

SECTION 9: MEASUREMENT AND PAYMENT

9-01 MEASUREMENT OF QUANTITIES. All Work to be paid for at a contract price per unit of measurement shall be measured by the Engineer in accordance with the United States Standard Measures. Quantities for payment shall be based upon those given in the Contract included herewith, and any written notice to the Contractor by the Engineer changing or revising same to conform to any increase or reduction in the actual Work required.

Said quantities shall not be increased except upon the approval of the Engineer and said written notice. Quantities shall be measured in the units shown in the Contract.

At a time designated by the Engineer after the completion of construction and before the issuance of a final pay letter (estimate), a representative of the Contractor and of the City shall measure and determine the final quantities.

9-02 SCOPE OF PAYMENT. The Contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools and equipment necessary to the completed Work and for performing all Work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, or from the action of the elements, except as hereinbefore provided, during the prosecution of the Work until final acceptance by the City and for all risks of every description connected with the prosecution of the Work; also for all expenses incurred in consequence of the suspension or discontinuance of the Work as herein specified; and for completing the Work according to the Contract Documents. Neither the payment for any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective Work or material.

9-03 PAYMENT AND COMPENSATION FOR ALTERED QUANTITIES. When alterations in Plans or quantities of Work are ordered and performed, the Contractor shall accept payment in full at the contract unit price for the actual quantities of Work done, except as otherwise provided in Paragraph 4-03, "Extra Work," of these Standard Provisions. No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving Supplemental Agreements will be paid for as stipulated in such agreements.

9-04 FORCE ACCOUNT WORK. When extra work is to be paid for on a force account basis, the labor, materials and equipment used in the performance of such work shall be subject to the approval of the Engineer and compensation will be determined as per Section 9-1.03, "Force Account Payment," of the Standard Specifications; provided, however, that the City reserves the right to furnish such materials required as it deems expedient, and the Contractor shall have no claim for profit on the cost of such materials; and, further provided, that no additional payment therefor will be made by

the City by reason of the performance of the Work by a subcontractor or other forces. For the use of equipment owned by Contractor, he/she shall be paid the current prices prevailing in the locality, which shall have been previously determined and agreed upon in writing by the Engineer and by the Contractor, plus fifteen percent (15%).

All force account work shall be adjusted daily upon report sheets, furnished to the Engineer by the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of force account work done.

9-05 DEDUCTIONS FROM PAYMENTS. The City may, at its option and at any time, retain out of any amounts due the Contractor: (1) sums sufficient to cover any unpaid claims which are not covered by insurance covering the City, its officers and employees, provided by the Contractor; and (2) any other sum which City is authorized or required to withhold under any applicable laws. The City shall withhold and retain from payments due the Contractor under the Contract all amounts which have been forfeited pursuant to the provisions of Part 7, Chapter 1 of the Labor Code, provided that no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Law Enforcement of the State of California or by the City.

9-06 PARTIAL PAYMENTS. Once in each month the Engineer shall cause an estimate in writing to be made of the total amount of work done and the acceptable materials furnished and delivered by the Contractor on the ground and not used, to the time of such estimate, and the value thereof. The City shall retain ten percent (10%) of such estimated value of the Work done, fifty percent (50%) of the value of the materials so estimated to have been furnished and delivered and unused as aforesaid as part security for the fulfillment of the Contract by the Contractor and sums sufficient to cover any unpaid claims as detailed in Paragraph 9-05 above and any accrued liquidated damages, and shall pay monthly to the Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in Engineer's judgment, the total value of the Work done since the last estimate amounts to less than Three Hundred Dollars (\$300). No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

As per Section 4590 of the Government Code, the City will permit substitution of securities to ensure performance for any moneys withheld.

9-07 NOTICE OF POTENTIAL CLAIMS. Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications is amended to read:

9-07.01 Notice Of Potential Claim. The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence or other cause, unless the Contractor shall have given the Engineer due written notice of potential claim as hereinafter specified. Compliance with said Section 9-1.04 shall not be a prerequisite as to matters within the scope of the protest provisions in Section 4-1.03, "Changes," or Section 8-1.06, "Time of Completion," or the notice provisions in Section 5-1.116, "Differing Site Conditions," or Section 8-1.07, "Liquidated Damages," or Section 8-1.10, "Utility and Non-Highway Facilities," nor to any claim which is based on differences in measurements or errors of computation as to contract quantities.

The written notice of potential claim shall be submitted to the Engineer prior to the time that the Contractor performs the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within fifteen (15) days after the happening of the event, thing, occurrence or other cause, giving rise to the potential claim.

The written notice of potential claim shall be submitted on Form CEM-6201 furnished by the City and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655. The notice shall set forth the reasons for which the Contractor believes additional compensation will or may be due and the nature of the costs involved. Unless the amount of the potential claim has been stated in the written notice, the Contractor shall, within fifteen (15) days of submitting the notice, furnish an estimate of the cost of the affected Work and impacts, if any, on project completion. The estimate of costs may be changed or updated by the Contractor when conditions have changed. When the affected Work is completed, the Contractor shall submit substantiation of Contractor's actual costs. Failure to do so shall be sufficient cause for denial of any claim subsequently filed on the basis of said notice of potential claim.

It is the intention of said Section 9-1.04 that differences between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time in order that the matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that the Contractor shall have no right to additional compensation for any claim that may be based on any act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

Should the Contractor, in connection with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the possession of the Department that pertain to the potential claim, the Contractor

shall make its records of the project, as deemed by the Department to be pertinent to the potential claim, available to the Department for inspection and copying.

9-08 CLAIMS. The Contractor shall submit written statement of all claims arising under or by virtue of the contract so that the Engineer receives the written approval or statement of claims no later than close of business of the thirtieth (30th) day after receiving the proposed final estimate. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, then receipt of the written approval or statement of claims by the Engineer shall not be later than close of business of the next business day. No claim that was not included in the written statement or claims will be considered nor will any claim be allowed as to which a notice or protest is required under the provisions in Sections 4-1.03, "Changes," 8-1.06, "Time of Completion," 8-1.07, "Liquidated Damages," 5-1.116, "Differing Site Conditions," 8-1.10, "Utilities and Non-Highway Facilities," and 9-1.04, "Notice of Potential Claim," unless the Contractor has complied with the notice or protest requirements in those sections.

Claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. If additional information or details are required by the Engineer to determine the basis and amount of the claims, the Contractor shall furnish additional information or details so that the additional information or details are received by the Engineer no later than the fifteenth (15th) day after receipt of the written request from the Engineer. If the fifteenth day falls on a Saturday, Sunday or legal holiday, then receipt of the information or details by the Engineer shall not be later than close of business of the next business day. Failure to submit the information and details to the Engineer within the time specified will be sufficient cause for denying the claim.

The Contractor shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claims. Failure to permit access to those records shall be sufficient cause for denying the claims.

Claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650, *et. seq.*, the undersigned,

_____,
(name)
_____ of
(title)
_____,
(company)

hereby certifies that the claim for the additional compensation and time, if any, made herein for the Work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between parties.

Dated _____

/s/ _____

Subscribed and sworn before me this _____ day

of _____.

Notary Public
My Commission Expires _____

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any claim for overhead shall also be subject to audit by the City at its discretion.

Any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

The Engineer will make the final determination of any claims which remain in dispute after completion of the claim review. The Contractor may be allowed to make a presentation in support of those claims.

Upon final determination of the claims, the Engineer will then make and issue the Engineer's final estimate in writing. Payment on the Engineer's final estimate shall be in accordance with Section 9-09, "Final Payment." That final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Sections 9-1.03C, "Records," and 9-1.09, "Clerical Errors."

9-09 FINAL PAYMENT. After the completion of the Work and prior to its acceptance by the City Council, the Engineer will make a proposed final estimate in writing of the quantities of Work done under the Contract and the value of such Work and will submit such estimate to the Contractor. Within thirty (30) days thereafter and prior to City Council acceptance, the Contractor shall submit to the Engineer Contractor's written approval of said proposed final quantities or a written statement of all claims which Contractor has for additional compensation claimed to be due under the Contract.

On the Contractor's approval, or if Contractor files no claims within said period of thirty (30) days, the Engineer will issue a final written estimate as submitted to the Contractor and the City shall pay the entire sum so found to be due after deducting there from all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract.

All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

The final estimate shall be conclusive and binding against both parties to the Contract on all questions relating to the performance of the Contract and the amount of work done thereunder and compensation therefor, except in the case of gross error.

Payment on the final estimate will be made after thirty-five (35) days have elapsed from the date of acceptance of the project by the Engineer or City Council, whichever is required.