

104 Scope of Work

104.1 Intent of the Contract

- (1) The intent of the contract is to state the roles and obligations of the department and contractor regarding the construction, execution, and completion of the work. Perform the work as the contract specifies.

104.2 Revisions to the Contract

104.2.1 General

- (1) The department reserves the right to revise the contract at any time. These revisions do not invalidate the contract or release the surety. The contractor agrees to complete the contract as revised. Do not proceed with revised work without the project engineer's prior written approval. Upon receiving written approval, proceed immediately with the revised work.
- (2) The contractor must notify the project engineer if the contractor believes a revision to the contract is necessary. Whenever the words notice, notification, or notify are used in 104.2 with reference to the contractor, the contractor must provide notice as specified in [104.3](#). The project engineer will determine if a potential contract revision is necessary and will notify the contractor of its determination in writing. The contractor must proceed with the project engineer's direction.
- (3) If the project engineer determines a revision is necessary, the project engineer will revise the contract time as specified in [108.10](#) and will revise the contract price as specified in [109.4](#). The contractor is entitled to no reimbursement for loss of anticipated profit.
- (4) If the project engineer decides that a potential contract revision identified by the contractor is not necessary, and the contractor does not agree with the project engineer's decision, the contractor may pursue a claim under [105.13](#).

104.2.2 Issuing Change orders

104.2.2.1 Change Orders for Extra Work

- (1) The department will issue a change order to accomplish extra work as defined in [101.3](#).

104.2.2.2 Change Orders for Differing Site Conditions

- (1) During the progress of the work, if one or more of the following differing conditions are encountered at the site, the party discovering the condition must promptly notify the other party of the specific condition before further disturbing the site and before further performing the affected work.
 1. A subsurface or latent physical condition, differing materially from those indicated in the contract.
 2. An unknown physical condition of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work specified in the contract.
- (2) If the contractor discovers the differing condition, the contractor shall provide oral notification as specified in [104.3.2](#), of the specific differing condition before further disturbing the site and before further performing the affected work.
- (3) The project engineer will investigate the conditions. If the project engineer determines the conditions materially differ and cause an increase or decrease in the cost, time, or both, required to perform the work under the contract, the project engineer will adjust the contract price, time, or both, and modify the contract in writing accordingly. The project engineer will respond to the contractor as to whether or not an adjustment is warranted. The project engineer will follow the contractor notification procedures specified in [104.3](#).
- (4) The department will not allow a contract adjustment unless the contractor has provided the required notice as specified in [104.3](#).

104.2.2.3 Change Orders for Engineer-Ordered Suspensions

- (1) If the project engineer suspends or delays the performance of all or any portion of the work in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional payment, contract time, or both, is due because of the suspension or delay, the contractor shall notify the engineer as specified in [104.3](#).
- (2) The project engineer will evaluate the contractor's request. If the project engineer agrees that the cost, time, or both, required for the performance of the contract has increased due to the suspension or delay and the suspension or delay was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the project engineer will make an adjustment and modify the contract in writing accordingly. The project engineer will respond to the contractor as to whether or not an adjustment is warranted as specified in [104.3.6](#).

- (3) The project engineer will not consider a contract adjustment unless the contractor submits the request for adjustment within the time specified above.
- (4) The project engineer will not consider a contract adjustment under this clause to the extent that the performance would have been suspended by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

104.2.2.4 Change Orders for Significant Changes in the Character of the Work

104.2.2.4.1 General

- (1) Under the contract a significant change is defined if either one of two separate and distinct circumstances occur as follows:
 1. Altered work.
 2. Changed quantities.
- (2) Before performing significantly changed work, reach agreement with the department concerning the basis for the adjustment as specified in [109.4.4](#). If the department does not acknowledge that the work has significantly changed, follow the notification procedures as specified in [104.3](#).
- (3) If the alterations or changes in quantities do not significantly change the character of the work under the contract, the department will pay for the altered work at the contract price.

104.2.2.4.2 Altered Work

- (1) The department will adjust the contract if the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction.

104.2.2.4.3 Changed Quantities

- (1) The department will adjust the contract if the department or contractor demonstrates that quantity changes affect the contractor's unit cost to perform the work and meet one of the following:
 1. The quantity of a major bid item, as defined in [101.3](#), is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity applies only to that portion in excess of 125 percent of the original contract bid item quantity, or in case of a decrease below 75 percent, to the work actually performed.
 2. The quantity of a minor bid item is increased to become a major bid item. An adjustment in the contract unit price for that bid item applies only to the quantity of that bid item having a contract value as follows:
 - Original Contract < \$8M: In excess of 6.25 percent of the original contract.
 - Original Contract >= \$8M: In excess of \$500,000.
 3. The quantity of a minor bid item that is part of an approved subcontract and that exceeds 10 percent of the original value of that subcontract is decreased more than 50 percent from the original contract quantity for that bid item. Either party to the contract may submit a request for a revision to the contract unit price for that bid item. The department's total payment for the final reduced quantity will not exceed 75 percent of the original contract quantity at the contract price.
 4. The quantity of a minor bid item that is part of an approved subcontract and that exceeds 10 percent of the original value of that subcontract is increased more than 50 percent from the original contract quantity for that bid item and which as increased does not qualify for adjustment as a major bid item. Either party to the contract may submit a request to the other for a revision of the contract unit price for that quantity of the bid item that is in excess of 125 percent of the original contract quantity.

104.2.2.5 Change Orders for Eliminated Work

- (1) The department has the right to partially eliminate or completely eliminate work the project engineer finds to be unnecessary for the project. If the project engineer partially eliminates or completely eliminates work, the project engineer will issue a change order for a fair and equitable amount as specified in [109.5](#).

104.2.2.6 Change Orders for Revisions to Contract Time

- (1) The department will issue a change order to revise the contract time as specified in [108.10](#).

104.3 Contractor Notification

104.3.1 General

- (1) Subsection 104.3 specifies the step-by-step communication process to be followed to expedite the resolution of potential contract revisions identified by the contractor. Both contractor actions and department responses are outlined. The contractor's non-compliance with the requirements of 104.3 may constitute a waiver of entitlement to a pay adjustment under [109.4](#) or a time extension under [108.10](#). The department and contractor can mutually agree to extend any time frame specified throughout 104.3.

104.3.2 Contractor Initial Oral Notification

- (1) If required by [104.2](#), or if the contractor believes that the department's action, the department's lack of action, or some other situation results in or necessitates a contract revision, the contractor must promptly provide oral notification to the project engineer. Upon notification, the project engineer will attempt to resolve the identified issue.

104.3.3 Contractor 5-Day Written Statement

- (1) If the project engineer has not responded or resolved the identified issue within 5 business days after receipt of initial notification, provide a contractor written statement to the project engineer in the following format:

Part 1 - Executive Summary (label page 1.1 through page 1.x)

Include a detailed, factual statement of the request for additional compensation and contract time. Include the date the issue was identified, the date initial notification was given to the project engineer, and the dates and specific locations of work involved.

Part 2 - Contractor's Basis of Entitlement (label page 2.1 through page 2.x)

Include references to relevant contract provisions and a narrative summarizing how the contract provisions support the request for a revision to the original contract.

Part 3 - Contractor's Request for Damages (label page 3.1 through page 3.x)

When requesting additional compensation, include an itemized list of costs with a narrative supporting the requested amount and explaining how the costs are tied to the requested contract revision.

When requesting additional contract time, include a copy of the schedule that was in effect when the issue occurred and a detailed narrative explaining how the issue impacted controlling items of work. Provide a time impact analysis utilizing base and updated schedules.

If the full extent of either compensation or time is not known at the date of submittal of the contractor 5-Day written statement, provide a brief statement as to why, and include estimated compensation and time.

Part 4 - Supporting Documentation (label page 4.1 through page 4.x)

Include copies of the following:

- A. Relevant excerpts from specifications, special provisions, plans, change orders, or other contract documents.
 - B. Communication on the issue, including: letters, e-mails, meeting minutes, etc.
 - C. Any other documentation to support or clarify the contractor's position, including: daily work records, cost summary sheets, weigh tickets, test results, sketches, etc.
- (2) With the submittal of the written statement, the contractor may also request a meeting with the region.

104.3.4 Region One-Day Written Acknowledgment

- (1) Within one business day after the contractor provides the 5-day written statement, the project engineer will provide a region one-day written acknowledgment to the contractor. The project engineer will continue to resolve the issue.

104.3.5 Region 5-Day Written Response

- (1) Within 5 business days after receiving the contractor 5-day written statement, the project engineer may request specific additional information to allow the project engineer to decide whether item 1 or 2 of [104.3.6\(1\)](#) applies. The project engineer will state the information needed and date it is to be received for further review. Submit additional information as an amendment to the contractor 5-day written statement.

104.3.6 Region Final Decision

- (1) Within 10 business days after receiving the contractor 5-day written statement or additional information requested in [104.3.5\(1\)](#), whichever comes last, the region will consider all information and provide a region final decision in writing to the contractor with one or more of the following responses:
 1. The region will confirm that the contractor is entitled to a contract revision and a change order is necessary as specified in [104.2](#). The project engineer will give direction concerning the potential change.
 2. The region will deny that the contractor is entitled to a contract revision. The project engineer will provide a statement as to why the issue is not a change to the contract. At a minimum, the project engineer will respond to the contractor's issues and refer to the contract to show why the issues are not a change from the original contract.
- (2) If the contractor does not agree with the region's decision the contractor may pursue the issue as a claim as specified in [105.13](#). Alternatively, if the contractor and department mutually agree, the department will get a third-party advisory opinion according to the department's dispute resolution procedures.

- (3) If a third party reviews the issue, their recommendation is not binding on either party. The region has 10 business days after receipt of the third party's written recommendation to render a decision. If the department fails to respond in writing within those 10 business days or the contractor disagrees with the region's decision, the contractor may pursue the issue as a claim as specified in [105.13](#).

104.4 Requests for Information

- (1) Either the department or the contractor may request information that the other party must provide in order for the requesting party to fulfill its contract obligations. The requesting party must submit requests for information (RFI) on department form [DT2502](#) either in hard copy or via email. RFI must conform to the following:
- Be of reasonable scope.
 - Explain why a response is necessary to fulfill contract obligations.
 - Provide a requested response time, which must be reasonable in relation to its scope.
- (2) The responding party must respond on department form [DT2502](#) either in hard copy or via email within the requested response time. If more time will be required to adequately address the issue, the responding party must provide a written status report within the requested response time. The parties will discuss the status of outstanding RFI at each progress meeting until the issue is resolved.

104.5 (Vacant)

104.6 Roadway Maintenance and Traffic Control

104.6.1 General

104.6.1.1 Contractor Responsibilities

- (1) The contractor is not liable for damages to or failure of existing facilities unless the damage or failure results from the contractor's own operations, negligence, or noncompliance with the contract.
- (2) The contractor shall maintain only those facilities or portions of facilities, including the roadbed surfaces, on which construction has begun or been completed, or has been damaged by the contractor's operations or has been damaged due to the contractor's negligence or noncompliance with the requirements of the contract.
- (3) The contractor is not responsible for snow removal or ice control operations to maintain traffic on highways open to traffic or closed to through traffic.
- (4) These provisions do not relieve the contractor of responsibility for injury or damage caused by the contractor's negligence in properly safeguarding public travel.

104.6.1.2 Construction Operations and Facilities

104.6.1.2.1 General

- (1) Conduct construction operations and provide facilities required to maintain the portion of the project open to the public in a condition that safely and adequately accommodates public traffic. Use temporary traffic control zone devices, as specified in chapter 6 of the WMUTCD, and ensure that the contractor's use of the right-of-way conforms to [107.9](#).
- (2) Throughout the life of the contract, and as the engineer directs, conduct construction operations and provide temporary facilities as follows:
- Conduct flagging operations conforming to plan details and the department's flagging handbook.
 - Delineate and shield abrupt drop-offs and other hazards.
 - Furnish, erect, and maintain temporary traffic control zone devices including but not limited to the following:
 - Concrete barrier conforming to [603](#).
 - Crash cushions and beam guard conforming to [614](#).
 - Delineators conforming to [633](#).
 - Traffic control devices conforming to [643](#).
 - Pedestrian devices and facilities conforming to [644](#).
 - Marking and temporary raised pavement markers conforming to [643](#).
 - Traffic control signals and ramp gates conforming to [661](#).
- (3) Work required solely to accommodate the contractor's means and methods is incidental to the contract. The department will not pay for replacing or repositioning temporary traffic control zone devices damaged or displaced.

104.6.1.2.2 Flagging

- (1) Ensure that when performing flagging work on the project flaggers; are certified and wear a high visibility class 3 top/pants ensemble that meets or exceeds ANSI/ISEA 107-2015 type R. Provide flagger certification documentation to the engineer before flagging.
- (2) Ensure that each flagger is equipped with a handheld two way radio and a "stop/slow" sign paddle. Ensure that sign paddle signs are 18 X18 inches or larger, meet retroreflective requirements of [637.2.2.2](#), have at least 6 inch letters, and are mounted on a handle with the bottom of the sign at least 5 feet above the ground.
- (3) Provide associated advanced warning signs that meet the retroreflective requirements of [637.2.2.2](#). Provide temporary portable rumble strips from the [APL](#) installed according to manufacturer's instructions and as specified in the flagging plan details. Provide guidance service through the worksite using pilot vehicles if required. The department will allow automated flagging assistance devices from the APL. The department will allow flaggers to prevent pedestrians from entering the work area and to pass when the facility is clear of work materials and equipment.
- (4) The department will restrict construction activities for portions of the project with deficient flagging operations until the contractor provides remedial training for flagging personnel.
- (5) Flagging is incidental to the contract and includes costs for advance signing, temporary portable rumble strips, and pilot vehicle guidance service.

104.6.1.2.3 Drop-Off Protection

- (1) Eliminate vertical drop-offs greater than 2 inches and edge slopes steeper than 3:1 between adjacent lanes open to traffic.
- (2) Unless the engineer allows otherwise, and except as specified for shoulders adjacent to asphalt pavement or surface under [305.3.3.3](#), address drop-offs when they exist within 8 feet of the travelled way as follows:
 - Delineate vertical drop-offs 2 inches or greater and edge slopes steeper than 3:1 with drums, barricades, and signs, by the end of the work day.
 - Eliminate vertical drop-offs 2 inches or greater and edge slopes steeper than 3:1 within 72 hours or before a weekend or holiday whichever comes first.
 - Eliminate or use temporary concrete barrier to protect vertical drop-offs 4-inches or greater after 72 hours or before a weekend or holiday whichever comes first.
- (3) If a 4-inch or greater vertical drop-off or an edge slope steeper than 3:1 exists between 8 and 15 feet of the traveled way, delineate that drop-off or edge slope with drums, barricades, and signs by the end of the work day.
- (4) If a 12-inch or greater vertical drop-off exists between 8 and 15 feet of a traveled way with a posted speed limit of 55 mph or greater, eliminate or use temporary concrete barrier to protect that drop-off within 72 hours or before a weekend or holiday whichever comes first.

104.6.1.2.4 Hazard Protection on Roads Open to All Traffic

- (1) On roads open to all traffic; remove construction debris, stored materials, and equipment not in use; or if the engineer allows, delineate and shield with concrete barrier for the following:
 - Posted speeds 45 mph or less: within 8 feet of the travelled way.
 - Posted speeds from 45 mph to 55 mph inclusive: within 10 feet of the travelled way.
 - Posted speeds above 55 mph: within 15 feet of the travelled way.
- (2) On roads open to all traffic; use temporary traffic control drums to delineate bridge abutments, concrete barrier blunt ends, sign bridge foundations, drainage structures, and slopes exposed by removing permanent protective measures. Eliminate the need for delineation within 5 calendar days or before noon on the Friday after removing permanent roadside safety devices.

104.6.2 Temporary Roads

- (1) Construct and maintain temporary roads necessary to maintain traffic as the contract specifies or as the engineer directs. Excavate and remove those portions of temporary roads not incorporated into the final roadway section, and restore disturbed areas outside the construction limits to their original condition.
- (2) The department will pay for the construction and removal of temporary roads, included in the contract or as the engineer orders, and the associated restoration of disturbed areas. The department will pay for this construction, removal, and restoration work at the contract unit prices of the bid items used, or as extra work, if the necessary bid items are not included in the contract.

- (3) Maintain temporary roads, included in the contract or as the engineer orders, in a safe and adequate condition. The cost of maintaining these temporary roads is incidental to the contract, except during suspensions under [104.6.7](#).
- (4) The cost of constructing, maintaining, and removing temporary roads the contract does not show or the engineer did not order, is incidental to the contract.

104.6.3 Road Closed to Traffic

- (1) If the contract provides, or if the engineer orders, that the road or portions of the road be closed to all traffic, furnish, erect, and maintain the traffic control devices at the project termini and at intersecting roads along the project the contract specifies or as the engineer directs. Unless specifically required in the contract, the contractor is not responsible to maintain the pavement structure or traffic signs of the detour that may be provided for the accommodation of traffic around the portion of the road closed to traffic.
- (2) Never close a public road or portion of a public road without the engineer's specific written permission. If the contract specifies, or if the engineer orders, that a road or a portion of road is to be closed, notify the engineer at the earliest possible date of when the closure is needed so the department can make arrangements to close the road and provide detours.

104.6.4 Road Closed to Through Traffic

- (1) If the contract provides that the road or portions of the road be closed to through traffic, furnish, erect, and maintain the traffic control devices at the project termini and at intersecting roads along the project the contract specifies or the engineer directs. Also, furnish, erect, and maintain those traffic control devices within the project limits as may be required for the safe accommodation of local traffic as defined in [101.3](#). At all times conduct the work in a manner to provide safe, reasonably-direct, all-weather, 24-hour pedestrian and vehicular access to abutting properties along the highway being improved.
- (2) Unless specifically required in the contract, the contractor is not responsible to maintain the pavement structure or traffic signs of the detour that may be provided for the accommodation of traffic around the portion of the road closed to through traffic. The department will pay for surfacing and base materials that the engineer deems necessary to maintain the roadway at contract unit prices, or as extra work.

104.6.5 Opening Section of Closed Road to Traffic before Work is Completed

- (1) For contracts with the road or portions of the road closed to traffic during construction, the engineer may direct or authorize the contractor to open sections of the road to public traffic before the work is completed. The engineer may direct the contractor to open sections of the road for the convenience of the traveling public. The engineer may authorize the contractor to open sections of the road to public traffic due to the contractor's request. Do not open the road to public traffic without the engineer's written direction or written authorization. By opening sections to public traffic, the contractor is not relieved of performing the maintenance. However, the department will assume all costs for repair and maintenance solely attributable to public traffic use, and beyond the control and without fault of the contractor. These maintenance expenses include costs associated with those traffic control devices or facilities specified in this section. The engineer's direction or authorization to open sections of the road to public traffic does not constitute partial acceptance under [105.11.1](#) and waives no other contract provisions.
- (2) Furnish, erect, and maintain those traffic control devices as may be required for the safe accommodation of the traffic.
- (3) The contractor is not liable for injuries or damages sustained by a person using the opened highway except for injuries or damages resulting from the contractor's own operations, negligence, or noncompliance with the requirements for traffic control under [104.6.1](#).
- (4) Whenever opening the road or a portion of the road to traffic, conduct the remainder of the construction operations in a way that causes the least obstruction to traffic.

104.6.6 Road Open to All Traffic

- (1) If the contract provides for the maintenance of all traffic over or along the road while undergoing improvement or reconstruction, keep the road open to all traffic. Furnish, erect, and maintain the traffic control devices as required to keep the portions of the road being used by public traffic in a condition to safely and adequately accommodate pedestrian and vehicular traffic. The department will pay for necessary work and materials to maintain the roadway at the contract unit prices of the bid items used or as extra work if the necessary bid items are not included in the contract.

104.6.7 Traffic Control and Maintenance During Suspensions of the Work

- (1) During a suspension of work as specified in [105.1](#), the contractor shall make passable and open to traffic portions of the highway under improvement and temporary roads or portions thereof as the contractor and the engineer may agree upon for temporary accommodation of necessary traffic during the period of suspension. During the period of suspension, maintain the surface of the traveled way of the temporary route or line of travel agreed upon.
- (2) When resuming work, replace or renew all work or material lost or damaged because of temporary use of the highway under improvement. Remove temporary roads and restore disturbed areas outside the construction limits to their original condition, as the engineer directs. Complete the improvements in every respect as though prosecution had been continuous and without interference, except as the contractor and the engineer may otherwise have agreed upon at the time the arrangement was made for the temporary accommodation of necessary traffic during the anticipated period of suspension.
- (3) If the reason for the suspension is beyond the control and without the fault of the contractor, the department will pay for the following at the contract unit prices of the bid items used, or as extra work if the necessary bid items are not included in the contract.
 1. The replacement of materials and additional work made necessary because of the temporary use of the highway.
 2. The construction and removal of temporary roads needed for public travel during the suspension, and the corresponding restoration of disturbed areas outside the construction limits.
 3. Maintaining the surface of the traveled way of temporary roads used by the public during the period of suspension.
 4. The furnishing, erecting, and maintenance of those traffic control devices and facilities needed to safely accommodate public travel during the suspension.

104.7 Removing Structures and Obstructions

- (1) Remove from within the roadway all or parts of existing culverts, bridges, and miscellaneous structures designated for replacement or that interfere with new construction. The department will:
 1. Pay for removing existing culverts and bridges as specified in [203.5](#).
 2. Pay for removing existing miscellaneous structures as specified in [204.5](#), if the contract contains separate removal bid items under [204](#).
 3. Pay for removing existing miscellaneous structures as follows, if the contract does not contain separate removal bid items under [204](#):
 - 3.1. Pay as specified in [206.5.1](#), if the removal is located within the limits of an Excavation for Structures bid item under [206](#).
 - 3.2. Otherwise, pay as incidental to the Excavation bid items under [205](#).
- (2) Remove all or parts of existing culverts, bridges, and miscellaneous structures from beyond the roadway, but within the highway, if the contract specifies. Within 104.7, highway means the entire highway right-of-way, including abutting portions of existing highways. The department will:
 1. Pay for removing existing culverts and bridges, as specified in [203.5](#).
 2. Pay for removing existing miscellaneous structures as specified in [204.5](#), if the contract contains separate removal bid items under [204](#).
 3. Pay for removing existing miscellaneous structures as follows, if the contract does not contain separate removal bid items under [204](#):
 - 3.1. Pay as incidental to the Obliterating Old Road bid item, if the removal is located within the limits of the Obliterating Old Road bid item under [214](#).
 - 3.2. Otherwise, pay as incidental to the other contract bid items.
 4. Pay for removals as extra work, if they are not specified in the contract but subsequently required.
- (3) Leave structures beyond the limits of the highway in place.

104.8 Rights in the Use of Materials Found on the Project

- (1) The contractor may use on the project stone, gravel, sand, or other material found within the vertical and horizontal excavation limits the plans show. Ensure that the engineer determines the material's suitability before using it. The department will pay for both the excavation of these materials at the corresponding contract bid price and the bid item for which the excavated material is used. The department will not charge the contractor for the materials found within the above described excavation limits and so used. Replace, at no expense to the department, with other acceptable material all of the excavation material so removed and used for embankments, backfills, approaches, or otherwise.

- (2) Do not excavate or remove material from within the right-of-way that is not within the vertical and horizontal excavation limits the plans show except as follows:
- If the contract does not identify potential source areas, obtain written authorization from the engineer to use those sources. Complete required environmental documentation and obtain necessary permits. The department will reduce pay by \$1.50 per cubic yard under the Material from Right-of-Way administrative item for material obtained from those areas.
 - If the contract identifies potential source areas that were evaluated and permitted in the original environmental document, do not begin excavating in those areas until the engineer allows in writing. Additional environmental documentation and environmental permits are not required. The department will not reduce pay for material obtained from those areas.

The department may suspend use of these sources if the contractor's operation affects the essential functions or characteristics of the project.

- (3) Take ownership of all materials required to be removed and not necessary for the work.

104.9 Final Cleanup

- (1) Upon completion of the work and before the department accepts the work as specified in [105.11.2](#) and makes final payment as specified in [109.7](#), the contractor shall remove from the right-of-way, and to the extent that the contractor is responsible therefore, from the adjacent property, all surplus and discarded materials, rubbish, and temporary structures. Leave the right-of-way in a neat and presentable condition. The contractor shall restore, at no expense to the department and in general conformity with the contract for the bid item or bid items involved, all work completed under previous contracts that the contractor has damaged.
- (2) If the contractor procures or produces material from a pit, quarry, or deposit which is not an active commercial source or is not naturally submerged, the contractor shall do work as necessary and practicable to shape, slope, and trim and drain the site, including associated haul roads and adjacent areas disturbed by the contractor's operations, so that it presents a stable, neat, trimmed appearance and that no water collects or stands therein. Do not create or enlarge an area of open water except as allowed under [208.2.2](#).
- (3) The cost of final cleanup is incidental to the contract.

104.10 Cost Reduction Incentive

104.10.1 General

- (1) Subsection 104.10 specifies a 2-step process for contractors to follow in submitting a cost reduction incentive (CRI) for modifying the contract in order to reduce direct construction costs computed at contract bid prices. The initial submittal is referred to as a CRI concept and the second submittal is a CRI proposal. The contractor and the department will equally share all savings generated to the contract due to a CRI as specified in [104.10.4.2](#)(1). The department encourages the contractor to submit CRI concepts for the following situations:
1. The contractor generates the original cost savings idea and formulates it into a concept.
 2. The department generates the original cost savings idea and obtains the contractor's assistance to formulate the idea into a concept.
- (2) Follow the procedures specified in [104.10.2](#) for submitting a CRI concept. If the department determines a CRI concept has merit, the department will encourage the contractor to submit a CRI proposal. Follow the procedures specified in [104.10.3](#) for submitting a CRI proposal.
- (3) The contractor may submit a CRI concept from a subcontractor. Subcontractors may not submit a CRI except through the contractor.
- (4) The contractor may submit a CRI concept only after the execution of the contract. Do not base bid prices on the anticipated approval of a CRI proposal. If the department rejects a CRI proposal, complete the contract as specified in the original terms or as otherwise modified.
- (5) The department will consider a CRI that changes but does not impair the essential functions or characteristics of the project. These functions or characteristics include, but are not limited to, appearance, service life, economy of operations, ease of maintenance, design, and safety of structures and pavements, construction phasing or procedures, or other contract requirements. The department will not consider a CRI that changes the following:
- Permanent pavement type.
 - Permanent structural cross section above the subgrade.
- (6) The department will decide whether or not to approve a CRI. The department will bear no liability for causing a delay to the project in considering a CRI or for refusing to approve a CRI. The department may consider a noncompensable time extension as specified in [104.10.2](#)(3). The department will

consider no contractor claims for additional costs related to the acceptance or rejection of a CRI, including loss of anticipated profits, or increased material or labor costs. The department will reimburse the contractor for the development costs of CRI proposals as specified in [104.10.4.1\(3\)](#).

- (7) A CRI, approved or not approved by the department, applies only to the contract for which the contractor submits it. Impose no restrictions on the CRI for its use or disclosure. The department has the right to use, duplicate, and disclose in whole or in part all data necessary for the utilization of the CRI. The department may use an accepted CRI or part of an accepted CRI on other projects without obligation to the contractor. This provision does not deny rights granted by law with respect to patented materials or processes. The department will not use this provision as the basis for rejecting the contractor's submittal of a CRI concept from past projects.
- (8) Continue to perform the work as the contract specifies until receipt of the engineer's written acceptance or rejection of the CRI Proposal.
- (9) Work produced under an approved CRI change order is subject to the provisions of [105.3.2](#) for nonconforming work.

104.10.2 Submittal and Review of a CRI Concept

- (1) Initially, submit a brief letter with graphics as necessary to the engineer to describe and illustrate the CRI concept. Estimate the overall CRI savings and the costs to develop the CRI proposal specified in [104.10.3](#). The engineer will use the contractor's estimate of the CRI proposal development costs as specified in [104.10.4.1\(3\)](#). Indicate whether adequate time is available in the project schedule for submitting a complete CRI proposal and for the department's review before implementation.
- (2) The department will review the CRI concept and, within 10 business days of the contractor's initial submittal, notify the contractor in writing whether the CRI concept has merit and whether the contractor should submit it as a CRI proposal. The contractor and the department can mutually agree to extend this 10-day review requirement. The department will notify the contractor if a professional engineer registered in the state of Wisconsin should seal the CRI proposal. If the department informs the contractor to submit the CRI proposal, the department will share in the cost for developing the CRI proposal as specified in [104.10.4.1\(3\)](#).
- (3) If the department determines the time for response indicated in the CRI concept letter is insufficient for review, the department may choose to evaluate the need for a noncompensable time extension to the contract. The department will base its evaluation on the additional time that the department needs for its review of the CRI proposal and the effect on the contractor's schedule caused by the added review time.
- (4) If the department has already taken action to implement revisions to the contract subsequently proposed in a CRI concept, the department may reject the CRI concept and revise the contract without obligation to the contractor.
- (5) The department may consider a CRI concept that addresses a potential change under [104.2](#); except the department will not consider a CRI concept that only eliminates work.
- (6) The department will not implement a contractor-initiated CRI concept, or portion of that concept, without sharing the cost savings with the contractor as specified in [104.10.4.2](#).
- (7) The savings generated by the CRI must be sufficient to warrant its review and processing and offset the level of risk. The department will assess the risk of the CRI relative to departmental design policies and criteria for the project. The department may reject a CRI concept for the following reasons:
 1. It requires excessive time or costs for the contractor to develop the CRI proposal.
 2. It requires excessive time or costs for review, evaluation, investigation, or implementation.
 3. It introduces an inappropriate level of risk.

104.10.3 Submittal of the CRI Proposal

- (1) Within 10 business days after the department has determined that the CRI concept has merit, submit the CRI proposal. The contractor and department can mutually agree to extend this 10-day submittal requirement. Ensure that the CRI proposal includes sufficient data for the department to make an informed decision regarding the proposal and includes, at a minimum, the following information:
 1. A statement that the proposal is submitted as a CRI.
 2. A description of the difference between the existing contract and the proposed change and the advantages and disadvantages of each, which may include effects on service life, economy of operations, ease of maintenance, benefits to the traveling public, desired appearance, and safety.

3. A complete set of plans and specifications showing the proposed revisions relative to the original contract features and requirements. Support the proposed revisions with design computations as necessary for a thorough and expeditious evaluation.
4. A complete analysis indicating the final estimated costs and quantities to be replaced by the CRI compared to the new costs and quantities generated by the CRI. The department will use these costs as specified in [104.10.4.2\(1\)](#) to compute the proposed net savings.
5. A statement specifying the time within which the department must make a decision.
6. A statement detailing the effect the CRI will have on interim completion dates and the time for completing the contract.
7. A description of a previous use or testing of the CRI and the conditions and results. If the contractor previously submitted the CRI on another department project, the contractor shall indicate the date, contract number, and action taken by the department.
8. A detailed statement that indicates the costs for developing the CRI proposal and implementing the changes. The department will use these costs as the contractor's CRI development and implementation costs as specified in [104.10.4.1\(3\)](#) and [104.10.4.2\(1\)](#).
9. Ensure that a professional engineer registered in the state of Wisconsin seals the CRI proposal if the department requires it as specified in [104.10.2\(2\)](#).
10. If proposing design changes, the contractor may include with the additional information, results of field investigations and surveys, design computations, and field change sheets.

104.10.4 Acceptance, Rejection, and Payment

104.10.4.1 Acceptance, Rejection, and Payment of a CRI Proposal

- (1) Within 10 business days of the contractor's submission of the CRI proposal, the department will accept or reject the CRI proposal in writing. The contractor and the department can mutually agree to extend this 10-day review requirement. Provide requested additional information needed to evaluate the CRI proposal in a timely manner. The department may reject a CRI proposal for untimely submittal of additional information.
- (2) After accepting the CRI proposal, the department will execute a change order reimbursing the contractor for the cost of preparing the CRI proposal. The department will limit reimbursement to the contractor's estimate of the CRI proposal development costs provided in the CRI concept submittal. The change order will also state the conditions for the department's acceptance and which of the following the net savings will be based on:
 1. Agreed lump sum prices before the contractor performs the CRI.
 2. Agreed unit prices before the contractor performs the CRI in conjunction with quantities that the department will measure after the contractor completes the CRI.
- (3) If the department informs the contractor to submit a CRI proposal as specified in [104.10.2](#) and later rejects the CRI proposal, the department will execute a change order to adjust the contract for the contractor's CRI development costs as listed in item 8 of [104.10.3\(1\)](#). The department will limit the contract revision amount to the contractor's estimate of the CRI proposal development costs provided in the CRI concept submittal. The change order will terminate the department's review of the CRI.
- (4) Rejection of a CRI proposal is not an allowable basis for a claim against the department for delay or for other costs.

104.10.4.2 Payment for the CRI Work

- (1) The department will pay for completed CRI work as specified for progress payments under [109.6](#). The department will pay for CRI's under the Cost Reduction Incentive administrative item. When all CRI costs are determined, the department will execute a change order that does the following:
 1. Adjusts the contract time, interim completion dates, or both.
 2. Pays the contractor for the unpaid balance of the CRI work.
 3. Pays the contractor 50 percent of the net savings resulting from the CRI, calculated as follows:

$$\mathbf{NS = CW - CRW - CC - DC}$$

Where:

- NS** = Net Savings
- CW** = The cost of the work required by the original contract that is revised by the CRI. CW is computed at contract bid prices if applicable.
- CRW** = The cost of the revised work, computed at contract bid prices if applicable.
- CC** = The contractor's cost of developing the CRI proposal.

DC = The department's cost for investigating, evaluating, and implementing the CRI proposal.

- (2) The department is the sole judge of the acceptability of a CRI proposal and of the agreed net savings in construction costs from the adoption of all or part of the CRI proposal. The department will not include time savings resulting from the CRI in the calculation of net savings.