

## 105 Control of the Work

### 105.1 Engineer's Authority

- (1) The engineer decides all questions regarding:
  1. Interpretation of the contract.
  2. The quantity, quality, and acceptability of materials furnished and work performed.
  3. Rate of progress of the work.
  4. Payment, contract administration, and the acceptable fulfillment of the contract.
  5. Disputes.
  6. Mutual rights under the contract.
- (2) The engineer may suspend the work in writing for any reason at any time during the contract. Except as specified in [104.2.2.3](#) for engineer-ordered suspensions, the department will allow no additional payment or time extension due to a suspension of work.
- (3) The engineer will determine estimated quantities for progress payments as specified in [109.6](#).

### 105.2 Supplemental Plans and Drawings

#### 105.2.1 General

- (1) Submit to the engineer supplements to the approved contract plans, shop drawings, and the computations necessary to control the work. Do not change the approved contract plans without the engineer's written authorization.
- (2) If sufficient detail is not provided on the structure plans produced by the department, submit to the engineer plans, shop drawings and the computations required to successfully prosecute the work.
- (3) If required in the contract, submit plans for temporary structures, cribs, cofferdams, falsework, shoring, and form work. Ensure that these plans and accompanying drawings and computations are signed and sealed by a professional engineer registered in the state of Wisconsin.
- (4) Include a transmittal letter with each submittal made under 105.2. Indicate on shop drawings all deviations from the contract drawings and itemize these deviations in the transmittal letter. The department will file and may review these submittals. The department's review does not relieve the contractor of the responsibility for obtaining satisfactory results, for the accuracy of dimensions and details, or for conformity of these drawings with the contract. The contractor may begin work on associated items without the department's review.
- (5) Include the cost of furnishing all shop drawings in the unit price for one or more associated bid item.

#### 105.2.2 Fabrication Library Submittals

- (1) If specific contract provisions require submittals under 105.2.2, also check and electronically submit shop drawings and computations to the department's fabrication library a minimum of 2 weeks before the start of fabrication. Conform to the fabrication library submission standards. Procedures for accessing the fabrication library are located at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/strct/fab-sharepoint.aspx>

### 105.3 Conformity with the Contract

#### 105.3.1 General

- (1) Perform all work the contract specifies. Produce quality work within limits of precision reasonably expected of good construction. Produce work conforming to the lines, grades, cross-sections, dimensions, and material requirements the contract specifies or the engineer establishes. Monitor construction operations to identify potential unacceptable work as defined in [101.3](#). Promptly remove and replace, or otherwise correct, unacceptable work at no expense to the department.
- (2) The contractor may request a plan dimension change between US standard and SI metric dimensions for a portion of the work. The engineer will only consider this dimension change if the modified work is essentially equivalent to the specified work. The department will pay for this modified work as specified in [109.1.1](#)(2) item 4. Do not proceed with modified work without the engineer's written permission.
- (3) The contract may specify specific values with allowable tolerances, ranges, minimums, or maximums. Control operations to produce work that falls within the specified tolerance or range, falls above a specified minimum, or falls below a specified maximum. If the contract does not specify a tolerance, range, minimum, or maximum value, control operations to produce work conforming to the contract within accepted manufacturing or construction industry standards.
- (4) The contract may specify standard manufactured items such as fences, wire, plates, rolled shapes, pipe conduit, etc. If these items are identified by gauge, unit weight, section, dimensions, etc., these identifications are nominal weights or dimensions.

### **105.3.2 Nonconforming Work**

#### **105.3.2.1 Engineer-Accepted Nonconforming Work**

- (1) If the work does not conform to the contract, the engineer will determine the circumstances under which that nonconforming work may be accepted and allowed to remain in place. The engineer will document the basis of acceptance and may execute a change order to adjust the contract unit prices for the nonconforming work. If the contract does not specify a price adjustment, the engineer may adjust the price.

#### **105.3.2.2 Unacceptable Work**

- (1) The engineer will issue a written order to remove and replace or otherwise correct nonconforming work that the engineer deems unacceptable, as defined in [101.3](#). If the contractor does not comply with the engineer's written order, the engineer may effect a remedy and deduct the cost from payments due the contractor.

#### **105.3.2.3 Unauthorized Work**

- (1) Unauthorized work is work performed as follows:
  1. Without the lines and grades being given.
  2. Beyond the lines and grades the contract shows or the engineer provides.
  3. Without the engineer's prior approval.
  4. After the inspector has temporarily suspended the work in writing as specified in [105.8](#).
  5. In violation of a written direction the engineer issues.
- (2) The department may elect to not measure or pay for unauthorized work. The engineer may issue a written directive to remove unauthorized work at no expense to the department. If the contractor does not comply with the engineer's written directive, the engineer may remove unauthorized work and deduct the cost from payments due the contractor.

### **105.4 Coordination of the Contract Documents**

- (1) All documents included under the definition of contract in [101.3](#) are essential parts of the contract. A requirement occurring in one is binding as though occurring in all. These documents provide for and describe the complete contract. These documents are available to the contractor at no cost.
- (2) During the progress of the work, the contractor may request that the engineer interpret or provide information relative to the contract.
- (3) If there is a discrepancy between documents, the governing order is as follows:
  1. Addenda.
  2. Special Provisions.
  3. Plans.
  4. Additional Special Provisions.
  5. Standard Specifications.
- (4) If there is a discrepancy on a drawing, the drawing dimensions, unless obviously incorrect, govern over scaled dimensions. If there is a discrepancy in the plans, the typical sections or details govern over the standard detail drawings.
- (5) Neither the contractor nor the department may take advantage of an error or omission in the contract. Notify the engineer immediately as specified in [104.3](#) upon discovering an error or omission. The engineer will offer an interpretation and make the necessary corrections.

### **105.5 Coordination with the Contractor**

#### **105.5.1 Contractor Obligations**

- (1) Give the work the constant attention necessary to promote the progress of the work. Promptly supply the materials, tools, plant, equipment, labor, and incidental items required to perform the work.
- (2) Cooperate with the engineer and with third parties engaged upon or near the work. If the department grants a third party a permit to do utility work, the engineer may issue a change order directing the contractor to make or repair required roadway openings. The department will pay the contractor as specified in [104.2](#) for extra work.
- (3) Maintain one copy each of the plans and specifications at the site of work at all times. The engineer will supply the contractor with copies of the contract. If the department has electronically computed estimated grading quantities, the department will furnish that information to the contractor upon request.

- (4) Supervise and direct the work competently and efficiently. Devote the attention and apply the expertise necessary to perform the work as the contract specifies. Monitor the work in progress to ensure that the work conforms to the contract. The contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction. The contractor is not responsible for the negligence of others in the design or specification of specific means, methods, techniques, sequences, or procedures of construction described in and expressly required under the contract.
- (5) Employ a competent superintendent or designate a representative capable of reading and understanding the contract and experienced in the type of work being performed. The superintendent or designated representative is the authorized agent of the contractor and has full authority to execute the engineer's directions or instructions without delay. Ensure that the superintendent or designated representative is on the project or accessible to the engineer during all hours of each work day. Notify the engineer promptly when replacing the superintendent or designated representative.

#### **105.5.2 Cooperation Between Contractors**

- (1) The department may, at any time, contract for or perform other work on or near the work covered under the contract. Cooperate with other contractors engaged upon or near the work.
- (2) The contractor shall, or the engineer may, direct the contractor to:
  1. Schedule and conduct the work to avoid interference with the operations of other contractors engaged upon or near the work.
  2. Perform the work in the proper sequence in relation to that of other work in the area.
  3. Join the work to that of others in a manner consistent with accepted manufacturing or construction industry practices.
  4. Conduct operations and maintain the work so that adequate drainage is provided at all times.
- (3) The contractor is responsible for damage done by the contractor or the contractor's agents to work performed by other contractors. The engineer will resolve disputes between 2 or more contractors, engaged upon or near the work, regarding the rights of each under their respective contracts.

### **105.6 Construction Staking**

#### **105.6.1 General**

- (1) The department is responsible for errors or discrepancies found in previous department surveys, plans, specifications, special provisions, or work constructed under other department contracts. The department will pay for further studies and redesign required due to these errors or discrepancies.
- (2) The department will furnish and set original horizontal and vertical control points the plans show. Prosecute the work using these points for field control. The department is responsible for the accuracy of lines, slopes, and grades it provides. The engineer and contractor must agree on the meaning of all stakes, measurements, and marks before the contractor begins work.

#### **105.6.2 Contractor Staking**

- (1) Provide and maintain the horizontal and vertical control, construction stakes, and marks needed to prosecute the work as follows:
  1. Staking required under [650](#) to lay out and construct the work for the individual construction staking bid items the contract schedule of items includes.
  2. Additional horizontal and vertical control, staking, and markings that might be needed to support the contractor's specific method of operations.
  3. Other staking or markings as required to successfully prosecute the work.

Provide documentation to the engineer describing the location of and methods used to establish and modify the contractor's horizontal and vertical field control network throughout construction.

- (2) The contractor is responsible for the accuracy of lines, slopes, and grades the contractor provides. Construct the work conforming to the lines, grades, cross-sections, and dimensions the contract specifies or the engineer establishes.
- (3) Notify the engineer immediately when finding errors or discrepancies in previous surveys, plans, specifications, special provisions, or work constructed under other contracts. Suspend related operations until the engineer gives approval to proceed.
- (4) The engineer may check the control of work, as established by the contractor, at any time. The engineer will provide the results of these checks to the contractor, but by doing so in no way relieves the contractor of the responsibility for the accuracy of their layout work.
- (5) Correct or replace deficient layout and construction work resulting from:
  1. Inaccuracies in the contractor's staking operations
  2. Inaccuracies in the contractor's horizontal or vertical field control network.

3. Not reporting inaccuracies found in work done by the department or by others.
- (6) If, due to the inaccuracies in [105.6.2\(5\)](#), the department is required to make further studies, redesign, or both, the department will deduct all expenses incurred from the payment due the contractor.

#### **105.7 Authority and Duties of Project Engineer**

- (1) As the engineer's direct representative, the project engineer has immediate charge of the engineering details of each construction project. The project engineer is responsible for field administration of the project. The engineer authorizes the project engineer to reject defective material and to suspend all work being improperly performed. The engineer may delegate additional authority, granted under [105.1](#), to the project engineer.

#### **105.8 Authority and Duties of Inspectors**

- (1) As the engineer's authorized representatives, inspectors may inspect all work done and all materials furnished.
- (2) The department authorizes inspectors to:
1. Call the contractor's attention to work or materials that do not conform to the contract.
  2. Reject materials until the engineer is notified and decides all questions at issue.
  3. Temporarily suspend work, in writing, until the engineer is notified and decides all questions at issue.
- (3) The department does not authorize inspectors to do the following unless the engineer specifically delegates:
1. Revoke, alter, or waive any requirements of the contract.
  2. Approve or accept any portion of the completed project.
  3. Act as foreperson or perform other duties for the contractor.
- (4) The engineer may delegate additional authority to the inspector.

#### **105.9 Inspecting Work**

- (1) The engineer may inspect, at any time, all materials and all parts of the work. This inspection may include the preparation, fabrication, or manufacture of materials or components on or off the project site. Allow the engineer safe access to all parts of the work. Furnish the information and assistance needed to make a complete inspection.
- (2) If the engineer requests, uncover or remove portions of finished work for inspection. After inspection, restore that work to the contract requirements. If the department finds the work acceptable, the department will pay for uncovering, removing, and restoring that work as extra work. If the department finds the work unacceptable, the contractor shall pay for uncovering, removing, and restoring that work.
- (3) Failure to reject defective work or materials does not prevent the department from rejecting defective work discovered later.

#### **105.10 (Vacant)**

#### **105.11 Inspection and Acceptance**

##### **105.11.1 Partial Acceptance**

- (1) Upon completion of a portion of the work, the contractor may request partial acceptance of that work. The engineer will conduct an inspection to determine if the contractor has satisfactorily completed operations in that area. Within 5 business days, the engineer will grant, in writing, partial acceptance for that portion of the work or reject the contractor's request. If the engineer grants partial acceptance, the engineer will designate, in writing, what portion of the work is partially accepted and the effective date for that partial acceptance.
- (2) Partial acceptance will relieve the contractor of maintenance responsibility for the designated portion of the work. By relieving the contractor of maintenance, the department does not relieve the contractor of responsibility for defective work or damages caused by the contractor's operations. Do not construe partial acceptance to be final acceptance of any part of the project, or a waiver of any legal rights specified under [107.16](#).

##### **105.11.2 Project Acceptance**

###### **105.11.2.1 Inspection**

###### **105.11.2.1.1 General**

- (1) Notify the engineer when the project is substantially complete as defined in [105.11.2.1.3](#). As soon as practicable, the engineer will inspect the work and categorize it as one of the following:
1. Unacceptable or not complete.

2. Substantially complete.
3. Complete.

#### **105.11.2.1.2 Unacceptable or Not Complete**

- (1) The engineer will identify, in writing, work that is unacceptable or not complete. Immediately correct or complete that work. The engineer will assess contract time until the work is corrected or completed.
- (2) Proceed as specified in [105.11.2.1.1](#) until the engineer determines that the work is complete.

#### **105.11.2.1.3 Substantially Complete**

- (1) When the project is substantially complete the engineer will relieve the contractor of maintenance responsibility for the completed work and no longer assess contract time. The project is substantially complete if the contractor has completed all contract bid items and change order work, except for the punch list. As applicable, the following must have occurred:
  1. All lanes of traffic are open on a finished surface.
  2. All signage and traffic control devices are in place and operating.
  3. All drainage, erosion control, excavation, and embankments are completed.
  4. All safety appurtenances are completed.
- (2) The engineer will provide a written punch list enumerating work the contractor must perform and documents the contractor must submit before the engineer will categorize the work as complete.
  1. Punch list work includes uncompleted cleanup work required under [104.9](#) and minor corrective work. Immediately correct or complete the punch list work. The engineer may restart contract time if the contractor does not complete the punch list work within 5 business days after receiving the written punch list. The engineer and contractor may mutually agree to extend this 5-day requirement.
  2. Punch list documents include whatever contract required documentation is missing. The engineer may restart contract time if the contractor does not submit the punch list documents within 15 business days after receiving the written punch list. The engineer and contractor may mutually agree to extend this 15-day requirement.
- (3) Proceed as specified in [105.11.2.1.1](#) until the work is complete.

#### **105.11.2.1.4 Complete**

- (1) When the engineer determines that the project is complete, the engineer will give the contractor written notice. The project is complete when the contractor has completed all contract bid items, change order work, and punch list work including the submission of all missing documentation.

#### **105.11.2.2 (Vacant)**

#### **105.11.2.3 Final Acceptance**

- (1) The engineer will grant final acceptance of the project after determining that all contract work is complete; all contract, materials, and payroll records are reviewed and approved; and the semi-final estimate quantities are final under [109.7](#).
- (2) Failure to discover defective work or materials before final acceptance does not prevent the department from rejecting that work or those materials later. The department may revoke final acceptance if the department discovers defective work or materials after it has accepted the work.

#### **105.12 (Vacant)**

### **105.13 Claims Process for Unresolved Changes**

#### **105.13.1 General**

- (1) Before submitting a claim, the department and contractor can mutually agree to have the department get a third-party advisory opinion as specified in [104.3.6](#).
- (2) The department and contractor can mutually agree to extend any time frame specified throughout 105.13 and can mutually agree to utilize an alternative dispute resolution method at any point before the department renders its final decision.
- (3) The department and contractor share costs related to referral to a dispute review board (DRB) as prescribed in the department's dispute resolution procedures (refer to [CMM 253](#)). The DRB recommendation is not binding on either party. Upon receipt of the DRB recommendation, the department will have up to 21 calendar days to render a written final decision. The department's final decision may confirm, overrule, or modify the DRB recommendation.

#### **105.13.2 Notice of Claim**

- (1) If the contractor has followed the procedures for revising the contract specified in [104.2](#) and provided the notification specified in [104.3](#), but still disagrees with the region, the contractor may pursue the

issue as a claim. File a notice of claim with the project engineer concerning the disagreement within 14 calendar days of receiving the region's decision under [104.3.6\(1\)](#).

- (2) The project engineer may deny the applicable portion of a claim if the contractor does not do the following:
  1. File the notice of claim within 14 calendar days as specified in [105.13.2\(1\)](#).
  2. Give the project engineer sufficient access to keep a record of the actual labor, materials, and equipment used to perform the claimed work.
- (3) Upon filing the notice of claim, maintain records as specified for force account statements in [109.4.5](#). Unless the project engineer issues a suspension, continue to perform the disputed work. The department will continue to make progress payments to the contractor as specified in [109.6](#).

#### **105.13.3 Submission of Claim**

- (1) Submit the claim to the project engineer as promptly as possible following the submission of the Notice of Claim, but not later than the end of the time allowed under [109.7](#) for the contractor to respond in writing to the engineer-issued semi-final estimate. If the contractor does not submit the claim within that response time, the department will deny the claim.
- (2) The department will not accept the submission of a claim until the resolution process in [104.3](#) has been completed and the contractor makes no further requests to submit updated information that may affect the region's final decision.

#### **105.13.4 Content of Claim**

- (1) The final contractor written statement under [104.3.3](#) is considered the content of the claim. If the contractor makes a request to submit updated information that may affect the region's final decision under [104.3.6](#), submit the updated information as an amendment to the contractor written statement and continue the resolution process in [104.3](#) before submitting a claim.
- (2) The department may refer the claimant of a false claim to the appropriate authority for criminal prosecution. Certify the claim using the following form:

The undersigned is duly authorized to certify this claim on behalf of (the contractor).

(The contractor) certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of (the contractor's) knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which (the contractor) believes that the department is liable.

(THE CONTRACTOR)

By: \_\_\_\_\_

(Name and Title)

Date of Execution: \_\_\_\_\_

#### **105.13.5 Department Final Decision**

- (1) The department will have up to 28 calendar days, from the contractor's submission of the claim, to perform a final review of the claim and conduct all meetings. The department may request, in writing, that the contractor submit additional information related to the claim. Submit that additional information, or notify the department in writing to base its decision on the information previously submitted. Either the contractor or region may request a meeting to present their views. Before the meeting, both parties will agree upon written ground rules for the meeting.
- (2) Upon completion of the 28 calendar days for the department's review and meetings, the department will have up to 21 calendar days to render a written decision. The department will consider written and oral submissions from the contractor and region, and may consider other relevant information in the project records.
- (3) The department will provide the following in its final decision:
  1. A concise description of the claim.
  2. A clear, contractual basis for its decision that includes a reference to [104.2](#) on revisions to the contract and as appropriate, specific reference to language regarding the bid items in question.
  3. Other facts the department relies on to support its decision.
  4. A concise statement of the circumstances surrounding the claim and reasons for its decision. If the department rejects the claim in whole or in part, the department will explain why the claimed work is not a change to the contract work.
  5. The amount of money or other relief, if any, the department will grant the contractor.
- (4) If the contractor disagrees with the department's final decision, the contractor may initiate a legal action pursuant to state statutes.