

- 1           (2) Payment for costs incurred in organization of the work will be based on verified  
2           actual costs and will be included in the adjusted contract lump sum price for  
3           Mobilization in accordance with Subarticle 108-13(E)(1). The Contractor shall  
4           demonstrate through submission of appropriate documentation that these costs were  
5           included in the bid item of Mobilization. After reviewing the submitted cost records  
6           and the submitted documentation, the Engineer will make such adjustments as he  
7           deems warranted.
- 8           (3) Upon request from the Contractor, materials meeting the requirements of the contract  
9           that were to have been incorporated into the work or were to remain the property of  
10          the Department but are not used in the work will be paid in accordance with  
11          Article 109-6.
- 12          (4) No claim for loss of anticipated profits will be considered and no payment will be  
13          made for loss of anticipated profits.
- 14          (5) Termination of a contract shall not relieve the Contractor of his responsibilities for  
15          any completed portion of the work nor shall it relieve his Surety, of its obligation for  
16          and concerning any just claims arising out of the work performed.

**108-14 TERMINATION OF CONTRACTOR'S RESPONSIBILITY**

18 After the project has been completed and accepted, as provided for in Article 105-17, the  
19 Contractor's responsibility will cease except as provided in Article 107-20 and as set forth in  
20 his contract bonds. The Contractor shall remain responsible for any amounts determined to be  
21 owed the Department in the processing of the final estimate and such amounts shall be paid  
22 by the Contractor upon notification by the Department before processing of the final estimate.

**SECTION 109  
MEASUREMENT AND PAYMENT**

**109-1 MEASUREMENT OF QUANTITIES**

26 All work completed under the contract will be measured by the Engineer according to United  
27 States standard measures unless otherwise stated in the contract.

28 The method of measurement and computations used in the determination of quantities of  
29 material furnished and of work performed under the contract will be those methods generally  
30 recognized as conforming to accepted engineering practice.

31 The terms “gauge” and “thickness,” when used in connection with the measurement of plates,  
32 sheets and steel wire, shall be applied as follows:

<b>Item</b>	<b>Test Method</b>
Uncoated Steel Sheets and Light Plates	United States Standard Gauge
Galvanized Sheets	AASHTO M 218 or M 167
Aluminum Sheets	AASHTO M 196 or M 197
Steel Wire	AASHTO M 32

33 The term “ton” will mean short ton (mass) consisting of 2,000 lb.

34 Trucks used to haul material being paid by weight will be either weighed empty before each  
35 loading or weighed empty daily. When trucks are weighed empty daily, each truck shall be  
36 weighed before hauling its first load of the day and shall bear a legible identification mark.

37 Where aggregates that are to be paid by weight have been stockpiled after being produced,  
38 measurement for purposes of payment will be made after the aggregates have been loaded on  
39 trucks for direct delivery to the project.

40 When a complete structure or structural unit, as may be indicated by the unit, lump sum or  
41 each, is specified as the unit of measurement, the unit will be construed to include all  
42 necessary fittings and accessories.

## Section 109

1 When standard manufactured items are specified, and these items are identified by gauge, unit  
2 weight, section dimensions or other dimensions, such identification will be considered to be  
3 nominal weights or dimensions. Unless more stringently controlled by tolerances in cited  
4 specifications, manufacturing tolerances established by the industries involved will be  
5 accepted.

### 6 **109-2 SCOPE OF PAYMENT**

7 The Contractor shall receive and accept payment provided for in the contract as full payment  
8 for furnishing all materials and performing all work under the contract in a complete and  
9 acceptable manner and for all risk, loss, damage, or expense of whatever character arising out  
10 of the nature of the work or the prosecution thereof, subject to the requirements of  
11 Article 107-20. Payment to the Contractor will be made only for the actual quantities of the  
12 various items that are completed and accepted in accordance with the terms of the contract.

13 If the Measurement and Payment clause in the specifications relating to any unit price or lump  
14 sum price in the bid schedule requires that the said unit price or lump sum price cover and be  
15 considered compensation for certain work or material essential to the item, this same work or  
16 material will not be measured or paid under any other pay item that may appear elsewhere in  
17 the contract.

### 18 **109-3 FORCE ACCOUNT WORK**

19 All force account work shall be performed as directed by the Engineer including the numbers  
20 and types of equipment, the numbers and classifications of labor and foremen and material  
21 requirements.

22 All work to be paid on a force account basis shall be paid in the following manner:

#### 23 **(A) Labor**

24 For all authorized labor and foremen in direct charge of the specific operations, the  
25 Contractor will receive the rate of base (actual) wages (or scale) actually being paid by  
26 the contractor for each hour that the labor and foremen are actually engaged in the  
27 specific force account work.

28 In addition to reimbursement for each hour that the labor and foremen are actually  
29 engaged in the specific force account work, the Contractor may receive compensation for  
30 travel time to and from the project if and only if the labor and foremen needed are outside  
31 a 75 mile radius as included in Subarticle 109-3(B). The base location will be established  
32 and approved by the Engineer before performing the specific force account work. If the  
33 approved labor and foremen travel to another project upon completion of the specific  
34 force account work, payment for travel time may not exceed the travel time that would  
35 have been required to return to the point of origin in accordance with  
36 Subarticle 109-3(B). When travel time is approved by the Engineer, it shall be included  
37 in the total hours approved and worked for that specific week. The Engineer will approve  
38 the mode of travel.

39 Before beginning the specific force account work, the Contractor will submit in writing  
40 for the Engineer's approval a list of all wage rates applicable to the work. Approval will  
41 not be granted where these wage rates are not actually representative of wages being paid  
42 elsewhere on the project for comparable classes of labor performing similar work.

1 Payment for overtime will be allowed when approved by the Engineer before performing  
2 the specific force account work. Overtime for labor and foremen will be paid based on  
3 the company's policy for overtime payment. Verification of such payment will be  
4 tracked by submission of weekly payrolls as required on federal projects and as requested  
5 on all other projects. Failure to submit payrolls as required or requested shall act as a bar  
6 to the Contractor for payment of overtime for labor and foremen. If the labor or foremen  
7 is employed partly on specific force account work and partly on other work, the amount  
8 of overtime to be reimbursed will be prorated based upon the number of hours worked on  
9 the specific force account work during the payroll period.

10 An additive amount equal to the Contractor's actual labor burden rate, up to a maximum  
11 of 60%, will be paid to the Contractor for all base (actual) wages paid to labor and  
12 foremen for the specific force account work. No additive will be provided for overtime  
13 payments. The labor burden rates will include costs associated with the employee's  
14 actual base wages benefits, including Federal Insurance Contributions Act (FICA),  
15 unemployment contributions, Social Security and Medicare taxes and company fringe  
16 benefits. Company fringe benefits are the actual costs paid to, or on behalf of, workers  
17 by reason of health and welfare benefits, pension fund benefits, or other benefits, when  
18 such amounts are required by prevailing wage laws generally applicable to the classes of  
19 labor employed on the work. The Contractor's actual labor burden rates will be  
20 submitted to and approved by the Engineer before beginning the work. When the  
21 Contractor cannot verify actual labor burden rates, an amount equal to 35% of the total  
22 base (actual) wage paid labor and foremen will be added to the total base wages paid to  
23 the Contractor. These percentage additives will be full compensation for overhead,  
24 benefits, contingencies and all other costs associated with labor for the specific force  
25 account work.

#### 26 **(B) Subsistence and Travel Allowances**

27 The Contractor may receive payment for actual costs paid to, or on behalf of, labor and  
28 foremen by reason of subsistence and travel allowances under certain circumstances.  
29 When the Contractor is required to mobilize a crew for specific operations, the Engineer  
30 may approve reimbursement of subsistence, including meals and overnight lodging, if the  
31 specific force account work is determined to be outside of the scope of the original  
32 contract and the distance from the Contractor's base location to the project is more than  
33 75 miles. Should the Contractor use forces currently working at the location of the  
34 specific force account work, the Engineer may approve the payment of subsistence,  
35 including meals and overnight lodging, if the work is determined to be outside of the  
36 scope of the original contract, the forces currently working at the location has routinely  
37 stayed overnight during the life of the project, and the distance from the Contractor's  
38 base location to the project is more than 75 miles. The Engineer will approve the mode  
39 of travel.

40 Payment will be made to the Contractor for subsistence, including meals and overnight  
41 lodging, paid in accordance with the Contractor's usual policy for authorized labor and  
42 foremen in direct charge of the specific operations. Subsistence will be limited to the  
43 lesser of actual amount paid or the current maximum in-state rate for State employees.  
44 Verification of such costs paid to, or on behalf of, labor and foremen will be submitted to  
45 the Engineer. If the labor or foremen are partly employed on specific force account work  
46 and partly on other work, the amount of subsistence to be reimbursed will be prorated  
47 based upon the number of hours worked on the specific force account work during the  
48 payroll period.

## Section 109

### 1 (C) Materials

2 For materials authorized and accepted by the Engineer and used, the Contractor will  
3 receive the actual cost of such materials, including sales tax and transportation charges  
4 paid by him (exclusive of equipment rentals as hereinafter set forth), to which costs 15%  
5 will be added. The Contractor will furnish records to the Engineer to verify the quantities  
6 of materials used in the specific force account work, prices of the materials, sales tax and  
7 costs of transportation for the materials.

8 If materials used in the specific force account work are not specifically purchased for  
9 such work but are taken from the Contractor's stock, the Contractor will furnish  
10 an affidavit certifying that such materials were taken from his stock, the quantity was  
11 actually used in the specific force account work and the price and transportation cost  
12 claimed represent the actual cost to the Contractor.

### 13 (D) Equipment

14 For all equipment authorized by the Engineer to be used on the specific force account  
15 work the Contractor will receive rental payment.

16 Hourly rental rates paid for equipment in use that is Contractor owned or rented from  
17 another Contractor will not exceed 1/176 of the monthly rate listed in the *Rental Rate*  
18 *Blue Book for Construction Equipment* that is current at the time the specific force  
19 account work is performed.

20 In determining the hourly rate, the regional adjustment factor and the rate adjustment  
21 factor for equipment age, as set forth in the *Blue Book*, will both be applied to the basic  
22 rate. An additive payment equal to 100% of the *Blue Book* estimated operating cost per  
23 hour will be paid for all hours that equipment is in use. This additive payment will be  
24 full compensation for fuel, lubricants, repairs, servicing (greasing, fueling and oiling),  
25 small tools and other incidentals.

26 If rental rates for the equipment actually being used in the work are not listed in the *Blue*  
27 *Book*, the Contractor will receive the prevailing rental rates being paid for such  
28 equipment in the area where the project is located. An additive payment equal to 15% of  
29 the prevailing rental rate will be paid for all hours equipment is in use. This additive  
30 payment will be full compensation for fuel, lubricants, repairs, servicing (greasing,  
31 fueling and oiling), small tools and other incidentals.

32 Hourly rental rates for equipment held in ready as directed by the Engineer will be 50%  
33 of the rate paid for equipment in use. An additive payment will not be made for  
34 equipment held in ready. When equipment is in use less than 40 hours for any given  
35 week and is held in ready as directed by the Engineer, payment for held in ready time will  
36 be allowed for up to 40 hours, less hours in use. When payment is made for equipment  
37 held in ready as directed by the Engineer, the payment for held in ready time will be  
38 allowed for up to 8 hours in a day less hours in use.

39 Hourly rental rates for idle equipment that is held in ready in accordance with  
40 Article 104-4 will be paid at 50% of the rate paid for equipment in use. Hourly rental  
41 rates for idle equipment held in ready in accordance with Article 104-4 that is rented  
42 from a commercial rental agency will be paid in accordance with the invoice rate for the  
43 equipment. An additive payment will not be made for idle equipment. When equipment  
44 is in use less than 40 hours for any given week and is held in ready as idle equipment in  
45 accordance with Article 104-4, payment for idle equipment time will be allowed for up to  
46 40 hours, less hours in use. When payment is made for idle equipment held in ready in  
47 accordance with Article 104-4, the payment for idle equipment time held in ready will be  
48 allowed for up to 8 hours in a day less hours in use.

1 In the event the Contractor does not possess or have readily available such equipment  
2 necessary for the performance of the work and such equipment is rented from  
3 a commercial rental agency, the Contractor will receive payment based on the approved  
4 invoice rate for the equipment.

5 An additive payment equal to 15% of the calculated hourly invoice rate will be paid for  
6 all hours equipment is in use. This additive payment will be full compensation for fuel,  
7 lubricants, repairs, servicing (greasing, fueling and oiling), small tools and other  
8 incidentals. The commercial rental agency cannot be the Contractor or an affiliate of the  
9 Contractor.

10 No compensation will be made for the use of equipment not authorized by the Engineer.

11 The Contractor will be reimbursed for the actual transportation costs for equipment that  
12 the Contractor is directed to furnish. Such payment will be limited to transportation costs  
13 from the nearest source of available equipment. If equipment is not returned to the point  
14 of origin, but is transported to another location, transportation costs will not exceed the  
15 cost of return to the point of origin. Rental for such equipment will not be paid when the  
16 equipment is being transported. The Contractor will furnish records to the Engineer to  
17 verify the actual transportation costs for equipment.

18 The Contractor will provide to the Engineer, for approval, a listing of all equipment and  
19 attachments to be used in the prosecution of the work. The list will include the  
20 manufacturer's name, type, model, serial number and year of manufacture. The list will  
21 include the invoice rate for equipment rented from a commercial rental agency. It will be  
22 the Contractor's responsibility to verify the age of the equipment in a manner acceptable  
23 to the Engineer. Where such verification is not available, the rate adjustment factor used  
24 will be for the oldest equipment listed in the *Blue Book*.

25 The above prices and payments will be full compensation for fuel, lubricants, cutting  
26 edges, all repairs and all other operating and maintenance costs other than operator's  
27 wages.

#### 28 **(E) Owner-Operated Equipment**

29 For all owner-operated equipment authorized by the Engineer to be used on the specific  
30 force account work, the Contractor will receive rental payment equal to the existing  
31 contract rates with no additive as provided in Subarticles 109-3(A), 109-3(B), 109-3(D)  
32 and 109-3(H). When existing contract rates have not been established, the Contractor  
33 will submit the proposed rates for the owner-operated equipment with sufficient  
34 documentation as deemed necessary by the Engineer for approval.

35 For fully maintained and operated trucks used for the specific force account work, the  
36 Contractor will receive rental payment equal to the existing contract rates with no  
37 additive as provided in Subarticles 109-3(A), 109-3(B), 109-3(D) and 109-3(H). When  
38 existing contract rates have not been established, the prevailing industry rates for fully  
39 maintained and operated trucks will be used for the specific force account work with  
40 approval of the Engineer.

41 For the purposes of force account work, owner-operated equipment, including fully  
42 maintained and operated trucks, will be considered subcontractors. No additional  
43 additives other than those allowed under Subarticle 109-3(G) will be allowed.

#### 44 **(F) Miscellaneous**

45 No additional allowance will be made for general superintendence, the use of manually  
46 powered tools or other costs for which no specific allowance is herein provided.

**Section 109**

**(G) Subcontracting**

For administrative costs of the Contractor in connection with approved subcontract work, at any level, and the use of owner-operated equipment, at any level, the Contractor will receive an additive amount in accordance with Table 109-1. The total cost of such subcontracted work will include applicable labor and additive, bond and insurance, materials and equipment costs incurred by the subcontractor; overhead and profit computed in accordance with Subarticles 109-3(A) through 109-3(D), 109-3(F), 109-3(H) and 109-3(I); and costs for owner-operated equipment, including fully maintained and operated trucks in accordance Subarticle 109-3(E). No additional additives will be allowed.

<b>TABLE 109-1</b>	
<b>RATE SCHEDULE FOR SUBCONTRACTING ADDITIVE</b>	
<b>Total Cost of Subcontract Work</b>	<b>Rate Schedule</b>
\$0 - \$10,000	10%
Above \$10,000	\$1,000 + 5% Above \$10,000

**(H) Overhead And Profit**

An additive payment equal to 10% of the specific force account total will be paid to the Contractor. This specific force account total is exclusive of the portion of the work included with Subarticles 109-3(C), 109-3(E) and 109-3(G). This payment will be full compensation for all costs including but not limited to home office and field overhead, burdens and profit associated with the specific force account work.

An additive payment equal to 10% of the specific force account total for approved subcontract work will be paid to the subcontractor for overhead and profit. This specific force account total for subcontract work is exclusive of the portion of the work included with Subarticles 109-3(C) and 109-3(E). This payment will be full compensation for all costs including but not limited to home office and field overhead, burdens and profit associated with the specific force account subcontracted work. No additional additives will be allowed.

**(I) Bond And Insurance**

For property damage and liability insurance premiums and bond premiums on the specific force account work the Contractor will receive the actual cost. The Contractor will furnish satisfactory evidence to the Engineer of the rate or rates paid for such insurance and bond.

An annualized composite percentage may be used to determine the cost for bond and insurance. Insurance costs will be limited to the direct costs associated with the specific force account work. The Contractor will furnish satisfactory evidence to the Engineer of the annualized composite percentage for the bond and insurance.

**(J) General**

The Engineer will maintain the payment records of work performed on a force account basis. The Contractor will compare records of work with the Engineer at the end of each day on which such work is in progress.

Any contention the Contractor may have for an extension in the completion date, intermediate completion date, or intermediate completion time, due to performance of specific force account work will be considered as provided in Article 108-10.

**109-4 PARTIAL PAYMENTS****(A) General**

Partial payments will be based upon progress estimates prepared by the Engineer at least once each month on the date established by the Engineer. Partial payments may be made twice each month if in the judgment of the Engineer the amount of work performed is sufficient to warrant such payment. No partial payment will be made when the total value of work performed since the last partial payment, excluding mobilization, amounts to less than \$10,000. Partial payments will be approximate only and will be subject to correction in the final estimate and payment.

Where lump sum items are included in the contract and the applicable section of the Specifications require that fixed percentages of the total amount bid included in partial pay estimates, the Engineer will determine amounts due on partial pay estimate in accordance with the applicable sections of the Specifications.

**(B) Prompt Payments**

Contractors at all levels, prime, subcontractor, or second tier subcontractor, shall within 7 calendar days of receipt of monies, resulting from the satisfactory completion of work performed, pay subcontractors, second tier subcontractors, or material suppliers. This seven-day period begins upon knowledgeable receipt by the contracting firm obligated to make a subsequent periodic or final payment. This prompt payment requirement will be met if each firm mails the payment to the next level firm by evidence of postmark within the seven-day period. For the purposes of this section, the satisfactory completion of work performed shall exist when a subcontractor, second tier subcontractor or material supplier completes tasks called for in the subcontract and are in conformance with the terms of the Contract as required by the Department. This specification for prompt payment shall be incorporated into each subcontract or second tier subcontract issued for work performed on the project or for services provided.

The Contractor shall not withhold any payments to a subcontractor, second tier subcontractor or material supplier for any claim or action arising outside the current contract with the Department. Notwithstanding the provisions of this section, the Contractor may withhold up to 3% retainage if any subcontractor does not obtain a payment and performance bond for their portion of the work. Additionally, this retainage may be increased to a maximum of 10% where the Contractor and any subcontractor have supplied to the Engineer a satisfactorily executed mutual agreement for an increased amount. If any retainage is held on subcontractors, all retainage shall be released within seven calendar days of satisfactory completion of all work. For release of retainage, satisfactory completion is defined as completion of all physical elements and corresponding documentation as defined in the subcontract, as well as agreement between the parties as to the final quantities for all work performed in the subcontract. The Department will provide internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed subcontract portions of the project.

Failure of any entity to make prompt payment as defined herein may result in the Department:

- (1) Withholding money from the Contractor due for work performed by that entity in the next partial payment until the necessary assurances are made consistent with this specification; or
- (2) Removing an approved Contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors' list.

## Section 109

### 1 (C) Unbalanced Bids

2 Any excess monies included in an unbalanced bid price that the Department determines  
3 to be in excess of a reasonable unit or lump sum bid price for the work, shall be retained  
4 by the Department until the last partial payment estimate, at which time these funds will  
5 be paid to the Contractor. These retained funds will not be eligible for deposit in any  
6 trust account established pursuant to this contract nor for interest for such delay in the  
7 payment for the retained portion of the bid price. Partial payment for work performed on  
8 an unbalanced bid item shall be at the reasonable unit or lump sum price determined in  
9 accordance with this subarticle.

10 For purposes of this subarticle, a reasonable unit or lump sum price will be deemed to be  
11 the average of the Engineer's Estimate and the individual balanced bid prices received  
12 from the other bidders for the item in question.

### 13 **109-5 PAYMENT FOR MATERIAL TO BE USED IN THE WORK**

#### 14 (A) Material Delivered on the Project

15 When so authorized by the Engineer, partial payments will be made up to 95% of the  
16 delivered cost of materials on hand that are to be incorporated in the work, provided that  
17 such materials have been delivered on or in close proximity to the project and stored in  
18 an acceptable manner. Material payments will be allowed when 95% of the accumulated  
19 costs of unpaid invoices are equal to or greater than \$10,000, materials have been  
20 inspected and approved by the Engineer, and the documents listed in Subarticle 109-5(C)  
21 have been furnished to the Engineer.

#### 22 (B) Material Stored at Fabricator's Facilities or Contractor's Facilities

23 When so authorized by the Engineer, partial payments will be made up to 95% of the  
24 invoiced cost, exclusive of delivery cost, for bulky materials requiring fabrication at  
25 an off site location that are durable in nature and represent a significant portion of the  
26 project cost, if it has been determined by the Engineer, that the material cannot be  
27 reasonably stockpiled in the vicinity of the work. Material payments will be allowed  
28 when the materials have been inspected and approved by the Engineer and the documents  
29 listed in Subarticle 109-5(C) have been furnished to the Engineer.

#### 30 (C) Required Documents

- 31 (1) Written consent of surety to make such partial payments,
- 32 (2) Bill of Sale from the Contractor to the Department, and
- 33 (3) Copy of invoice from material supplier verifying the cost of the material.

#### 34 (D) General Requirements

35 The partial payments will be made on the conditional basis that the material meets the  
36 requirements of the contract and will be incorporated into the project. The Contractor  
37 shall reimburse the Department for all partial payments for material paid, but not  
38 incorporated into the project.

39 Partial payments for materials on hand will not constitute acceptance, and any faulty  
40 material will be rejected even though previous payment may have been made for same in  
41 the estimates.

42 Partial payment will not be made for fuel, supplies, form lumber, falsework, or used  
43 materials.

44 Partial payments will not be made on seed or any living or perishable plant materials  
45 except that when such materials have been planted or otherwise incorporated in the work,  
46 payment may be made, not as materials, but as work done as part of a contract item for  
47 which a contract unit or lump sum price has been established.



1 Partial payments will not exceed 95% of the contract unit or lump sum prices for the  
2 work.

### 3 **109-6 PAYMENT FOR LEFTOVER MATERIALS**

4 Payment will be made to the Contractor for materials meeting the requirements of the contract  
5 that were to have been permanently incorporated into the work or were to remain the property  
6 of the Department but due to revisions or elimination of items of work by the Engineer, due to  
7 discrepancies in the contract or due to termination of the contract are not used in the work.  
8 The Contractor, upon request, will be reimbursed for the verified actual cost of such material  
9 delivered to a site designated by the Engineer, including any handling charges less any  
10 discount, but in no event shall payment exceed that which would have been made at the  
11 contract unit or lump sum price for the completed work.

12 The Contractor shall furnish invoices and cost records to the Engineer to verify the actual cost  
13 of materials, handling charges, discounts that were taken and transportation charges. No  
14 percentage additive will be added to the verified cost of such material.

15 No payment will be made for loss of anticipated profits and no other payment will be made  
16 for leftover materials except as listed above.

### 17 **109-7 COMPENSATION PAID AT CONTRACT PRICES**

18 Except as provided for by this article, payment for work performed will be made at the  
19 contract unit price or the contract lump sum price. Payment shall be made at the adjusted  
20 contract unit price, as applicable, when a price adjustment or pay factor is provided for by the  
21 contract or as determined by the Engineer in accordance with Article 105-3. In addition to the  
22 compensation made at the unit or lump sum price, adjustment in compensation will be made  
23 in accordance with Article 109-8. The Contractor shall not be paid for any work performed  
24 for which there is not a contract price, nor shall the Contractor receive additional  
25 compensation over and above the contract price for work performed or for extra work  
26 performed, except for work performed pursuant to an executed supplemental agreement or  
27 work performed in accordance with Section 104.

### 28 **109-8 FUEL PRICE ADJUSTMENTS**

29 Fuel price adjustments will be made to the payments due the Contractor for contract items  
30 specified in the contract, or for extra work item specified in the supplemental agreement,  
31 when the average terminal price has fluctuated from the Base Index Price contained in the  
32 contract. The average terminal price is the average of the Freight on Board (F.O.B.) price for  
33 diesel fuel at the terminals in Charlotte, Wilmington and Selma, North Carolina. When the  
34 average terminal price fluctuates upward or downward from the Base Index Price, an amount  
35 will be added to or deducted from the monies due the Contractor as follows.

36 The current quantity for the specified contract items for which partial payment is made will be  
37 multiplied by the respective Diesel Fuel Usage Factor contained in the contract to determine  
38 the theoretical diesel fuel usage for each specified contract item. The sum of the theoretical  
39 diesel fuel usage for all specified contract items will be multiplied by the algebraic difference  
40 between the average F.O.B. price for diesel fuel at the above specified terminals and the Base  
41 Index Price contained in the contract to determine the fuel price adjustment to be made on the  
42 partial payment estimate.

## Section 109

1 The following formula will be used to calculate the appropriate payment or credit on the  
2 estimate:

$$S = (A - B)(\sum QF)$$

Where:

- S** = Fuel Price Adjustment for Partial Payment
- B** = Base Index Price
- A** = Average Terminal Price
- Q** = Partial Payment Quantity for Contract Item
- F** = Fuel Factor for Contract Item

3 The average terminal price in effect on the first day of the month in which the partial payment  
4 period ends will be used to make payment adjustments for fuel whether or not more than one  
5 price fluctuation has occurred within a single partial payment period.

6 The Engineer's estimate of quantities for contract items measured by cross sections shall be  
7 used on the various partial payment estimates to determine fuel price adjustments. When the  
8 Engineer determines after payment for all or a portion of such contract item that is subject to  
9 a fuel price adjustment that the total quantity of work paid to date will be adjusted to reflect  
10 more accurate quantity determinations, the Engineer will make a pro rata increase or decrease  
11 in the fuel price adjustment proportionate to the adjustment in the total quantity of work paid.  
12 The prorated fuel price adjustment for the contract item will be determined by multiplying the  
13 cumulative fuel price adjustment made for that contract item for the previous estimate period  
14 by the adjusted quantity for that contract item and divided by the total quantity of work paid  
15 for the previous estimates for the contract item. Payment for the prorated fuel price  
16 adjustment will be made accordingly on the partial payment estimate that includes the  
17 adjustment in the quantity of work paid.

### 18 **109-9 FINAL PAYMENT**

19 Upon completion of the final estimate assembly, the Engineer will notify the Contractor  
20 giving the final quantities and the apparent liquidated damages, if any are assessed. After the  
21 Contractor reviews the final quantities and submits the documents listed in Article 109-10, the  
22 entire sum found to be due after deducting all previous payments and all amounts to be  
23 retained or deducted under the requirements of the contract will be paid to the Contractor.

### 24 **109-10 DOCUMENTS REQUIRED FOR THE PROCESSING OF THE FINAL** 25 **ESTIMATE**

26 Before the processing of the final estimate, the following documents shall have been  
27 submitted to and accepted by the Engineer.

28 **(A)** Statement of Consent of Surety on the contract bonds for payment of money due the  
29 Contractor.

30 **(B)** Affidavit of the Contractor that all obligations and debts arising out of the construction  
31 have been satisfied or affidavit that shall include a list of obligations not satisfied.

32 **(C)** Written notice that the Contractor has no request for any extension in the completion date  
33 or any adjustment in compensation from that shown in the final estimate or in lieu thereof  
34 written notice presenting all request for adjustment of the final estimate setting forth full  
35 justification for such requests.

36 **(D)** Any other documents that are required by the contract such as reports, statements and  
37 other information necessary for compliance with applicable labor regulations of the  
38 FHWA.

1 Submission of false information in the documents required by this section shall be a basis for  
2 disqualifying the Contractor from further bidding in accordance with Article 102-15. If the  
3 Contractor fails to submit the required documentation within the timeframe specified by the  
4 Department, the Department may consider the Contractor to be nonresponsive and may  
5 process the final estimate.

6 **109-11 INTEREST ON FINAL PAYMENT**

7 Should final payment on a project not be made within 120 calendar days after the project final  
8 acceptance date, interest, at the average rate earned by the State Treasurer on the investment  
9 within the State's Short Term Investment Fund during the month preceding the date interest  
10 becomes payable, will be paid to the Contractor on the final payment for the period beginning  
11 on the 121<sup>st</sup> day after final acceptance and extending to the date the final estimate is paid,  
12 provided that the documents required by Article 109-10 have been submitted within 30 days  
13 of the mailing of the notification outlined in Article 109-9. In the event the Contractor fails to  
14 submit the required documents within the stipulated 30 days, and the final estimate is not paid  
15 until 120 calendar days following final acceptance of the project, the number of days on  
16 which interest accrues will be reduced by the number of days in excess of 30 that the  
17 Contractor requires to submit the documents.

18 **SECTION 150**  
19 **MAINTENANCE OF TRAFFIC**

20 The Contractor will be required to maintain traffic within the limits of the project, including  
21 all existing roadways that cross or intersect the project, unless otherwise provided in the  
22 contract or approved by the Engineer. Traffic shall be maintained from the time the  
23 Contractor begins work on the project site until acceptance of the project, including any  
24 periods during which the Contractor's operations are suspended, unless otherwise provided for  
25 in the contract or approved by the Engineer. The Contractor shall conduct his work in a safe  
26 manner that will create a minimum amount of inconvenience to traffic.

27 The Contractor shall be responsible for maintaining in a safe, passable and convenient  
28 condition, such part or parts of existing roads as are being used by him to maintain traffic  
29 within the limits of the project from the time the Contractor begins work on the project until  
30 acceptance of the project. As an exception to the above, the Department will be responsible  
31 for the removal of ice and snow from all portions of the project open to traffic.

32 Whenever it is necessary to use traffic control devices as shown in the contract, as determined  
33 by the Engineer, or to conform to this section, the work of furnishing, erecting, operating,  
34 maintaining, covering, relocating and removing traffic control devices shall be in accordance  
35 with Division 11 and 12.