

## 104 – SCOPE OF WORK

### SECTION 104

#### SCOPE OF WORK

##### 104.1 INTENT OF CONTRACT AND SCOPE OF CONTRACT

a. Perform all work necessary to construct or reconstruct the Project. Use the best general engineering and construction practices.

b. Assume responsibility for the following:

- all work necessary to construct or reconstruct the Project;
- sublet work at any tier as if the Contractor were performing that work (**subsection 105.9**);
- materials supplied at any tier as if the Contractor were supplying the materials directly (**SECTION 106**);
- unacceptable work and unauthorized work (**subsection 105.5**);
- damage to Project work (**subsection 104.20**); and
- damage to persons and property (**subsection 107.10**).

c. Accept Contract Changes such as differing site conditions, quantity changes, eliminated items, extra work, and temporary suspensions of work, among others. Contract Changes do not release the Contractor or Surety from liability for completing the contract. The Engineer will prepare a change order for Contract Changes.

d. If the Contractor believes that a Contract Change or any other acts or omissions fundamentally change the scope of the original contract and thus represent a breach of contract, notify the Engineer in writing. See **subsection 108.10b**.

e. Changes caused by Acts of God are not Contract Changes.

##### 104.2 SIGNIFICANT CHANGE IN MAJOR CONTRACT ITEM QUANTITIES

a. A major contract item is any contract item, excluding mobilization, having an original contract value of 5% or more of the original contract amount.

b. A significant change in contract quantities is an increase or decrease to a major contract item of work by more than 25% of the original contract quantity. For decreases of 100%, see **subsection 104.4** for eliminated items.

c. The Engineer will make a contract adjustment for a significant change in contract quantities if the Contractor proves:

- (1) the changed quantities reasonably increase or decrease the Contractor's time for performance (CIOW or Project critical path), price for performance, or both;
- (2) the Contractor, its suppliers at any tier, or its subcontractors at any tier did not cause or contribute to the changed quantities; and
- (3) the Contractor has provided the required notice under **subsection 104.8**.

d. **Limits on Compensation.** A price adjustment will apply only to that quantity above 125% or below 75% of the original contract quantity. The Secretary will not compensate the Contractor for expenses not recovered because of the way the Contractor allocated overhead, profit, or other expenses among the various bid items.

##### 104.3 CHANGES IN MINOR CONTRACT ITEM QUANTITIES

a. Any item not considered a major contract item is considered a minor contract item.

b. The Engineer will not provide monetary compensation for changes in quantities of minor contract items.

## 104 – SCOPE OF WORK

c. The Engineer may grant a time extension if the Contractor proves:

- (1) the quantity change in minor contract items increases the time for performance (CIOW or Project critical path);
- (2) the Contractor, its suppliers at any tier, or its subcontractors at any tier did not cause or contribute to the changed quantities; and
- (3) the Contractor has provided the required notice under **subsection 104.8**.

### 104.4 ELIMINATED ITEMS

a. The Engineer may eliminate items from the contract regardless of whether the eliminated item(s) represents an entire subcontract.

#### b. Determining the Contract Adjustment (Price and Time).

(1) Money allowed. The Secretary will pay for work actually performed and materials purchased (but non-returnable) before KDOT gave the Contractor notice of eliminating the item from the contract. Deliver to KDOT, materials the Secretary purchased under this **subsection 104.4**. Such materials become KDOT's property. The cost of materials purchased but non-returnable shall include the invoice price of the materials and shipping/delivery charges that represent the most economical movement of the materials to the Contractor's office and/or to the Project site or other location KDOT designates.

(2) Prohibited Costs. The Secretary will not pay for bidding costs, overhead, anticipated profit, interest, or other indirect costs associated with the eliminated item.

(3) Subcontracts. If the eliminated item is a subcontracted item, neither the Contractor nor the pass-through subcontractor is entitled to recovery beyond reimbursement for actual work performed and materials purchased. The Secretary will not pay for the pass-through subcontractor's bidding costs, overhead, anticipated profit, interest, or other indirect costs associated with the eliminated item even if the eliminated item results in canceling the subcontract.

(4) Time. The Secretary will not increase or decrease the Contract Time for eliminated items.

c. **Subsections 104.8** through **104.10** do not apply to eliminated items.

### 104.5 DIFFERING SITE CONDITIONS

a. Differing site conditions are:

(1) Type I. Type I site conditions are subsurface or latent physical conditions encountered at the site differing materially from those affirmatively indicated in the Contract Documents.

(2) Type II. Type II site conditions are unknown and unusual physical conditions differing materially from those ordinarily encountered and generally recognized as inherent in the contract work.

b. Unless **subsection 104.5c**. applies, the Engineer will make a contract adjustment for a differing site condition if the Contractor proves:

(1) the differing site condition reasonably increases or decreases the Contractor's time for performance, price for performance, or both;

(2) the Contractor, its suppliers at any tier, or its subcontractors at any approved tier did not cause or contribute to the differing site condition; and

(3) the Contractor has provided the required notice under **subsection 104.8**.

c. The Engineer will not make a contract adjustment for a differing site condition if:

(1) the Contract Documents address the Type I conditions encountered.

(2) the Contract Documents address the Type I or Type II nature of the work.

(3) a provision in the Contract Documents shifts to the Contractor the responsibility for the Type I or Type II conditions encountered or nature of the work.

(4) the average Contractor should have been able to discover the differing Type I or Type II site condition from reviewing the Contract Documents or from investigating the site.

(5) the Contractor knew or should have known of the Type I or Type II conditions encountered or nature of the work.

## 104 – SCOPE OF WORK

**d.** Contract Changes or claims associated with unidentified and improperly relocated utilities under **subsection 105.11** shall be treated as differing site conditions and evaluated under **subsections 105.11 and 104.5**.

### 104.6 EXTRA WORK

**a.** Extra Work is:

- (1) work not foreseen or included in the original contract.
- (2) work that differs materially in kind or nature from that involved or included in the original proposed construction.
- (3) work caused by, delay to work caused by, or acceleration of work caused by:
  - (a) written changes that KDOT, a LPA, or both make to the Contract Documents or the Contractor's work.
  - (b) verbal changes that KDOT, a LPA, or both make to the Contract Documents or the Contractor's work.
  - (c) other acts or omissions that change the contract terms.

**b.** The Engineer will make a contract adjustment for extra work if the Contractor proves:

- (1) the Engineer and Contractor agreed that the written or verbal Contract Change is extra work and reached this agreement before the Contractor began the extra work;
- (2) the Contractor, its subcontractors, or its suppliers did not voluntarily perform or provide the extra work;
- (3) the extra work was necessary to complete the Project;
- (4) the extra work reasonably increases or decreases the Contractor's time for performance (CLOW or Project critical path), price for performance, or both;
- (5) the act or omission of the Contractor, its suppliers at any tier, or its subcontractors at any tier did not cause or contribute to the extra work;
- (6) another Contractor on this Project or an adjacent project did not cause or contribute to the extra work (refer to **subsection 105.12** for claims between Contractors); and
- (7) the Contractor has provided the required notice under **subsection 104.8**.

**c.** Examples of extra work include work caused by, delay to work caused by, or acceleration of work caused by:

- changes KDOT, a LPA, or both make that affect the Contractor's method of operations.
- changes KDOT, a LPA, or both make that affect the Contractor's manner of performing the work.
- changes KDOT, a LPA, or both make that affect the Contractor's schedule.
- changes KDOT, a LPA, or both make to the Contract Documents because of an error or omission in the Contract Documents.
- changes in government-provided facilities, equipment or materials.
- changes in federal, state, or municipal law enacted after the Letting.

**d.** For purposes of **subsection 104.6**, KDOT includes KDOT employees and KDOT hired third party consultants operating within their authority and duties (see **subsection 105.2** and **105.3**). For purposes of **subsection 104.6**, LPA includes LPA employees and LPA hired third party consultants operating within their authority and duties (see **subsection 105.2** and **105.3**).

**e.** Contract Changes or claims for negligent inspection, excessive inspection, or both shall be treated as extra work and evaluated under **subsection 105.7 and 104.6**; however, the Contractor's failure to provide timely notice as required by **subsection 104.8a**, will result in the denial of the claim and waiver of the claim under **subsection 104.8c(3)**. Allowances made for lack of timely notice in **subsection 104.8c(1)** and **104.8c(2)** do not apply to claims for negligent inspection or claims for excessive inspection.

### 104.7 TEMPORARY SUSPENSION OF WORK

**a.** A temporary suspension of work occurs when:

- (1) The Engineer orders the Contractor to suspend all or part of the work. The Engineer will follow a verbal suspension with written notice to the Contractor.

## 104 – SCOPE OF WORK

(2) The Engineer's acts or omissions result in a suspension of all or part of the work. Verbally, without delay, notify the Engineer if such acts or omissions result in a suspension. Follow the verbal notice with a written notice to the Engineer. The Engineer may not know the acts or omissions caused the suspension.

**b.** Unless **subsection 104.7c.** applies, the Engineer will compensate for a temporary suspension of part or all of the work if the Contractor proves:

(1) the temporary suspension reasonably increases or decreases the Contractor's time for performance, price for performance, or both;

(2) the Contractor, its suppliers at any tier, or its subcontractors at any approved tier, did not cause or contribute to the suspension;

(3) the Contractor submits its request for a contract adjustment within 7 calendar days after the suspension or within any additional time the Engineer grants in writing;

(4) no other provision in the contract permits or denies a contract adjustment for the acts or omissions causing the temporary suspension; and

(5) the suspension:

- was not originally anticipated or should not have been anticipated in the original contract;
- is not a suspension customary in, ordinarily encountered in, or inherent to the construction industry; or
- is for a period longer than anticipated.

**c. Compensation Denied for Certain Suspensions.**

(1) The Engineer will not compensate for a temporary suspension if the suspension was caused by:

- unsafe conditions.
- violation of laws.
- requirements of KDHE, Corp of Engineers, or other governmental entities.

(2) The Engineer will not grant monetary compensation but will suspend working day charges or grant a time extension, whichever applies, under **SECTION 108** if the suspension was caused by:

- an Act of God as provided in **subsection 108.6c.(3)** (calendar day contracts).
- weather/recovery days as provided in **subsections 108.5c.(1)** and **108.5d.(1)** (working day contracts).
- unusually severe weather as provided in **subsection 108.6c.(2)** (calendar day contracts).
- an agreement to suspend the Project for a winter shutdown period as provided in **subsection 108.5d.(6)**.

**d. Determining the Contract Adjustment (Price and Time).**

(1) Money. The Secretary will pay the Contractor using the Force Account provision of **subsection 109.3**. The Contractor is responsible for keeping track of and submitting all costs. The Secretary will not pay suspension costs not documented with Force Account records. The Secretary will not pay suspension costs if the Contractor would have incurred these costs notwithstanding KDOT's temporary suspension of work. Exception: if the Contractor can segregate suspension costs from other costs that would have been incurred, the Engineer will include the segregated costs in the contract adjustment.

(2) Time or Acceleration Costs. The Secretary will increase the Contractor's time for performance by the amount of time KDOT's temporary suspension delayed the Project's critical path. Alternatively, the Secretary will pay acceleration costs if the Engineer requires or permits the Contractor to accelerate the work at KDOT's expense rather than increasing the time for performance.

(3) Waiver. If the Contractor fails to submit its request for a contract adjustment within 7 calendar days after the suspension is lifted or the additional time the Engineer grants as provided in **subsection 104.7b.(3)**, the Contractor waives the right to a contract adjustment.

(4) **Subsections 104.8** through **104.10** do not apply to temporary suspensions.

### 104.8 NOTICE OF CONTRACT CHANGE AND REQUEST FOR CONTRACT ADJUSTMENT

**a. Notice.** After encountering a Contract Change, notify the Field Engineer of the Contract Change verbally without delay and in writing within 10 business days. In the written notice, describe the Contract Change and, if applicable, any potential claim for contract adjustment (additional time, money, or both). Explain how the

## 104 – SCOPE OF WORK

Contractor anticipates the Contract Change will impact the Contractor's operations, delay the Contractor's schedule, or otherwise increase the Contractor's costs.

(1) Such written notice of a Contract Change is necessary so the Field Engineer may record the costs the Contractor is incurring.

(2) Provide the written notice even if the Engineer orders the Contract Change. The Engineer may know the Contractor is performing the work but not that the Contractor expects a contract adjustment for the work.

(3) Never assume the Engineer knows the Contractor is performing a Contract Change for which the Contractor will be claiming a contract adjustment. The Engineer and Contractor may disagree that the work is a Contract Change.

(4) For differing site conditions, provide the written notice to the Field Engineer before beginning the work caused by the differing site conditions. Obtain the Engineer's approval of a preliminary or final contract adjustment before beginning the work caused by the differing site condition unless the Engineer allows otherwise in writing.

(5) For extra work, provide the written notice to the Field Engineer before beginning the extra work. Obtain the Engineer's approval of a preliminary or final contract adjustment before beginning the extra work unless the Engineer allows otherwise in writing.

(6) Notice to an Inspector does not meet the requirements of this provision.

**b. Contract Adjustment Request.** After providing the Engineer written notice of a Contract Change under **subsection 104.8a.**, submit a written request for any contract adjustment desired (time, money or both) without unreasonable delay but no later than 30 calendar days following the written notice of Contract Change.

(1) If the Contractor desires more than 30 calendar days to submit the request, obtain the Engineer's approval to submit the request for contract adjustment outside the 30 calendar day period provided.

(2) If the request involves a differing site condition or extra work, the Contractor must obtain the Engineer's approval of a contract adjustment before beginning the differing site condition work or extra work unless the Engineer allows otherwise in writing. If the Contractor needs to begin the work before the Contractor is able to submit a final contract adjustment request, obtain the Engineer's approval to submit a preliminary contract adjustment with an estimate of the requested time, money, or both. Then, submit the final request for contract adjustment within the 30 calendar day period provided or within any additional time the Engineer approves.

**c. Failure to Provide Notice or Failure to Submit Request.** If the Contractor does not provide notice of the Contract Change timely under **subsection 104.8a.**, or if the Contractor does not submit the contract adjustment request timely and in sufficient detail under **subsections 104.8b., 104.9 and 104.10**, the Engineer may:

(1) reduce the Contractor's request for contract adjustment by the amount of time, money, or both time and money the Secretary may have been able to save if the Contractor would have given more timely notice or a more timely contract adjustment request; and

(2) reduce the Contractor's request by amounts the Engineer was unable to substantiate with KDOT records; or

(3) deny the claim and consider the lack of timely notice as the Contractor's waiver of the claim.

**d. Waiver of Contract Adjustment Request.** Notwithstanding **subsection 104.8c.**, the Engineer will deny the claim and consider the lack of timely notice as the Contractor's waiver of the claim if the Contractor fails to provide notice of the Contract Change before the Engineer issues Notice of Acceptance of Contract under **subsection 105.16b.**

**e. Certification of Contract Adjustment Request.** The Contractor's authorized representative shall certify the contract adjustment request with one of the following statements, whichever applies to the specific contract adjustment request:

(1) The undersigned hereby certifies, under the penalty of law for perjury or falsification, that I am authorized to submit this contract adjustment request on behalf of the Contractor and to bind the Contractor, that the contract adjustment request is made in good faith and, to the best of the Contractor's knowledge and belief, is a true and complete statement of the estimated costs and time sought for the Contract Change and is authorized by the Contract. I further certify that no additional claims will be submitted related to this contract adjustment request, and the Contractor will maintain documentation that supports the contract adjustment request.

(2) The undersigned hereby certifies, under the penalty of law for perjury or falsification, that I am authorized to submit this contract adjustment request on behalf of the Contractor and to bind the Contractor, the contract adjustment request is made in good faith and, to the best of the Contractor's knowledge and belief, is a true

## 104 – SCOPE OF WORK

and complete statement of the actual costs and time incurred for the Contract Change and is authorized by the Contract. I further certify that no additional claims will be submitted related to this contract adjustment request, and the Contractor has documentation that supports the contract adjustment request.

**f. Subcontractor/Supplier Pass Through Claims.** Contract adjustment requests shall include pass-through claims of subcontractors and suppliers, if any, associated with Contract Changes. KDOT's consideration of these claims does not create privity of contract between KDOT and the subcontractors or suppliers or between the LPA and the subcontractors or suppliers. If the contract adjustment request includes the pass-through claim of subcontractors and suppliers, the Certification required under **subsection 104.8e.** shall include the following language for each subcontractor and supplier seeking a pass-through claim: "The claim being passed through to KDOT, the LPA, or both is passed through in good faith and is, to the best of the Contractor's knowledge and belief, a true and complete statement of the estimated or actual costs and time incurred by the named subcontractor/supplier for the Contract Change and is authorized by the Contract. I further certify that no additional related claims will be submitted on that subcontractor's/supplier's behalf, and the Contractor has or will have documentation that supports the pass-through claim." The Subcontractor's or Supplier's authorized representative shall certify the contract adjustment request with one of the statements provided in **subsection 104.8e.**, whichever applies to the specific contract adjustment request, except that the word "Contractor" shall be replaced with the word "subcontractor" or "supplier".

### 104.9 PRICING THE CONTRACT ADJUSTMENT REQUEST

**a. Costs Included.** Include in the contract adjustment request, submitted under **subsection 104.8,** all direct and indirect costs associated with the Contract Change including labor, materials, equipment, overhead, profit, impact costs, and other costs for which the Contractor claims compensation is owed. When applicable, provide reduction in costs attributable to the Contract Change. Do not include prohibited costs listed in **subsection 104.9c.**

(1) For Contractor-owned equipment charges, use the Rental Rate Blue Book for Construction Equipment (Blue Book) rates as calculated under **subsection 109.3d.** for both operating equipment (**subsection 109.3d.(1)**) and idle equipment (**subsection 109.3d.(3)**). Exception: if the contract adjustment request is for an amount equal to or greater than Two hundred fifty thousand dollars (\$250,000.00), the Secretary's representative at any level of review may require the Contractor to provide actual equipment rates from the Contractor's cost accounting records rather than allowing the Contractor to use Blue Book rates. The lesser of Blue Book or actual equipment rates will be used for the contract adjustment request. When actual equipment rates are required instead of Blue Book rates, standby rates will be determined in accordance with **subsection 109.3d.(3)** except the calculation shall use the hourly ownership rate determined from the Contractor's cost accounting records in lieu of the hourly rental rate.

(2) For rented equipment, use the actual rental cost from invoice.

**b. Acceleration Costs.** On calendar day or calendar completion date projects, also include in the contract adjustment request all direct and indirect costs associated with required acceleration. Identify these costs separately from the other direct and indirect costs. If the Contractor determines circumstances make it impracticable or impossible to accelerate the work, notify the Engineer in the contract adjustment request.

**c. Prohibited Costs.** Do not include claim preparation costs, attorney's fees, loss of anticipated profit, and interest during the period in which the Contractor prepared the claim. Do not include loss of bonding capacity, loss of credit, loss of business, and similar items of consequential damages not specifically allowed in **subsection 104.9a.** These charges are not payable under the contract.

**d. Impact Costs.** If the Contractor is uncertain as to the amount of impact costs, write in the contract adjustment request the anticipated impact cost amount and specify that this is an anticipated amount which will be justified in detail upon completion. The Contractor waives the right to seek impact costs if the Contractor fails to include actual or anticipated cost in the contract adjustment request. In evaluating compensation for impact costs, the Engineer may take into account changes in schedule float that occur between the date of the Contract Change and the date the Contractor furnishes its actual or anticipated claimed impact costs.

**e. Force Account Records.** The Field Engineer may require the Contractor to keep force account records under **subsection 109.3.**

## 104 – SCOPE OF WORK

**f. Omitted Contract Changes. Subsection 104.9** does not apply to changes in minor contract items quantities, eliminated items, or temporary suspensions; instead, see **subsections 104.3, 104.4 and 104.7.**

### 104.10 TIME EXTENSIONS IN THE CONTRACT ADJUSTMENT REQUEST

**a. Working Day Contracts.** On working day contracts, include in the contract adjustment request, submitted under **subsection 104.8**, all additional days caused by a Contract Change and all working days disputed because of a Contract Change. Submit a detailed narrative describing the delay in operations and an updated progress schedule to support the claimed time extension.

**b. Calendar Day or Calendar Completion Date Projects.** On calendar day or calendar completion date projects, identify the additional time associated with a Contract Change. Submit a detailed narrative describing the delay in operations and describing the acceleration efforts necessary to overcome the delay. Submit an updated progress schedule that supports the claimed delay and that demonstrates acceleration. Anticipate receiving acceleration costs under **subsection 104.9b**, rather than a time extension. If the Contractor feels circumstances make it impossible or impractical to accelerate the work, notify the Engineer in the contract adjustment request. The Secretary may grant a time extension if KDOT finds it is impossible or impractical for the Contractor to meet the calendar completion date by acceleration or if KDOT determines acceleration costs are excessive.

**c. Acts of God on Calendar Day or Calendar Completion Date Projects. Subsection 108.6** rather than **SECTION 104** governs time extensions for Acts of God and other unusually severe weather events unrelated to Contract Changes.

**d. Proof of Delay.** The Engineer will consider additional days and extensions under **subsections 104.10a**, and **104.10b**, only if the Contractor shows the Contract Change required additional days, shows delay to the CIOW, shows that the delay extends the Project Open Time, Cleanup Time, or other Contract Time, or a combination thereof.

**e. Omitted Contract Changes. Subsection 104.9** does not apply to eliminated items or temporary suspensions; instead, see **subsections 104.4, and 104.7.**

### 104.11 MAINTAINING AND PROTECTING THE WORK AND INFRASTRUCTURE

**a. General.** Maintain and protect from damage the work being constructed and all roads, detour routes, intersections, ramps, entrances, temporary approaches, crossings, and structures (infrastructure) within the Project limits. If traffic is being carried through construction, maintain all access routes. If performing work at night or during evening hours, provide lighting equipment so conditions compare favorably with daylight hours. Observe curing periods and legal load restrictions.

**b. Detours.** Unless shown otherwise in the Contract Documents, all detour routes except those over or through construction will be maintained by the Secretary.

If the detour is marked by the Contractor, the Contractor shall be responsible for maintaining such markings.

**c.** Maintain and protect the work and infrastructure within the Project limits until partial or final acceptance. Maintaining infrastructure includes temporary surfacing and repairs to pavement and other infrastructure necessary to safely move traffic through the Project.

**d.** During all temporary suspensions and winter shutdown periods, perform the following operations:

- store all materials so they do not impede or obstruct traffic or traffic safety;
- provide and maintain normal and adequate drainage;
- continue implementation of the SWPPP in accordance with **DIVISION 900**;
- erect and maintain temporary structures, signs, or other facilities;
- maintain newly established planting, seeding, and sod;
- protect new trees or other vegetative growth; and

## 104 – SCOPE OF WORK

- protect the work from damage and deterioration.

### **e. Snow Removal Responsibilities.**

- Conduct snow and ice removal on closed roads to maintain access on all closed roads through the winter.
- The Secretary will conduct snow and ice removal on official detour routes and State highways opened to through traffic (including associated intersections and ramps) within the Project limits.
- For City and County Projects, the LPA will conduct snow and ice removal on official detour routes opened to through traffic (including associated intersections and ramps) within the Project limits.

### **104.12 REMOVING AND DISPOSING OF STRUCTURES AND OBSTRUCTIONS**

Remove from the Project all:

- structures and obstructions that are going to be replaced under the contract;
- structures and obstructions unnecessary for constructing the Project;
- structures and obstructions useless to the completed Project; and
- trash.

If a new structure is replacing an existing bridge at the same location, remove the existing bridge.

The Secretary may remove or contract with third parties to remove from the highway right-of-way buildings and other improvements that need to be replaced or relocated. Private or public utilities will remove their utilities from the highway right-of-way or relocate within the highway right-of-way, unless the Contract Documents require the Contractor to do the relocation. The Contract Documents will specify which structures or obstructions third parties will be removing.

The costs of removing structures and obstructions is subsidiary to other work unless the contract has a separate bid item for removal of existing structures or unless the material falls within the limits of structure excavation.

### **104.13 LOAD RESTRICTIONS**

**a.** Observe legal load restrictions when operating equipment, hauling equipment, or hauling materials on public roads; newly constructed/reconstructed base, pavement, and structures; and any existing base, pavement or structures that will remain in place. Assume responsibility for changes in legal load restrictions that occur after the Project was let. Obtain the District Engineer's written approval and a special permit to exceed legal load restrictions on the State highway system and on newly constructed/reconstructed portions of the Project.

**b.** Protect roadways and structures within Project limits from damage. Observe curing periods before operating equipment or hauling loads on newly constructed pavement, reconstructed pavement, or structures. Do not haul loads of any size on pavement base, except when operations require equipment on pavement base to place material. Assume responsibility for damages to roadways and structures the Contractor causes when operating equipment or hauling loads.

### **104.14 OPENINGS IN HIGHWAY OR RIGHT-OF-WAY FOR THIRD PARTIES**

Make no openings, entrances, or other access points in the highway or right-of-way for third parties unless shown in the Contract Documents or unless the third party has obtained a permit from KDOT. Construct all openings, entrances, and other access points according to KDOT's standards. Maintain and repair all openings, entrances, and other access points until final acceptance.

### **104.15 THIRD PARTY PERMITS AND RESTORING WORK AREAS DAMAGED BY THIRD-PARTY PERMITS**

**a.** The Secretary may issue to individuals or organizations permits for making an opening in the highway or using highway right-of-way.



## 104 – SCOPE OF WORK

b. The Secretary or other government authorities may issue to individuals or organizations permits for constructing or reconstructing utilities.

c. From the time the Notice to Proceed is issued until Final Acceptance, coordinate and accommodate third parties authorized to work within the Project limits. Do not allow individuals or organizations to perform work within the Project limits without a permit from KDOT or other government authorities.

- If the Engineer orders the Contractor to repair or restore work within the Project limits that these individuals or organizations damaged, the Engineer will pay for these repairs or restoration as extra work; and
- If these individuals delay the Contractor's operations, the Engineer will consider whether the delay entitles the Contractor to a contract adjustment as a differing site condition or extra work, whichever applies.

### 104.16 HANDLING TRAFFIC THROUGH CONSTRUCTION

Safely move traffic throughout the Project. Provide temporary surfacing, when required. Repair potholes and other pavement deficiencies. The Engineer's approval of the Contractor's method of operations does not lessen the Contractor's responsibility for the traveling public's safety.

Sequence work to provide 2-way travel of traffic whenever practicable.

Do not detour traffic if the Contract Documents state that traffic will be carried through construction.

Erect signs and traffic control devices as shown in the Contract Documents or traffic control plan, unless the Engineer directs otherwise. The Engineer will establish work zone speed limits. Confine restricted speed zones to the immediate vicinity of the work, and maintain speed zones over the minimum length of the Project. When the vicinity of the work changes, move the restricted work zone devices to the new area. Remove or cover signs that are unnecessary when no work is in progress.

Provide flaggers and equip flaggers to comply with **SECTION 805**.

The Engineer may shut down all or part of the work (temporary suspension) to handle traffic safely during periods of inclement weather or heavy traffic. The Contractor is not entitled to additional monetary compensation for these temporary suspensions except as provided in this **subsection 104.16**. The Contractor is entitled to working day relief under **subsections 108.5c.** and **d.** or a time extension under **subsection 108.6c.** if the Contractor proves the suspension for inclement weather or heavy traffic meets the conditions stated in these subsections. Exception: The Contractor may be entitled to additional monetary compensation under **subsection 104.7b.** if KDOT, any LPA, or both knew or should have known of the traffic restriction before the Letting.

Include in the Contractor's bid all costs associated with traffic restrictions identified in the Contract Documents. The Contractor is not entitled to additional time, money, or both for these traffic restrictions.

### 104.17 TRAFFIC CONTROL DEVICES

The Contractor's obligation to provide, erect, and maintain all traffic control devices is extremely important. The Engineer's failure to enforce the Contractor's duty to provide, erect, and maintain all traffic control devices does not lessen the Contractor's responsibility or liability to KDOT, any LPA, the public and workers for failing to provide, erect, or maintain these devices.

The Contractor's subletting of traffic control devices does not lessen the Contractor's responsibility or liability to the public and workers for failing to provide, erect, or maintain these devices. A subcontractor's delay in providing acceptable traffic control devices or a subcontractor's delay in repairing or replacing unacceptable traffic control devices does not excuse the Contractor's obligation to perform this work timely.

Obtain the Engineer's approval before erecting traffic control devices, changing traffic control devices, or removing traffic control devices except if an emergency situation requires immediate action. Comply with the Engineer's orders to change or remove traffic control devices.

Provide, erect, and maintain all traffic control devices necessary to protect the public and workers on the Project. Make sure that the quality, quantity, and placement of traffic control devices meet the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD) adopted by the Secretary, ATSSA standards, and **SECTION 805**. Traffic control devices that do not meet the MUTCD, ATSSA standards, or **SECTION 805** are unacceptable.

Inspect traffic control devices at least daily during the day, and when needed, at night. Immediately upon discovering or receiving notification of unacceptable traffic control devices, either repair or remove and replace the

## 104 – SCOPE OF WORK

unacceptable traffic control devices. Record unacceptable traffic control devices and record when the condition has been corrected.

Provide, erect and maintain all traffic control devices until written, final acceptance of the Project including all temporary suspensions of work.

### 104.18 OPENING SECTIONS TO TRAFFIC AND MAINTAINING ROADWAYS AFTER OPENING SECTIONS TO TRAFFIC

**a.** The contract may require the Contractor to open to traffic designated sections of the Project before the Contractor has completed all work. Open to traffic and maintain these sections until partial or final acceptance. Include in the Contractor's bid the costs for maintaining these sections of traffic before partial or final acceptance.

**b.** During the Project, the Engineer may order the Contractor to open to traffic sections of the Project before the Contractor has completed all work or before the Contract Time expires. Open such sections to traffic. The Engineer will issue a partial acceptance of this section. The Secretary will maintain or pay the Contractor to maintain partially accepted sections open to traffic. Exception: the Secretary does not assume liability for damage the Contractor causes to partially accepted work.

### 104.19 RAILROAD PROVISIONS

**a. Notice of Work.** Notify the Railroad Company's Division Superintendent/Division Engineer/General Manager, in writing, of the date the Contractor anticipates beginning work on Railroad Company property. If there is no Contractor's Right of Entry or other document in the Contract Documents specifying the notice requirements, provide this initial notice a minimum of 10 business days before starting the work. If the work requires railroad protective services, provide an additional notice a minimum of 24 hours before starting the work.

**b. Communication with Railroad.** Maintain contact and liaison with the Railroad Company's Division Superintendent/Division Engineer/General Manager or that person's authorized representative. Obtain the Division Superintendent/Division Engineer/General Manager's approval of the time and manner of doing the work.

**c. Allowed Clearances.** The Contract Documents will show clearance distance from the nearest rail of any railroad track. Allow no structure, material, equipment, or other obstructions within this clearance distance except for permitted falsework.

**d. Falsework on Grade Separation Structures.** The Contract Documents will show falsework clearance for grade separation structures. Allow no obstructions within the clearance lines shown. After placing falsework, expedite work over the tracks to minimize the falsework duration. Construct falsework to protect the Railroad Company's tracks. Construct falsework to protect the railroad facilities and provide safe train operation. Once no longer necessary, remove falsework, protecting the Railroad Company's tracks and safe train operation. If, in the Railroad Company Chief Engineer's opinion, the Contractor fails to construct, maintain, or remove the falsework safely, thereby endangering the safety of railroad traffic, the Railroad Company may take over the falsework operations and bill the Contractor for expenses the Railroad Company incurs in assuming these obligations.

**e. Working Around Railroad Tracks.** At all times keep workers, materials, equipment, and machinery a minimum of 12 feet from the centerline of the Railroad Company's main track.

**f. Crossings.** Cross the Railroad Company's tracks only at existing, open public crossings or temporary crossings the Contractor has constructed with the Railroad Company's written approval (permit).

**g. Prosecution of Work.** Once begun, consistently pursue work near the railroad tracks, delaying completion only if conditions outside the Contractor's control prevent continued work.

**h. Restoring Railroad Property.** Upon completing construction, restore the Railroad Company's right-of-way and property to a condition substantially similar to the condition that existed before the Contractor began construction. Include in the Contractor's bid the anticipated costs for such restoration.

## 104 – SCOPE OF WORK

**i. Obtaining Railroad Protective Services.** Obtain from the Railroad Company the services of railroad flaggers, switch-tenders, pilots, and similar protective services required because of the Contractor's operations on the contract.

**j. Payment for Railroad Costs.**

(1) Using Railroad Property. Costs for using railroad property are subsidiary to other bid items.  
(2) Restoring Railroad Property. Costs of restoring railroad property are subsidiary to other bid items.  
(3) Obtaining Railroad Protective Services. Costs for obtaining railroad protective services are subsidiary to other bid items.

- (a) Pay the Railroad Company directly for railroad protective services.
- (b) The cost of railroad protective services includes labor, transportation, and travel expenses.
- (c) Exception: The Secretary will reimburse the Railroad Company directly for railroad protective services required under force account work.
- (d) Exception: If not included in the Contract Documents the Secretary will reimburse the Railroad Company directly for excess costs of railroad protective services required at detours and temporary crossings if:
  - the detour or temporary crossing the Contractor constructed replaced an existing crossing for which the Railroad Company had maintained protective services; and
  - the protective services required at the detour or temporary crossing are greater than the services that were required at the existing crossing. Only the excess costs are reimbursable.

(4) Adjusting Railroad Property. Costs necessary to adjust Railroad property for the Contractor's convenience (other than that shown on the Contract Documents) are subsidiary to other bid items.

**k. Contractor's Right of Entry.** If the Railroad requires the Contractor to execute a right of entry or other agreement directly with the Railroad as a condition to being on railroad right-of-way, KDOT will include a copy of that agreement in the Contract Documents through a Railroad Special Provision. The Contractor is responsible for knowing the requirements of the Railroad Special Provision and should be aware that the Railroad Special Provision may modify the requirements of **subsection 104.19**. If there is a conflict between the Railroad Special Provision and **subsection 104.19**, the Special Provision shall control.

### 104.20 LIABILITY FOR DAMAGE TO WORK/PROJECT

**a. Work.** For purposes of this **subsection 104.20**, the term "work" refers to the improvements to be constructed under the contract.

**b. Damage Caused by Acts of God and Third Parties.** Until Notice of Acceptance of Contract under **subsection 105.16**, protect the work from and assume liability for damages to the work caused by Acts of God, vandalism, malicious mischief, falling objects, explosions, and other acts of third parties except acts of the public enemy (**subsection 104.20d.**) and certain acts of the traveling public (**subsection 104.20h.**). Once damaged, the work is considered unacceptable work under **subsection 105.5**.

**c. Damage caused by the Contractor and the Contractor's agents.** Protect the work from and assume liability for damages to the work caused by faulty workmanship. Protect the work from and assume damages for the work caused by events within the control of the Contractor, Contractor's agents, subcontractors at any tier, suppliers at any tier, or any combination thereof. Once damaged, the work is considered unacceptable work under **subsection 105.5**.

**d. Damage caused by Acts of Governmental Authorities or Acts of the Public Enemy.** The Secretary assumes liability for damages to the work caused by acts of governmental authorities or acts of the public enemy. The Secretary also assumes liability for damages to the work that occur during unanticipated winter shutdown when acts of governmental authorities or the public enemy extend the Contractor's operations into the winter shutdown condition. If the Secretary requires the Contractor to restore, repair, remove, or remove and replace work damaged in this manner, the Engineer will pay for the work as extra work under **subsection 104.6**.

## 104 – SCOPE OF WORK

**e. Damage to work that has been partially accepted.** The Secretary assumes liability for damages to the work that occur after the Engineer has issued a partial acceptance of the work under **subsection 105.16a**. The Secretary assumes liability for damages to work that is complete and awaiting partial acceptance under **subsection 105.16a**. The Contractor has the burden to prove that the work is complete. Exception: The Secretary does not assume liability for such damages if the Contractor, the Contractor's agents, subcontractors at any tier, or suppliers at any tier caused the damage.

**f. Damage to work during contract winter shutdown periods.** Protect the work from and assume liability for damages to the work during contract winter shutdown periods except as provided in **subsection 104.20h**. Once damaged, the work is considered unacceptable work under **subsection 105.5**. Include in the Contractor's bid anticipated costs necessary to conduct repairs or replacement.

**g. Damage to work during temporary suspensions of entire Project.**

(1) Protect and assume liability for damages to the work that occur during temporary suspensions of the entire Project for which the Contractor is not entitled to a contract adjustment under **subsection 104.7**. Once damaged, the work is considered unacceptable work under **subsection 105.5**.

(2) The Secretary assumes liability for damage to the work that occurs during temporary suspensions of the entire Project if:

- the Contractor is entitled to a contract adjustment under **subsection 104.7** and the Contractor would have been completed with physical construction of the Project at the time the damage occurred had the Project not been temporarily suspended;
- acts of governmental authorities or acts of the public enemy caused the damage; or
- acts of the traveling public caused the damage as provided in **subsection 104.20h**.

If the Secretary requires the Contractor to restore, repair, remove, or remove and replace work damaged in this manner, the Engineer will pay for the work as extra work under **subsection 104.6**.

**h. Damage to work caused by the traveling public.** The Secretary assumes liability for damages to the work caused by the traveling public if:

- (1) the roadway is open to travel by the traveling public (restricted or unrestricted traffic);
- (2) the damage was caused by a vehicular accident;
- (3) no negligent act or omission of the Contractor, the Contractor's agents, subcontractors at any tier, or suppliers at any tier caused or contributed to the vehicular accident; and
- (4) the work damaged was in a finished condition, meeting plans and specifications, whether it qualifies for partial acceptance under **subsection 105.16a**.

### 104.21 PUNCH LIST AND FINAL CLEANUP

**a. Punch List.** A punch list is a list of incomplete work items or items needing corrective action to fulfill the contract requirements.

**b. Final Cleanup.** Final cleanup includes completing all work necessary to construct or reconstruct the Project and cleaning up the Project site, adjacent property the Contractor occupied, borrow sites, plant sites, and local material sources of all trash, weeds, brush, materials, temporary structures, and equipment.

**c. Preparation of Punch List.**

(1) Monthly Punch List. At each monthly progress meeting, the Field Engineer will provide the Contractor a punch list. KDOT's failure to include an item on a monthly punch list (as distinguished from the final punch list) does not relieve the Contractor's responsibility to complete or correct the item before acceptance of contract.

(2) Final Punch List. Within the Cleanup Time established in **subsection 108.4c**, or by special provision or within a different Contract Time established by special provision when the contract does not have separate Cleanup Time, request in writing for the Engineer to provide a final punch list for the Project. Include a summary of all known incomplete items to be finished for acceptance of contract. If not yet completed, include in the final punch list as-built construction plans as defined in and required by **subsection 802.3g**.

## 104 – SCOPE OF WORK

Identify the date the Engineer should provide the final punch list, allowing at least 5 business days for the Field Engineer to develop the final punch list, and allowing time for the Contractor to complete the punch list within the Cleanup Time or other Contract Time permitted.

Within the 5 business days allowed for KDOT to prepare the final punch list, the Contractor's superintendent shall meet with the Field Engineer, a KDOT Maintenance Representative, District Representative and an LPA, if any, to review, inspect the work, and develop the final punch list.

After the final punch list is developed and submitted to the Contractor, KDOT and any LPA representative waive the right to add items to the final punch list without paying for the added items as extra work under **subsection 104.6**. See **subsection 104.21d.(1)(c)**.

(3) Notice of Acceptance of Contract. After the Contractor has completed the final punch list and the final cleanup, the Field Engineer will issue Notice of Acceptance of Contract under **subsection 105.16b**. KDOT's failure to include an item on the final punch list constitutes a waiver of the Contractor's responsibility for that item except as provided in **subsection 108.12** (pertaining to breach of warranty, breach of guaranty, latent defects, fraud, or misrepresentation discovered after Notice of Acceptance).

### d. Timely Completion.

(1) Complete the final punch list and final cleanup within the Cleanup Time permitted in **subsection 108.4c**, or by special provision or within the other Contract Time established by special provision.

(a) If the Engineer fails to provide the final punch list within the required 5 business days and the Contractor is performing no physical construction on the Project because the Project is in a state of completion:

- the Engineer will not charge time until the Engineer provides the final punch list.
- the Engineer will suspend charging time damages under **subsection 108.8** if the Project is in liquidated damages, disincentive assessments, or both until the Engineer provides the final punch list.

(b) The Engineer will resume charging time or associated damages, if any, on one of the following days, whichever occurs first:

- The day the Contractor resumes the punch list work.
- The 1<sup>st</sup> working day after the Contractor receives the final punch list.
- The 5<sup>th</sup> calendar day after the Contractor receives the final punch list if the Contractor had demobilized from the Project.

(c) If KDOT and any LPA representative, or both add items (except As Built construction plans, required by **subsection 802.3g**.) after the final punch list has been given to the Contractor and before Notice of Acceptance:

- the Engineer will pay for these items as extra work under **subsection 104.6** but the requirements of **subsection 104.6b.(1)** concerning a written agreement and **subsection 104.6b.(7)** concerning notice will not apply.
- the Engineer will not charge time while the Contractor is performing the extra work.
- the Engineer will suspend charging damages under **subsection 108.8** if the Project is in liquidated damages, disincentive assessments, or both until the Contractor completes the extra work.

(2) If the Contractor fails to complete the final punch list and final cleanup within the Cleanup Time or other Contract Time including adjustments in **subsection 104.21d.(1)**, the Secretary may do either or both of the following:

(a) Charge the Contractor liquidated damages per **TABLE 108-1** or as specified in a special provision.

(b) Declare the Contractor in breach of contract and exercise the Secretary's remedies for breach if the Contractor fails to cure as provided in **subsection 108.9**. These remedies include hiring a third party or using KDOT's maintenance forces to perform the final punch list or final cleanup after removing the Contractor from the Project, recovering damages charged to the Contractor, and recovering expenses the Secretary incurred because of the breach. Neither the Contractor nor

## 104 – SCOPE OF WORK

Surety can avoid liability under **subsections 104.21** and **108.9** by characterizing the failure to perform the final punch list or final cleanup as an immaterial breach of contract.

e. The Engineer will not issue Notice of Acceptance of Contract under **subsection 105.16b.** until the final punch list and final cleanup has been completed. Exception: if the remaining final cleanup involves a third party landowner, the Engineer will issue Notice of Acceptance if the Contractor/landowner agreement provides for cleanup at a future date.