

materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

Payment based on Force Account records shall constitute full payment and settlement of all additional costs and expenses including delay and impact damages caused by, arising from or associated with The Work performed.

109.06 Eliminated Items

Should any Items contained in the Proposal be found unnecessary for the proper completion of The Work, the Engineer may, upon written order to the Contractor, eliminate such Items from the Contract, and such action shall in no way invalidate the Contract. When a Contractor is notified of the elimination of Items, he will be reimbursed for actual work done and all costs incurred, including mobilization of materials prior to said notifications.

109.07 Partial Payments

A. General

At the end of each calendar month, the total value of Items complete in place will be estimated by the Engineer and certified for payment. Such estimate is approximate only and may not necessarily be based on detailed measurements. Value will be computed on the basis of Contract Item Unit Prices or on percentage of completion of Lump Sum Items.

When so requested by the Contractor and approved by the Engineer, Gross Earnings of \$500,000.00 or more for work completed within the first 15 days of any month will be certified for payment on a semi-monthly basis subject to the conditions and provisions of Subsection 109.07.A, Subsection 109.07.B.6, Subsection 109.07.C, Subsection 109.07.D, Subsection 109.07.E, and Subsection 109.07.F.

B. Materials Allowance

Payments will be made on delivered costs, or percentage of bid price if otherwise noted, with copies of paid invoices provided to the Department for the materials listed below which are to be incorporated into the Project provided the materials:

- Conform to all Specification requirements.
- Are stored on the Project Right-of-Way or, upon written request by the Contractor and written approval of the Engineer, they may be stored off the Right-of-Way, but local to the Project, provided such storage is necessary due to lack of storage area on the Right-of-Way, need for security, or need for protection from weather.

As a further exception to on-Project storage, upon written request by the Contractor, the Engineer may approve off-the-Project storage items uniquely fabricated or precast for a specific Project, such as structural steel and precast concrete, which will be properly marked with the Project number and stored at the fabrication or precast facility.

The Engineer may approve out-of-state storage for structural steel and prestressed concrete beams uniquely fabricated for a specific Project stored at the fabrication facility.

1. Paid invoices should accompany the materials allowance request, but in no case be submitted to the Project Engineer later than 30 calendar days following the date of the progress payment report on which the materials allowance was paid.

In case such paid invoices are not furnished within the established time, the materials allowance payment will be removed from the next progress statement and no further materials allowance will be made for that item on that Project.

2. Materials allowances will be paid for those items which are not readily available, and which can be easily identified and secured for a specific project and for which lengthy stockpiling periods would not be detrimental. Some exclusions are as follows:
 - a. No payments will be made on living or perishable plant materials until planted.
 - b. No payments will be made on Portland Cement, Liquid Asphalt, or Grassing Materials.
 - c. No payment will be made for aggregate stockpiled in a quarry. Payment for stockpiled aggregate will be made only if the aggregate is stockpiled on or in the immediate vicinity of the project and is held for the exclusive use on that project. The aggregate must be properly secured. If the aggregate stockpiled is to be paid for per-ton (megagram) it must be reweighed on approved scales at the time it is incorporated into the Project.
 - d. No payments will be made on minor material items, hardware, etc.
3. No materials allowance will be made for materials when it is anticipated that those materials will be incorporated into The Work within 30 calendar days.

4. No materials allowance will be made for a material when the requested allowance for such material is less than \$25,000.
5. Where a storage area is used for more than one project, material for each project shall be segregated from material for other projects, identified, and secured. Adequate access for auditing shall be provided. All units shall be stored in a manner so that they are clearly visible for counting and/or inspection of the individual units.
6. Materials allowance for prestressed concrete and structural steel bridge members may be processed for uncast or unfabricated members upon the Engineer's receipt of a true copy of the binding order for the members required by the plan. Such copy shall be sealed and notarized by both the contractor placing the order and the supplier therein identified to cast or fabricate said members. All orders shall demonstrate conformance to the approved plans and specifications regarding beam type, size, length, material quantities and shall not exceed the approved plan quantity. The materials allowance applied to uncast prestressed concrete members will be made in amount equal to 40% of the invoice for the respective member(s) to the contractor. The materials allowance applied to unfabricated structural steel bridge members will be made in amount equal to 55% of the invoice for the respective member(s) to the contractor. An additional material allowance may be requested separately upon completion of the casting or fabricating for a maximum 90% of the invoice for the member(s) provided there is adherence to all other provisions of this specification.
7. The Commissioner may, at his discretion, grant waiver to the requirements of this Section when, in his opinion, such waiver would be in the public interest.

Subsequently, in the event the material is not on-hand and in the quantities for which the materials allowance was granted, the materials allowance payment will be removed from the next progress statement and no further materials allowance will be made for those items on that Project. If sufficient earnings are not available on the next progress statement, the Contractor agrees to allow the Department to recover the monies from any other Contract he may have with the Department, or to otherwise reimburse the Department.

Excluding item 6 above, payments for materials on hand shall not exceed the invoice price or 75 percent of the bid prices for the pay items into which the materials are to be incorporated, whichever is less.

C. Minimum Payment

No partial payment will be made unless the amount of payment is at least \$1000.00.

D. Liquidated Damages

Accrued liquidated damages will be deducted in accordance with Subsection 108.08.

E. Other Deductions

In addition to the deductions provided for above, the Department has the right to withhold any payments due the Contractor for items unpaid by the Contractor for which the Department is directly responsible, including, but not limited to, royalties (see Section 106).

F. Amount of Payment

The balance remaining after all deductions provided for herein have been made will be paid to the Contractor. Partial estimates are approximate and are subject to correction on subsequent progress statements. If sufficient earnings are not available on the subsequent progress statement, the Contractor agrees to allow the Department to recover the monies from any other Contract he may have with the Department, or to otherwise reimburse the Department. The Engineer is responsible for computing the amounts of all deductions herein specified, for determining the progress of the Work and for the items and amounts due to the Contractor during the progress of the Work and for the final statement when all Work has been completed.

G. Interest

Under no circumstances will any interest accrue or be payable on any sums withheld or deducted by the Department as authorized by Subsection 109.07.A, Subsection 109.07.B.6, Subsection 9.07.C, Subsection 109.07.D, Subsection 109.07.E, and Subsection 109.07.F.

H. Insert the Following in Each Subcontract

The Contractor shall insert the following in each Subcontract entered into for work under this Contract:

“The Contractor shall not withhold any retainage on Subcontractors. The Contractor shall pay the Subcontractor 100% percent of the gross value of the Completed Work by the Subcontractor as indicated by the current estimate certified by the Engineer for payment.”

Neither the inclusion of this Specification in the Contract between the Department and the Prime Contractor nor the inclusion of the provisions of this Specification in any Contract between the Prime Contractor and any of his Subcontractors nor any other Specification or Provision in the Contract between the Department and the Prime Contractor shall create, or be deemed to create, any relationship, contractual or otherwise, between the Department and any Subcontractor.

109.08 Final Payment

When Final Inspection and Final Acceptance have been made by the Engineer as provided in Subsection 105.16, the Engineer will prepare the Final Statement of the quantities of the various classes of work performed. All prior partial estimates and payments shall be subject to correction in the Final Statement. The District Engineer will transmit a copy of the Statement to the Contractor by Registered or Certified Mail. The Contractor will be afforded 35 days in which to review the Final Statement in the District Office before it is certified for payment by the Engineer. Any adjustments will be resolved by the District Engineer or in case of a dispute referred to the Chief Engineer whose decision shall be final and conclusive. After approval of the Final Statement by the Contractor, or after the expiration of the 35 days, or after a final ruling on disputed items by the Chief Engineer, the Final Statement shall be certified to the Treasurer by the Chief Engineer stating the Project has been accepted and that the quantities and amounts of money shown thereon are correct, due and payable.

The Treasurer, upon receipt of the Engineer's certification, shall in turn furnish the Contractor with the Department's Standard Release Form to be executed in duplicate. The aforesaid Release Form, showing the total amount of money due the Contractor, shall be sent to the Contractor by Registered or Certified Mail, to be delivered to such Contractor upon the signing of a return receipt card, to be returned to the Department in accordance with the provision of Federal law in respect to such matters and such return receipt card shall be conclusive evidence of a tender of said sum of money to the Contractor. Upon receipt of the properly executed Standard Release Form, the Treasurer shall make final payment jointly to the Contractor and his Surety. The aforesaid certification, executed release form, and final payment shall be evidence that the Commissioner, the Engineer, and the Department have fulfilled the terms of the Contract, and that the Contractor has fulfilled the terms of the Contract except as set forth in his Contract Bond.

The Standard Release Form is to be executed by the Contractor within 45 days after delivery thereof, as evidenced by the Registered or Certified Mail Return Receipt. Should the Contractor fail to execute the Standard Release Form because he disputes the Final Payment as offered, or because he believes he has a claim for damages or additional compensation under the Contract, the Contractor shall, within 45 days after delivery to the Contractor of the Standard Release Form, as evidenced by the Registered or Certified Mail Return Receipt, enter suit in the proper court for adjudication of his claim. Should the Contractor fail to enter suit within the aforesaid 45 days, then by agreement hereby stipulated, he is forever barred and stopped from any recovery or claim whatsoever under the terms of this Contract.

Should the Contractor fail to execute the Standard Release Form or file suit within 45 days after delivery thereof, then the Surety on the Contractor's Bond is hereby constituted the attorney-in-fact of the Contractor for the purpose of executing such final releases as may be required by the Department, including but not limited to the Standard Release Form, and for the purpose of receiving the Final Payment under this Contract.

The Department reserves the right as defined in Subsection 107.20, should an error be discovered in any estimates, to claim and recover from the Contractor or his Surety, or both, such sums as may be sufficient to correct any error of overpayment. Such overpayment may be recovered from payments due on current active Projects or from any future State work done by the Contractor.

The foregoing provisions of this Section shall be applicable both to the Contractor and the Surety on his Bond; and, in this respect, the Surety shall be bound by the provisions of Subsection 108.09 of these Specifications in the same way and manner as the Contractor.

A. Interest

In the event the Contractor fails to execute the *Standard Release Form* as prepared by the Treasurer because he disputes the amount of the final payment as stated therein, the amount due the Contractor shall be deemed by the Contractor and the Department to be an unliquidated sum and no interest shall accrue or be payable on the sum finally determined to be due to the Contractor for any period prior to final determination of such sum, whether such determination be by agreement of the Contractor and the Department or by final judgement of the proper court in the event of litigation between the Department and the Contractor. The Contractor specifically waives and renounces any and all rights it may have under Section 13-6-13 of the Official Code of Georgia and agrees that in the event suit is brought by the Contractor against the Department for any sum claimed by the Contractor under the Contract, for delay damages resulting from a breach of contract, for any breach of contract or for any extra or additional work, no interest shall be awarded on any sum found to be due from the Department to the Contractor in the final judgement entered in such suit. All final