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1400.1 AUTHORITY OF THE ENGINEER

1400.1.1 Subject to 1400.11, the Engineer will decide all questions that may arise as to quality and acceptability of materials furnished, work performed, rate of progress, interpretation of the plans and specifications, and acceptable fulfillment of the contract.

1400.2 PLANS, CONFORMITY WITH PLANS, AND ALLOWABLE DEVIATIONS

1400.2.1 Contract plans furnished by the Department are intended to give a comprehensive idea of the construction contemplated.

1400.2.2 Finished surfaces shall conform to the lines, grades, typical cross-sections, and dimensions shown on the plans, except that construction emergencies, or other causes, may require the Engineer to determine and authorize modifications to the plans.

1400.3 COORDINATION OF GENERAL PROVISIONS, STANDARD SPECIFICATIONS, PLANS, AND SPECIAL PROVISIONS

1400.3.1 The general provisions, standard specifications, plans, special provisions, and all supplementary documents are essential parts of the contract and are intended to be mutually complementary. In the event of discrepancy, the governing order of these documents, starting with the highest order shall be: supplemental written agreements, special provisions, plans, standard specifications and general provisions.

1400.3.2 The Contractor shall not take advantage of any apparent error or omission in the plans or specifications, or of any discrepancy between the plans and specifications, but shall forthwith bring the error or omission to the attention of the Engineer.

1400.4 COOPERATION BY THE CONTRACTOR

- 1400.4.1 The Contractor will be supplied with two sets of plans and contract assemblies including special provisions, one set of which the Contractor shall keep available at the work site at all times.
- 1400.4.2 The Minister reserves the right to perform other work by contract or otherwise, and to permit utility companies and others to do work on or near the project during the progress of the work. The Contractor shall conduct his work and cooperate with such other parties so as to cause as little interference as possible with their operations. Claims for delay or inconvenience due to operations of such other parties, except as provided in the contract, will not be considered.
- 1400.4.3 The Contractor shall at all times during his absence from the work have a competent superintendent or supervisor as his representative on the work, who shall receive instructions from the Engineer.

1400.5 CONSTRUCTION STAKES AND LAND MONUMENTS

- 1400.5.1 The Engineer will set construction stakes establishing lines, slopes, and continuous profile grade in the roadwork; and centre lines and bench marks for culvert work, protective and accessory structures, and appurtenances. The Engineer will furnish the Contractor with all necessary information relating to such lines, slopes, and grades. These stakes and marks shall constitute one of the field controls by, and in accordance with, which the Contractor shall govern and execute the work.
- 1400.5.2 The Contractor shall be held responsible for the preservation of all stakes and marks and, if any of the construction stakes or marks have been carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them may be charged against him, and shall be deducted from the payment for the work.
- 1400.5.3 In the case of alterations which involve any changes in stake-out, the Contractor shall cooperate with the Engineer and facilitate the prompt re-establishment of the field control for the altered or adjusted work.
- 1400.5.4 The Contractor shall carefully protect from disturbance or damage all land monuments and property marks indicated in the plans or denoted by stakes on the improvement, until an authorized agent of the Engineer has witnessed or otherwise referenced their location. The cost to the Department of replacing land monuments and property marks that have been carelessly or willfully destroyed or disturbed by the Contractor, may be charged against him, and deducted from the payment for the work.

1400.6 INSPECTION OF THE WORK

- 1400.6.1 The Engineer and his representatives shall be allowed access to all parts of the work at all times and shall be furnished such information and assistance by the Contractor as may be required to make a complete and detailed inspection. Such inspection, however, shall not relieve the Contractor from any obligation to perform all the work strictly in accordance with the requirements of the contract.

- 1400.6.2 The Contractor shall, if the Engineer requests, remove or uncover such portion of the finished work as directed, before the final acceptance of the same. After the examination, the Contractor shall restore said portion of the work to the standard required by the specifications. If the work thus exposed or examined proves acceptable, the expense of uncovering or removing and replacing the parts removed, shall be paid for as Extra Work, but if the work so exposed or examined is not acceptable, the expense of uncovering or removing and replacing of the same in accordance with the specifications shall be borne by the Contractor.
- 1400.6.3 When any other authority or authorities reimburse the Department for all or any portion of the cost of work, the work may be subject to inspection by their representatives. Such inspection shall, in no sense, make the other authority or authorities a party to this contract, and will not, in any way interfere with the right of either party hereunder.

1400.7 UNACCEPTABLE AND UNAUTHORIZED WORK

- 1400.7.1 All work and materials which do not conform to the requirements of the contract shall be considered unacceptable unless such unacceptable work or material resulted from the use of defective materials supplied by the Department.
- 1400.7.2 Any work done without lines and grades having been established by the Engineer, any work done by the Contractor prior to the execution of the contract by both parties, any work done contrary to the instructions of the Engineer, any work done beyond the lines and dimensions shown on the plans or any Extra Work done without written authority pursuant to Subsection 1300.4 shall be considered as unauthorized work.
- 1400.7.3 No payment shall be made for unacceptable or unauthorized work or for unacceptable materials. Further, the Department shall be entitled to recover from the Contractor any cost which it incurs to remedy unacceptable or unauthorized work or to remove and replace unacceptable materials.
- 1400.7.4 In addition to the foregoing, the following will apply to overgrading which is identified prior to acceptance of all work contemplated by the contract on any section of roadway two kilometres or more in length:
- 1400.7.4.1 Prior to acceptance, the Contractor will be advised in writing of the section where overgrading has occurred.
- 1400.7.4.2 No payment shall be made for the quantity of overgrading beyond permissible variations as determined by the Engineer.
- 1400.7.5 The disposition of defective materials shall be such that the Engineer can satisfy himself that each lot or parcel of material has been disposed of properly.

1400.8 EQUIPMENT

- 1400.8.1 Unless specifically required or prohibited in the construction requirements, the Contractor shall select the type and size of equipment; however, all equipment shall be of suitable size and type as to meet the requirements of the work and produce a satisfactory quality of work.
- 1400.8.2 Any equipment deemed by the Engineer to be in unsafe or in unsatisfactory working condition, and so designated by him, shall be replaced with satisfactory equipment, or repaired, or adjusted to a satisfactory working condition. If the Contractor fails to do so, the Engineer may suspend the work until such equipment is satisfactory.
- 1400.8.3 With the exception of weigh scales, which are covered in Subsection 1800.2, no equipment which requires calibration or measurement of its capacity shall be used before such calibration or measurement is to be made on the project, or if the Engineer deems it necessary to check such calibration or measurement, the Contractor shall furnish such assistance and equipment as may be required by the Engineer.

1400.9 COMMUNICATIONS TO CONTRACTOR

- 1400.9.1 Any written notice to the Contractor which may be required under the contract shall be served on said Contractor either personally or by mail to the address given in his tender, or by leaving the same at said address, or by delivery of same to the Contractor's authorized representative on the work.

1400.10 FINAL INSPECTION AND ACCEPTANCE

- 1400.10.1 Upon notice from the Contractor that the roadway has been completed on a section of the work (two kilometres or more in length), the Engineer may, on inspection and approval of the section, accept the roadway on such section so far as responsibility for the maintenance is concerned. Such partial acceptance shall be in writing and will relieve the Contractor from any future maintenance of the roadway on such section, except as may be ordered by the Engineer as Extra Work, but will not relieve him of any other obligations or responsibilities under the contract.
- 1400.10.2 Upon notice from the Contractor that the work is completed, the Engineer will inspect the project. If at such inspection, the Engineer finds the project completed to his satisfaction, such inspection will constitute the final acceptance. The Contractor will be notified of such acceptance in writing as soon thereafter as practicable.
- 1400.10.3 If the project, in whole or in part, is not acceptable to the Engineer at the time of any inspection, he will advise the Contractor in writing as to the particular defects. Upon notice from the Contractor that the defects have been remedied, another inspection shall be made. If the Engineer finds the project completed to his satisfaction, such inspection will constitute the final acceptance. The Contractor will be notified of such acceptance in writing as soon thereafter as practicable.

1400.11 APPEAL BY CONTRACTOR

- 1400.11.1 The Contractor shall give written notice to the Engineer of his intention to appeal a decision within 48 hours of that decision by the Engineer.
- 1400.11.2 If the Engineer declares that disputed work is to be performed while the appeal procedures are in process, the Contractor shall perform the work and the Engineer will maintain detailed records of the work. Neither the fact that such work was performed nor the fact that such records were kept shall be construed as proving the validity of the decision under appeal or the appeal action.
- 1400.11.3 The appeal shall be in writing to the Minister and shall contain appropriate supporting evidence.
- 1400.11.4 The Minister will give his decision to the Contractor in writing. The decision will be final and conclusive and may be altered only by action at law, except that the Contractor may, within 30 days of receipt of the Minister's written decision, request that the matter be submitted to conciliation.
- 1400.11.5 Unless otherwise agreed, the following shall apply:
- 1400.11.5.1 The conciliator's fees, including transportation and living expenses, shall be divided equally between the Department and the Contractor.
 - 1400.11.5.2 The fees of any witnesses appearing for the Contractor shall be paid by the Contractor, and the fees of any witnesses appearing for the Department shall be paid by the Department.
 - 1400.11.5.3 Legal counsel fees shall be paid by the party to the contract for whom that counsel appears.
 - 1400.11.5.4 *The Arbitration Act*, shall apply except as inconsistent with the provisions of this contract.
- 1400.11.6 The recommendation of a conciliator(s) shall not be binding upon either party to the contract. However, after receipt of such recommendation, it shall be incumbent upon the Minister to inform the Contractor in writing of the extent to which the Minister's previous decision will be altered.

1400.12 APPEAL BY THE DEPARTMENT

- 1400.12.1 The Department may appeal a decision of the Contractor made pursuant to Subsection 1300.2 or 1300.3 by requesting within 30 days of receipt of the Contractor's decision, that the matter be submitted to conciliation. Subsection 1400.11.5 will apply in such conciliation.
- 1400.12.2 The recommendation of a conciliator(s) shall not be binding upon either party to the contract. However, after receipt of such recommendation, it shall be incumbent upon the Contractor to notify the Minister in writing of the extent to which the Contractor's previous decision will be altered. Such decision by the Contractor shall be final and conclusive and may be altered only by action at law.