**SECTION 105**

**CONTROL OF WORK**

Standard Modifications

**105-1.01 AUTHORITY OF THE ENGINEER.** *ADD the following:*

When, in the opinion of the Engineer, conditions are such that the safety or convenience of the traveling public are adversely affected, the Contractor will be immediately notified in writing. The notice will state the defect(s), the corrective action(s) required, and the time required to complete such action(s). In no case shall this time exceed 24 hours. In the event that the Contractor fails to take the corrective action within the specified time, the Engineer reserves the right to have corrective action taken by outside forces. The cost of work by outside forces shall be deducted from any monies due or that may become due under the terms of this Contract.

* + 1. **UTILITIES.**

2. Cooperation with Utility Owners. *DELETE Item 2 and REPLACE with the following:*

The Contractor shall request locates from all the companies and organizations having utilities in the area. The Contractor shall use the Statewide Locate Call Center for utility location services.

The Contractor shall also contact DOT&PF Maintenance & Operations Mat-Su District Superintendent at (907) 745-2159 for work within State owned rights-of-ways.

There may be various utility appurtenances located within the project limits. Cooperate with these utilities and coordinate schedule of work to allow them access to the project for their adjustments or relocation.

The Contractor assumes the obligation of coordinating their activities with utility owners, and shall cooperate with utility owners to facilitate removal, adjustment, or relocation operations, avoid duplication of work, and prevent unnecessary interruption of services.

Utility owners are not required to work in more than one location at a time, and shall be allowed to complete a specific section of work prior to commencing another section. Utility owners will not normally perform adjustment or relocation of underground utilities when the ground is frozen. Utility owners may prohibit the Contractor, through the Engineer, from working near utilities when the ground is frozen.

The Matanuska-Susitna Borough has sole discretion to grant permits for utility work within the Borough rights-of-way. The State of Alaska DOT&PF has sole discretion to grant permits for utility work within State rights-of-way. The Contractor shall allow parties with utility permits to work and make excavations in the project.

If utility owners do not complete their work in a timely manner, the Engineer may direct the Contractor to temporarily relocate the utilities, to construct new utilities, or to make necessary repairs to complete the utility work.

3. Utility Work. *ADD the following:*

t. Work around those utilities not designated for relocation on the plans. Contractor shall bear the expense for any changes or additional relocation requested for Contractor convenience. Work around all utility facilities, either existing or relocated, throughout the project unless advised by the utility that the facility is abandoned in place.

u. Contractor is solely responsible for any changes in contract scheduling and contractor time, which result in the conditions in this specification not being met Schedule and coordinate the utility relocations with project construction as set forth in Section 108-1.03, Prosecution and Progress.

v. When Right of Way or Construction surveying is required prior to utility relocation, payment will be made as follows:

* 1. Subsidiary to Item 642(1), Construction Surveying, if the Contractor is required to provide the surveying as part of the Contract; and
  2. Under Item 642(3), Three Person Survey Party, if the construction or Right of Way staking required by the utility is either in advance of the Contractor's two (2) week work plan, or not already required by the Contract.

*ADD the following new Item:*

1. Utility Relocation Requirements

Provide Traffic Control Plans and all traffic control as required for utility relocations, to promote safety and efficiency of public travel through the project area and safety of utility relocation work, all to the satisfaction of the Engineer.

When scheduling utility relocation work, the Contractor shall assume a six (6) day utility relocation crew work week (Monday through Saturday) excluding holidays.

The Contractor shall schedule and coordinate road construction work and utility relocation work to the satisfaction of the Engineer to maximize efficiency and minimize delay and/or multiple remobilizations for utility relocation crews to the satisfaction of the Engineer. The Contractor shall be responsible for the costs of unnecessary delay or remobilization of utility relocation crews as determined by the Engineer.

**105-1.13 MAINTENANCE DURING CONSTRUCTION.** *DELETE the first paragraph and REPLACE with the following:* The Contractor shall maintain the work, and those portions of the surrounding area or outside the project area affected by the work, from the date physical construction begins until project completion. This maintenance shall be a continual and effective effort prosecuted day by day, with adequate equipment and forces to the end that the work, and those portions of the project affected by the work, are kept in satisfactory condition at all times. The Contractor may be relieved of specified portions of this maintenance responsibility during a seasonal suspension of work.

The existing road systems, when utilized as haul roads, shall be maintained at the Contractor's expense. Maintenance of haul roads includes, but is not limited to, grading of potholes and application of water for dust control, as directed by the Engineer. Upon completion of hauling over a road, it shall be in as good or better condition than prior to commencement of hauling operations. This determination shall be made by the Engineer.

**105-1.17 CLAIMS.** *DELETE the subsection in its entirety and REPLACE with the following:* If the Contractor wishes to make a claim for an increase in the Contract Sum (Change Order), the Contractor shall give the Engineer written notice thereof as soon as possible but at least within ten days of the first observance or awareness or notice of the basis for the claim, whichever is earlier. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed as needed. No such claim shall be valid unless so made and the claim must comply with and is governed by the terms of this section. Any change in the Contract Sum resulting from such claim shall be authorized only by a written fully executed Change Order.

Except for claims which have been waived by acceptance of final payment, and except as otherwise provided in this Contract, any claims, any disputes, or other questions arising out of, or relating to, this Contract shall be presented in writing by the Contractor to the Engineer. In presenting any claim, the Contractor shall clearly and specifically state in writing:

1. The specific contract provision under which the claim is made.
2. The contract item on which the claim is based.
3. A description of the specific nature and cause of the claim.
4. The specific relief including additional time and compensation to which the Contractor believes they are entitled.
5. The detailed factual basis of any additional costs or time claimed and all verifiable documentation necessary to support those actual costs or additional time.
6. A certification by the Contractor under penalty of perjury the claim is made in good faith, the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Department is liable.

Claims must be submitted as soon as possible, but not later than ten days after the first observance or awareness or notice of the basis for the claim, whichever is earlier; in no case shall a claim be made more than ten days after the date of completion and acceptance of the entire contracted work. If the amount of time or compensation cannot be readily ascertained at the time the claim is submitted, the Contractor shall so advise the Department and such amounts shall be submitted as soon as they are discernible. In any case, the amount of time and compensation claimed together with all necessary supporting data, which could not have reasonably been available to the Contractor or a reasonably sophisticated contractor at the time of notice of claim, shall be submitted no later than 20 days after completion of the contract item of work on which the claim is based.

The Contractor represents to the Department and the Department relies upon the following representations to enter in this Contract with the Contractor:

* + - 1. The Department and Contractor recognize claims and litigation concerning claims result in increased contract costs for both parties. Further, both parties recognize both parties are subject to increased risk when stale claims are in dispute or are litigated;
      2. The Department and Contractor agree separately from the Contract that compliance with this section is necessary to enhance identification of disputes, processing of claims, negotiations and settlement of disputed issues. Further, both parties agree verbal, written or any other notice not in full compliance with the terms of this section will not meet the terms and spirit of this section; and
      3. Failure to comply with this section shall constitute a waiver and abandonment of the right to make any claim not fully compliant with this section.

Claim to the Engineer. As soon as received from the Contractor, a claim shall be acknowledged in writing by the Engineer. If the claim is not disposed of by agreement, the claim shall be reviewed by the Engineer who shall, unless he notifies the Contractor otherwise, within 14 days of receiving the Contractor’s final submittal of the claim, advise the Contractor of the Engineer’s decision and communicate the decision to the Contractor in writing. The Engineer’s decision shall, unless otherwise determined on administrative appeal to the Contracting Officer or then determined by appeal to the Superior Court of Alaska, be final and conclusive. Any appeal from the Contractor of the Engineer’s decision to the Contracting Officer shall be commenced within 14 days of the decision. In the event no such appeal to the Contracting Officer is timely made, the decision of the Engineer shall be final and conclusive as to the dispute.

Pending final decision of any dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract, and after the Engineer's decision is made, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Engineer's decision.

The parties agree at every level, including administrative appeal and litigation, all claims made will be made by the actual cost method, supported by actual invoices, payroll records and the like, and may not be made by the total cost method or any modifications thereof; or by the jury verdict method.

Appeal of Decision by Engineer. An appeal of the Engineer’s decision may be filed with the Contracting Officer. The appeal shall be filed within 14 days after the decision is served on the Contractor. An appeal by the Contractor may not raise any new factual issues, theories of recovery or claims for damages in amount or character or for additional time not presented to and decided by the Engineer in the decision appealed from except upon the showing of extraordinary circumstances not due to the fault or neglect of the Contractor or his agents. If allowed to make amended or additional claims, no such claims may be made unless they arise out of the same operative facts on which the original claim was based.

An appeal must contain a copy of the Engineer’s decision being appealed and identification of all factual or legal errors in the decision that form the basis for the appeal.

Upon receipt, the Contracting Officer shall advise the parties of the procedures that will be utilized to determine the appeal (i.e. briefing, hearing etc.) and any pertinent deadlines related thereto. The Contracting Officer shall handle the appeal of a claim expeditiously.

The Contracting Officer shall serve all parties personally or by certified mail with the Contracting Officer’s decision within 20 days after the hearing has ended or the Contracting Officer’s receipt of the final brief, unless the Contractor is notified otherwise. The Contracting Officer’s decision shall notify all parties that the Contracting Officer’s decision under this section may be appealed to the superior court in Palmer, Alaska in accordance with the Alaska Rules of Appellate Procedure. In the event no such appeal to the court is made within 30 days, the decision of the Engineer or the Contracting Officer shall be final and conclusive as to the dispute.

MSB 082119