

**1. FEDERAL GOODS AND SERVICES TAX**

- 1.1 Monies payable by the Minister to the Contractor shall be exclusive of the federal Goods and Services Tax (GST).

**2. BASIS OF PAYMENT**

- 2.1 Payment for Lump Sum Work shall be based on the prices in the Contract and, when required by the Contract, the approved schedule of values for such work.
- 2.2 Payment for Unit Price Work shall be based on the Unit Prices in the Contract.
- 2.3 Payment for Cost Plus Work shall be based on the cost of such work, as specified herein, plus a fee in the amount of 10% of the cost of such work for the Contractor's overhead and profit except that no fee shall be applied to the cost of Construction Equipment when such cost is based on rates which already include the Contractor's overhead and profit.
- 2.4 The cost of Cost Plus Work shall be computed as the sum of the following cost elements as applicable to such work:

- .1 Cost of labour (other than labour costs included in other cost elements) comprised of payroll costs for employees in the direct employ of the Contractor. Such employees shall include the superintendent and foremen at the Site. Payroll costs shall include salary, fringe benefits and statutory charges paid by the Contractor. Fringe benefits shall include health care, vacations with pay, sick time allowance, and pension plan, life and disability insurance, dental and medication plan contributions. Statutory charges shall include contributions for Canada Pension Plan, Workers' Compensation, statutory holidays and Unemployment Insurance. Labour rates shall be consistent with rates actually paid for equivalent job classifications in the normal performance of Lump Sum Work or Unit Price Work or, if there are no such equivalencies, under a schedule of job classifications and labour rates agreed upon by the Minister and the Contractor, if possible before labour costs are incurred.
- .2 Cost of Products supplied and incorporated into Permanent Work, including cost of transportation and storage thereof and Supplier's site services required in connection therewith. Cash discounts shall accrue to the Contractor. Trade discounts, rebates and refunds and returns from sale of surplus Products shall accrue to the Minister.
- .3 Cost of Construction Equipment:
- .1 Cost of Construction Equipment shall be paid at the rates specified in the current edition of the Equipment Rental Rates Guide published by the Alberta Roadbuilders and Heavy Construction Association, hereinafter called the "Rates Guide", subject to the following:
- .1 Rates specified in the Rates Guide shall be deemed to include all overhead and profit, regardless of whether Construction

Equipment is provided by the Contractor, Subcontractors or Sub-subcontractors.

- .2 Rates specified in the Rates Guide shall be deemed to include cost of owning, operating (including wages for equipment operators but not including travel and subsistence costs for equipment operators) loading, unloading, assembling, erecting, and dismantling.
- .2 When applicable rates are not included in the Rates Guide, costs shall be paid at the rates agreed upon by the Minister and the Contractor, if possible before such costs are incurred.
- .3 Cost of moving Construction Equipment to and from the Site shall not be payable, unless such cost is solely attributable to the Work and is approved as such by the Minister.
- .4 Except for Construction Equipment traveling under its own power, travel time for Construction Equipment shall not be payable. Unless otherwise approved by the Minister, Construction Equipment shall be moved by the most economical method.
- .4 Cost of Temporary Work, including cost of transportation and maintenance thereof, used and consumed in the performance of the Work and the cost less fair market value of such work used but not consumed which shall remain the property of the Contractor.
- .5 Cost of special services, including the cost of architects, engineers, specifiers, surveyors, testing laboratories and inspection agencies.
- .6 Supplemental costs, including:
- .1 travel and subsistence costs of the Contractor's employees (including equipment operators under clause 2.4.3.);
- .2 statutory charges, including fees, cost of permits and licences and custom duties;
- .3 cost of rights-of-way and other land related costs;
- .4 royalty payments and patent licence fees;
- .5 deposits lost for causes other than the Contractor's fault or negligence.
- .7 Subcontract and Sub-subcontract costs, including payments made by the Contractor to Subcontractors and by Subcontractors to Sub-subcontractors in accordance with the requirements of such contracts. Subcontractors' and Sub-subcontractors' costs and fees for overhead and profit for Cost Plus Work to be performed under such contracts shall be determined in the same manner as the Contractor's cost and fee.
- 2.5 With respect to Cost Plus Work:
- .1 Costs payable by the Minister shall be directly related to or shall have been necessarily and properly incurred in the performance of such work.
- .2 Overhead shall include the Contractor's costs related to the operation and maintenance of his head office and branch offices, administration at head office and

branch offices, general management, legal, audit and accounting services, buying organization, corporate tax, financing and other bank charges, company directors, salaries and other compensation of personnel stationed off-site, design of Construction Equipment and Temporary Work, planning and scheduling of work, expendable and unexpendable small tools, including maintenance thereof, and recruitment and training of site staff.

- .3 The Contractor shall obtain the Minister's prior approval to subcontract or enter into other agreements for Cost Plus Work.
- .4 The Minister may refuse to pay all or part of the cost of any Work item under any cost element, where the item in question was, in the Minister's opinion, unsuitable for the Work performed.

### **3. MEASUREMENT FOR PAYMENT**

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- 3.1 Unless otherwise specified in the Contract, the Minister shall measure the Work for the purpose of determining payment to the Contractor in accordance with the measurement provisions of the Contract.

### **4. PROGRESS PAYMENTS**

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- 4.1 Prior to Substantial Performance of the Work, the Minister shall make monthly payments to the Contractor.
- 4.2 Within 7 days after the end of each monthly payment period, the Contractor shall submit to the Minister:
  - .1 completed Statutory Declaration Form 00630A, at and after the second monthly payment period,
  - .2 any data requested by the Minister to assist the Minister to determine the amount due and payable to the Contractor, and
  - .3 for Products stored by the Contractor on the Site for incorporation in Permanent Work but not incorporated in such Work, proof of purchase price and delivery to the Site, along with a statement of the quantity of such Products and the Schedule of Prices item to which the Products relate.
- 4.3 The Minister shall, within 42 days after the end of each monthly payment period and subject to having received within the time specified any required information referred to in clause 4.2, pay to the Contractor the amount which the Minister determines to be due and payable to the Contractor, up to the end of the monthly payment period in respect of:
  - .1 the value of Work executed;
  - .2 the value of Work executed pursuant to authorized Changes in the Work;
  - .3 the value of Products stored by the Contractor on the Site for incorporation in Permanent Work but not incorporated in such Work;
  - .4 adjustments due to changes in Regulatory Requirements or price fluctuation provisions of the Contract, if applicable;
  - .5 any other amount determined by the Minister; and
  - .6 subject to:
    - .1 any deductions under clause 11.;

.2 any withholdings under clause 12.; and

.3 retention of the holdback amount calculated by applying the holdback percentage referred to in clause 5. to the amount payable to the Contractor under clause 4.3 after any deductions and withholdings.

- 4.4 For Unit Price Work, the Minister may, at his discretion, make partial payment based on partial completion of the scope of a single unit of an item of Work.
- 4.5 If, after receipt of a progress payment from the Minister, the Contractor disagrees with the amount of such payment, such amount shall nevertheless be considered to be correct unless the Contractor, within 7 days after such receipt, notifies the Minister of the respects in which such payment is claimed by him to be incorrect. On receipt of such notice, the Minister shall review the amount of the payment and either confirm or vary it. If the Minister varies the payment, such variance shall be added to the next progress payment.
- 4.6 Notwithstanding the terms of this clause or any other clause of the Contract no amount shall be paid by the Minister until the contract security and proof of insurance, if required under the Contract, have been provided by the Contractor.

### **5. HOLDBACK**

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- 5.1 The Minister shall hold back 5% from each progress payment referred to in clause 4..
- 5.2 Up to 100% of retained holdback monies shall be payable by the Minister to the Contractor not less than 45 days after the date of Substantial Performance of the Work as certified by the Minister provided:
  - .1 third party claims, received by the Minister pursuant to the Public Works Act or applicable or addressed and a course of action agreed to by the Minister and the Contractor, and
  - .2 the Contractor has submitted to the Minister, within 7 days after the date of Substantial Performance, a letter of clearance from the Workers' Compensation Board and a completed Statutory Declaration Form 00630A.
- 5.3 The Minister shall, within 63 days after Substantial Performance and subject to having received within the time specified any required information referred to in clause 5.2, pay to the Contractor 100% of retained holdback monies, subject to any deductions under clause 11. and to any withholdings under clause 12., and subject further to withholding:
  - .1 an amount equal to twice the Minister's estimate of the cost to the Minister of remedying any defects described in the certificate of Substantial Performance of the Work, and
  - .2 an amount equal to the Minister's estimate of the cost to the Minister of completing any outstanding work described in the certificate of Substantial Performance of the Work.
- 5.4 If the Minister withholds a portion of the retained holdback pursuant to clause 5.3, the Minister shall, at such reasonable times and intervals as the Minister may

determine, pay to the Contractor the balance of the retained holdback, as and when the cause or causes for the withholding are removed.

- 5.5 When a certificate of Substantial Performance for part of the Work has been issued by the Minister, the provisions of clause 5.2 shall apply proportionately to such part of the Work.

## **6. PAYMENT AFTER SUBSTANTIAL PERFORMANCE**

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- 6.1 After Substantial Performance of the Work, the Minister shall make periodic payments to the Contractor on the same basis and conditions as specified in clause 4, except that such payments:

- .1 shall be made at such reasonable times and intervals as the Minister may determine, and
- .2 shall not be subject to holdback.

- 6.2 When a certificate of Substantial Performance for part of the Work has been issued by the Minister, the provisions of this clause shall apply proportionately to such part of the Work.

## **7. FINAL PAYMENT**

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- 7.1 The Minister shall prepare the final statement and make final payment to the Contractor.
- 7.2 Within 42 days after the date of Total Performance of the Work, the Contractor shall submit to the Minister:
- .1 any data requested by the Minister to assist the Minister to determine the final amount due and payable to the Contractor,
  - .2 a completed Statutory Declaration Form 00630A, and
  - .3 a letter of clearance from Workers' Compensation Board.
- 7.3 Subject to having received within the time specified any required information referred to in clause 7.2, the Minister shall, within 63 days after the date of Total Performance of the Work, prepare and deliver to the Contractor the final statement, stating the final amount which the Minister determines to be due and payable by the Minister to the Contractor.
- 7.4 The Minister shall, within 42 days after the final statement is issued to the Contractor, pay the Contractor the final amount.
- 7.5 If the final statement is considered by the Contractor to be incorrect, the Contractor shall, within 63 days of receipt thereof, submit to the Minister a notice of claim, including substantiation, notwithstanding the time provisions of clause 10. of the General Conditions
- 7.6 If the Minister does not receive a notice of claim pursuant to clause 7.5 within the time specified, the final statement shall be considered correct.
- 7.7 The final payment shall represent full and final settlement of all monies due to the Contractor pursuant to the Contract except with respect to unresolved claims, if any.

## **8. MINISTER'S LIABILITY**

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- 8.1 .1 After the final payment issued pursuant to clause 7.4 has been made, the Minister shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract, except as may be provided elsewhere in the Contract, unless the Contractor shall have made a claim in respect thereof prior to or within the time specified in clause 7.5.

## **9. DELAY IN MAKING PAYMENT**

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- 9.1 In respect of progress payments, payment after Substantial Performance of the Work, payment of holdback, and final payment, the Minister shall pay the Contractor an amount that the Minister considers to be due to the Contractor, pursuant to the Contract, within the time specified.

## **10. RIGHT OF SET-OFF**

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- 10.1 Without limiting any right of set-off, deduction or recovery given or implied by law or elsewhere in the Contract, the Minister may set off any amount payable to the Minister by the Contractor, or recoverable from the Contractor by the Minister, under the Contract or under any other current contract against any amount payable to the Contractor under this Contract.
- 10.2 For the purposes of these Payment Conditions, "other current contract" means a contract between the Minister and the Contractor under which the Contractor has an undischarged obligation to perform or supply work, labour, or material, or in respect of which the Minister has, since the date of execution of the contract agreement, exercised any right to take the work that is the subject of the contract out of the Contractor's hands.

## **11. DEDUCTIONS FROM PAYMENTS**

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- 11.1 The Minister may deduct from any amount claimed by or payable to the Contractor:
- .1 an amount at least equal to the value, as determined by the Minister, of work not in accordance with Contract Documents,
  - .2 the amount of any unresolved third party claim submitted pursuant to the Public Works Act or applicable requirements of the Contract,
  - .3 the amount of any unpaid and overdue statutory account related to the Contract and of which the Minister has received notice and which is enforceable against the Minister,
  - .4 the amount of any overpayment made by the Minister to the Contractor, and
  - .5 any other amount recoverable by the Minister from the Contractor under the Contract.

## **12. WITHHOLDING OF PAYMENT**

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- 12.1 The Minister may withhold all or part of any amount payable to the Contractor in order to protect the Minister or third parties from loss due to the Contractor's:

- .1 failure to make payments properly to Subcontractors or for labour, materials or equipment,
  - .2 failure to ensure that Subcontractors make payments properly to Sub-subcontractors or for labour, materials or equipment,
  - .3 inability to complete the Work within the Contract Time,
  - .4 inability to complete the Work for the unpaid balance of the Contract Price,
  - .5 persistent failure to perform the Work in accordance with the Contract Documents.
- 12.2 Minister may withhold all or part of any amount payable to Contractor due to Contractor's persistent failure to provide submittals in accordance with the Contract Documents.
- 12.3 When the causes for withholding payment pursuant to clauses 12.1 or 12.2 are removed to the Minister's satisfaction, the Minister shall pay the Contractor the amount previously due and payable with the next progress payment.

**13. TITLE TO AND ACCEPTANCE OF WORK**

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- 13.1 The Contractor warrants that title to work and Products covered by any payment made by the Minister to the Contractor will pass to the Minister, at the time of payment, free and clear of all claims, interests and encumbrances.
- 13.2 The Contractor further warrants that Products stored at the Site and for which payment has been received, shall not be removed from the Site and shall be kept secure and protected.
- 13.3 Payments made by the Minister shall not be construed as an acceptance that the Work, Products, or any part thereof is complete, is satisfactory or is in accordance with the Contract Documents.

**END OF SECTION**