

## SECTION 9 MEASUREMENT AND PAYMENT

### 9-1 Measurement of Quantities.

**9-1.1 Measurement Standards:** The Engineer will measure all work completed under the Contract in accordance with the United States Standard Measures [International System of Units (SI) Measures].

**9-1.2 Method of Measurements:** The Engineer will take all measurements horizontally or vertically.

#### 9-1.3 Determination of Pay Areas:

**9-1.3.1 Final Calculation:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be determined by calculation, the Engineer will use lengths and widths in the calculations based on the station to station dimensions shown on the plans; the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the surface of the completed work within the neat lines shown on the plans or designated by the Engineer. 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.

**9-1.3.2 Plan Quantity:** When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be the plan quantity, the Engineer will determine the final pay quantity based on the plan quantity subject to the provisions of 9-3.2. Generally, the Engineer will calculate the plan quantity using lengths based on station to station dimensions and widths based on neat lines shown in the plans.

**9-1.4 Construction Outside Authorized Limits:** The Engineer will not pay for surfaces constructed over a greater area than authorized, or for material that the Contractor has moved from outside of slope stakes and lines shown on the plans, except where the Engineer provides written instruction for the Contractor to perform such work.

#### 9-1.5 Volume Measurement (Conversion from Truck Weights):

**9-1.5.1 Eligible Materials:** The Contractor may request that the following materials, when specified to be measured by volume, be weighed on truck scales, and the weights converted to equivalent volumes, in accordance with the provisions of this Subarticle:

- (1) Borrow, where truck measurement is specified.
- (2) Stabilizing materials.
- (3) Limerock and shell, where truck measurement is specified.
- (4) Cover materials for surface treatment and mineral seal coat.

**9-1.5.2 Determination of Conversion Factor:** The Department will establish the conversion factor as follows:

(a) Determination of Truck Volumes: The Engineer will measure the trucks that the Contractor will use in establishing the conversion factor and will calculate cubic content for each type and size.

When loading the trucks, heap the material in the truck bodies and then strike-off the material level with the sides of the trucks, leaving no voids along the perimeter of the truck body.

(b) Calculation of Conversion Factor: The Department will weigh the trucks loaded and empty, and divide the net weight of the material by the measured volume of the truck bodies to determine the conversion factor. The Department will calculate a factor from the average determined by weighing not less than three loaded and measured trucks each day, at various times during the day.

**9-1.5.3 Weighing Operations after Establishment of Conversion Factor:** After the Engineer establishes the conversion factor, weigh each load on truck scales and keep an accurate record of the total weight and the tare weight of each load. The Department will calculate a tare weight using the

weight of the empty truck, weighed with the fuel tank full, less the calculated weight of 1/3 of a tank of fuel. The Department does not require the leveling of the material in the truck bodies after establishment of the conversion factor.

In the event that the material involved is wet by rain after the conversion factor has been established, the Department will establish a new conversion factor in the manner prescribed in 9-1.5.2.

Provide truck scales that meet the requirements of 320-2.2.1. Furnish the scales and the scale operator at a location near the project site.

**9-1.6 Ladders and Instrument Stands for Bridge Projects:** On bridge projects, in order to facilitate necessary measurements, provide substantial ladders to the tops of piers and bents, and place and move such ladders as the Engineer directs.

For bridge projects crossing water or marshy areas, supply fixed stands for instrument mounting and measurements, in accordance with the details stipulated in the Specifications for the project.

## 9-2 Scope of Payments.

**9-2.1 Items Included in Payment:** Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its final acceptance; also for all other costs incurred under the provisions of Division I.

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

**9-2.1.1 Bituminous Material:** The Department will adjust the bid unit price for Bituminous Material to reflect changes, both increases and decreases, in the Asphalt Index price of bituminous material from that in effect during the month bids were received for this Contract. The Contractor will not be given the option to reject this cost adjustment. Adjustments will be made using the following criteria:

(a) Price adjustments will apply only to the price of bituminous material F.O.B. manufacturer's asphalt terminal and will not reflect variations in the cost of transportation from the terminal to the job site.

(b) Price adjustments will be made for all bituminous material incorporated into asphalt pavement whether paid for under a separate bid item such as Item No. 300-1 [Item No. 2300-1] or under other items that include the cost of bituminous material.

(c) Price adjustments will be paid on a monthly basis with payment being based on the increased quantities shown on the previous estimate.

(d) The adjusted unit price will be calculated for the month during which the material was incorporated into the project in accordance with the following formula:

$$P_a = P_b + (I_d - 1.05 I_b) \text{ during a period of increasing prices.}$$

$$P_a = P_b + (I_d - 0.95 I_b) \text{ during a period of decreasing prices.}$$

where:  $P_a$  = Adjusted unit price for Bituminous Material. (The Department will calculate it separately for each month bituminous material is used and will reflect an increased or decreased price.)

$P_b$  = Bid unit price for Bituminous Material.

$I_d$  = Asphalt Price Index during the month the material is incorporated into the project.

$I_b$  = Asphalt Price Index during the month bids were received for this Contract.

(e) The Department will determine the Asphalt Price Index for each month by averaging quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.

(f) A price adjustment will be made only when the current Asphalt Price Index varies more than 5% from the index that was applicable when bids were received.

(g) If the adjusted unit price for any Bituminous Material item exceeds the bid unit price in excess of 50% of the Asphalt Price Index for the month bids were received, the Department reserves the right to reduce the quantity of that item or delete from the Contract work where this material is to be used.

(h) When a reduced payment rate for bituminous material is applied due to material failing to meet the specified viscosity requirement, the reduction factor will be applied to the applicable adjusted unit price in lieu of the original Contract unit price.

(i) The dollar value paid for adjustments will not be included in the Contract amount from which normal retainage is withheld (as per 9-6.1).

(j) No adjustment will be allowed for the quantity of any item left in place at no pay.

(k) No adjustment will be allowed for the volume of water used to dilute emulsified asphalt in the proportions established by the Contract documents for use on the job.

The above provisions will apply to a recycling agent if used in a hot bituminous mixture in lieu of asphalt cement. In this case the Asphalt Price Index for Asphalt Cements (AC-20/AC-30) will apply to asphalt recycling agents and the Asphalt Price Index for Emulsified Asphalts (RS-2) will apply to emulsified recycling agents.

The Asphalt Price Index is available from the Department's Contracts Office after the 15th of each month.

**9-2.1.2 Gasoline and Diesel Fuels:** Contract price adjustments will be made to reflect increases or decreases in the prices of gasoline and diesel fuels from those in effect during the month in which bids were received for this Contract. The Contractor will not be given the option of accepting or rejecting this adjustment. This adjustment will be made in accordance with the following criteria:

(a) Price adjustments will be based on monthly average quoted bulk prices of gasoline and diesel fuel as derived by the Department. These prices shall be determined by averaging bulk fuel prices on the first day of the month as quoted by major oil companies that could reasonably be expected to furnish fuel to projects in the State of Florida.

(b) Price adjustments will be made for only the amounts of diesel and gasoline fuel estimated by the Department as required to complete the Contract. The requirements of each kind of fuel for each pay item is estimated by multiplying the Department's standard fuel factor for that pay item by the pay quantity of that item.

(c) Price adjustments will be paid on a monthly basis with the following conditions:

1. Payment will be based on the increased quantities shown on the previous estimate on all items for which established standard fuel factors are on a file maintained by the Department.

2. Monthly calculations will be based partially on truck haul for commercial material deliveries to the job site and the use of diesel fuel for drying operations of asphaltic mixes.

3. Any fuel used for drying aggregate will be adjusted using the index for diesel fuel.

(d) A price adjustment for gasoline and diesel fuel respectively will be made only when the current fuel price varies by more than 5% from the price prevailing in the month when bids were received.

(e) The adjustment for each fuel will be calculated for each month during which the fuel was used on the project in accordance with the following formula:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

$A_i = F_i (P_i - 0.95 P_b)$  during a period of decreasing prices.

where:  $A_i$  = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month "I."

$F_i$  = Total gallons calculated as being used during the month.

$P_i$  = Average price for fuel prevailing during month "I."

$P_b$  = Average price for fuel prevailing during the month "b" when bids were received on this Contract.

(f) Adjustments will be paid or charged to the Prime Contractor only. Any Contractor receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.

(g) The dollar value paid for adjustments will not be included in the Contract amount from which normal retainage is withheld (as per 9-6.1).

(h) No adjustment will be allowed for the quantity of any item which is left in place at no pay.

Average quoted monthly bulk prices for diesel and gasoline will be available from the Department's Contracts Office after the 15th of each month.

**9-2.2 Non-Duplication of Payment:** In cases where the basis of payment clause in these Specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or material essential to the item, the Department will not measure or pay for this same work or material under any other pay item that may appear elsewhere in these Specifications.

### **9-3 Compensation for Altered Quantities.**

**9-3.1 General:** When alteration in plans or quantities of work not requiring a supplemental agreement as hereinbefore provided for are offered and performed, the Contractor shall accept payment in full at Contract unit bid prices for the actual quantities of work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefor, or from any other cause.

Compensation for alterations in plans or quantities of work requiring supplemental agreements shall be stipulated in such agreement, except when the Contractor proceeds with the work without change of price being agreed upon, the Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.

#### **9-3.2 Payment Based on Plan Quantity:**

**9-3.2.1 Error in Plan Quantity:** As used in this Article, the term "substantial error" is defined as the smaller of (a) or (b) below:

(a) a difference between the original plan quantity and final quantity of more than 5%,

(b) a change in quantity which causes a change in the amount payable of more than \$5,000.

On multiple job Contracts, changes made to an individual pay item due to substantial errors will be based on the entire Contract quantity for that pay item.

Where the pay quantity for any item is designated to be the original plan quantity, the Department will revise such quantity only in the event that the Department determines it is in substantial error. In general, the Department will determine such revisions by final measurement, plan calculations, or both, as additions to or deductions from plan quantities.

In the event that either the Department or the Contractor contends that the plan quantity for any item is in error and additional or less compensation is thereby due, the claimant shall submit, at their own expense, evidence of such in the form of acceptable and verifiable measurements or calculations. The Department will not revise the plan quantity solely on the basis of a particular method of construction that the Contractor selects. For earthwork items, the claimant must note any differences in the original ground surfaces from that shown in the original plan cross-sections that would result in a substantial error to the plan quantity, and must be properly documented by appropriate verifiable level notes, acceptable to both the Contractor and the Department, prior to disturbance of the original ground surface by construction operations. The claimant shall support any claim based upon a substantial error for differences in the original ground surface by documentation as provided above.

**9-3.2.2 Authorized Changes in Limits of Work:** Where the Department designates the pay quantity for any item to be the original plan quantity and authorizes a plan change which results in an increase or decrease in the quantity of that item, the Department will revise the plan quantity accordingly. In general, the Department will determine such revisions by final measurement, plan calculations or both.

**9-3.2.3 Specified Adjustments to Pay Quantities:** Do not apply the limitations specified in 9-3.2.1 and 9-3.2.2 to the following:

(1) Where these Specifications or Special Provisions provide that the Department determines the pay quantity for an item on the basis of area of finished work adjusted in accordance with the ratio of measured thickness to nominal thickness.

(2) Where these Specifications provide for a deduction due to test results falling outside of the allowable specified tolerances.

(3) To payment for extra length fence posts, as specified in 550-6.3.

### **9-3.3 Lump Sum Quantities:**

**9-3.3.1 Error in Lump Sum Quantity:** Where the Department designates the pay quantity for an item to be a lump sum and the plans show an estimated quantity, the Department will adjust the lump sum compensation only in the event that either the Contractor submits satisfactory evidence or the Department determines and furnishes satisfactory evidence that the lump sum quantity shown is in substantial error as defined in 9-3.2.1.

**9-3.3.2 Authorized Changes in Work:** Where the Department designates the pay quantity for an item to be a lump sum and the plans show an estimated quantity, the Department will adjust compensation for that item proportionately when an authorized plan change is made which results in an increase or decrease in the quantity of that item. When the plans do not show an estimated plan quantity or the applicable specifications do not provide adjustments for contingencies, the Department will compensate for any authorized plan change resulting in an increase or decrease in the cost of acceptably completing the item by establishing a new unit price through a supplemental agreement as provided in 4-3.2.

**9-3.4 Deviation from Plan Dimensions:** If the Contractor fails to construct any item to plan or to authorized dimensions within the specified tolerances, the Engineer, at his discretion will: require the Contractor to reconstruct the work to acceptable tolerances at no additional cost to the Department; accept the work and provide the Contractor no pay; or accept the work and provide the Contractor a reduced final pay quantity or reduced unit price. The Department will not make reductions to final pay quantities for those items designated to be paid on the basis of original plan quantity or a lump sum quantity under the provisions of this Article unless such reduction results in an aggregate monetary change per item of more than \$100, except that for earthwork items, the aggregate change must exceed \$5,000 or 5% of the

original plan quantity, whichever is smaller. If, in the opinion of the Engineer, the Contractor has made a deliberate attempt to take advantage of the construction tolerances as defined in 120-11.1 to increase borrow excavation in fill sections or to decrease the required volume of roadway or lateral ditch excavation or embankment, the Department will take appropriate measurements and will apply reductions in pay quantities. The Department will not use the construction tolerance, as defined in 120-11.1, as a pay tolerance. The construction tolerance is not to be construed as defining a revised authorized template.

## **9-4 Common Carrier Freight Rates.**

**9-4.1 General:** Except as provided hereinafter for certain railroad freight rates, the Department will make no allowance or deduction for any increase or decrease in common carrier rates or transportation costs on materials.

**9-4.2 Materials on which Adjustment is Allowable:** The Department will make an allowance or deduction for any changes in railroad freight rates under the provisions of this Article, only for the construction materials described and limited below.

- (1) Limerock used in bases and in Limerock Bearing Ratio (LBR) stabilizing.
- (2) Limerock overburden used in LBR stabilizing.
- (3) Shell used in bases and in LBR stabilizing.
- (4) Stone screenings used in LBR stabilizing.
- (5) Asphalt.
- (6) Fine and coarse aggregates for asphaltic mixtures or bituminous surface treatments (mineral filler excluded).
- (7) Fine and coarse aggregates and portland cement, used in portland cement concrete for which the Contract provides payment by area or by volume.
- (8) Structural steel shapes and plates, and reinforcing steel, for which the Contract provides direct payment by lump sum or weight basis; as shipped from the final fabrication or jobbing point.
- (9) Riprap (rubble).
- (10) Cement used in optional base.

**9-4.3 Explanation of Terms:** The designation "applicable materials" as used hereinafter includes only the materials listed in 9-4.2 that are actually shipped by railroad and only within the limitations set forth in this Article. In addition, any such materials that the bidder, at his option, may himself exclude from such designation (as provided in 9-4.6) are not "applicable materials" for the particular contract for which they are thus excluded.

**9-4.4 Basis for Adjustment:** It is agreed that prices bid on items in the proposal that include the applicable materials are based on railroad freight rates, including multiple-car rates if applicable, and are shown on the Option and Affidavit Form in the proposal (as provided in 9-4.6 and 9-4.7). In case there is a difference between rates shown on the Option and Affidavit Form and rates quoted by the authorized freight agent for the same origin and destination, the Department will use the rates most favorable to the Department when making any adjustment. In the event that the freight rates on the applicable materials, including any multiple-car shipment reductions, are increased or decreased after the date the Department opened the bids and any of the applicable materials are shipped at the increased or decreased rates, the Department will adjust the final Contract amount in accordance with, and subject to, the provisions set forth hereinafter.

**9-4.5 Method of Determining Adjustment:** The Department will determine the amount of any contract adjustment to be made under the provisions of this Article as follows:

- (a) For any applicable material, the Department will determine the base freight rate increase or decrease as the product of either the theoretical weight or the actual weight of the material shipped at the increased or decreased rate, whichever is less, by the change in rate. When the actual weight shipped, as determined from the freight bills, exceeds the theoretical weight as shown below, the

Department will assume that the theoretical weight was shipped first when rates are increasing and last when rates are decreasing.

(b) The Department will not make any Contract adjustment for a net base freight cost increase or decrease of \$1,000 or less on the Contract.

(c) The Department will further limit the amount of the Contract adjustment to 90% of the base freight cost increase or decrease over the \$1,000 deductible amount.

(d) The Department will make adjustments for freight rate changes on the applicable materials entering into and forming a part of the completed work, whether or not they are supplied direct to the Contractor. (This applies to the applicable materials in structural concrete, concrete pavement, and plant-mixed asphalt mixtures, even though the Contractor purchases concrete or asphalt mixture from another firm.)

(e) The Department will base weights used in calculating the amount of any adjustment on the final Contract pay quantities whichever is less, the actual weight or the unit theoretical weights shown below.

(1) Limerock Base (square yard [square meter] pay unit) - 100 lbs/yd<sup>2</sup>-in [2 kg/(m<sup>2</sup>·mm)].

(2) Limerock and Limerock Overburden (cubic yard [cubic meter] pay unit, truck measurement) - 2,400 lbs/yd<sup>3</sup> [1,420 kg/m<sup>3</sup>].

(3) Shell - 75 lbs/ft<sup>3</sup> [1,200 kg/m<sup>3</sup>].

(4) Stone Screenings - 93 lbs/ft<sup>3</sup> [1,490 kg/m<sup>3</sup>].

(5) Asphalt - 8.5 lbs/gal [1 kg/L].

(6) Fine and Coarse Aggregates for Asphaltic Mixtures - Weights specified in job-mix formula.

(7) Slag or Stone for Bituminous Surface treatments - 2,400 lbs/yd<sup>3</sup> [1,420 kg/m<sup>3</sup>].

(8) Expanded aggregates for Bituminous Surface treatments - 1,100 lbs/yd<sup>3</sup> [650 kg/m<sup>3</sup>].

(9) Portland Cement - Theoretical weight in the applicable concrete items, or for Optional Base - the amount actually applied and accepted.

(10) Fine and Coarse Aggregates for Portland Cement Concrete - Weights specified in job design mix.

(11) Structural Steel:

Lump sum pay basis - Shop bill weight.

Weight pay basis - Contract pay quantity.

(12) Reinforcing Steel - Contract pay quantity.

(13) Riprap (Rubble) - Contract pay quantity.

**9-4.6 Contractor's Option for Excluding Materials:** Exercise the option of including or of excluding any or all of the designated applicable materials from the provisions of this Article, and provide the required affidavit as described in 9-4.7, using a form that the Department will insert in the Contract forms at the time of award.

**9-4.7 Affidavits Required:** For those applicable materials that the Contractor desires covered by the provisions of this Article, the Contractor shall furnish within the time that the Department stipulates for returning the executed Contract and bond, affidavits showing the railroad freight rates and any multiple-car shipment reductions on which he has based his bid for the work. Indicate on these affidavits the rate for a single origin and destination for each of the applicable materials upon which the bid prices were determined. Support the affidavits with a signed quotation from an authorized freight agent. In case any rates or multiple-car shipment reductions are in litigation on the date that the Department opens the bids, do not base the bid on anticipation of a reduction. The Department will consider any change in railroad freight rates (including multiple-car shipment reductions ordered by the Court from the rates in

effect on the date that the Department opened the bids as a rate revision under the provisions of this Article. Advise the Department if the use of railroad transportation is not intended.

**9-4.8 Failure to Furnish Affidavits or Exercise Option:** If the Contractor does not execute the option described in 9-4.6 or does not furnish the affidavits described in 9-4.7, all within the time allowed for his execution and return of the Contract and the furnishing of the bond, then the Department will exclude all materials from the freight rate adjustment clauses of this Article.

**9-4.9 Change in Shipping Methods or Points; Errors in Rate Quotations:** Notify the Department immediately of any changes in the proposed shipping methods, including change in origin or destination, and supply appropriate new affidavits and supporting quotations that cover the following, if applicable. Obtain these quotations from an authorized freight agent:

(a) Single-car and multiple-car rates, in effect on the date of the Contract letting, for all applicable materials to be shipped from the revised origin or to the revised destination.

(b) Rate increases or decreases, applicable to the original origin and destination, that became effective between the date of Contract letting and the completion of the railroad shipments.

(c) The effective dates of such rate changes.

The Department will not make any allowances for increased freight cost due to errors in the affidavit or quotations, or change in type of transportation, or any change in freight costs due to a change in origin or destination; whether made by the Contractor, his supplier, or his carrier. Whenever there is a change in origin or destination and also a change in freight rates for the applicable material, in making any adjustment under the provisions of this Article, the Department will use the difference between the rates shown on the Option and Affidavit Form or the quoted rates, at the time of bid, and the rates in effect on date of shipment for either (1) the shipping points listed in the original Option and Affidavit Form, or (2) the actual shipping points; whichever are most favorable to the Department.

The provisions of this Article are applicable to materials used to construct Optional Base Course in accordance with Section 285 subject to the following stipulations:

(1) Base the Option and Affidavit Form (as provided in 9-4.6 and 9-4.7) on the materials required to construct the option on which the bid is based as specified in 285-3.

(2) If the Department directs the Contractor to construct an option other than the one on which the Contractor bid, in making any adjustment under the provisions of this Article the Department will use the difference between the rates shown on the affidavit or the quoted rates at the time of bid and the rates in effect on the date of shipment for either (1) the shipping points and materials listed in the original affidavit, or (2) the actual shipping points and materials; whichever are most favorable to the Department.

**9-4.10 Submission of Freight Bills:** For all applicable materials not excluded from the adjustment provisions of this Article, submit to the Engineer, as soon as practicable after completing the material shipments, one of the following sets of records or an appropriate combination thereof:

(a) Original receipted freight bills (or copies thereof) covering the applicable material and a tabulation showing each bill, listed in chronological order; the material, quantity, and date shipped; and the freight rate paid.

(b) Shipping tickets (or copies thereof); the tabular billing from the railroad, covering the applicable shipping tickets showing the material, origin, and destination and listing each ticket or car number, date shipped, quantity, and freight rate charged; and copies of the vouchers or receipts from the railroad showing payment of appropriate billings.

(c) Affidavits from authorized freight agents to the effect that there was no rate increase or decrease during the period of material shipments for use under the appropriate contract, as compared to the quotations furnished for the rates in effect on the date of Contract letting. Furnish affidavits for all applicable material, origins, and destinations not covered by records submitted under the provisions of (a) or (b) above.

The Department requires these records, in addition to the required quotations, even if the Contractor does not file any claim for increased rates. The Department will withhold payment of the final estimate until receipt of the required bills, quotations, and tabulations, or affidavits.

**9-4.11 Payment of Claim:** The Department will withhold payment for any increased freight costs until final payment on the Contract.

**9-4.12 Expiration of Contract Time:** If the Contractor has not completed work under the Contract at the expiration of the Contract Time, including any extensions that the Department may grant, then the Department will make no allowance for freight rate increases effective after the date that the Contract Time expires.

**9-5 Deleted Work.**

The Department will have the right to cancel the portions of the Contract relating to the construction of any acceptable item therein, by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date that the Engineer cancels the work.

**9-6 Partial Payments.**

**9-6.1 General:** The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.

The Department will base the amount of such payments on the total value of the work that the Contractor performs to the date of the estimate, based on the quantities and the Contract unit prices, less an amount retained and less payments previously made. The Department will determine the amount retained in accordance with the following schedule:

	Amount Retained
0 to 50	None
50 to 100	10% of the earnings on the current monthly estimate and subsequent monthly estimates when the percentage of dollar value of the Contractor's completed work is less than the dollar value of work that should have been completed in accordance with the Contractor's approved working schedule. The Department will release retainage withheld for this reason on the next progress estimate when actual earnings equal or exceed earnings projected on the latest approved working schedule.
75 to 100	10% of the value of work completed exceeding 75% of the Contract Amount. The Department will withhold this amount in addition to any amount withheld due to differences between actual earnings and earnings projected in accordance with the Contractor's approved working schedule.

Contract Amount is defined as the original Contract amount as adjusted by approved supplemental agreements.

Where more than one project or job (separate job number) is included in the Contract, the Department will apply the above percentages separately to each job.

**9-6.2 Unsatisfactory Payment Record:** In accordance with Sections 255.05 and 337.16 of the Florida Statutes, and the rules of the Department, the Department may disqualify the Contractor from bidding on future Department contracts if the Contractor's payment record in connection with contract work becomes unsatisfactory. The Department may also disqualify the surety from issuing bonds for future Department contracts if they similarly fail to perform under the terms of their bond.

### **9-6.3 Withholding Payment:**

**9-6.3.1 Withholding Payment for Defective Work:** If the Department discovers any defective work or material prior to the final acceptance, or if the Department has a reasonable doubt as to the integrity of any part of the completed work prior to final acceptance, then the Department will not allow payment for such defective or questioned work until the Contractor has remedied the defect and removed any causes of doubt.

**9-6.3.2 Withholding Payment for Failure to Comply:** The Department will withhold progress payments from the Contractor if he fails to comply with any or all of the following within 60 days after beginning work:

(a) comply with and submit required paperwork relating to prevailing wage rate provisions, Equal Employment Opportunity, On-Job-Training, and Affirmative Action;

(b) comply with or make a good faith effort to meet Disadvantaged Business Enterprise goals;

(c) comply with or make a good faith effort to meet minority and female hiring goals; and

(d) comply with or make a good faith effort to meet On-Job-Training goals.

The Department will withhold progress payments until the Contractor has satisfied the above conditions.

**9-6.4 Release of Retainage After Acceptance:** When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, freight bills, freight rate certifications, wage rate affidavits, Federal Highway Administration Form FHWA-47 (formerly known as PR-47), EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due and Form 21-A release) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in 9-6.3.

The Department will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days.

The Department may deduct from payment estimates any sums that the Contractor owes to the Department on any account. Where more than one project or job (separate job number) is included in the Contract, the Department will distribute the reduced retainage as provided in the first paragraph of this Subarticle to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

### **9-6.5 Partial Payments for Delivery of Certain Materials:**

**9-6.5.1 General:** The Department will allow partial payments for new materials that will be permanently incorporated into the project and are stockpiled in approved locations in the project vicinity. Stockpile materials so that they will not be damaged by the elements and in a manner that identifies the project on which they are to be used.

The following conditions apply to all payments for stockpiled materials:

(1) There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.

(2) The stockpiled material must be approved as meeting applicable specifications.

(3) The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.

(4) The Contractor shall furnish the Engineer with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.

(5) Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.

(6) Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

**9-6.5.2 Partial Payment Amounts:** The following partial payment restrictions apply:

(1) Partial payments less than \$5,000 for any one month will not be processed.

(2) Partial payments for any individual pay item with an extended total less than \$5,000 will not be processed.

(3) Partial payments for structural steel and precast prestressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid price of the item in which the material is to be used.

(4) Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the Department requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

**9-6.5.3 Off Site Storage:** If the conditions of 9-6.5.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of 9-6.5.1 and the following conditions are met:

(1) Furnish the Department a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and Department. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Florida Department of Transportation. The bond shall be in the full dollar amount of the bid price for the materials described in the contract.

(2) The following clauses must be added to the construction Contract between the Contractor and the supplier of the stockpiled materials:

"Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Florida Department of Transportation should <supplier> default in the performance of this agreement."

"Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor's obligation to furnish the materials described in this agreement to the Florida Department of Transportation."

(3) The agreement between the Contractor and the supplier of the stockpiled materials must include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

**9-6.5.4 Retainage on Partial Payments** The standard retainage as provided 9-6.1, will be withheld from all of the partial payments herein above described.

**9-6.6 Substitution of Securities for Retainage:** In accordance with Section 337.175 of the Florida Statutes, the Department will accept substitution of securities, as provided by Section 255.052 of the Florida Statutes, or certificates of deposit or irrevocable letters of credit approved by the Department's Comptroller, in lieu of retainage. Obtain information concerning such substitutions from the Office of Comptroller of the Department of Transportation, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida, 32399-0450.

**9-6.7 Certification of Payment to Subcontractors:** Section 337.11(10)(a) of the Florida Statutes requires that, prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract have received their pro rata share of previous progress payments to the Contractor for all work completed and materials furnished in the previous period. Provide this certification be in the form designated by the Department. The term "subcontractor," as used herein,

includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements.

The Department will not make any progress payments after the initial partial payment until the Contractor certifies that he has disbursed to all subcontractors and suppliers having an interest in the Contract their pro rata shares of the payment out of progress payments that he has previously received unless the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors and suppliers.

Within ten days of making a payment to any DBE subcontractor, obtain from the DBE subcontractor an executed sworn DBE Payment Certification Form and submit the form with relevant invoices from the DBE subcontractor to the Engineer within 30 days.

The DBE subcontractor's failure to sign the DBE Payment Certification Form and forward the form to the Contractor immediately upon receipt of payment is sufficient grounds for the Department to suspend the DBE subcontractor's certification.

The Contractor's failure to submit to the Engineer DBE Payment Certification Forms covering all payments made to DBE subcontractors, within 30 days after receiving the final progress payment, is sufficient grounds for the Department to suspend a Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.012.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract their pro rata shares of the payment for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30-day period.

## **9-7 Record of Construction Materials.**

**9-7.1 General:** For all construction materials used in the construction of the project, (except materials exempted by 9-7.2), preserve for the Department's inspection the invoices and records of the materials for a period of three years from the date of completion of the project. Apply this requirement when subcontractors purchase materials, and obtain the invoices and other materials records from the subcontractors.

Not later than one month after completing the project, furnish the Engineer with a certification of construction materials procured for the project by the Contractor and all subcontractors. Provide this certification in the form of an affidavit completed on a Department-furnished form.

**9-7.2 Non-Commercial Materials:** Provisions 9-7 do not apply to materials generally classed as non-commercial, such as fill materials, local sand, sand-clay, or local materials used as stabilizer.

## **9-8 Disputed Amounts Due the Contractor.**

The Department reserves the right to withhold from the final estimate any disputed amounts between the Contractor and the Department. The Department will release all other amounts due, as provided in 9-9.

## **9-9 Acceptance and Final Payment.**

Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance (as provided in 5-10 and 5-11), and subject to the terms of 8-11, the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The Department will pay the amount of this estimate, less any sums that the Department may have deducted or retained under the provisions of

the Contract, as soon as practicable after final acceptance of the work, provided that the Contractor has met the requirements of (a) through (g) below.

If the Contractor fails to furnish all required Contract Documents within 90 days of the Department's offer of final payment, the Department may suspend the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.012.

(a) The Contractor has agreed in writing to accept the balance due, as determined by the Department, as full settlement of his account under the Contract and of all claims in connection therewith, or the Contractor has through the use of the Qualified Acceptance Letter, accepted the balance due, as determined by the Department, with the stipulation that his acceptance of such payment does not constitute any bar, admission, or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and the Department. To receive payment based on a Qualified Acceptance Letter, define in writing the dispute or pending claim with full particular of all items of all issues in dispute, including itemized amounts claimed for all particulars of all items, and submit it as part of the Qualified Acceptance Letter. The Contractor further agrees, by submitting a Qualified Acceptance Letter that any pending or future arbitration claim or suit is limited to those particulars, including the itemized amounts, defined in the Qualified Acceptance Letter, and that he will commence with any such arbitration claim or suit within 820 calendar days from and after the time of final acceptance of the work and that his failure to file a formal claim within this period constitutes his full acceptance of the Engineer's final estimate and payment.

(b) The Contractor has properly maintained the project, as specified hereinbefore.

(c) The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7-12.1.

(d) The surety on the Contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of his portion, to final payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.

(e) The Contractor has complied with and settled all requirements pertaining to any wage-rate provisions.

(f) The Contractor has furnished all required mill tests and analysis reports to the Engineer.

(g) The Contractor has submitted the Form FHWA-47 (formerly known as PR-47) Record of Materials and Labor on Federal-aid projects, to the Engineer for transmittal to the FHWA. This submittal is required on all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000. The rate of any prejudgment or post judgment interest assessed against either party to this Contract is 6% per annum.

### **9-10 Interest Due on Delayed Payments.**

The Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.

### **9-11 Offsetting Payments.**

Section 337.145 of the Florida Statutes, providing for offsetting payments to the Contractor, is hereby made a part of this Contract:

(1) After settlement, arbitration, or final adjudication of any claim of the Department for work done pursuant to a construction contract with any party, the Department may offset such amount from payments due for work done on any construction contract, excluding amounts owed to subcontractors, suppliers, and laborers, which it has with the party owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department.

(2) Offsetting any amount pursuant to (1) above shall not be considered a breach of Contract by the Department.