

## 109 Measurement and Payment

### 109.1 Measurement of Quantities

#### 109.1.1 General

- (1) The engineer will use the US standard system to measure all work completed under the contract. The engineer will determine quantities of materials the contractor furnishes and work the contractor performs using measurement methods and computations conforming to standard engineering practice, modified to meet department requirements. The engineer will document these measurements using department procedures.
- (2) The engineer will measure the work as the contract measurement subsection for individual items specifies. The department will measure the actual quantities of work the contractor acceptably completes and make final payment based on those actual measured quantities except as follows:
  1. If the measurement subsection for a bid item specifically restricts the quantity measured for payment or allows for use of conversion factors.
  2. If the engineer executes a change order modifying the method of measurement for specific bid items, the engineer will measure the quantities of applicable bid items for payment using the change order methods.
  3. If the engineer, under [105.3.1\(2\)](#), approves a contractor-requested plan dimension change between US standard and SI metric dimensions, the engineer will measure whichever of the following is less:
    - Actual quantities constructed.
    - Quantities derived from the original plan dimensions.
  4. For substitutions made under [106.2.3](#) between US standard and SI metric products, the engineer will measure the actual quantities of the substitute products using the original contract measuring system.

#### 109.1.2 Area

- (1) If the contract designates payment for a measured area, the engineer will measure the length and width of the area actually constructed within engineer-designated limits, or the final dimensions measured along the surface of the completed work within the neat lines the plans show or the engineer designates. The engineer will use the method or combination of methods of measurement that reflect, with reasonable accuracy, the actual surface area of the finished work as the engineer determines.
- (2) If the contract allows, the engineer may weigh or determine a volume and convert to area for payment. The engineer will determine the weight-to-area or volume-to-area conversion factors. The engineer and contractor must agree on the conversion factor before the engineer converts a pay quantity.

#### 109.1.3 Volume

- (1) For material specified for measurement by volume in the vehicle, haul the material in engineer-approved vehicles. Ensure that the vehicle body type allows for ready and accurate measurement of the contents.
- (2) The engineer will determine the approved capacity of vehicles to the nearest 1/10 cubic yard. Unless all department-approved vehicles on a job have the same capacity, mark each vehicle with a plainly legible identification mark showing the approved capacity. Do not change capacity markings without the engineer's consent.
- (3) The engineer will measure the material in the vehicle at the point of delivery. The engineer will make no adjustment for the settlement of material during transit. The engineer may reject loads not hauled in department-approved vehicles.
- (4) If the contract allows, the engineer may weigh material and convert to a volume for payment. The engineer will determine the weight to volume conversion factors. The engineer and contractor must agree on the conversion factor before the engineer converts a pay quantity.

#### 109.1.4 Weight

##### 109.1.4.1 General

- (1) If weighing materials in the hauling vehicle, check gross weights and determine the vehicle tare weight whenever the engineer directs.
- (2) If the contract allows, the engineer may measure the volume of material and convert to weight for payment. The engineer will determine the volume to weight conversion factors. The engineer and contractor must agree on the conversion factor before the engineer converts a pay quantity.
- (3) For aggregates and asphaltic mixtures measured by weight, weigh the material on platform scales or other engineer-approved scales. Use department-tested scales or ensure that department-authorized testing firms or agencies test the scales as frequently as the engineer deems necessary.

#### **109.1.4.2 Load Tickets**

- (1) For weighed aggregates, submit a ticket for each load of material. Submit tickets daily as work is completed. Ensure that each ticket includes a unique ticket number, the project ID, material description, date & time measured, gross, tare & net weights, and truck ID.
- (2) For asphaltic mixtures, submit tickets as specified in [450.3.1.1.4](#).
- (3) For ready-mixed concrete, submit tickets as specified in [501.3.5.4](#).

#### **109.1.4.3 Electronic Load Tickets**

- (1) Electronic load tickets may be provided as a substitute for printed tickets. Include the information as specified in 109.1.4.2 on each electronic ticket.
- (2) Automatically generate electronic tickets using a system that is fully integrated with the load-out scale system being used to weigh the material. Ensure data input cannot be altered and provide offline capabilities to prevent data loss.
- (3) Provide electronic tickets in real-time by allowing the department access to the tickets utilizing a web-based or app-based system compatible with iOS and Android.
- (4) Provide the capability to record information and comments on each ticket.
- (5) For each project ID and bid item, submit an electronic daily summary of the individual tickets daily as work is completed. In the daily summary, include the unique information for each individual load ticket. Provide the daily summary data in an importable format, such as comma separated values (.csv).

#### **109.2 Scope of Payment**

- (1) The department will use the US standard unit prices the schedule of items shows to pay for the work.
- (2) The department will pay for the quantity of work acceptably completed and measured for payment as the measurement subsection for each bid item specifies. Within the contract provide means to furnish and install the work complete and in-place. Payment is full compensation for everything required to perform the work under the contract including, but not limited to, the work elements listed in the payment subsection. Payment also includes all of the following not specifically excluded in that payment subsection:
  1. Furnishing and installing all materials as well as furnishing the labor, tools, supplies, equipment, and incidentals necessary to perform the work.
  2. All losses or damages, except as specified in [107.14](#), arising from one or more of the following:
    - The nature of the work.
    - The action of the elements.
    - Unforeseen difficulties encountered during prosecution of the work.
  3. All insurance costs, expenses, and risks connected with the prosecution of the work.
  4. All expenses incurred because of an engineer-ordered suspension, except as specified in [104.2.2.3](#).
  5. All infringements of patents, trademarks, or copyrights.
  6. All other expenses incurred to complete and protect the work under the contract.
- (3) The department may withhold payments due under the contract until the contractor proves to the department that the contractor has paid for all labor and materials used in the work.

#### **109.3 Payment for Altered Quantities**

- (1) If the measured quantity for a bid item varies from the quantity given in the proposal, the department will pay at the original contract bid price for the quantity measured as [109.1.1\(2\)](#) specifies. The department will adjust payment for revisions in plans or quantities of work requiring change orders as specified in [104.2](#).
- (2) The department will not pay the contractor for loss of expected reimbursement or anticipated profits suffered or claimed by the contractor. The department will not make revisions to the contract bid prices except as specified in [104.2](#).

#### **109.4 Price Adjustments for Contract Revisions**

##### **109.4.1 General**

- (1) If the department revises the contract under [104.2](#), the department will adjust the contract price using the sequence specified in [109.4.2](#) through [109.4.5](#). This price adjustment includes payment for performing the revised work, delay costs, and all other associated costs the engineer deems reasonable and not expressly precluded in [109.4.6](#). The department may, at anytime, direct the contractor to perform all or part of the revised work under force account.

- (2) If a contract revision includes a time adjustment for compensable delays under items 2 through 5 of [108.10.3\(2\)](#), the department will adjust the contract price for delay costs as specified in [109.4.7](#).

#### **109.4.2 Contract Bid Prices**

- (1) Before proceeding to another pricing method, the engineer will attempt to price revised work using contract bid prices.

#### **109.4.3 (Vacant)**

#### **109.4.4 Negotiated Prices**

- (1) The engineer and contractor will negotiate the price of a contract revision for one or more of the following:
1. Adjustments in contract bid prices are necessary due to a significant change as specified in [104.2.2.4](#).
  2. The engineer and contractor cannot agree on a revised price under [109.4.2](#).
- (2) Provide an estimate of the proposed unit prices or lump sum price for the contract revision. Include the cost of performing the revised work, delay costs, all other associated costs, plus a reasonable allowance for profit and applicable overhead. The engineer may request that the contractor justify the estimate by providing one or more of the following:
1. Labor requirements by trade in hours for each task.
  2. Equipment costs and time requirements.
  3. Material costs.
- (3) Provide the justification within 5 business days after the department's request. The department will respond to the estimate within 5 business days after receipt of the contractor's justification. The department and the contractor can mutually agree to extend these 5-day requirements.
- (4) If the department negotiates with the contractor but does not agree on a price adjustment, the engineer may direct the contractor to perform all or part of the revised work under force account.

#### **109.4.5 Force Account**

##### **109.4.5.1 General**

- (1) The engineer may direct the contractor to perform the revised work under force account. Submit a written proposal for the work including the planned equipment, materials, labor, and work schedule.
- (2) The department will pay the contractor as specified in [109.4.5.2](#) through [109.4.5.6](#), as full compensation for performing the force account work, delay costs, and all other associated costs. At the end of each workday, the contractor's representative and the inspector shall compare records of the work done under force account. The department will make no force account payment before the contractor submits an itemized statement of the costs for that work.
- (3) Provide the following content in itemized statements for all force account work:
1. Name, classification, date, daily hours, total hours, rate, and amount for all labor. Include accumulation of wages to date for each employee performing force account work and identify allowable federal unemployment tax (FUTA) and state unemployment tax (SUTA) multipliers.
  2. Designation, dates, daily hours, total hours of actual operation and stand-by operation, rental rate, and amount for each unit of equipment, or the applicable hourly equipment expense rate for each truck or other unit of machinery and equipment. Include the manufacturer's name or trademark, model number, and year of manufacture with the designation.
  3. Quantities of materials and prices.
  4. Transportation charges on materials, free on board (f.o.b.) at the job site.
  5. Cost of property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security tax.
  6. Documentation showing payment for all invoiced work.
  7. If materials are taken from contractor's stock and original receipted invoices for the materials and transportation charges cannot be provided, provide an affidavit and certify the following:
    - The materials were taken from the contractor's stock.
    - The quantity shown was actually used for the force account work.
    - The price and transportation costs represent the actual cost to the contractor.
- (4) The department will pay for force account work based on the engineer's review of the actual invoice costs the contractor submits. The engineer will approve payment for costs the engineer deems reasonable based on experience or prevailing market rates. The engineer may request that the contractor provide additional evidence to support costs the engineer questions. The department will only pay for costs the engineer approves.

#### **109.4.5.2 Labor**

- (1) The department will pay the contractor's labor costs, at prevailing wage rates or at wage rates previously agreed upon with the department in writing, for personnel directly involved in producing and supervising the force account work. The department will only pay for hours that personnel are actually engaged in force account work. The department will also reimburse the contractor based on actual invoiced costs paid to, or on behalf of, workers for subsistence and travel benefits, health and welfare benefits, pension fund benefits, or other contractor-paid benefits. The department will pay an additional 35 percent markup of these wages and benefits.
- (2) The department will pay no part of wages or benefits for personnel connected with the contractor's forces above the classification of foreman and having only general supervisory responsibility for the force account work.

#### **109.4.5.3 Insurance**

- (1) The department will pay the contractor based on actual invoiced costs for property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions, and social security taxes on force account work. The department will pay an additional 15 percent markup of these costs. Furnish satisfactory evidence of the rates actually paid.

#### **109.4.5.4 Materials**

- (1) The department will pay the contractor based on actual invoice costs, including applicable taxes and actual freight charges, for engineer-approved materials the contractor uses in force account work. The department will pay an additional 15 percent markup of these costs. If the contractor uses materials from the contractor's stock, the department and the contractor must agree on the price. Do not incorporate materials into the work without agreement.
- (2) The department reserves the right to furnish materials as it deems appropriate. Make no claims for costs, overhead, or profit on materials that the department provides.

#### **109.4.5.5 Equipment**

##### **109.4.5.5.1 General**

- (1) The department will pay the contractor's costs for equipment the engineer deems necessary to perform the force account work for the time the engineer directs or until the contractor completes the force account work, whichever happens first. The department will pay the contractor for equipment only during the hours that it is operated. The department will pay for non-operating hours at the stand-by rate as specified in [109.4.5.5.3](#). Report equipment hours to the nearest 1/2-hour.
- (2) The department will pay for use of contractor-owned equipment the engineer approves for force account work at published rates. The department will pay the contractor expense rates, as modified in 109.4.5.5, given in EquipmentWatch Cost Recovery (formerly Rental Rate Blue Book). Base all rates on revisions effective on January 1 for all equipment used in that calendar year.

<http://equipmentwatch.com/estimator/>

- (3) For each piece of equipment the contractor uses, whether bought or rented, the contractor shall provide the engineer with the following information:
  1. Manufacturer's name.
  2. Equipment type.
  3. Year of manufacture.
  4. Model number.
  5. Type of fuel used.
  6. Horsepower rating.
  7. Attachments required, together with their size or capacity.
  8. All further information necessary to determine the proper rate.
- (4) Provide for the engineer's confirmation, the manufacturer's ratings, and manufacturer-approved modifications required to classify equipment for rental rate determination. For equipment with no direct power unit, use a unit of at least the minimum recommended manufacturer's rating.
- (5) The department will not pay rental for tools or equipment with a replacement value of \$500 or less.
- (6) Use engineer-approved equipment in good working condition and providing normal output or production. The engineer may reject equipment not in good working condition or not properly sized for efficient performance of the work.

- (7) For equipment not listed in the blue book, provide an expense rate and furnish cost data to support that rate. Obtain the engineer's written approval for the expense rate before using that equipment on force account work.

#### **109.4.5.5.2 Hourly Equipment Expense Rates (Without Operators)**

- (1) The contractor shall determine, and the department will confirm, hourly equipment expense rates as follows:

$$\text{HEER} = [\text{RAF} \times \text{ARA} \times (\text{R}/176)] + \text{HOC}$$

**Where:**

**HEER** = Hourly equipment expense rate.

**RAF** = EquipmentWatch regional adjustment factor.

**ARA** = EquipmentWatch age rate adjustment factor.

**R** = Current EquipmentWatch monthly rate.

**HOC** = EquipmentWatch estimated hourly operating cost.

- (2) The EquipmentWatch hourly operating cost represents all costs of equipment operation, including fuel and oil, lubrication, field repairs, tires, expendable parts, and supplies.

#### **109.4.5.5.3 Hourly Equipment Stand-By Rate**

- (1) For equipment that is in operational condition and is standing-by with the engineer's approval, the contractor shall determine, and the department will confirm, the hourly stand-by rate as follows:

$$\text{HSBR} = \text{RAF} \times \text{ARA} \times (\text{R}/176) \times (1/2)$$

**Where:**

**HSBR** = Hourly stand-by rate.

**RAF** = EquipmentWatch regional adjustment factor.

**ARA** = EquipmentWatch age rate adjustment factor.

**R** = Current EquipmentWatch monthly rate.

- (2) The department will limit payment for stand-by to 10 hours or less per day up to 40 hours per week. The department will not pay the contractor for equipment that is inoperable due to breakdown. The department will not pay for idle equipment if the contractor suspends work or if the contractor is maintaining or repairing the equipment.

#### **109.4.5.5.4 Hourly Outside-Rented Equipment Rate**

- (1) If the contractor rents or leases equipment from a third party for force account work, the contractor shall determine, and the department will confirm, the hourly outside-rented equipment rate as follows:

$$\text{HORER} = \text{HRI} + \text{HOC}$$

**Where:**

**HORER** = Hourly outside-rented equipment rate.

**HRI** = Hourly rental invoice costs prorated for the actual number of hours that rented equipment is operated solely on force account work.

**HOC** = EquipmentWatch hourly operating cost.

#### **109.4.5.5.5 Owner-Operated Equipment**

- (1) For rental of equipment owned and operated by persons other than the contractor or their subcontractors, the department will pay the contractor based on the actual paid invoice. Provide an invoice that includes all costs for furnishing and operating the equipment. Obtain the engineer's written approval of the rental rates before starting the force account work.
- (2) The department will allow the contractor to add a markup on the invoice for owner-operated equipment. Determine the markup in the same manner as specified in [109.4.5.6](#) for subcontractors.

#### **109.4.5.5.6 Moving of Equipment**

- (1) The department will pay the contractor at the hourly equipment expense rate, as specified in [109.4.5.5.2](#), for time required to move needed equipment under its own power to the location of the force account work and to return it to its original location on the project. The department will pay the contractor at the hourly equipment expense rate, as specified in [109.4.5.5.2](#), for the transporting vehicle only if it is transporting equipment to, from, and within the project.
- (2) The department will pay the contractor for actual freight costs of equipment moved by commercial carrier.

#### **109.4.5.6 Force Account Work by Subcontractors**

- (1) If a subcontractor performs force account work, the department will allow the contractor a markup on work the subcontractor performs as follows:
  1. Use a markup of 10 percent for the first \$10,000 of work.
  2. Use a markup of 2 percent for work in excess of \$10,000.

#### **109.4.6 Non-Allowable Charges for Adjustment of Contract Prices**

- (1) Whether contract revision price adjustments are based on contract bid prices, agreed lump sum prices, negotiated prices, or force account, the department will not reimburse the contractor for the following:
  1. Profit in excess of that specified in [109.4.2](#) through [109.4.5](#).
  2. Loss of anticipated profit.
  3. Home office overhead.
  4. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, and insolvency.
  5. Indirect costs.
  6. Attorneys fees, claims preparation expenses, or costs of litigation.
  7. Interest.

#### **109.4.7 Price Adjustments for Delay Costs**

##### **109.4.7.1 General**

- (1) For a compensable delay under items 2 through 5 of [108.10.3\(2\)](#), the department will pay for the costs specified here in [109.4.7.2](#). The department will not pay for non-allowable charges specified in [109.4.6](#) nor duplicate payment made under [109.4.2](#) through [109.4.5](#).
- (2) The department will only pay the contractor for costs the contractor actually incurs. The department will make no payment for delay costs before the contractor submits an itemized statement of those costs. Provide the content specified in [109.4.5.1\(3\)](#), for the applicable items, in this statement.

##### **109.4.7.2 Allowable Delay Costs**

###### **109.4.7.2.1 Extended Field Overhead**

- (1) The department will pay the contractor for extended field overhead costs that include costs for general field supervision, field office facilities and supplies, and for maintenance of field operations.
- (2) General field supervision costs include, but are not limited to, field supervisors, assistants, watchman, and clerical and other field support staff. Compute these labor costs as specified in [109.4.5.2\(1\)](#). For salaried personnel, calculate the daily wage rate actually paid by dividing the weekly salary by 5 days per week.
- (3) Field office facility and supply costs include, but are not limited to, field office trailers, tool trailers, office equipment rental, temporary toilets, and other associated facilities and supplies. Compute these costs on a calendar-day basis using actual costs incurred due to the delay to provide these services.
- (4) Maintenance of field operations costs include, but are not limited to, telephone, electric, water, and other similar expenses. Compute these costs on a calendar-day basis using actual costs incurred due to the delay to maintain these services.

###### **109.4.7.2.2 Extended Labor**

- (1) Compute labor costs during delays as specified in [109.4.5.2](#) for all non-salaried personnel remaining on the project as required under collective bargaining agreements or for other engineer-approved reasons.

###### **109.4.7.2.3 Escalated Labor**

- (1) To receive payment for escalated labor, demonstrate that the department-caused delay forced the work to be performed during a period when labor costs were higher than planned at the time of bid. Provide adequate support documentation for the costs, allowances, and benefits specified in [109.4.5.2](#).

###### **109.4.7.2.4 Equipment Stand-By or Equipment Demobilization**

- (1) The department will pay the contractor the stand-by rate calculated in [109.4.5.5.3](#) for equipment, other than small tools, that must remain on the project during delays. The department will pay the contractor's transportation costs to remove and return equipment not required on the project during delays.

#### **109.4.7.2.5 Materials Escalation or Material Storage**

- (1) The department will pay the contractor for increased material costs or material storage costs due to the delay. Obtain the engineer's approval before storing material due to a delay.

#### **109.5 Eliminated Work**

- (1) If the department eliminates work as specified in [104.2.2.5](#), the department will pay the direct costs incurred as of the date the work was eliminated. The department will not pay for bidding costs or other non-allowable charges specified in [109.4.6](#).
- (2) The department may pay for, and take ownership of, materials or supplies the contractor has already purchased.
- (3) Submit a certified statement, including paid invoices, covering all direct costs incurred as of the date the work was eliminated. The department will execute a change order as follows:
  1. For incurred direct costs that have no value to other contract work, the department will reimburse the contractor in full for those costs.
  2. For incurred direct costs that are distributed over other contract work, the department will prorate reimbursement based on the value of the eliminated work compared to the total value of associated contract work.
  3. Restocking and cancellation charges.
  4. A markup for unrecoverable overhead paid as 7 percent of the contract price of the work actually eliminated. The work actually eliminated is calculated as the net value of the eliminated work and replacement work having the same essential functions as the eliminated work.

#### **109.6 Progress Payments**

##### **109.6.1 General**

- (1) The department will first prepare a progress payment estimate as described in [109.6.3](#), and then will make a progress payment based on the engineer's estimate of the quantities of work completed. Payment will be at the contract or agreed unit or lump sum prices. The department may suspend progress payments if the contractor does not comply with the engineer's directions as the contract specifies. The department will notify the contractor immediately whenever progress payments are suspended.
- (2) The department will restrict progress payments, as specified in [108.4](#), until the engineer accepts the contractor's progress schedule. Progress payment restrictions are specified in [108.4.2.1\(5\)](#) for bar chart schedules, in [108.4.3.2\(5\)](#) for RBC schedules, and in [108.4.4.3\(6\)](#) for CPM schedules.
- (3) The department's payment of an estimate before final acceptance of the work does not constitute the department's acceptance of the work, and does not relieve the contractor of responsibility for:
  1. Protecting, repairing, correcting, or renewing the work.
  2. Replacing all defects in the construction or in the materials used in the construction of the work under the contract, or responsibility for damage attributable to these defects.
- (4) The contractor is responsible for all defects or damage that the engineer may discover on or before the engineer's final acceptance of the work. The engineer is the sole judge of these defects or damage, and the contractor is liable to the department for not correcting all defects or damage.
- (5) The department will take ownership of all material and work covered by progress payments. However, the contractor remains solely responsible for all materials and work covered by progress payments and for the restoration of damaged work as specified in [107.14](#). Also, by making the progress payment, the department waives no requirement, right, or term of the contract as specified in [107.16](#).

##### **109.6.2 Frequency**

- (1) The department will make 2 progress payments each month, as feasible, if the contractor is due a payment of \$1000 or more. The department may reduce this minimum payment due for contracts of \$25,000 or less.

##### **109.6.3 Preparation of Progress Payment Estimate**

###### **109.6.3.1 General**

- (1) The department will compute quantities to reflect the approximate quantity of work completed, or substantially completed, under the pertinent contract bid items to the date of the progress payment estimate. The department will adjust quantities to cover contingencies and costs for finishing or maintaining the work. If the engineer bases the progress payment estimate on contract quantities, the department will adjust quantities to cover variations between the contract and final quantities.
- (2) Between the times the engineer authorizes a change order and the department executes it, the engineer will include, in the progress payment estimate, the value of the acceptably completed change

order work. The department will pay at least 90 percent of the value of the work as it is completed under an unexecuted change order. After the department executes the change order, the department will deduct payments made on the unexecuted change order work from future payments due the contractor.

### **109.6.3.2 Materials**

#### **109.6.3.2.1 General**

- (1) The engineer may include in the progress payment estimate the value of materials that:
  1. Are specifically manufactured, produced, or purchased for incorporation as a permanent part of the work.
  2. Are delivered to the project or stored at a location off the project as specified in [106.4](#).
  3. Are stored separately and irrevocably assigned to the project if stockpiled at plants or fabrication sites.
- (2) The engineer will require the contractor to document costs for materials included in a progress payment estimate. Provide the required invoice, billing, title, or assignment documents including a complete material description, identification, and cost data.
- (3) If the contractor does not satisfy all vendor claims made against the contractor for materials within 30 calendar days after receiving the progress payment, the department may cancel the applicable materials payment in the next progress payment estimate.
- (4) If making progress payments for materials, the engineer will not exceed the delivered cost or contract amount for the material complete in place. The engineer will use those amounts paid for materials to reduce future payments due the contractor for completed work incorporating those materials.

#### **109.6.3.2.2 Structural Steel**

- (1) On contracts containing 250 tons or more of structural steel, the engineer may also include in the progress payment estimate the value of Structural Steel Carbon or Structural Steel HS, or both, to be used in the completed work and that has been delivered to the fabricator.
- (2) In addition to the information required in [109.6.3.2.1](#), provide the weights, dimensions, and heat and unit numbers.
- (3) Store the structural steel separately. Use stored structural steel only for fabrication of structural components to be used on the contract.
- (4) Present acceptable evidence indicating satisfactory fabrication of structural steel. The engineer may include, in the estimate prepared for progress payment, the value of this fabricated material, determined by multiplying the total unit weight of the material by 80 percent of the contract unit price.

#### **109.6.3.3 Retainage**

- (1) The department will withhold retainage from progress payment estimates for liquidated damages and claims including the following:
  1. To provide for recovery of liquidated damages assessable against the contract under [108.11](#).
  2. To cover claims against the contract filed with the department under chapter 779 of the Wisconsin statutes.  
<http://docs.legis.wi.gov/statutes/statutes/779>
  3. To provide for recovery of damage and tort claims assessable against the contract under [107.12](#).

### **109.7 Acceptance and Final Payment**

- (1) After the engineer gives written notice that the project is complete as specified in [105.11.2.1.4](#) and reviews required document submittals and materials test reports, the engineer will issue the semi-final estimate.
- (2) Within 30 calendar days after receiving the semi-final estimate, submit to the engineer a written statement of agreement or disagreement with the semi-final estimate. For an acceptable statement of disagreement, submit an item-by-item list with reasons for each disagreement. If the contractor does not submit this written statement within those 30 days, the engineer will process the final estimate for payment. The engineer and the contractor can mutually agree to extend this 30-day submission requirement.
- (3) If the contractor submits an acceptable statement of disagreement, the department will withhold payment of the final estimate and determine the validity of the contractor's disagreement. After considering the contractor's statement, the department may revise the final estimate based on the engineer's judgment of the validity of the contractor's disagreement.
- (4) The department will make final payment within one year after the date the contractor provides the department with written confirmation of the semi-final estimate, or within one year after expiration of the 30-day period specified in [109.7\(2\)](#), whichever applies. If the department does not pay as required,



the department will pay interest, compounded monthly, on the balance due at the rate specified in section 16.528(2)(a) of the Wisconsin statutes.

<http://docs.legis.wi.gov/statutes/statutes/16>

- (5) If the department has been notified that there are multiple claims against the amount held and the department concludes that it cannot appropriately choose between or among the conflicting claims, the department may withhold payment of the amount at issue pending resolution of those conflicts. Upon resolution of all issues affecting rights to the amount held, the department will pay the claimant or claimants.
- (6) The department may correct progress estimates and payments in the final estimate and payment.
- (7) If approved by the division administrator, the department may set off any sums the department determines the contractor owes the department against any sums otherwise due and payable to the contractor under this contract or any previously executed or future contract with the department. The department will notify the contractor when exercising this right and identify how the department has or will make that equitable adjustment.

#### **109.8 No Assignment of Payments**

- (1) The department will pay the contractor all payments due under the contract, or any part of the contract, as specified in 109. The department will recognize no contractor-executed assignment or order directing payment of all, or any portion of, the funds to any other person or persons.