Disqualification of Bidder*

- **Adds disqualification reasons**
  - Insufficient financial ability
  - Key Contractor stake-holder guilty of government fraud
  - Currently debarred from working with any public body, or state or federal agency
  - Failure to respond to Department's request for clarification on above issues
  - Failure to register/participate in E-Verify
  - Making materially false statements in bid
  - Failure to previously meet SWaM or DBE requirements

## **102.13**

### ***E-Verify***

- **New section details participation requirements in E-Verify**
- **Bidder certifies it will not knowingly employ Illegal Immigrants.**

# **103.01**

## ***Consideration of Bids***

- **Changes to allow VDOT to enter into MOU with low bidder clarifying certain aspects of bid and contract.**
- **MOU must be executed by both parties.**
  - Federal oversight projects – FHWA must concur.
  - Bidder cannot be defaulted and forfeit bid bond if it refuses to sign MOU.



# 103.01

## *Consideration of Bids*

- **Use of MOU limited to:**
  - Clarification of specification or drawing
  - Establish order of priority among conflicting specifications
  - Document inclusion of pages inadvertently omitted from contract documents
  - Correct units of measure where conflict exists in bid documents
  - Document elimination of an item
  - Limit VDOT's exposure to contract overruns or potentially unbalanced bid items

# **103.10**

## ***Assignments, Transfers, or Assumptions***

- **Contractor shall not allow another entity to assume responsibility for the Contract.**
  - Bonding and Subcontracting relationships excepted.

# **104.03**

## ***Differing Site Conditions***

- **Adds requirement that notice be given “before the site is disturbed and before the affected work is performed”**
- **This will place much greater notice burden on the Contractors**
- **VDOT also proposed language that would preclude recovery for the impact of a differing site condition on unchanged work**

## 105.03

# *Authority of Personnel*

- **VDOT included new language:**

The Contractor shall not construe reviews, approvals, or inspections by the Department, the Engineer, or the Department's inspectors, agents, and employees as a waiver, release, warranty or assumption of liability on the part of the Department. **The Contractor understands and agrees that reviews, approvals, and inspections are for the Department's sole use and benefit.** Any such reviews, approvals, and inspections shall not relieve the Contractor of its contractual duties and obligations or be conclusive as to the acceptability of the Contractor's performance.

# 105.03

## *Communication & Decision Making*

- Incorporates “Process for Decision-Making” from existing amended specification.
- Applies to processing of:
  - Submittals
  - Confirmation of Verbal Instructions (COVI)
  - RFI
  - Requests for Department Action (RDA)
  - Contractor Change Requests (CCR)
  - Requests for Contractor Action (RCA)
  - Unilateral Change Orders

# 105.03

## *Communication & Decision Making*

- **The Process includes:**
  - Contractor and VDOT ACE will agree on a written field decision-making process during the Pre-Construction Conference.
  - This process will identify responsible decision-makers for the Contractor and VDOT at each level, and “cycle times” for resolution of issues.
  - There must be an agreed process to log and track requests for decisions.
  - Each person with authority and responsibility for decision-making at each level of the process must be named in the written plan.
- **Guidelines and suggested timeframes for decision making are provided in the 105.03.**

## **105.06**

### ***Subcontracting***

- **“Specialty Items” do not count against 30% minimum organic Work**
- **“Leased employees” count towards 30% minimum organic Work if:**
  - Contractor maintains supervision of the day-to-day activities of the leased employees
  - Contractor remains responsible for the quality of the work of the leased employees
  - Contractor retains all power to accept or exclude individual employees from work on the project
  - Contractor remains ultimately responsible for conformance with Contract labor regulations.

# 105.08

## *Cooperation with Utilities*

- **Clarifies handling of unknown utilities.**
  - Handled as Type I Differing Site Condition.



# **105.13 (d)**

## ***Surveying***

- **Minimum Plan Projects**

- Survey requirements which were the same as for Construction projects were removed to reduce redundancy.
- Phrase “Same as for Construction (C) Projects.” inserted instead.

## 105.19

# *Submission & Disposition of Claims*

- **Incorporates provisions of recent court cases addressing claims procedures**
- **Notice of Intent to File Claim**
  - Required for “acts of omission or commission” by VDOT
  - Required to be submitted at the time of “each and every occurrence” that may be basis of claim AND before performing any affected work
  - Must describe nature of damage or impact
  - Specifically includes Engineer’s denial of Contractor request for time extension, add’l compensation, change order, adjustment or “other request.”

# 105.19

## *Submission & Disposition of Claims*

- **Content of Claim**

- Detailed statement of facts
- Supporting documentation
- Contractual basis for claim
- Actual cost for materials, labor and equipment requested
  - Rental Rate Bluebook CANNOT be used for equipment
  - Resulting from decision in AMEC Civil by VA Supreme Court
- Copy of Notice of Intent for claim
- Certification

# 105.19

## *Submission & Disposition of Claims*

- **Non-recoverable items**
  - Lost profits or consequential damages
  - Loss of bonding capacity
  - Loss of business or bidding opportunity
  - Cost of financing or interest paid
  - Attorneys fees or consultant costs
  - Claim preparation expenses
  - Costs of litigation
  - Pre-judgment or post-judgment interest

## **106.04**

### ***Disposal Area***

- **Critical section governing disposal of unsuitable and surplus material**
- **Must be read in conjunction with “Earthwork” Specification 303.04**
- **Definition of “Rootmat” moved to Section 101**
- **Department determines disposal of valuable materials**

# **107.15**

## ***Use of SWaM Vendors***

- **Removed references to obsolete term “Minority Business Enterprises (MBE’s)”**
- **Formally defined “SWaM Vendor”**
- **SWaM Vendor’s must provide “commercially useful function.”**

# 107.16

## *Environmental Matters*

- **Storm Water**

- Contractor responsible for obtaining VPDES General Permit coverage for all support facilities not located on VDOT ROW or easements.
- Storm Water Pollution Prevention Plan (SWPPP) includes:
  - ESC Plan
  - Storm Water Management Plan (SWM)
- Contractor must develop SWPPP for all support facilities within and outside Project limits.

# 107.16

## *Environmental Matters*

- **Storm Water**
  - Inspection Procedures.
    - Inspection required at least once each 7 calendar days & within 48 hours of a storm event (.24 in rain in 24 hours)
    - Daily readings of rain gage on project



## **107.17**

# ***Construction Safety and Health Standards***

- **Removed detailed requirements, referenced OSHA, VOSH, VWAPM, and others.**

**108.03 (b)**  
***Progress Schedule Submission***

- **Category 'M' Special Provision inserted here.**

# 108.08

## *Termination*

- **Added language to allow Department to terminate for convenience.**
  - Contractor shall stop work, and not place further subcontracts.
  - Terminate existing subcontracts and settle with them.
  - Department takes ownership of all Work in progress.
  - Take action to preserve and protect the site.
- **Added language to terminate for default**
  - “Default” as defined in 108.07
  - If Termination for Default is improper, Contractor’s rights and remedies determined as if terminated for convenience.

## **109.05**

### ***Payment for Contract Changes***

- **Time extensions based on extra work granted only if it affects critical path AND extends contract completion date.**
  - Time extensions must be included in executed change order for extra work.
- **Extra work to be performed on Force Account only when neither Engineer nor Contractor can establish reliable estimate of costs for extra work.**

# 109.05

## *Payment for Contract Changes*

- **Payment for Compensable Delays**
  - Request for compensation must be submitted within 14 days after end of delay event, unless otherwise directed by the Engineer.
  - Must include Schedule Impact Analysis and supporting data
  - Specific compensable and non-compensable delays listed

# 109.05

## *Payment for Contract Changes*

- **Field Office Overhead (FOOH)**
  - Site supervision & administration costs
  - Site office costs
  - Extended site equipment not used for specific contract line items
- **FOOH cannot be recovered for:**
  - Extra work done on Force Account
  - Increased contract quantities
  - Change order work where Contractor paid for delay
- **Documented on VDOT “Itemized Project FOOH Costs” (IFPC) Form**

## 109.05

# *Payment for Contract Changes*

- **Home Office Overhead (HOOH)**
  - Recoverable for compensable delays where Contractor cannot recoup HOOH by taking on other work because it was on standby or idled by delay
  - HOOH Rate defaults to 6%
  - Calculated using Eichley formula.
- **VDOT may audit FOOH and HOOH if total sum of FOOH and HOOH exceeds 20% of original Contract Amount**