

SECTION 104 CONTROL OF WORK

104.01 **AUTHORITY OF THE CONTRACTING OFFICER (CO)** - The following are added to this subsection:

- a. **TERMINATION FOR DEFAULT:** If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the contract time, or fails to complete said work within the contract time, the Commonwealth may, by written notice to the Contractor from the Contracting Officer, terminate the Contractor's right to proceed with the work or such part of the work as to which there has been delay, after providing ten day's written notice and an opportunity to the Contractor to show cause why such action should not be taken. In the event of a termination for default under this clause, the Commonwealth may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plans as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and his sureties shall be liable for any damage to the Commonwealth resulting from the Contractor's refusal or failure to complete the work within the contract time.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

- i. The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of nature, acts of the public enemy, acts of the Commonwealth in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Commonwealth, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers of any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and
- ii. The Contractor, within ten (10) days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notify the Contracting Officer in writing of the cause of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension and his findings shall be final, subject only to appeal as provided in Section 103 "Disputes" clause.

If the Commonwealth terminates the Contractor's right to proceed under paragraph (a), the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work,

together with any increased costs occasioned the Commonwealth in completing the work.

If the Contractor is in default under paragraph (a), but the Commonwealth does not terminate the Contractor's right to proceed, the resulting damage will consist of applicable liquidated damages until the work is completed or accepted.

The Contractor shall be in default of the Contract, and the Contracting Officer may immediately and without other notice, terminate the Contractor's right to proceed with the Contract through written notice to the Contractor of default termination, upon a determination by the Contracting Officer that, related to this particular contract, any of the following has occurred:

- (i) The Contractor has committed any breach of ethical standards as defined in the Contract Documents, the CNMI Procurement Regulations, or other applicable law.
- (ii) The Contractor has participated in any violation of the rules or regulations in the CNMI Procurement Regulations to the disadvantage of the Commonwealth.
- (iii) The Contractor has colluded with other potential awardees of the Contract or with government employees to the disadvantage of the Commonwealth.
- (iv) The Contractor knowingly requests and/or receives payment to which it is not entitled under the specific terms of the Contract.
- (v) The Contractor accepts payment with knowledge that government employees or officials authorizing the payment have not complied with the terms of the Contract or applicable law.

If, after notice of termination of the contractor's right to proceed under any of the provisions of this clause, it is subsequently determined by the Contracting Officer (or, upon review of the Contracting Officer's decision, by an authorized administrative or judicial body) that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for the Convenience of the Commonwealth" clause in this section. This paragraph shall provide the exclusive remedy for a wrongful termination for default.

Any disagreement of the Contractor to any action taken by the Commonwealth under this clause shall be a dispute within the meaning of the "Disputes" clause, under Section 103.

The rights and remedies of the Commonwealth provided in this clause are in addition to any other rights and remedies provided by law or under the Contract.

b. TERMINATION FOR THE CONVENIENCE OF THE COMMONWEALTH:

Termination. The Contracting Officer may, when the interests of the Commonwealth so require, terminate this contract in whole or in part, for the convenience of the Commonwealth. The Contracting Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when the termination becomes effective.

Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Contracting Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Commonwealth. The Contractor must still complete the work not terminated by the notice of termination and incur obligations as are necessary to do so.

Right to Supplies. The Contracting Officer may require the Contractor to transfer title and deliver to the Commonwealth in the manner and to the extent directed by the Director of Procurement and Supply:

- (i) Any completed supplies; and
- (ii) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the Contract.

The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Commonwealth has an interest. If the Contracting Officer does not exercise the right specified in paragraph (c) , the Contractor shall use his best efforts to sell such supplies and manufacturing materials in accordance with the standards of the Uniform Commercial Code of the Northern Mariana Islands, 5 CMC § 2706. Utilization of this procedure in no way implies that the Commonwealth has breached the contract by exercise of the "Termination for Convenience of the Commonwealth" clause.

Compensation. The Contractor shall submit to the Contracting Officer a termination claim specifying the amount due because of the Termination for Convenience together with cost and pricing data to the extent required. If the Contractor fails to file a termination claim within one (1) year from the effective date of the termination, the Contracting Officer may pay the Contractor, if at all, an amount set in accordance with paragraph (g).

The Contracting Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim and that the settlement does not

exceed the total contract price plus settlement costs reduced by payments previously made by the Commonwealth, the proceeds of any sales and supplies and manufacturing materials under paragraph (d), and the contract price of the work not terminated.

Absent complete agreement under paragraph (f), the Contracting Officer shall pay the Contractor the following amounts, provided payments agreed to under paragraph (f) shall not duplicate payments under this paragraph:

- (i) contract prices for supplies or services accepted under the contract.
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.
- (iii) costs of settling and paying claims arising out of termination of subcontracts or orders pursuant to paragraph (b). These costs must not include cost paid in accordance with subparagraph (g) (ii).
- (iv) the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of the contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of the Contract. The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price plus reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made from the proceeds of any sales of supplies and manufacturing materials under paragraph (d), and the contract price of work not terminated.

- c. **AUTHORITIES AND LIMITATIONS** - All work under the Contract shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Commonwealth and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. The authorized Representatives are responsible for guiding the technical aspects of the project and for general surveillance of the work performed.

The authorized representatives shall not make any commitments or authorize any changes which constitute work not within the general scope of the Contract, change the expressed terms and conditions hereof or specifications incorporated or included herein, or by any act or omission authorize expressly

or otherwise, a basis for any increase in the contract price or time for performance. Whenever any provisions in the Contract specify an individual (such as, but not limited to, Construction Engineer, Inspector, or Custodian) or an organization (whether government or private) to perform any act on behalf of, or in the interest of the Commonwealth, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under the Contract but only to the extent so specified. A copy of each document vesting authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

The Contractor shall perform the Contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risks and consequences of performing the contract in accordance with any order (including but not limited to, instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

The work of the Contractor is subject to inspection to insure strict compliance with the terms of the Contract. No inspector is authorized to change any provision of the specifications without the written authority of the Contracting Officer, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the work.

104.03 SPECIFICATIONS AND DRAWINGS: - Revised this subsection to read:

- a. The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:
 1. Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
 2. Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor, who shall then furnish the number of additional prints, not to exceed 10, required by the Contracting Officer.
- b. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by his subcontractors.
- c. The Contractor shall check the drawings and schedules, shall coordinate them (by means of coordination drawings wherever required by the Contracting Officer) with the work of all trades involved before submission and shall indicate thereon his approval. Drawings and schedules submitted without evidence of the Contractor's approval may be returned for resubmission.

- d. Each shop drawing or coordination drawing shall have a blank area 5" x 5", located adjacent to the title block. The title block shall display the following:

Number and title of drawing,

Date of drawing or revision,

Name of Contractor and (if appropriate) name of subcontractor submitting the drawing,

Clear identity of contents and location of work, and

Project title and contract number.
- e. Unless otherwise provided in this contract or otherwise directed by the Contracting Officer, shop drawings, coordination drawings, and schedules shall be submitted to the Contracting Officer sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.
- f. Except as otherwise provided in paragraph (h), approval of drawings and schedules will be general and shall not be construed as:
 - 1. Permitting any departure from the contract requirements;
 - 2. Relieving the Contractor of the responsibility for any errors including details, dimensions, materials, etc.; or
 - 3. Approving departures from full-size details furnished by the Contracting Officer.
- h. If drawings or schedules show variations from the contract requirements because of standard shop practice or for other reasons, the Contractor shall describe such variations in his letter of transmittal. If acceptable, the Contracting Officer may approve any or all such variations and issue an appropriate change order. If the Contractor fails to describe such variations, he shall not be relieved of the responsibility for executing the work in accordance with the contract, even though such drawings or schedules may have been approved.

Upon completion of the work to be performed under the Contract, and before final payment is made, the Contractor shall furnish the Commonwealth with two complete sets of "as-built" drawings on vellum sheet (24" x 36") and on CD (AutoCAD 2012 Version or as specified by the Contracting Officer). These sets shall include "marked up" prints of the contract drawings and such additional drawings as may be necessary to reflect the complete "as-built" work accomplished under the Contract. The "as-built" drawings shall be initiated at the beginning of the work and shall be maintained and kept current by the Contractor on the job site as the work progresses and until final completion and acceptance by the Commonwealth. Markings shall be accomplished in red and shall be complete and legible to assure that the information

presented is readily usable. The "as-built" drawings submitted by the Contractor will be subject to review and approval of the Contracting Officer.

STANDARD REFERENCES:

- a. All documents and publications (such as, but not limited to, handbooks, codes, standards, and specifications) which are cited in the Contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under the Contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of the Contract, in accordance with the following:
- b. Wherever reference is made to Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, the Contractor shall comply with the requirement set out in the issue or edition identified in the Contract except as modified or as otherwise provided in the specifications of the Contract. Wherever reference is made to any document other than those specified in paragraph (a) above, the Contractor shall comply with the requirements set out in the edition specified in the Contract, or, if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the Invitation for Bids on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade by the specifications of the Contract.
- c. Federal Specifications and Federal Standards may be obtained from the Commonwealth Printing Office, Washington, D.C. 20420. Inquiries regarding "Commercial Standards", "Products Standards", and "Simplified Practice Recommendations" should be addressed to the Office of Product Standards, National Bureau of Standards, Washington D.C. 20234. Publications of associations referred to in the specifications may be obtained directly from the associations.
- d. Upon request, make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in the Contract and which governs quality and workmanship.

STANDARD DETAILS: Standard Details are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

104.04 COORDINATION OF CONTRACT DRAWINGS- Delete the fourth sentence of the first paragraph:

The following are added paragraph under this subsection top read:

The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the

specifications shall govern. In case of discrepancy either in the figures, on the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such determination shall be at his risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information he may consider necessary, unless otherwise provided.

In case of difference between small and large scaled drawings, the large scaled drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

104.05 LOAD RESTRICTIONS – Add the following to this Subsection:

The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation.

The following subsections are added and made part of this Section:

104.06 OTHER CONTRACTS - The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other Contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or allow any act that will interfere with the performance of work by any other Contractor or by Government employees.

104.07 INSPECTION OF WORK BY OTHERS - For observing work that affects their respective properties, inspectors for the municipality, public agencies, and the utility companies shall be permitted access to the work, but all official orders and directives to the Contractor will be issued only by the Engineer.

END OF SECTION 104