



# Florida Department of Transportation

**CHARLIE CRIST**  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

**STEPHANIE KOPELOUSOS**  
SECRETARY

October 20, 2009

Monica Gourdine  
Program Operations Engineer  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Re: Office of Design, Specifications  
Section 009  
Proposed Specification: **0090103SLLS Measurement and Payment**

Dear Ms. Gourdine:

We are submitting, for your approval, two copies of the above referenced Supplemental Specification.

This is one of several specifications to be implemented as special provisions to be used on Streamline Contract, defined as projects less than \$2,000,000 and less than 2,000 tons of asphalt. These changes were proposed by David Chason of the State Construction Office to specify that the project is a lump sum contract.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to ST986RP or rudy.powell@dot.state.fl.us.

If you have any questions relating to this specification change, please call Rudy Powell, State Specifications Engineer at 414-4280.

Sincerely,

Rudy Powell, Jr., P.E.  
State Specifications Engineer

RP/dt

Attachment

cc: Gregory Jones, Chief Civil Litigation  
Florida Transportation Builders' Assoc.  
State Construction Engineer

For State Funded Lump Sum Contracts *Projects* less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.  
Use n/a in fields that do not apply.

## MEASUREMENT AND PAYMENT.

(REV *107-1229-09*)

SUBARTICLE 9-1.3 (Page 95) is deleted and the following substituted:

### 9-1.3 Determination of Pay *Reduction* 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. *In measurement of areas of work, where pay reductions are to be assessed, the Engineer will use the lengths and/or widths in the calculations based upon station to station dimensions in the Contract Documents, the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the final surface of the completed work within the neat lines shown in the Contract Documents or designated by the Engineer. The Engineer will use the method or combination of methods of measurement which will reflect with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.*

*Failure on the part of the Contractor to construct any item of work in compliance with the contract requirements; or to plan or authorized dimensions within the specification tolerances will result in: reconstruction to acceptable tolerances at no additional cost to the Department; or acceptance at no pay at the discretion of the Engineer.*

ARTICLE 9-2 (Pages 96-98) is deleted and the following substituted:

### 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

For State Funded Lump Sum Contracts *Projects* less than \$2,000,000 and less than 2,000 tons asphalt.

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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 Fuels:** The Department will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by the Department as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the Department's standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, the Department will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price prevailing in the month when bids were received (BFP), and then only on the portion that exceeds 5%.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the Department. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the Construction Office website before the 15<sup>th</sup> of each month, at the following URL: [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

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

Price adjustments will not be made for Items of work added by contingency supplemental agreement, supplemental agreement, field supplemental agreement, or work orders.

Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:

When fuel prices have decreased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 95 P_b)$  during a period of decreasing prices.

$A_i =$  Total dollar amount – positive or negative – of the cost adjustment for each kind of fuel used by the Contractor during the month “i.”

For State Funded Lump Sum Contracts *Projects* less than \$2,000,000 and less than 2,000 tons asphalt.

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\_\_\_\_\_  $F_i$  = 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.

\_\_\_\_\_ When fuel prices have increased between month of bid and month of this progress estimate:

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

\_\_\_\_\_  $A_i$  = 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.

\_\_\_\_\_ Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

\_\_\_\_\_ 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.

\_\_\_\_\_ **9-2.1.2 Bituminous Material:** On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, the Department will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing in the month when bids were received (BAPI), and then only on the portion that exceeds 5%.

\_\_\_\_\_ The Department will determine the API 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.

\_\_\_\_\_ The API will be available on the Construction Office website before the 15<sup>th</sup> of each month at the following URL:

\_\_\_\_\_ [www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm](http://www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm).

\_\_\_\_\_ Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:

\_\_\_\_\_ \$ Adjustment = (ID)(Gallons)

\_\_\_\_\_ Where ID = Index Difference =  $[CAPI - 0.95(BAPI)]$  when the API has decreased between the month of bid and month of this progress estimate.

\_\_\_\_\_ Where ID = Index Difference =  $[CAPI - 1.05(BAPI)]$  when the API has increased between the month of bid and month of this progress estimate.

\_\_\_\_\_ Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.

~~For State Funded Lump Sum Contracts~~ *Projects* less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.  
Use n/a in fields that do not apply.

~~For asphalt concrete items payable by the ton, the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal.~~

~~Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd<sup>2</sup> per inch.~~

~~**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.~~ *Accept the compensation as provided in the Contract Documents 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.*

*The Contract Lump Sum Price will include overhead, profits, and direct and indirect costs required to complete the project except as described below.*

**9-2.2 General Basis of Adjusted Pay:**

**9-2.2.1 Asphalt Overbuild:** *Where overbuild is called for in the plans for the correction of cross-slope, the Engineer will make an adjustment in payment should the quantity of material placed be less than the specified spread rate. In addition, should the material placed exceed the specified spread rate with no negative effect to the correction of cross-slope, an upward adjustment will be made representing the additional material placed. The upward adjustment in payment is limited to 5% of the original material required for overbuild. Adjustments in pay will be determined for the entire project by applying a proportional adjustment in payment for the material in question, based on a ratio of the average spread rate to the design spread rate, which will then be applied using the unit prices as shown in Table 9-2.*

Table 9-2

<i>Item Description</i>	<i>Unit</i>	<i>Unit Price</i>

**9-2.2.2 Foundations:** *Adjustment in the lump sum payment will be made for actual quantities installed of Piling and Drilled Shafts, as additions or deletions for the total project quantity determined from the pile/drilled shaft elevations shown in the Contract Documents.*

*The Engineer will base all adjustments in payment on the unit prices as shown in Table 9-3.*

Table 9-3

For State Funded Lump Sum Contracts ~~Projects~~ less than \$2,000,000 and less than 2,000 tons asphalt.

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<i>Item Description</i>	<i>Unit</i>	<i>Unit Price</i>

*Payment listed above for Piling and Drilled Shafts includes all work required to install the foundation element to the required capacity/depth.*

**9-2.2.3 Adjustment to the Lump Sum Payment for Deleted Items of**

*Work: When items such as pipe culverts, inlets, manholes, mitered end sections, etc. are shown in the Contract Documents to be constructed or installed and due to actual field conditions, it is determined by the Engineer that the item is not needed, then a negative adjustment will be made based on the invoice price for the actual cost of the item and the Contractor will retain ownership. This adjustment will not exceed \$5,000.00. Should the amount of the adjustment exceed \$5,000.00, it will be considered a significant change and an adjustment will be processed in accordance with 4-3.2.*

ARTICLE 9-3 (Pages 98-100) is deleted.

**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 therefore, 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.~~

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Use n/a in fields that do not apply.

~~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~~

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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 120-12.1 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 120-12.1, as a pay tolerance. The construction tolerance is not to be construed as defining a revised authorized template.

SUBARTICLE 9-5.1 (Pages 100 and 101) is deleted and the following substituted:

~~9-5.1 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 has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.~~

~~Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.~~

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

~~Contract time is defined as the original Contract time adjusted by approved Contract time extensions.~~

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Note: Information for all Tables in Subarticle 9-2.2 to be filled in.

Use n/a in fields that do not apply.

~~Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.~~ *The Engineer will make partial payments based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Department will base the amount of such payments on certified monthly invoices submitted by the Contractor for progress payments each month, less any retainage withheld. The Contractor must make a request for payment no later than 12 O'clock noon, Monday, after the estimate cut-off date or as directed by the Engineer, based on the amount of work done or completed. The invoice shall include the Contract Number, the Financial Project Number, the Invoice Number, the Invoice Date, and the time period that the invoice represents.*

*Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.*

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

*Contract time is defined as the original Contract time adjusted by approved Contract time extensions.*

*Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final invoice.*

SUBARTICLE 9-8.1 (Pages 104 - 105) is deleted and the following substituted:

## **9-8 Acceptance and Final Payment.**

**9-8.1 Acceptance and Final Payment Documents:** ~~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 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, along with all executed supplemental agreements received after final acceptance.~~

~~If the Contractor fails to furnish all required Contract Documents as listed in (a) through (g) below within 90 days of the Department's offer of final payment or request for refund of overpayment, the Department may suspend the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.~~

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~~\_\_\_\_\_ (a) The Contractor has agreed in writing to accept the balance due or refund the overpayment, 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 or refunded the overpayment, as determined by the Department, with the stipulation that his acceptance of such payment or the making of such refund 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 original 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. The overpayment refund check from the Contractor, if required, will be considered a part of any Acceptance Letter executed.~~

~~\_\_\_\_\_ (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 7-13.~~

~~\_\_\_\_\_ (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 furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final certification of compliance with the requirements of Section 105 to accompany the final estimate. Certification must be on a form provided by the Engineer. *Upon final inspection and final acceptance of the Contract as provided in 5-10 and 5-11, and subject to the terms of 8-11, the Contractor shall submit a final invoice for work completed and accepted by the Department. The Department will pay the invoice, less any sums that the*~~

~~For State Funded Lump Sum Contracts~~ *Projects* less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.  
Use n/a in fields that do not apply.

*Department may have deducted or retained under the provisions of the Contract, provided the Contractor has met the requirements of (a) through (f) below.*

*(a) The Contractor has provided the Acceptance Letter.*

*(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 7-13.*

*(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 furnished all required mill tests and analysis reports to the Engineer.*

*(f) The Contractor has furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final certification of compliance with the requirements of Section 105 to accompany the final estimate.*

ARTICLE 9-9 (Page 106) is expanded as follows:

*Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:*

*Contractors providing goods and services to an agency should be aware of the following time frames: Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.*

*If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes will be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.*

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~~For State Funded Lump Sum Contracts~~ *Projects* less than  
\$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.

Use n/a in fields that do not apply.

*A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline, 1-800-848-3792.*

Lump Sum Projects less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.

Use n/a in fields that do not apply.

## **MEASUREMENT AND PAYMENT.**

**(REV 10-12-09)**

SUBARTICLE 9-1.3 (Page 95) is deleted and the following substituted:

**9-1.3 Determination of Pay Reduction :** In measurement of areas of work, where pay reductions are to be assessed, the Engineer will use the lengths and widths in the calculations based upon station to station dimensions in the Contract Documents, the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the final surface of the completed work within the neat lines shown in the Contract Documents or designated by the Engineer. The Engineer will use the method or combination of methods of measurement which will reflect with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

Failure on the part of the Contractor to construct any item of work in compliance with the contract requirements; or to plan or authorized dimensions within the specification tolerances will result in: reconstruction to acceptable tolerances at no additional cost to the Department; or acceptance at no pay at the discretion of the Engineer.

ARTICLE 9-2 (Pages 96-98) is deleted and the following substituted:

### **9-2 Scope of Payments.**

**9-2.1 Items Included in Payment:** Accept the compensation as provided in the Contract Documents 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.

The Contract Lump Sum Price will include overhead, profits, and direct and indirect costs required to complete the project except as described below.

#### **9-2.2 General Basis of Adjusted Pay:**

**9-2.2.1 Asphalt Overbuild:** Where overbuild is called for in the plans for the correction of cross-slope, the Engineer will make an adjustment in payment should the quantity of material placed be less than the specified spread rate. In addition, should the material placed exceed the specified spread rate with no negative effect to the correction of cross-slope, an upward adjustment will be made representing the additional material placed. The upward adjustment in payment is limited to 5% of the original material required for overbuild. Adjustments in pay will be determined for the entire project by applying a proportional adjustment in payment for the material in question, based on a ratio of the average spread rate to the design spread rate, which will then be applied using the unit prices as shown in Table 9-2.

Lump Sum Projects less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.

Use n/a in fields that do not apply.

Table 9-2

Item Description	Unit	Unit Price

**9-2.2.2 Foundations:** Adjustment in the lump sum payment will be made for actual quantities installed of Piling and Drilled Shafts, as additions or deletions for the total project quantity determined from the pile/drilled shaft elevations shown in the Contract Documents.

The Engineer will base all adjustments in payment on the unit prices as shown in Table 9-3.

Table 9-3

Item Description	Unit	Unit Price

Payment listed above for Piling and Drilled Shafts includes all work required to install the foundation element to the required capacity/depth.

**9-2.2.3 Adjustment to the Lump Sum Payment for Deleted Items of Work:** When items such as pipe culverts, inlets, manholes, mitered end sections, etc. are shown in the Contract Documents to be constructed or installed and due to actual field conditions, it is determined by the Engineer that the item is not needed, then a negative adjustment will be made based on the invoice price for the actual cost of the item and the Contractor will retain ownership. This adjustment will not exceed \$5,000.00. Should the amount of the adjustment exceed \$5,000.00, it will be considered a significant change and an adjustment will be processed in accordance with 4-3.2.

ARTICLE 9-3 (Pages 98-100) is deleted.

SUBARTICLE 9-5.1 (Pages 100 and 101) is deleted and the following substituted:

**9-5.1 General:** The Engineer will make partial payments based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Department will base the amount of such payments on certified monthly invoices submitted by the Contractor for progress payments each month, less any retainage withheld. The Contractor must make a request for payment no later than 12 O'clock noon, Monday, after the estimate cut-off date or as directed by the Engineer, based on the amount of work done or completed. The invoice

Lump Sum Projects less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.

Use n/a in fields that do not apply.

shall include the Contract Number, the Financial Project Number, the Invoice Number, the Invoice Date, and the time period that the invoice represents.

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.

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

Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final invoice.

SUBARTICLE 9-8.1 (Pages 104 - 105) is deleted and the following substituted:

## **9-8 Acceptance and Final Payment.**

**9-8.1 Acceptance and Final Payment Documents:** Upon final inspection and final acceptance of the Contract as provided in 5-10 and 5-11, and subject to the terms of 8-11, the Contractor shall submit a final invoice for work completed and accepted by the Department. The Department will pay the invoice, less any sums that the Department may have deducted or retained under the provisions of the Contract, provided the Contractor has met the requirements of (a) through (f) below.

(a) The Contractor has provided the Acceptance Letter.

(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 7-13.

(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 furnished all required mill tests and analysis reports to the Engineer.

(f) The Contractor has furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final

Lump Sum Projects less than \$2,000,000 and less than 2,000 tons asphalt.

Note: Information for all Tables in Subarticle 9-2.2 to be filled in.

Use n/a in fields that do not apply.

certification of compliance with the requirements of Section 105 to accompany the final estimate.

ARTICLE 9-9 (Page 106) is expanded as follows:

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

Contractors providing goods and services to an agency should be aware of the following time frames: Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes will be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline, 1-800-848-3792.