SECTION 104 - SCOPE OF WORK

104.01 Intent of Contract, Duty of Contractor. The intent of the contract is to provide for the construction, complete in every detail, the work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the contract documents.

104.02 Changes. The Engineer may at any time during the progress of the work, by written order and without notice to the sureties, make changes in the work be found to be necessary or desirable. Such changes shall not invalidate the contract nor release the surety and the Contractor will perform the work as changed, as though it had been a part of the original contract.

(A) Minor Changes. The Engineer may direct minor changes in the work with no changes in contract price or contract time of performance. If the Contractor believes a minor change directive justifies an increase in contract price or contract time it must follow the oral and written notice requirements set forth in Subsection 104.02(B) – Orders and Directives.

(B) Orders and Directives. Except for minor change directives referred to in Subsection (A) above, only a duly issued change order or field order may alter the contract and work requirements. Any order, direction, instruction, interpretation or determination from the Engineer or any other person that is not a field order or change order, may be considered as a compensable change only if the Contractor gives the Engineer an oral notice not later than noon of the following working day of its intent to treat such order, direction, instruction, interpretation or determination as a change directive. Such notice must be given before the Contractor acts in conformity with the order, direction, instruction, interpretation or determination. The oral notice shall be followed by a written notice of a potential claim that must be delivered to the Engineer within five days after communication of the order, direction, instruction, interpretation, or determination to the Contractor. The written notice of a potential claim shall state the date, circumstances, source of the order, direction, instruction, interpretation, or determination that the Contractor regards as a compensable change, and provide a detailed justification for additional payment or time. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time, compensation or contract price related to such work.
No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of a potential claim. Failure by the Contractor to submit a written notice of a potential claim in the time specified waives all rights for an increase in contract time or compensation related to such work. The claim shall be determined as provided in Subsection 107.15 –Disputes and Claims. In all cases, the Contractor shall proceed with the work as specified in the order, direction, instruction, interpretation, or determination immediately upon providing the Engineer with the oral notice described above, unless otherwise directed in writing by the Engineer.

(C) Penal Sum of the Surety Performance and Payment Bonds.
The penal sum of the surety performance and payment bonds will be adjusted by the amount of each and every contract change order.

Field Orders. Upon receipt of the field order the Contractor shall proceed with the work as changed by the field order without delay. If the Contractor does not agree with any of the terms or conditions or the adjustment or nonadjustment to the contract price, contract time, or both set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than three days after receipt of the field order. No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of a potential claim. Failure to file the written notice of a potential claim or to protest any portion(s) of the field order by the time specified shall constitute agreement on the part of the Contractor with all the terms, conditions, amounts and adjustment or non-adjustment to contract price, contract time, or both, set forth in the field order or the non-protested portion of the field order. Timely written notice shall be a non-waivable condition precedent to the assertion of a claim.

Contract Change Orders. The Engineer will issue contract change orders when it deems appropriate during the contract period. A contract change order may contain the adjustment in contract price, contract time, or both, for a number of field orders. In all cases, the Contractor shall proceed with the work as changed by the contract change order.
payment for any changes will be made until the contract change order is issued. If the Contractor does not agree with any of the terms or conditions of the adjustment or nonadjustment to either the contract price or contract time set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than three days after receipt of the contract change order.

104.05 Duty of Contractor to Provide Change Proposals. A field order may request the Contractor to supply the Engineer with a detailed proposal for an adjustment to the contract price, contract time, or both for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the field order.

At any time without the issuance of a field order, the Engineer may request the Contractor to supply the Engineer with a detailed proposal for an adjustment to the contract price, contract time, or both for contemplated changes in the work. The request for change proposal is not a directive for the Contractor to perform the work described therein.

The Contractor shall submit a detailed written proposal in a time span allowed by the Engineer or if a time span is not stated by the Engineer it shall be within 15 days after receipt of a request for change proposal or field order containing a request for proposal. The format shall set forth all charges the Contractor proposes for the change and a detailed justification for the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

Unless otherwise authorized by the Engineer in writing, no payment shall be allowed to Contractor for cost incurred for pricing, negotiating, and researching for proposed or actual charges, or designing of construction means and methods for proposed or actual changes. No time extensions will be granted for delay caused by late Contractor pricing of changes or proposed changes or time spent in negotiation.

The Engineer may accept the entire proposal, or any discrete cost item contained within the proposal, or the proposed adjustment to contract time by a notice in writing to the Contractor delivered to the Contractor within 30 days after receipt of the proposal. The written acceptance by the Engineer of all or part of the Contractor's proposal shall create a binding agreement between the parties for that aspect of the change.

If the Engineer refuses to accept the Contractor's entire proposal, the Engineer may issue a field order for the work; or if a field order has already been issued, the Engineer may issue a supplemental field order establishing new contract prices, the remaining adjustments to contract price and/or contract time for the ordered changes. If the Contractor disagrees with any term, condition
or adjustment contained in such field order or supplemental field order, it shall follow the protest procedures set forth in and be subject to the other terms of Subsection 104.03 - Field Orders.

104.06 Methods of Price Adjustment. Any adjustment in the contract price pursuant to a change or claim shall be made in one or more of the following ways:

(1) By written agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.

(2) By unit prices or other price adjustments specified in the contract or subsequently agreed upon.

(3) The Engineer may base the adjustment for a lump sum item on a calculated proportionate unit price. The Engineer will calculate the proportionate unit price by dividing the original contract lump sum price by the actual or original estimated quantity established by the contract documents.

(4) In such other lawful manner as the parties may mutually agree.

(5) At the sole option of the Engineer, work may be paid for on a force account basis in accordance with Subsection 109.06 - Force Account Provisions and Compensation.

(6) By determination by the Engineer of the reasonable and necessary costs attributed to the event or situation caused by the change, plus appropriate profit or fee, all computed by the generally accepted accounting principles and applicable sections of Chapter 3-123 and 3-126 of the HAR and using Subsection 109.05 - Allowances for Overhead and Profit herein, as the method for calculating overhead and profit.

104.07 Variations in Estimated Quantities. Where the quantity of a unit price item in this contract is estimated on the proposal schedule and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of the party. The adjustment shall be limited to any increase or decrease in direct costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. The adjustment shall be subject to Subsection 104.06 – Methods of Price Adjustment and Subsection 109.05 – Allowances for Overhead and Profit.

104.08 Differing Site Conditions. The Contractor shall promptly and before such conditions are disturbed, notify the Engineer of:
(1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(2) Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(A) Timeliness of Notice. No claim of the Contractor for any adjustment for contract price or contract time under this subsection shall be allowed unless the Contractor gives both:

(1) A verbal notice within 12 hours of discovery or by 10 A.M. of the next working day, whichever is later, of the differing site condition.

(2) Written notification of a potential claim to the Engineer no later than 5 days after the discovery of the differing site condition.

The Engineer in writing may extend the time prescribed in this subsection for giving verbal and written notice. The notices to the Engineer are non-waivable conditions precedent to any claim under this section.

(B) Adjustments of Price or Time. After receipt of the notice, the Engineer shall promptly investigate the site and if it is found that the conditions do materially differ and so cause an increase in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment will be made and the contract modified by contract change order. Any such adjustment in contract price or contract time shall be determined in accordance with the relevant adjustment subsections of this contract.

(C) No Claim After Final Payment. No request by the Contractor for an equitable adjustment to the contract shall be allowed if asserted after final payment under this contract.

(D) Knowledge. Nothing contained in this subsection shall be grounds for an adjustment in contract price or contract time if the Contractor had knowledge of the existence of such conditions prior to the submission of the bids.

104.09 Maintenance of Traffic. The Contractor shall:

(1) Keep the road open to traffic during the work or provide adequate detour roads as specified or directed.
104.09

(2) Furnish, install, and maintain traffic control devices under Section 645 – Work Zone Traffic Control.

(3) Construct and maintain all necessary accesses such as accesses to parking lots, garages, businesses, residences, and farms.

104.10 Use of Explosives. The use of explosives will not be permitted.

104.11 Utilities and Services.

(A) Contractor’s Duty to Coordinate Utility Work. The Contractor shall contact and cooperate with each affected utility owner in order for the work to progress on schedule and without unreasonable disruption of such utility services. If the work calls for permanent utility service installations or corrections to, or modifications of, existing utilities, the Contractor is responsible for scheduling and coordinating such work with appropriate utility owners. If the work required by the contract documents conflicts with the instructions, demands, or requirements of a utility owner, the Contractor shall notify the Engineer immediately. The Contractor shall furnish the Engineer with evidence that the Contractor has provided all relevant utility owners reasonable opportunity to review the drawings.

When the State has a separate agreement with utility owners for work to be performed within the worksite, at the direction of the Engineer, the Contractor shall make available all portions of the work and the worksite necessary for the utility owners to do their work.

The Contractor hereby holds the State harmless against all risks arising from acts or omissions of utility owners that damage the work, or create delays, disruptions, and additional cost to the Contractor in the performance of the work. Contract time may be extended in accordance with Subsection 108.05 - Contract Time, on account of acts and omissions of utility owners that delay the work without fault of the Contractor.

The Contractor may relocate or adjust the utility lines or service connections for its convenience with the permission of the owner of the utility and the Engineer at no increase in contract price or contract time.

(B) Contractor’s Duty to Locate and Protect Utility. Before beginning any work at the worksite, the Contractor shall:

(1) Ascertain and mark the exact location and depth of all utilities within the project area including taking reasonable steps to
detect the existence and location of utilities not shown on the drawing.

(2) Acquaint all personnel working near utilities with the type, size, location, and depth of the utilities, as well as the consequences that might result from disturbances.

(3) Take reasonable steps to protect the utilities and prevent service disruption.

(C) Discovery of Unknown Utility; Damage to Utility. Upon discovery of a utility that was not shown to exist in the contract documents, or is found at a location that is substantially different than shown in the contract documents, the Contractor shall promptly notify the Engineer before the utility and its surrounding area are further disturbed. The Contractor shall be responsible for the safety and protection of the public and the utility, subject to further direction from the Engineer. Whenever the Contractor damages a utility or causes any interruption to any utility service, the Contractor shall promptly notify the Engineer, the affected utility owner, and the appropriate governmental authorities. The Contractor shall cooperate with the affected utility owner and the appropriate governmental authorities in the restoration of service. If the damage is to a utility that is known, or should have been discovered before the damage occurred, the Contractor shall be responsible for all costs associated with its repair and restoration of service, at no increase in contract price or contract time.

104.12 Overweight Vehicle Control. All weight tags for aggregates and hot mix asphalt concrete transported to the worksite shall be submitted daily to the Engineer. The maximum legal total gross weight (W) as calculated by the formulas in HRS Chapter 291-35 Gross weight, axle, and wheel loads, for the transporting vehicle shall be clearly indicated on the weight tag. The Engineer may inspect any material transporting vehicle for compliance with HRS Chapters 291-34 to 291-36 at no increase in contract price or contract time. The Engineer may refuse entry to or demand the removal from the worksite of any vehicle that exceeds the maximum legal total gross weight and shall inform the appropriate enforcement authority of the violation.

END OF SECTION 104