

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Road Commissioner

Chapter 17-2A
(1966)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Road Commissioner

Chapter 17-2A
Series III
(1966)

Subject: Construction and Reconstruction of State Roads.

Section 1. General

1.01. Scope.--These rules and regulations relate to the construction and reconstruction of state roads.

1.02. Authority.--These rules and regulations are issued under authority of West Virginia Code, Chapter 17, Article 2-A, Section 8.

1.03. Effective Date.--These rules and regulations are promulgated on October 14, 1966, and become effective on October 14, 1966.

1.04. Filing Date.--These rules and regulations were filed in the Office of the Secretary of State on October 14, 1966.

1.05. Certification.--These rules and regulations are certified authentic by the State Road Commissioner by certification number

Section 2. Plans and Specifications for the Construction and Reconstruction of State Roads

2.01. Preparation of Plans and Specifications.--The State

Road Commissioner, either through his staff employees or through consultants, shall prepare all plans and specifications for the construction and reconstruction of state roads. No such plans or specifications shall be used by any contractor or by any employee or agent of the State of West Virginia for the purpose of constructing, altering, or repairing any state road until such plans or specifications have been approved in writing by the State Road Commissioner. Plans for projects to be constructed by State forces and plans for emergency repairs or reconstruction may be approved by the Director of Maintenance.

(a) Amendments to Plans and Specifications.--The plans and specifications for any state road project may be altered at any time by the State Road Commissioner if he believes the alteration is necessary or desirable for the benefit of the citizens of this state. However, no contractor will be held responsible for complying with any such alteration or amendment to the plans or specifications until at least three copies of the alteration or amendment (each of which must be properly identified and referenced) have been presented to the contractor, and one copy has been filed in the Office of the Clerk of the County Court of the county wherein the project is being carried on.

2.02. Purpose of Plans and Specifications.--The purpose of plans and specifications for the construction or reconstruction of any road is to provide the contractor or any other person undertaking such work with detailed directions regarding the work to be done, the manner in which or the method by which such work is to be done, and the materials and equipment which are to be used in such work. Accordingly, it is expected that the contractor, or other person who undertakes such work, will follow the plans and specifications in each and every detail.

2.03. Copies of Plans and Specifications.--Three complete sets of plans, profile, cross-sections and specifications will be furnished upon request to the contractor who is undertaking the work. Additional sets may be obtained by writing to the State Road Commissioner, and upon payment of the following charges:

- (a) Plan and Profile - per set - \$10.00
- (b) Cross-Sections - per set - \$50.00
- (c) Specifications - per set - \$10.00

2.04. Standard Specifications.--The State Road Commissioner may prepare standard specifications to be followed in the construction process of any state road project unless specific provisions of another nature are set forth in the contract. These standard

specifications will be filed with the Executive Secretary of the Commission by Commissioner's Order, and will be effective from the date of the Order filing them. Although these general or standard specifications may be amended or altered by the Commissioner at any time, the specifications in effect at the time of the execution of the contract shall serve as the basis for all transactions between the contractor and the Commissioner concerning the compensation due the contractor.

Section 3. Prequalification of Contractors

3.01. General Purposes.--In order that the State may obtain the services of only well-qualified, experienced and financially secure contractors for the construction and reconstruction of state roads, the Commissioner requires every contractor who wishes to undertake any state road project to have a Certificate of Qualification. No contract shall be awarded to any bidder who has not obtained this certificate from the State Road Commissioner.

3.02. Contractor's Prequalification Statement.--To obtain a Certificate of Qualification, the contractor must file, under oath, a "contractor's prequalification statement," containing a detailed financial statement, and experience records with detailed informa-

tion regarding available financial sources, equipment, property and other assets, together with an account of past experience, experience and qualifications of the personnel employed by the bidder and other such factual information as the Commissioner may require.

(a) Time for Filing.--Applications for prequalification will be accepted by the State Road Commissioner at any time, but no bids will be received or considered unless the bidder's application for prequalification has been on file with the Commissioner for at least fifteen days.

3.03. Scope of Certificate of Qualification.--If, after investigating the financial and professional qualifications of the contractor, the State Road Commissioner determines that the contractor is qualified to do the type construction work for which he has applied, a Certificate of Qualification will be issued fixing the amount of uncompleted work a contractor may have under contract at any one time and the particular type of work for which the contractor is qualified.

3.04. Qualifications of Sub-Contractors.--Before the State Road Commissioner will allow any portion of a state road project

to be subcontracted, he or his duly qualified representative must be satisfied as to the competence of the subcontractor to perform the work involved. The prime contractor as well as the proposed subcontractor will be required to furnish any information necessary to enable the Commissioner or his representative to make such a determination. However, in any case, the responsibility for the timely and orderly completion of the project is that of the prime contractor.

Section 4. Procedure for Making Bids or Proposals

4.01. Issuance of Proposal Forms.--Bidding or proposal forms will be issued only to prequalified contractors or their authorized representatives, or to contractors who have filed an application for prequalification upon the standard form provided for such purposes at least fifteen calendar days prior to the date set for receiving bids upon projects on which the applicant desires to bid. No proposal forms will be issued to a contractor for any project on which the engineer's preliminary estimate of cost exceeds the amount of the contractor's rating as established by the prequalification process. When more than one project is advertised, proposals will be issued on as many projects as the contractor requests, provided the contractor has been prequalified for each

individual project. However, no contracts will be awarded to a contractor where such contract, either by itself or when considered with other awarded but uncompleted contracts, exceeds the permissible limit of the contractor's prequalification rating.

4.02. Contents of Proposal Forms.--The proposal form issued by the Commissioner will set forth the location and the description of the proposed construction project, and will show the estimates of the various quantities of work to be performed or the materials to be furnished, the number of working days in which or the calendar date on which the work must be completed, the amount of security which must be provided by the contractor to guarantee completion of the proposal, the date, place and time of opening of all proposals. The proposal form will also set forth any special provisions or requirements which vary from or which are not contained in the standard specifications for roads and bridges as promulgated by the State Road Commissioner. All papers bound with or attached to the proposal form are a necessary part thereof and must not be detached.

4.03. Interpretation of Estimates Shown on the Proposal Form.--The quantities listed in the proposal form are to be considered as approximate and are to be used solely for the comparison of bids. Payment to the contractor will be made only for the actual quantities

of work performed in accordance with the plans and specifications of the project, and if upon completion of the construction work, the actual quantities show either an increase or decrease from the quantities given in the estimate, the prices or costs set forth on a unit basis in the proposal shall prevail, except as otherwise provided herein.

4.04. Preparation of Proposal.--The bidder must submit his proposal on the forms furnished by the State Road Commissioner. All blank spaces in the proposal form must be filled in correctly except where the bidder is given the alternative of bidding on one or more items. In this latter case, the bidder may bid upon only one of the alternates, if he chooses to do so. However, in any case, the bidder must state the prices (either written in ink or typewritten, both in words and numerals) for which he proposes to do each item of work contemplated. In case of discrepancy between prices shown in words and in figures, the words shall govern.

The proposal shall be signed by the individual bidding, or by his qualified and authorized agent, or, in the case of a partnership bid, the proposal shall be signed by one of the partners or by an authorized and qualified agent of the partnership, or, in the case of a joint venture, the proposal shall be signed by

one of the members thereof, or by an authorized and qualified agent of such joint venture, or in the case of a corporation, the proposal shall be signed by its president, secretary, treasurer or by some other officer duly qualified and authorized to act for and on behalf of the corporation.

4.05. Rejection of Proposals Containing Alterations, Erasures, or Irregularities.--Proposals may be rejected by the Commissioner if they show any alterations, ambiguous erasures, ambiguous additions to the proposal form, conditional bids, alternate bids where the same are not called for, incomplete bids or other irregularities of any kind.

4.06. Examination of Site of the Work and of the Plans and Specifications.--The bidder is required to examine carefully the site of the contemplated work, the proposal form, the plans, the specifications and the contract form pertaining to the project to be bid upon. In all cases, the Commissioner will assume that the bidder has inquired into and satisfied himself as to the conditions to be encountered in the performance of the work, as well as to the requirements and provisions of the proposal form, the plans, the specifications, and contract form pertaining to the construction project. Although test borings are made and recorded with reason-

able care and accuracy and the results are furnished with the plans, the Commissioner will not be responsible for full accuracy of subsurface information. The bidder is expected to use such information as a guide in making his own determination of subsurface conditions, and will be allowed no additional compensation because of changes in character or amounts of material encountered.

4.07. Security Required for the Proposal.--No proposal will be considered or accepted unless it is accompanied by either a certified or cashier's check, or by a bid bond issued by a corporate surety company satisfactory to the State Road Commissioner, and in the amount specified in the proposal form issued to the bidder, which such check or bond shall be payable to or shall secure the State Road Commissioner of West Virginia. Bid bonds will be accepted only if executed upon the official form furnished by the State Road Commissioner, and any proposal accompanied by a bond executed upon a copy, duplicate or facsimile of such official form will be rejected.

4.08. Delivery of Proposals.--Proposals or bids shall be placed in a sealed envelope addressed to the State Road Commissioner, 1800 Washington Street, East, Charleston, West Virginia. Such envelope shall also have the name and address of the bidder thereon and shall be plainly endorsed and identified as follows: "Pro-

posal for the improvement of the _____ Road (or Bridge
No. _____), Project No. _____, County of _____,
West Virginia."

4.09. Public Opening of Proposals.--All proper proposals shall be opened and read publicly at the time and place indicated in the advertisement. No proposal received at the office of the State Road Commissioner after the hour designated in the advertisement will be considered. Bidders or their authorized agents are invited to be present at such opening.

4.10. Withdrawal of Proposals.--Bidders may be given permission to withdraw any proposal after it has been deposited with the State Road Commissioner, provided that the Commissioner receives such request in writing prior to the opening and reading of bids. Where a bidder has been the successful low bidder upon one or more projects with the result that the total value of the work exceeds the bidder's prequalification rating, such bidder may withdraw, with the approval of the Commissioner, one or more of such bids in order to bring the remaining total within the monetary limits of his prequalification rating. In such case, the State Road Commissioner may in his discretion award contracts for the project or projects on which such bids have been withdrawn to the

next lowest qualified bidder.

4.11. State Road Commissioner May Reject Proposals.--The State Road Commissioner reserves the right to reject any and all proposals or bids, and to waive technicalities, when he deems it to be in the best interests of the State of West Virginia to do so.

4.12. Disqualification of Bidders.--Although a bidder has properly prequalified, he may nevertheless be disqualified by the State Road Commissioner for any of the following reasons:

(a) Multiple Bids.--Only one proposal from any individual, firm, corporation or association will be considered for any one project. Where the Commissioner has reasonable grounds for believing that a bidder is interested in more than one proposal for any particular project, all proposals in which such bidder is interested will be rejected.

(b) Collusion.--Proposals will be rejected if there is reason to believe that collusion exists among the bidders or any of them, and if after investigation and inquiry the Commissioner determines that one or more bidders colluded in any matter involved in the submission of their bids, the Commissioner may, at his discretion, disqualify

any or all such bidders from bidding on other projects.

(c) Changed Conditions.--The Commissioner may declare any bidder ineligible at any time during the process of receiving bids or awarding contracts where developments arise which, in the opinion of the Commissioner, adversely affects the bidder's responsibility. In such case, the bidder shall be given an opportunity by the Commissioner to present evidence in support of his position before his Certificate of Qualification is revoked.

Section 5. Award and Execution of Contract

5.01. Award of Contract.--The award of a contract for the construction of any State Road Commission project, will be to the lowest responsible bidder for the type of construction involved, and such award will be made within thirty days from the date of the opening of the bids or proposals. However, at the bidder's request, the Commissioner may agree to withhold the award of any such contract until some later time if he believes such a delay is warranted, or the Commissioner may request, and the bidder agree, to withhold such award until a later date.

5.02. Return of Security or Proposal Guarantee.--The

security given to the State Road Commissioner to guarantee the bidder's proposals, except that of the low bidder, will be returned immediately to the unsuccessful bidders upon completion of the tabulation and the checking of the proposals. If the contract is not awarded within thirty days, the proposal of the low bidder shall be rejected and his security or guarantee returned also, unless he has previously requested and agreed with the State Road Commissioner for a delay in making the award, in which event his security or proposal guarantee (if it be in the form of a cashier's check or certified check) will be returned to him provided he furnishes an adequate surety bond, in the amount of the proposal guarantee and thereby assuring execution of the contract when finally awarded. The bond will then be held and will remain in effect until the contract is executed or until the bidder's bid has been rejected by the State Road Commissioner.

5.03. Contract Bond Required.--After the award of a contract to the successful low bidder and at the time of the execution of the contract, the successful bidder shall execute and deliver to the State Road Commissioner a good and sufficient surety or collateral bond conditioned upon the satisfactory completion of the construction project by the successful low bidder, and securing the State of West Virginia in an amount equal to the contract price.

As an alternative, the contractor may furnish a cash bond, bonds of the United States government, West Virginia Road Bonds, in an amount of not less than 100 per cent of the contract price.

5.04. Special Bonds and Insurance.--When the work to be undertaken in any project is of such a nature that a special bond or special insurance is required, special requirements and information will be attached to the proposal form.

5.05. Insurance Requirements.--The contractor shall be required, in addition to any other form of insurance or bonds required under the terms of the contract and specifications, to procure and maintain during the life of the contract various policies of insurance, all of which must be properly countersigned by a resident agent of the State of West Virginia and otherwise in accordance with the applicable state statutes, as follows:

(a) Contractors' Public Liability and Property Damage Liability Insurance.--The contractor shall furnish evidence to the state that, with respect to the operations he performs, he carries regular contractors' public liability insurance providing insurance protection of not less than \$100,000.00 for all damages

arising out of bodily injuries to or for the death of any one person, and, subject to that limitation for each person, a total insurance coverage of at least \$300,000.00 for all damages arising out of bodily injuries to or for the death of two or more persons in any one accident; and, regular contractors' property damage and liability insurance providing insurance coverage of not less than \$50,000.00 for all damages arising out of injury to or destruction of property in any one accident, and subject to that limitation per accident, an aggregate insurance of not less than \$300,000.00 for all damages arising out of injury to or destruction of property during the life of the contract. All such policies of insurance shall be written or endorsed to cover the hazards of blasting, collapse, and the operation of mechanical equipment upon streets and highways.

If any part of the work is sublet, it shall be the duty of the contractor to see that insurance coverage of a similar nature is provided by or in behalf of the sub-contractors whose services are employed by him.

(b) Contractors' Protective Public Liability and Property

Damage Liability Insurance.--The contractor shall furnish evidence to the State Road Commissioner that with respect to the operations performed for him by subcontractors, he carries in his own behalf regular contractors' protective public liability insurance providing insurance protection of not less than \$100,000.00 for all damages arising out of bodily injuries to or the death of any one person, and subject to that limitation for each person, an aggregate insurance protection of not less than \$300,000.00 for all damages arising out of bodily injuries to or deaths of two or more persons in any one accident, and regular contractors' protective property damage liability insurance providing insurance protection in an amount of not less than \$50,000.00 for all damages arising out of injury to or destruction of property in any one accident and subject to that limitation per accident, an aggregate insurance protection of not less than \$300,000.00 for all damages arising out of injury to or destruction of property during the life of the contract. All such insurance policies shall be written or endorsed to cover the hazards of blasting, collapse, and the operation of mechanical equipment on streets or highways.

(c) Automobile Insurance.--The contractor shall furnish

evidence to the Commissioner that he has provided for insurance coverage upon all owned, hired, or non-owned automobiles or vehicles which he will use upon the project, and that he has thereby provided for insurance protection of not less than \$100,000.00 for all damages arising out of bodily injury to or the death of one person, and subject to that limitation for each person, a total insurance protection of not less than \$300,000.00 for all damages arising out of bodily injury to or for the death of two or more persons in any one accident, and property damage liability insurance having an aggregate limit of not less than \$10,000.00.

(d) Steam Boiler Insurance.--In the event steam boilers are used upon the project, the contractor shall furnish evidence that he carries standard steam boiler insurance providing insurance protection of not less than \$250,000.00.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted by the Commissioner.

5.06. Workmen's Compensation.--The contractor shall subscribe to and pay premiums into the West Virginia Workmen's Compensation Fund provided by Chapter 23 of the West Virginia Code, for the protection of all his employees. No contract will be awarded to any contractor who fails to provide such benefits for his employees in this state.

5.07. Execution of the Contract.--The contract shall be executed in the name of and by the bidder to whom the contract has been awarded, and the performance bond described hereinbefore in Section 5.03 shall be formally executed by the successful bidder as principal and by his sureties, and shall thereafter be returned to the office of the Commissioner, but not more than twenty days after notice of the award of the contract.

5.08. Failure to Execute the Contract and Provide a Performance Bond.--Failure on the part of the successful bidder to whom a contract has been awarded, to execute a contract or to provide an acceptable performance bond within twenty days after the notice of the award, shall be just cause for the annulment of the award; and in such case, the amount of the security deposited with the proposal form shall be retained by the Com-

missioner and deposited in the State Road Fund, not as a penalty, but as liquidated damages.

Section 6. Performance of the Contract

6.01. Purpose of the Contract.--The intent and purpose of the contract between the State Road Commissioner and the contractor is to provide a detailed written record of what each party intended that the other should do with regard to the construction project involved. For this reason, the contract includes, by reference, the proposal, the plans, and the specifications (including any special provisions) for the entire construction project, and any requirement or statement of duty or obligation set forth in any one of them is as binding as if called for by all of the documents. In the event of a conflict or discrepancy between one or more of such documents, or where a misunderstanding arises as to the intent or meaning of any one of these documents, the matter shall be resolved by the State Road Commissioner, and in all such cases his decision shall be final and conclusive. However, in case of mechanical errors which create conflicts or discrepancies, the following rules of interpretation shall be observed:

(a) Special or detailed plans and specifications shall govern over general plans and specifications.

(b) Plans shall govern over specifications.

(c) Computed or figured dimensions shall govern over scaled dimensions.

All work undertaken by the contractor must be in strict conformity with the contract, including the proposal, the plans and the specifications. Copies of all these documents must be filed by the State Road Commissioner in the Office of the County Clerk of the county wherein the work is to be performed and as such, these documents are available for examination by the public at any time.

6.02. Responsibility of the Contractor for Having Working Copies of the Contract.---The contractor or his project superintendent or foreman, must be present during all phases of the construction work to be undertaken in accordance with the contract, and therefore each of them must be capable of reading and thoroughly understanding the terms of the contract, including the plans and specifications. For this reason, the contractor is required to keep at least one copy of the contract, including the

plans and specifications, at the location of the construction project at all times. As noted in Section 2.03 of these regulations, the Commissioner will supply the contractor with three copies of these documents upon request without charge, and additional copies may be obtained at the contractor's expense as set forth in Section 2.03.

6.03. Inspection and Supervision of the Work.--The State Road Commissioner or his duly authorized representative shall be authorized to inspect all work done and materials furnished by the contractor, and insofar as the same is necessary, shall be authorized to supervise and control the work of the contractor to insure the full and complete satisfaction of the terms of the contract. Generally, an inspector employed by the Commissioner will be stationed on the project to report the progress of the work and the manner in which it is being performed. If the materials furnished or the work performed by the contractor fail to fulfill the requirements of the contract, the inspector shall immediately call the problem to the attention of the contractor. Where a dispute arises between the contractor and the inspector regarding either the materials furnished or the manner of performing work, the inspector shall have the authority to reject the material or to suspend the work, by written notice to the

contractor, until the question can be referred to the Commissioner for his decision. The inspector is not authorized to revoke, alter, enlarge, relax or release any requirements of the contract, including the proposal, the plans, or the specifications.

6.04. Unauthorized Work.--Any work done by the contractor after suspension of the project has been ordered by the Commissioner or by his duly authorized representative, or any work done beyond the lines shown upon the plans, or any extra work done without prior written authority of the Commissioner or his duly authorized representative, will be considered as unauthorized work done at the sole expense of the contractor. Where such work has a detrimental effect upon either the property or the project of the State Road Commission or upon an abutting property owner, or upon the public in general, the Commissioner may order such work removed at the contractor's expense.

6.05. Inspection and Control of Materials.--As soon as possible after a contract has been awarded, and prior to the time any construction work begins thereunder, the contractor shall furnish the Commissioner with a complete statement of the origin, composition and manufacturer of all materials which he proposes to use upon the project designated by the

contract. The contractor may also be required to furnish samples of any such materials to the Commissioner. Written approval of the quality of such samples must be received by the contractor prior to the time any of them are incorporated in the project. Whenever it is found that partly developed quarries, pits, or other sources of supply do not furnish a uniform product, or whenever the product fails to conform to the plans or specifications, the Commissioner shall require the contractor to furnish acceptable materials from other sources of supply without additional compensation.

(a) Testing of Materials.--All tests of materials shall be made in accordance with approved methods designated in the plans and specifications. In certain instances, testing specifications will be incorporated into the contract and the plans and specifications by reference to other source material. In such cases, the Commissioner will provide the contractor with copies of such information upon request.

6.06. Defective Work or Material.--No omission or failure on the part of the Commissioner to disapprove or reject any work

or material shall be taken to be an acceptance of any defective work or material. Upon being notified to do so, the contractor shall remove any work or material condemned by the Commissioner and shall rebuild and replace the same without additional compensation. Upon the failure or refusal of the contractor to remove any condemned work or material and to rebuild the same, such removal and replacement may be done by the Commissioner at the expense of the contractor, or, in case the Commissioner should not consider the defect of sufficient importance to require the contractor to rebuild or to replace any imperfect work or material, the Commissioner may make an equitable deduction therefor from the contract price.

6.07. Silence of Plans or Specifications.--Where the plans or specifications are silent regarding the details of any particular portion of the work or the material to be used in the work, such silence shall be regarded as meaning that only workmanship and materials of the highest quality are to be used in carrying out the contractor's duties and responsibilities under the terms of his contract with the State Road Commission.

6.08. Alterations in Plans or Quantities of Work.--The Commissioner reserves the right to make alterations in the plans

or in the quantities of work as may be necessary, either before or after the beginning of work under the contract, to insure completion of the work. Such alterations shall not be considered as a waiver of any conditions of the contract nor invalidate any of the provisions thereof, provided such alterations do not decrease or increase the total cost of the project by more than twenty-five (25) per cent thereof, based on the original contract quantities and the unit prices therein, and provided further that such alterations do not result in an increase or decrease of more than twenty-five (25) per cent of the quantity of any single major contract item. When alterations are made in excess of those provided for herein, then either party to the contract, upon written demand shall be entitled to a revised contract consideration to be fixed and agreed upon in a written supplemental agreement relating to the necessary changes, except in cases where the increase in cost of any single item is less than \$1,000.00, or where there is no material change in the character of the work which would increase the unit cost to the contractor, and in such cases no adjustment to the original contract by supplemental agreement or otherwise shall be made. A Work Order form shall be used to document minor contract changes.

- (a) Major Item; Definition.--A major item shall be defined as any item whose total cost is equal to or

greater than ten per cent of the total original contract cost. Items appearing as minor items in the original proposal shall be construed as becoming major items if they are increased to the extent that the total cost of the item is equal to or greater than ten per cent of the original total cost.

(b) Failure to Agree.--If the Commissioner and the contractor are unable to agree upon the contractor's revised consideration, the contractor may have the option of proceeding with the work and receiving payment therefor in an amount determined by the Commissioner as the reasonable cost of the materials and labor furnished by the contractor in the manner provided in Section 9.03 of Series III of these regulations, which section relates to the manner of payment for "Extra Work"; or, the contractor may permit the work to be done at the time and in the manner deemed most expedient by the Commissioner.

(c) Removal of Item From Contract.--The Commissioner may remove or omit any item or items from the contract, provided that notice of intent to remove or omit such

item or items is given to the contractor before any material has been purchased or before any labor has been performed on such item or items, and such removal or omission shall not constitute grounds for any claim for damages or loss of anticipated profits. The Commissioner may remove or omit any item or items from the contract, at any time, by agreeing to compensate the contractor for the reasonable expense already incurred and to take over, at actual cost, any unused material purchased in good faith by the contractor for use in or for the item or items removed or omitted.

6.09. Extra Work.--When ordered to do so in writing by the Commissioner, the contractor shall furnish materials and do extra work not otherwise provided for in the contract. Extra work shall be done in a workmanlike manner and as if it was provided for in express terms in the contract. Payment therefor shall be made at unit prices to be agreed upon by the contractor and the Commissioner before the work is begun and as provided in these regulations. If prices or compensation for extra work cannot be agreed upon, the Commissioner may order the contractor to do the work and payment therefor shall be made at its actual

and reasonable cost to the contractor, plus the percentage allowances provided for in Section 9.03 of Series III of these regulations.

Section 7. Legal Obligations and Responsibilities of the Contractor

7.01. Compliance with Federal, State, and Local Laws.--The contractor shall observe and comply with all federal, state and local laws, ordinances, and rules and regulations which may in any manner affect the conduct of his work, and he shall observe and comply with all orders or decrees of any tribunal, whether administrative or judicial, which may have any jurisdiction or authority over him or the work being undertaken by him for the State Road Commission. The contractor shall indemnify and save harmless the State Road Commissioner and any or all of his officers, agents or employees from any claim or liability arising from or based upon the violation of any such law, ordinance, rule or regulation, order or decree, whether such violation be occasioned by the contractor, his sub-contractor, or any of his agents or employees.

7.02. Permits and Licenses.--The contractor shall procure

all permits and licenses, shall pay all charges and fees, and shall give all notices necessary and incident to the completion of his work under the terms of the contract with the State Road Commissioner. All motor vehicles used by the contractor, his employees, or his sub-contractor, shall bear the proper West Virginia motor vehicle license tags as required by law.

7.03. Sanitary Provisions.--The contractor shall provide and maintain such toilet accommodations for the use of his employees as may be necessary, and in such a manner as to comply with the requirements of state and local boards of health or of such other public agencies having jurisdiction over the contractor or the area wherein the work is being done. All such toilet facilities shall be maintained in as neat and inoffensive manner as possible. In no case shall the contractor create, commit, or maintain a public nuisance.

7.04. Public Convenience and Safety on the Construction Project.--The contractor shall conduct his work in such a manner as to provide for the safety and convenience of the public who travel the highway under construction as well as those persons who reside along the highway, and in such a manner as to offer the least possible obstruction to the flow of traffic.

(a) Open Traffic Lane or Lanes.--Unless otherwise provided on the plans, the contractor shall provide and maintain no less than one traffic lane over the entire project at all times. Any such traffic lane or lanes, or a detour where the same is allowed, shall be kept smooth, and in safe and passable condition at all times. Where the contractor constructs temporary structures and provides temporary approaches, crossings and intersections with streets, roads, or railroads, they shall also be maintained in a safe, smooth and passable condition. The contractor shall maintain two-way traffic lanes except where to do so is not in the public interest, or where the same is detrimental to public safety. Where the contractor finds it necessary to restrict the project or any portion thereof to a one-way traffic, he shall furnish a flagman at either end of the one-way traffic area to assure the proper control of all such traffic. A pilot truck and driver shall be furnished by the contractor when directed to do so by the State Road Commissioner Project Engineer. The contractor shall also furnish flagmen or watchmen to regulate and control traffic around or along hazardous areas of the project.

or around the contractor's equipment, whenever the Commissioner's engineer directs him to do so.

(b) Safety Devices and Equipment.--The contractor shall provide safety devices and such protective equipment or safeguards, and shall take any other necessary actions, as may be reasonably necessary to protect the life and health of any person who may be in the vicinity of the construction project, and to protect all property in the vicinity from damage or destruction.

(c) Obstructions; Contractor's Equipment.--During periods of inactivity, the contractor's equipment shall not be left on the road in such a manner as to obstruct or interfere with traffic. The contractor shall not store his materials or supplies on or near any public road in such a manner as to obstruct or interfere with traffic.

(d) Closing of Roads.--No road shall be closed to public use by the contractor in the absence of prior written authorization from the State Road Commissioner.

(e) Railroad Tracks; Passengers' Platforms.--Where the construction project includes highways or municipal streets

which are occupied by railroad tracks, the contractor shall provide, for the convenience of the railroad company's passengers, such temporary platforms as may be reasonably necessary in the opinion of the State Road Commissioner.

(f) Fire Hydrants.--Fire hydrants on or adjacent to the highway must be accessible at all times, and the contractor shall permit no obstruction within five feet of any such fire hydrant.

(g) Sidewalks, Sewers, etc.--The contractor shall make such temporary provisions as shall be necessary for the use of sidewalks, the proper function of all gutters, sewer inlets and other drainage systems, and none of the foregoing shall be obstructed except where approval to do so is granted by the Commissioner or his duly authorized engineer.

(h) Removal of Ice and Snow.--The Commissioner expressly reserves the right to enter upon the contractor's project for the purpose of removing snow and ice, or to place abrasives or surfacing material, at the expense of the State Road Commission, where the same may be considered

necessary or advisable by the Commissioner. Such activities on the part of the State Road Commissioner shall in no way relieve the contractor of his obligations for the safe and expedient control of traffic upon the project. And, where the same becomes necessary at some later time, the contractor shall be responsible for the removal of such abrasives or surface material without additional compensation.

7.05. Barricades, Danger Signals, Warning and Detour Signs.--

All barricades and warning signs furnished by the contractor shall be painted in accordance with Commission standards. The contractor shall also furnish approved signal lights to illuminate all such barricades and signs, and the lights shall be lighted from sunset until sunrise.

7.06. Use of Explosives.--When explosives are used on the project, the contractor shall employ such modern standard practices as may be necessary to fully safeguard life and property. All explosives shall be stored in buildings under lock and key, and all such storage places shall be clearly marked "Dangerous Explosives" and shall be guarded by competent watchmen at all times. The Commissioner reserves the right to disapprove the number and

sizes of explosive charges used or contemplated to be used by the contractor, the method of storage employed by the contractor, and any and all other matters in connection with the use of explosives by the contractor, and upon direction by the Commissioner the contractor shall promptly and forthwith cease and desist from all practices disapproved by the Commissioner, and shall immediately conform to all directions of the Commissioner with respect to the use of explosives.

(a) Transportation of Explosives.--The transporting of explosives by a contractor shall be done in accordance with the regulations set forth in Section 9, Series V, of these regulations.

7.07. Preservation and Restoration of Trees, Monuments and Other Property.--The contractor shall not enter upon private property for any purpose without obtaining permission from the owner of such property. In any such case, the contractor shall be responsible for the preservation of all public or private property, including any trees, monuments or other improvements thereon which may be subject to damage as a result of the construction work. In no case shall the contractor move or remove any land monument or property line marker until a duly authorized engineer of the

State Road Commission has accurately recorded the nature and character of the monument or marker and its precise location.

If any damage is done to public or private property by the negligent or willful acts of the contractor or his employees, the contractor shall be responsible for, and shall restore such property to a condition equal or similar to that existing before such damage or injury was done, all at his own expense. If the contractor fails to restore such property or repair any damage done, within 48 hours after receiving written notice to do so from the State Road Commissioner, the Commissioner may proceed to repair, build or otherwise restore such property and to deduct the cost of such repairs from any monies due to the contractor under the terms of his contract. In case no such monies are available, the expenses incurred shall be charged against the contractor's surety.

If it becomes necessary to disturb or alter utility service connections, or any other property not owned by the state, the contractor shall give notice of needed alterations to property owners and shall cooperate with them in order that such alterations shall be made in the most efficient and expedient manner possible.

7.08. Responsibility for Damage to Persons or to Property.--

The contractor shall indemnify and save harmless the Commissioner, and any and all officers, agents, and employees of the State Road Commission or the Commissioner, from all suits, actions, or claims of any character, kind or description, which may be brought for or on account of any injuries or damages received or sustained by any person or group of persons, or injuries or damages occasioned to any property as the result of any negligence or misconduct of the contractor, his agents or employees during the performance of his obligations to the State Road Commissioner, or for any claim arising or recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree. Where he considers it to be necessary, the State Road Commissioner may retain all or any part of the monies due the contractor by virtue of his contract with the State Road Commission until such time as any actions, claims or other legal proceedings have been settled or determined.

7.09. No Waiver of Legal Rights.--The Commissioner shall not be precluded or estopped by any measurement, estimate or certificate made either before or after the completion and the acceptance of the work and payment therefor from showing the true amount and character of the work performed and materials furnished by the contractor, nor from showing that any such

measurement, estimate or certificate is untrue or is incorrectly made, nor from showing that the work or materials do not in fact conform to the contract. The Commissioner shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the contractor or from his sureties, or both, such damages as the Commission may sustain by reason of the contractor's failure to comply with the terms of the contract. Neither the acceptance of the project by the State Road Commissioner or his duly authorized representative, nor any payment for or acceptance for the whole or of any part of the work, nor any extension of time, nor any possession taken by the Commissioner or his duly authorized representative, shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages by the Commission. A waiver of any breach of the contract shall not be held to be a waiver of any other or any subsequent breach.

7.10. Federal Participation.--Where the United States government participates in any portion of the payment of the costs of any State Road Commission project, the federal law authorizing such participation and the rules and regulations which have been

established in accordance with such laws must be observed by the contractor. All work shall be subject to the inspection and approval of representatives of any such federal agencies designated to carry out the administration of such federal laws.

Section 8. Performance of the Work

8.01. Subletting or Assigning of Contract.--The Commissioner does not recognize a transfer, assignment or subletting of the contract, or any portion thereof, as in any way whatsoever relieving the contractor of his obligations under the contract. Insofar as the State Road Commission is concerned, all persons or firms who carry out any portion of the work under a construction contract with the State Road Commission shall be in all respects as employees of the contractor, and a removal of such persons or firms may be required by the Commissioner as in the case of any other employee. The contractor shall be solely responsible for all bills, labor and materials used in connection with the work whether purchased by himself or by any subcontractor.

The contractor shall not sublet, sell, or assign any portion of his contract or any other work provided for therein without the written consent of the State Road Commissioner, or his duly

authorized representative.

8.02. Prosecution of the Work.--After notice of the award, the contractor shall begin the work to be performed under the contract on or before the time specified in the proposal. Where the contractor moves his equipment or employees onto the project location and commences work upon the project, his action shall be deemed a waiver of the notice of the award.

The portion of the project where the contractor's work is to begin will be designated on the ground by the Commissioner or his duly authorized representative. The work shall be prosecuted from as many different points in the areas so designated, and at the times directed, and shall be conducted in a manner and with such material, equipment and labor as the Commissioner or his duly authorized representative considers necessary to insure the completion of the project within the time set forth in the proposal. If the contractor discontinues prosecution of the work for any reason, he shall notify the Commissioner at least 24 hours before again resuming operations.

8.03. General Requirements for Workmen and Equipment.

(a) Workmen.--The contractor shall employ careful and

competent superintendents, foremen and workmen. The contractor must secure written approval of the Commissioner, or his duly authorized representative, to his appointment of supervisory personnel before placing such persons on the project. The Commissioner, or his duly authorized representative, may demand and obtain the dismissal of any person who engages in misconduct in or about the work project, or who is incompetent or negligent in the performance of his duties, or who neglects or refuses to follow directions given. The person or persons so dismissed shall not be employed again to work on the subject project without the written consent of the Commissioner, or his duly authorized representative. Should the contractor continue to employ or subsequently employ such person or persons, the Commissioner may suspend all work upon the project until the contractor complies with his orders. Any such period of suspension shall not operate to extend the period designated for the completion of the work under the terms of the contract.

(b) Equipment.--All equipment necessary for the comple-

tion of the work to be performed under the contract shall be in first-class working condition and shall be inspected and approved by the engineer before the construction work is begun. All machinery and equipment owned or controlled by the contractor and which he proposes to use in carrying out his work under the contract, shall be of sufficient size and in the mechanical condition necessary to meet the requirements of the work. The Commissioner, or his duly authorized representative, may order the removal of unsatisfactory equipment and require it to be replaced. No change in the machinery and equipment employed upon the work which will have the effect of reducing the contractor's productivity, may be made except by written permission of the Commissioner or his duly authorized representative. Whenever it becomes apparent that the contractor will be unable to complete the work within the time specified in the contract because of equipment limitations, the Commissioner may require that additional equipment be placed upon the project.

8.04. Temporary Suspension of Work.--The Commissioner shall

have authority to suspend the work upon any project, either wholly or in part, for such period or periods as he may deem necessary, and because of unsuitable weather, any other conditions considered unfavorable for the prosecution of the work, or for such time as may be necessary due to the failure of the contractor to carry out the orders given by the Commissioner, or because of the failure of the contractor to perform all his obligations under the contract. Such suspension shall not constitute grounds for any claim for damages for extra compensation by the contractor. Where it becomes necessary to stop work for an indefinite period, the contractor shall store all materials so that they will not obstruct or impede the traveling public unnecessarily or become scattered or otherwise damaged. He shall take all precautions necessary to prevent damage to, or deterioration of, the work performed and shall provide suitable drainage of the roadway by opening ditches or drains, and shall erect temporary structures where necessary. The contractor shall not suspend the work without authorization to do so from the State Road Commissioner.

8.05. Computation of Construction Time; Extension of Contract.--The contract time shall be the number of working days or the calendar date shown in the proposal for completion of the con-

tract. The contractor's working days shall begin upon the 10th day following the date of the award of the contract, unless the contractor actually begins work before such date in which case the contractor's working days shall be computed from the date when such work was actually begun.

If the satisfactory execution and completion of the contract shall require work or materials in greater amounts than those set forth in the contract, the contract time shall be increased in the same ratio that the total cost of the work actually performed bears to the total cost of the original work contracted for. This shall apply both to working day and calendar day contracts.

(a) Days Not Counted.--In computing the time spent in the execution of the work, working days will not be charged for Saturdays, Sundays, or legal holidays, unless the contractor utilizes Saturday as a working day, or for delays due to causes beyond the reasonable control of the contractor and without his fault or negligence, including, but not restricted to, acts of God, acts of the Commission, floods, strikes, state or national emergency, or freight embargoes, provided such delays prevent the contractor from proceeding toward completion

of his work, and provided further that the contractor has used every reasonable means to remove the cause of such delays.

(b) Weekly Record of Working Time Under "Working Day" Contracts.--At the close of each week, the Commissioner, or his duly authorized representative, shall give written notice to the contractor (operating under a "working day" contract) of the number of "working days" which the Commissioner has determined were in the preceding weekly period covered by such notice. Such determination of "working days" shall be considered final and as binding upon both parties to the contract, unless within 10 days after receipt of such notice the contractor files with the Commissioner his written protest setting forth his objections to the Commissioner of determination and specifying the reasons for such objections.

8.06. Failure to Complete Work on Time.--In the event the contractor fails to complete his obligations under the contract within the time specified in the proposal or any extension thereof, he shall be subject to the payment of liquidated damages, which shall be in the amount specified in the contract.

8.07. Annulment of Contract.--If the contractor fails to begin work under the contract within the time specified, or if he fails to employ sufficient workmen, equipment or materials to ensure the prompt completion of the work, or if he fails to perform the work in a proper fashion, or if he neglects or refuses to remove materials or to replace work which has been rejected as defective and unsuitable, or if the contractor is stopped by a court order resulting from any injunctive action, or if the contractor discontinues the prosecution of the work, or if he becomes insolvent or is declared a bankrupt, or if he commits any act of bankruptcy, insolvency, or allows any final judgment to stand against him unsatisfactorily, a period of five days, or if he fails or refuses to remove within twenty-four hours after receipt of proper notice, any employee or person engaged in work under the contract, or if he makes an assignment for the benefit of his creditors, or for any other cause whatsoever should fail to carry out the work in an acceptable manner, the Commissioner may give written notice to the contractor and to his surety of any such delay, neglect or default, and if the contractor within a period of ten days after date of receipt of such notice does not proceed to remedy the defaults or errors and omissions set forth therein, then the Commissioner shall, upon

written certificate from the project engineer of the fact of such delay, default, or neglect, and the contractor's failure to comply with such notice, have full power and authority and without violating the terms of the contract, to take the prosecution of the work out of the hands of the contractor, to appropriate for use any and all materials and equipment upon the ground, and may enter into a new agreement for the completion of said contract according to the terms and provisions thereof, and may use such other methods as in the Commissioner's opinion may be required for the completion of the contract in an acceptable manner. All cost and charges so incurred by the Commission, together with the costs of completing the work under the contract, shall be deducted from any monies due or which may become due the contractor. In the event expense so incurred by the Commission should be less than the sum which would have been payable under the contract if it had been completed by the contractor, then the contractor shall be entitled to receive the difference; and in case such expense would exceed the sum which would have been payable under the contract, then the contractor and his surety shall be liable and shall pay the Commission the amount of such excess.

Section 9. Payment

9.01. Scope of Payments.--The contractor shall accept the

compensation as provided in the contract in full payment for furnishing all materials, labor, tools, equipment and all other costs including taxes unless otherwise provided for in the agreement; and for performing all work contemplated and embraced under the agreement; also for all loss or damage arising out of the nature of the work, from the action of the elements, unless otherwise provided for; or from any unforeseen difficulties which may be encountered during the prosecution of the work, or until its acceptance by the Commissioner; also for all expenses incurred in consequence of suspension or discontinuance of the work as herein specified; and for any infringement of patent, trademark or copyright; and for completing the work according to the written agreement. The payment of any current estimate or of any retained percentage shall in no way effect the obligation of the contractor to repair or renew, at his own cost, any defective parts of the construction performed under the agreement; or to be responsible for all damages due to such defects, if such defects or damages are discovered before the final inspection and acceptance of the work.

9.02. Payment and Compensation for Altered Quantities.--

When alterations in plans, or in the quantities of work as herein

provided for are ordered and performed, and when such alterations result in an increase or a decrease in the quantities of work to be performed, except as otherwise specifically provided in the contract or specifications, the contractor shall accept payment in full based upon the contract unit prices for the actual quantities of work done except where a supplemental agreement has been executed in accordance with provisions of these rules and regulations; but in no case will allowance be made for anticipated profits.

9.03. Payment For Extra Work and Force Account Work.--Extra work which has been ordered by the Commissioner and accepted by the contractor shall be paid for under either a supplemental agreement as provided for herein, or by means of a force account, as agreed upon and herein provided. If it is practicable to handle extra work on a unit price basis, a fair and equitable sum shall be fixed and set forth in a supplemental agreement signed by both contracting parties before any work is actually started. When the Commissioner or his duly authorized representative, deems it impracticable to handle any extra work on a unit price basis, the work may be ordered done and paid for on a force account basis as follows:

(a) For all labor, and foremen in direct charge of the specific operations, the contractor shall receive the current local rate of wage, to be agreed upon in writing before starting such work, for each and every hour that said labor and foremen are actually engaged in such work; to which shall be added an amount equal to thirty (30) per cent of the sum thereof; and no compensation will be allowed for general superintendence.

(b) For all materials used, the contractor shall receive the actual cost of such material, including freight charges, if any, as shown by original receipted bills; to which shall be added a sum equal to twenty (20) percent thereof.

(c) For any machine-power tools, trucks or other equipment, which it may be deemed necessary or desirable to use, the engineer shall allow the contractor a reasonable rental price, to be agreed upon in writing before such work is begun, such rental price to include the furnishing of all necessary fuel, lubrication and maintenance; to which shall be added a sum equal to ten (10) percent thereof.

(d) The compensation provided in (a), (b), and (c) above,

shall be received by the contractor as payment in full for extra work done on a force account basis, including administration, overhead, use of small tools and equipment for which no rental is allowed, profit, taxes, premium on bonds and insurance, unemployment contributions, and any other expense arising from the performance of the force account work order.

9.04. Duplicate Records for Extra Work and Force Account Work.--The contractor's representative and the State Road Commissioner's Inspector shall compare records of extra work done on a force account basis at the end of each working day. Copies of these records shall be made in duplicate by the Inspector upon the force account forms provided for this purpose, and such copies shall be signed by both the Inspector and the contractor or his duly authorized representative, and one copy of such form shall be sent to the State Road Commissioner and the other such copy shall be sent to the contractor.

(a) Claims for Payment.--All claims for payment for extra work done on the force account basis shall be submitted by the contractor to the State Road Commissioner by delivering to him no less than six copies of

a certified statement setting forth in detail the work completed by the contractor, the dates such work was done, and to which shall be attached an original receipted bill covering the cost of all materials, and freight charges, if any, used in such work. Such statements shall be filed not later than the first day of the month following that in which the work was actually performed, and shall include all labor charges, and materials charges insofar as they can be verified. If the contractor fails to submit his claims for payment within the period required herein, the Commissioner may after due notice in writing, make payment for the work done on the basis of the reasonable cost and value thereof as determined by the State Road Commissioner.

(b) Failure to Agree Upon Costs.--If the contractor fails to agree upon the items of cost involved in such work, the Commissioner may, after due notice in writing, make payment for the work so authorized upon the basis of the reasonable cost of the work as determined by the Commissioner.

(c) Contractor's Refusal to Perform Extra Work or Force Account Work.--If the contractor refuses or declines to prosecute the extra work authorized by the Commissioner, the Commissioner may either proceed to do the work with his own forces or he may arrange for its completion in any other proper and expedient manner, but in neither case shall the contractor offer any interference or obstruction to the performance of any such work. Where the contractor does interfere or obstruct such work, the Commissioner may withhold payment of all current progress estimates until the contractor ceases all such actions.

9.05. Partial Payments.--The contractor shall make written estimates on the cost of the labor and materials used by him in the performance of his contract. Such current estimates shall be submitted to the Commissioner at the time the contractor commences his work, or from time to time as work progresses and as required by the Commissioner. In these current estimates, the contractor shall set forth the amount of the materials which he has utilized and put into place and the actual cost thereof, and a detailed statement of the amount of work performed under the terms of the contract during the preceding month or other

period as required by the Commissioner, and the value thereof computed at the unit prices set forth in the contract. From the amount so ascertained there will be deducted an amount equivalent to five per cent of the total, to be retained by the Commissioner until after the completion of the entire contract in an acceptable manner. A sum equivalent to ninety-five per cent of the amount so ascertained may then be paid to the contractor, except where such balance amounts to less than \$500.00, and in such case, the Commissioner may delay payment thereof until the contractor submits another current estimate which when added to the previous estimate will amount to at least \$500.00, or until he submits his final estimate.

(a) Semi-monthly Payments.--Such progress estimates may be prepared and submitted for payment upon a semi-monthly basis when the amount due the contractor for work done during any semi-monthly period is in excess of \$10,000.00.

(b) Partial Payment of Retainage.--When the work described in the contract has been completed and its acceptance has been recommended by the Project Engineer, and upon written request by the contractor

and the receipt of a proper release by the contractor's surety, the contractor may be paid a part of the five per cent retainage, but in every case the Commissioner shall retain at least two per cent of the total amount finally contracted for until the contractor's final estimate is submitted and approved for payment.

9.06. Acceptance and Final Payment.--Whenever in the opinion of the Commissioner, the contractor has finally completed all the work under the contract in a workmanlike manner and substantially in accordance with the plans and specifications, the Commissioner shall cause a final inspection of such work to be made, and if it is found satisfactory he will accept the work and discharge the contractor from any further responsibility under the contract. Provided, however, that before final payment is made, the contractor shall furnish to the Commissioner, upon the form prescribed, a sworn affidavit to the effect that all obligations for salaries or wages or for materials furnished to the contractor in or about the project have been paid and that there are no claims or legal proceedings pending against the contractor. Where the contractor cannot provide such an affidavit

because of a dispute as to the amount or the legality of such a claim, the contractor shall prepare an affidavit setting forth therein the facts surrounding such dispute and including the name, address, amount and nature of the dispute, and if the Commissioner is of the opinion that the claim has not been paid solely because the contractor is in good faith questioning the legality of the claim or its amounts, and if the Commissioner is also satisfied that there is a good and sufficient bond to protect any or all such claimants, then he may make payment of the entire sum previously withheld from the contractor.