

## SECTION 104 SCOPE OF WORK

### 104.1 Intent of the Contract

*Revise 104.1(1) to clarify that the contract defines the contract obligations of the contractor and department.*

- (1) The intent of the contract is to state the roles and obligations of the department and contractor regarding the construction, execution, and completion of the work. Perform the work as the contract specifies.

### 104.2 Revisions to the Contract

#### 104.2.1 General

- (1) The department reserves the right to revise the contract at any time. These revisions do not invalidate the contract or release the surety. The contractor agrees to complete the contract as revised. Do not proceed with the revised work without the project engineer's prior written approval. Upon receiving written approval, proceed immediately with the revised work.
- (2) The contractor shall notify the project engineer if the contractor believes a revision to the contract is necessary. Whenever the words notice, notification, or notify are used in 104.2 with reference to the contractor, the contractor shall provide notice as specified in [104.3](#). The project engineer will determine if a potential contract revision is necessary and will notify the contractor of its determination in writing. The contractor must proceed with the project engineer's direction.
- (3) If the project engineer determines a revision is necessary, the project engineer will revise the contract time as specified in [108.10](#) and will revise the contract price as specified in [109.4](#). The contractor is entitled to no reimbursement for loss of anticipated profit.
- (4) If the project engineer decides that a potential contract revision identified by the contractor is not necessary, and the contractor does not agree with the project engineer's decision, the contractor may pursue a claim under [105.13](#).

#### 104.2.2 Issuing Contract Change Orders

##### 104.2.2.1 Change Orders for Extra Work

- (1) The department will issue a contract change order to accomplish extra work as defined in [101.3](#).

##### 104.2.2.2 Change Orders for Differing Site Conditions

- (1) During the progress of the work, if one or more of the following differing conditions are encountered at the site, the party discovering the condition shall promptly notify the other party of the specific condition before further disturbing the site and before further performing the affected work.
  1. A subsurface or latent physical condition, differing materially from those indicated in the contract.
  2. An unknown physical condition of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work specified in the contract.
- (2) If the contractor discovers the differing condition, the contractor shall provide oral notification as specified in [104.3.2](#), of the specific differing condition before further disturbing the site and before further performing the affected work.
- (3) The project engineer will investigate the conditions. If the project engineer determines the conditions materially differ and cause an increase or decrease in the cost, time, or both, required to perform the work under the contract, the project engineer will adjust the contract price, time, or both, and modify the contract in writing accordingly. The project engineer will respond to the contractor as to whether or not an adjustment is warranted. The project engineer will follow the contractor notification procedures specified in [104.3](#).
- (4) The department will not allow a contract adjustment unless the contractor has provided the required notice as specified in [104.3](#).

##### 104.2.2.3 Change Orders for Engineer-Ordered Suspensions

- (1) If the project engineer suspends or delays the performance of all or any portion of the work in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional payment, contract time, or both, is due because of the suspension or delay, the contractor shall submit a written request for adjustment within 7 calendar days of receipt of the project engineer's directive to resume work. Ensure that the content of the request conforms to [104.3.5](#).

- (2) The project engineer will evaluate the contractor's request. If the project engineer agrees that the cost, time, or both, required for the performance of the contract has increased due to the suspension or delay and the suspension or delay was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the project engineer will make an adjustment and modify the contract in writing accordingly. The project engineer will respond to the contractor as to whether or not an adjustment is warranted as specified in [104.3.6](#).
- (3) The project engineer will not consider a contract adjustment unless the contractor submits the request for adjustment within the time specified above.
- (4) The project engineer will not consider a contract adjustment under this clause to the extent that the performance would have been suspended by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

#### **104.2.2.4 Change Orders for Significant Changes in the Character of the Work**

- (1) The department will adjust the contract if the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction.
- (2) The department will adjust the contract if the department or contractor demonstrates that quantity changes materially affect the character of the work and meet one of the following:
  - 1. The quantity of a major bid item, as defined in [101.3](#), is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity applies only to that portion in excess of 125 percent of the original contract bid item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.
  - 2. The quantity of a minor bid item is increased to become a major bid item. An adjustment in the contract unit price for that bid item applies only to the quantity of that bid item having a contract value, determined from the contract unit price, in excess of 6.25 percent of the total amount of the original contract.
  - 3. The quantity of a minor bid item that is part of an approved subcontract and that exceeds 10 percent of the original value of that subcontract is decreased more than 50 percent from the original contract quantity for that bid item. Either party to the contract may submit a request for a revision to the contract unit price for that bid item. The department's total payment for the final reduced quantity will not exceed 75 percent of the original contract quantity at the contract price.
  - 4. The quantity of a minor bid item that is part of an approved subcontract and that exceeds 10 percent of the original value of that subcontract is increased more than 50 percent from the original contract quantity for that bid item and which as increased does not qualify for adjustment as a major bid item. Either party to the contract may submit a request to the other for a revision of the contract unit price for that quantity of the bid item that is in excess of 125 percent of the original contract quantity.
- (3) Before performing significantly changed work, reach agreement with the department concerning the basis for the adjustment as specified in [109.4.4](#). If the department does not acknowledge that the work has significantly changed, follow the notification procedures as specified in [104.3](#).
- (4) If the alterations or changes in quantities do not significantly change the character of the work under the contract, the department will pay for the altered work at the contract price.

#### **104.2.2.5 Change Orders for Eliminated Bid Items**

- (1) The department has the right to partially eliminate or completely eliminate a bid item the project engineer finds to be unnecessary for the project. If the project engineer partially eliminates or completely eliminates a bid item, the project engineer will issue a contract change order for a fair and equitable amount as specified in [109.5](#).

#### **104.2.2.6 Change Orders for Revisions to Contract Time**

- (1) The department will issue a contract change order to revise the contract time as specified in [108.10](#).

### **104.3 Contractor Notification**

#### **104.3.1 General**

- (1) Subsection 104.3 specifies the step-by-step communication process to be followed to expedite the resolution of potential contract revisions identified by the contractor. Both contractor actions and department responses are outlined. The contractor's non-compliance with the requirements of 104.3 may constitute a waiver of entitlement to a pay adjustment under [109.4](#) or a time extension under [108.10](#).

#### **104.3.2 Contractor Initial Oral Notification**

- (1) If required by [104.2](#), or if the contractor believes that the department's action, the department's lack of action, or some other situation results in or necessitates a contract revision, the contractor must promptly

provide oral notification to the project engineer. Upon notification, the project engineer will attempt to resolve the identified issue.

#### **104.3.3 Contractor 2-Day Written Notice**

- (1) If the project engineer has not responded or resolved the identified issue within 2 business days after receipt of oral notification, provide a contractor 2-day written notice to the project engineer. At a minimum, provide the following:
  1. A written description of the nature of the issue.
  2. The time and date of discovering the problem or issue.
  3. If appropriate, the location of the issue.
- (2) The contractor is encouraged to provide the additional information specified in [104.3.5](#) as early as possible to assist the project engineer in the timely resolution of an identified issue. The project engineer will not require, in subsequent submissions, duplication of information already provided.

#### **104.3.4 Engineer One-Day Written Acknowledgment**

- (1) Within one business day after the contractor provides initial written notice, the project engineer will provide an project engineer one-day written acknowledgment to the contractor. The project engineer will continue to resolve the issue.

#### **104.3.5 Contractor 5-Day Written Statement**

- (1) If the project engineer has not resolved the issue within 5 business days from the date of the initial written notice, augment the original written notice with an additional contractor 5-day written statement to resolve the issue. In the written statement:
  1. State why the issue is a change to the original contract.
  2. Refer to the contract to show what has changed from the original contract.
  3. Provide all perceived adjustments to contract prices, delivery schedules, phasing, and contract time.
  4. Provide an estimate of the time within which the department must respond to the notice to minimize cost, delay, or disruption.
- (2) The department understands that the contractor's estimates of the time required and additional costs may be based on incomplete information. The department will attempt to comprehend and resolve the potential change as quickly as possible. The contractor can help the department in this process by providing the requested information as quickly as possible.

#### **104.3.6 Engineer 5-Day Written Response**

- (1) Within 5 business days after receiving the contractor 5-day written statement, the project engineer will consider the statement and provide an project engineer 5-day response in writing to the contractor with one or more of the following responses:
  1. The project engineer will confirm that a contract change order is necessary as specified in [104.2](#). The project engineer will give direction concerning the potential change.
  2. The project engineer will deny that the contract has to be revised. The project engineer will provide a statement as to why the issue is not a change to the contract. At a minimum, the project engineer will respond to the contractor's issues and refer to the contract to show why the issues are not a change from the original contract.
  3. The project engineer will request additional information to allow the project engineer to decide whether item one or 2 of 104.3.6(1) applies. The project engineer will state the information needed and date it is to be received for further review.
- (2) If the contractor does not agree with the project engineer's decision the contractor may pursue the issue as a claim as specified in [105.13](#). Alternatively, if the contractor and department mutually agree, the department will get an third party advisory opinion according to the department's dispute resolution procedures.
- (3) If a third party reviews the issue, their recommendation is not binding on either party. The project engineer has 14 calendar days after receipt of the third party's written recommendation to render a decision. If the department fails to respond in writing within those 14 calendar days or the contractor disagrees with the project engineer's decision, the contractor may pursue the issue as a claim as specified in [105.13](#).

#### **104.4 Requests for Information**

- (1) Either the department or the contractor may request information that the other party must provide in order for the requesting party to fulfill its contract obligations. The requesting party shall submit requests for information (RFI) on department form DT 2502 either in hard copy or via email. RFI must conform to the following:
  - Be of reasonable scope.
  - Explain why a response is necessary to fulfill contract obligations.
  - Provide a requested response time, which must be reasonable in relation to its scope, but not less than 72 hours.
- (2) The responding party shall respond on department form DT 2502 either in hard copy or via email within the requested response time. If more time will be required to adequately address the issue, the responding party shall provide a written status report within the requested response time. The parties will discuss the status of outstanding RFI at each progress meeting until the issue is resolved.

#### **104.5 (Vacant)**

#### **104.6 Roadway Maintenance and Traffic Control**

##### **104.6.1 General**

- (1) The contractor is not liable for damages to or failure of existing facilities unless the damage or failure results from the contractor's own operations, negligence, or noncompliance with the contract.
- (2) The contractor shall maintain only those facilities or portions of facilities, including the roadbed surfaces, on which construction has begun or been completed, or has been damaged by the contractor's operations or has been damaged due to the contractor's negligence or noncompliance with the requirements of the contract.
- (3) The contractor is not responsible for snow removal or ice control operations to maintain traffic on highways open to traffic or closed to through traffic.
- (4) Maintain the safety of the traveling public and control traffic using barricades, signs, flaggers, and temporary barrier as specified in part VI, of the MUTCD and ensure that the contractor's use of the right-of-way conforms to [107.9](#). Furnish, erect, and maintain traffic control devices and facilities conforming to [section 643](#), or as the engineer directs, throughout the life of the contract. Use drums, barricades, and temporary barrier to delineate and shield abrupt drop-offs and other hazards. Adequately train flaggers in the methods described in the department's flagger's handbook and associated videotape before allowing them to control traffic. These provisions do not relieve the contractor of responsibility for injury or damage caused by the contractor's negligence in properly safeguarding public travel. Costs for flagging and guidance services, and signs associated with flagging and guidance, are incidental to the contract.
- (5) The contractor is responsible for all damages to the work due to failure of barricades, signs, lights, flaggers, watchers, and temporary barrier to protect it. The engineer may order the contractor to immediately remove and replace or otherwise repair the damaged work at no additional expense to the department.

##### **104.6.2 Temporary Roads**

- (1) Construct and maintain temporary roads necessary to maintain traffic as the contract specifies or as the engineer directs. Excavate and remove those portions of temporary roads not incorporated into the final roadway section, and restore disturbed areas outside the construction limits to their original condition.
- (2) The department will pay for the construction and removal of temporary roads, included in the contract or as the engineer orders, and the associated restoration of disturbed areas. The department will pay for this construction, removal, and restoration work at the contract unit prices of the bid items used, or as extra work, if the necessary bid items are not included in the contract.
- (3) Maintain temporary roads, included in the contract or as the engineer orders, in a safe and adequate condition. The cost of maintaining these temporary roads is incidental to the contract, except during suspensions under [104.6.7](#).
- (4) The cost of constructing, maintaining, and removing temporary roads the contract does not show or the engineer did not order, is incidental to the contract.

### **104.6.3 Road Closed to Traffic**

- (1) If the contract provides, or if the engineer orders, that the road or portions of the road be closed to all traffic, furnish, erect, and maintain the traffic control devices at the project termini and at intersecting roads along the project the contract specifies or as the engineer directs. Unless specifically required in the contract, the contractor is not responsible to maintain the pavement structure or traffic signs of the detour that may be provided for the accommodation of traffic around the portion of the road closed to traffic.
- (2) Never close a public road or portion of a public road without the engineer's specific written permission. If the contract specifies, or if the engineer orders, that a road or a portion of road is to be closed, notify the engineer at the earliest possible date of when the closure is needed so the department can make arrangements to close the road and provide detours.

### **104.6.4 Road Closed to Through Traffic**

- (1) If the contract provides that the road or portions of the road be closed to through traffic, furnish, erect, and maintain the traffic control devices at the project termini and at intersecting roads along the project the contract specifies or the engineer directs. Also, furnish, erect, and maintain those traffic control devices within the project limits as may be required for the safe accommodation of local traffic as defined in [101.3](#). At all times conduct the work in a manner to provide safe, reasonably-direct, all-weather, 24-hour pedestrian and vehicular access to abutting properties along the highway being improved.
- (2) Unless specifically required in the contract, the contractor is not responsible to maintain the pavement structure or traffic signs of the detour that may be provided for the accommodation of traffic around the portion of the road closed to through traffic. The department will pay for surfacing and base materials that the engineer deems necessary to maintain the roadway at contract unit prices, or as extra work.

### **104.6.5 Opening Section of Closed Road to Traffic before Work is Completed**

- (1) For contracts with the road or portions of the road closed to traffic during construction, the engineer may direct or authorize the contractor to open sections of the road to public traffic before the work is completed. The engineer may direct the contractor to open sections of the road for the convenience of the traveling public. The engineer may authorize the contractor to open sections of the road to public traffic due to the contractor's request. Do not open the road to public traffic without the engineer's written direction or written authorization. By opening sections to public traffic, the contractor is not relieved of performing the maintenance. However, the department will assume all costs for repair and maintenance solely attributable to public traffic use, and beyond the control and without fault of the contractor. These maintenance expenses include costs associated with those traffic control devices or facilities specified in this section. The engineer's direction or authorization to open sections of the road to public traffic does not constitute partial acceptance under [105.11.1](#) and waives no other contract provisions.
- (2) Furnish, erect, and maintain those traffic control devices as may be required for the safe accommodation of the traffic.
- (3) The contractor is not liable for injuries or damages sustained by a person using the opened highway except for injuries or damages resulting from the contractor's own operations, negligence, or noncompliance with the requirements for traffic control under [104.6.1](#).
- (4) Whenever opening the road or a portion of the road to traffic, conduct the remainder of the construction operations in a way that causes the least obstruction to traffic.

### **104.6.6 Road Open to All Traffic**

- (1) If the contract provides for the maintenance of all traffic over or along the road while undergoing improvement or reconstruction, keep the road open to all traffic. Furnish, erect, and maintain the traffic control devices as required to keep the portions of the road being used by public traffic in a condition to safely and adequately accommodate pedestrian and vehicular traffic. The department will pay for necessary work and materials to maintain the roadway at the contract unit prices of the bid items used or as extra work if the necessary bid items are not included in the contract.

### **104.6.7 Traffic Control and Maintenance During Suspensions of the Work**

- (1) During a suspension of work as specified in [105.1](#), the contractor shall make passable and open to traffic portions of the highway under improvement and temporary roads or portions thereof as the contractor and the engineer may agree upon for temporary accommodation of necessary traffic during the period of suspension. During the period of suspension, maintain the surface of the traveled way of the temporary route or line of travel agreed upon.

- (2) When resuming work, replace or renew all work or material lost or damaged because of temporary use of the highway under improvement. Remove temporary roads and restore disturbed areas outside the construction limits to their original condition, as the engineer directs. Complete the improvements in every respect as though prosecution had been continuous and without interference, except as the contractor and the engineer may otherwise have agreed upon at the time the arrangement was made for the temporary accommodation of necessary traffic during the anticipated period of suspension.
- (3) If the reason for the suspension is beyond the control and without the fault of the contractor, the department will pay for the following at the contract unit prices of the bid items used, or as extra work if the necessary bid items are not included in the contract.
  1. The replacement of materials and additional work made necessary because of the temporary use of the highway.
  2. The construction and removal of temporary roads needed for public travel during the suspension, and the corresponding restoration of disturbed areas outside the construction limits.
  3. Maintaining the surface of the traveled way of temporary roads used by the public during the period of suspension.
  4. The furnishing, erecting, and maintenance of those traffic control devices and facilities needed to safely accommodate public travel during the suspension.

#### **104.7 Removing Structures and Obstructions**

- (1) Remove from within the roadway all or parts of existing culverts, bridges, and miscellaneous structures designated for replacement or that interfere with new construction. The department will:
  1. Pay for removing existing culverts and bridges as specified in [203.5](#).
  2. Pay for removing existing miscellaneous structures as specified in [204.5](#), if the contract contains separate removal bid items under [section 204](#).
  3. Pay for removing existing miscellaneous structures as follows, if the contract does not contain separate removal bid items under [section 204](#):
    - 3.1. Pay as specified in [206.5.1](#), if the removal is located within the limits of an Excavation for Structures bid item under [section 206](#).
    - 3.2. Otherwise, pay as incidental to the Excavation bid items under [section 205](#).
- (2) Remove all or parts of existing culverts, bridges, and miscellaneous structures from beyond the roadway, but within the highway, if the contract specifies. Within 104.7, highway means the entire highway right-of-way, including abutting portions of existing highways. The department will:
  1. Pay for removing existing culverts and bridges, as specified in [203.5](#).
  2. Pay for removing existing miscellaneous structures as specified in [204.5](#), if the contract contains separate removal bid items under [section 204](#).
  3. Pay for removing existing miscellaneous structures as follows, if the contract does not contain separate removal bid items under [section 204](#):
    - 3.1. Pay as incidental to the Obliterating Old Road bid item, if the removal is located within the limits of the Obliterating Old Road bid item under [section 214](#).
    - 3.2. Otherwise, pay as incidental to the other contract bid items.
  4. Pay for removals as extra work, if they are not specified in the contract but subsequently required.
- (3) Leave structures beyond the limits of the highway in place.

#### **104.8 Rights in the Use of Materials Found on the Project**

- (1) The contractor may use on the project stone, gravel, sand, or other material found within the vertical and horizontal excavation limits the plans show. Ensure that the engineer determines the material's suitability before using it. The department will pay for both the excavation of these materials at the corresponding contract bid price and the bid item for which the excavated material is used. The department will not charge the contractor for the materials found within the above described excavation limits and so used. Replace, at no expense to the department, with other acceptable material all of the excavation material so removed and used for embankments, backfills, approaches, or otherwise.
- (2) Do not excavate or remove material from within the right-of-way that is not within the vertical and horizontal excavation limits the plans show without the engineer's written authorization. Do not base bids

on the anticipated approval of a request to excavate or remove material that is not within the above described excavation limits.

- (3) Take ownership of all materials required to be removed and not necessary for the work.

#### **104.9 Final Cleanup**

- (1) Upon completion of the work and before the department accepts the work as specified in [105.11.2](#) and makes final payment as specified in [109.7](#), the contractor shall remove from the right-of-way, and to the extent that the contractor is responsible therefore, from the adjacent property, all surplus and discarded materials, rubbish, and temporary structures. Leave the right-of-way in a neat and presentable condition. The contractor shall restore, at no expense to the department and in general conformity with the contract for the bid item or bid items involved, all work completed under previous contracts that the contractor has damaged.
- (2) If the contractor procures or produces material from a pit, quarry, or deposit which is not an active commercial source or is not naturally submerged, the contractor shall do work as necessary and practical to shape, slope, and trim and drain the site, including associated haul roads and adjacent areas disturbed by the contractor's operations, so that it presents a stable, neat, trimmed appearance and that no water collects or stands therein. Do not create or enlarge an area of open water except as allowed under [208.2.2](#).
- (3) The cost of final cleanup is incidental to the contract. The department will not allow separate or additional payment for final cleanup.

#### **104.10 Cost Reduction Incentive**

##### **104.10.1 General**

- (1) Subsection 104.10 specifies a 2-step process for contractors to follow in submitting a cost reduction incentive (CRI) for modifying the contract in order to reduce direct construction costs computed at contract bid prices. The initial submittal is referred to as a CRI concept and the second submittal is a CRI proposal. The contractor and the department will equally share all savings generated to the contract due to a CRI as specified in [104.10.4.2\(1\)](#). The department encourages the contractor to submit CRI concepts for the following situations:
  1. The contractor generates the original cost savings idea and formulates it into a concept.
  2. The department generates the original cost savings idea and obtains the contractor's assistance to formulate the idea into a concept.
- (2) Follow the procedures specified in [104.10.2](#) for submitting a CRI concept. If the department determines a CRI concept has merit, the department will encourage the contractor to submit a CRI proposal. Follow the procedures specified in [104.10.3](#) for submitting a CRI proposal.
- (3) The contractor may submit a CRI concept from a subcontractor. The department will reimburse the contractor. Subcontractors may not submit a CRI except through the contractor.
- (4) The contractor may submit a CRI concept only after the execution of the contract. Do not base bid prices on the anticipated approval of a CRI proposal. If the department rejects a CRI proposal, complete the contract as specified in the original terms or as otherwise modified.
- (5) The department will consider a CRI that changes but does not impair the essential functions or characteristics of the project. These functions or characteristics include, but are not limited to, appearance, service life, economy of operations, ease of maintenance, design, and safety of structures and pavements, construction phasing or procedures, or other contract requirements.
- (6) The department will decide whether or not to approve a CRI. The department will bear no liability for causing a delay to the project in considering a CRI or for refusing to approve a CRI. The department may consider a noncompensable time extension as specified in [104.10.2\(3\)](#). The department will consider no contractor claims for additional costs related to the acceptance or rejection of a CRI, including loss of anticipated profits, or increased material or labor costs. The department will reimburse the contractor for the development costs of CRI proposals as specified in [104.10.4.1\(3\)](#).
- (7) A CRI, approved or not approved by the department, applies only to the contract for which the contractor submits it. Impose no restrictions on the CRI for its use or disclosure. The department has the right to use, duplicate, and disclose in whole or in part all data necessary for the utilization of the CRI. The department may use an accepted CRI or part of an accepted CRI on other projects without obligation to the contractor. This provision does not deny rights granted by law with respect to patented materials or

processes. The department will not use this provision as the basis for rejecting the contractor's submittal of a CRI concept from past projects.

- (8) Continue to perform the work as the contract specifies until receipt of the engineer's written acceptance or rejection of the CRI Proposal.
- (9) Work produced under an approved CRI contract change order is subject to the provisions of [105.3.2](#) for nonconforming work.

#### **104.10.2 Submittal and Review of a CRI Concept**

- (1) Initially, submit a brief letter with graphics as necessary to the engineer to describe and illustrate the CRI concept. Estimate the overall CRI savings and the costs to develop the CRI proposal specified in [104.10.3](#). The engineer will use the contractor's estimate of the CRI proposal development costs as specified in [104.10.4.1\(3\)](#). Indicate whether adequate time is available in the project schedule for submitting a complete CRI proposal and for the department's review before implementation.
- (2) The department will review the CRI concept and, within 5 business days of the contractor's initial submittal, notify the contractor in writing whether the CRI concept has merit and whether the contractor should submit it as a CRI proposal. The contractor and the department can mutually agree to extend this 5-day review requirement. The department will notify the contractor if a professional engineer should seal the CRI proposal. If the department informs the contractor to submit the CRI proposal, the department will share in the cost for developing the CRI proposal as specified in [104.10.4.1\(3\)](#).
- (3) If the department determines the time for response indicated in the CRI concept letter is insufficient for review, the department may choose to evaluate the need for a noncompensable time extension to the contract. The department will base its evaluation on the additional time that the department needs for its review of the CRI proposal and the effect on the contractor's schedule caused by the added review time.
- (4) If the department has already taken action to implement revisions to the contract subsequently proposed in a CRI concept, the department may reject the CRI concept and revise the contract without obligation to the contractor.
- (5) The department may reject a CRI concept if it addresses a potential contract change situation as specified in [104.2](#).
- (6) The savings generated by the CRI must be sufficient to warrant its review and processing and offset the level of risk. The department will assess the risk of the CRI relative to departmental design policies and criteria for the project. The department may reject a CRI concept for the following reasons:
  1. It requires excessive time or costs for the contractor to develop the CRI proposal.
  2. It requires excessive time or costs for review, evaluation, investigation, or implementation.
  3. It introduces an inappropriate level of risk.

#### **104.10.3 Submittal of the CRI Proposal**

- (1) Within 10 business days after the department has determined that the CRI concept has merit, submit the CRI proposal. The contractor and department can mutually agree to extend this 10-day submittal requirement. Ensure that the CRI proposal includes sufficient data for the department to make an informed decision regarding the proposal and includes, at a minimum, the following information:
  1. A statement that the proposal is submitted as a CRI.
  2. A description of the difference between the existing contract and the proposed change and the advantages and disadvantages of each, which may include effects on service life, economy of operations, ease of maintenance, benefits to the traveling public, desired appearance, and safety.
  3. A complete set of plans and specifications showing the proposed revisions relative to the original contract features and requirements. Support the proposed revisions with design computations as necessary for a thorough and expeditious evaluation.
  4. A complete analysis indicating the final estimated costs and quantities to be replaced by the CRI compared to the new costs and quantities generated by the CRI. The department will use these costs as specified in [104.10.4.2\(1\)](#) to compute the proposed net savings.
  5. A statement specifying the time within which the department must make a decision.
  6. A statement detailing the effect the CRI will have on interim completion dates and the time for completing the contract.

7. A description of a previous use or testing of the CRI and the conditions and results. If the contractor previously submitted the CRI on another department project, the contractor shall indicate the date, contract number, and action taken by the department.
8. A detailed statement that indicates the costs for developing the CRI proposal and implementing the changes. The department will use these costs as the contractor's CRI development and implementation costs as specified in [104.10.4.1\(3\)](#) and [104.10.4.2\(1\)](#).
9. Ensure that a registered professional engineer seals the CRI proposal if the department requires it as specified in [104.10.2\(2\)](#).
10. If proposing design changes, the contractor may include with the additional information, results of field investigations and surveys, design computations, and field change sheets.

#### **104.10.4 Acceptance, Rejection, and Payment**

##### **104.10.4.1 Acceptance, Rejection, and Payment of a CRI Proposal**

- (1) Within 10 business days of the contractor's submission of the CRI proposal, the department will accept or reject the CRI proposal in writing. The contractor and the department can mutually agree to extend this 10-day review requirement. Provide requested additional information needed to evaluate the CRI proposal in a timely manner. The department may reject a CRI proposal for untimely submittal of additional information.
- (2) After accepting the CRI proposal, the department will execute a change order reimbursing the contractor for the cost of preparing the CRI proposal. The department will limit reimbursement to the contractor's estimate of the CRI proposal development costs provided in the CRI concept submittal. The change order will also state the conditions for the department's acceptance and which of the following the net savings will be based on:
  1. Agreed lump sum prices before the contractor performs the CRI.
  2. Agreed unit prices before the contractor performs the CRI in conjunction with quantities that the department will measure after the contractor completes the CRI.
- (3) If the department informs the contractor to submit a CRI proposal as specified in [104.10.2](#) and later rejects the CRI proposal, the department will execute a contract change order to adjust the contract for the contractor's development costs as listed in item 8 of [104.10.3\(1\)](#). The department will limit the contract revision amount to the contractor's estimate of the CRI proposal development costs provided in the CRI concept submittal. The contract change order will terminate the department's review of the CRI.
- (4) Rejection of a CRI proposal is not an allowable basis for a claim against the department for delay or for other costs.

##### **104.10.4.2 Payment for the CRI Work**

- (1) The department will pay for completed CRI work as specified for progress payments under [109.6](#). The department will pay for CRI's under the Cost Reduction Incentive administrative item. When all CRI costs are determined, the department will execute a contract change order that does the following:
  1. Adjusts the contract time, interim completion dates, or both.
  2. Pays the contractor for the unpaid balance of the CRI work.
  3. Pays the contractor 50 percent of the net savings resulting from the CRI, calculated as follows:

$$\mathbf{NS = CW - CRW - CC - DC}$$

**Where:**

**NS** = Net Savings

**CW** = The cost of the work required by the original contract that is revised by the CRI. CW is computed at contract bid prices if applicable.

**CRW** = The cost of the revised work, computed at contract bid prices if applicable.

**CC** = The contractor's cost of developing the CRI proposal.

**DC** = The department's cost for investigating, evaluating, and implementing the CRI proposal.

- (2) The department is the sole judge of the acceptability of a CRI proposal and of the agreed net savings in construction costs from the adoption of all or part of the CRI proposal. The department will not include time savings resulting from the CRI in the calculation of net savings.