

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 107—LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

January 27, 2003cc

SECTION 107—LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC of the Specifications is amended as follows:

Section 107.13 Responsibility For Damage Claims is replaced by the following:

The Contractor shall indemnify and save harmless the State, the Board, and its officers, agents, and employees, as well as the city, town, county, or other municipality in which the work is performed and their officers, agents, and employees, from suits, actions, or claims brought for or on account of any injuries or damages received or sustained by any person, persons, or property resulting from or arising out of the work performed by the Contractor, or by or in consequence of any neglect in safeguarding the work, through the use of unacceptable materials in the construction or the improvement, or resulting from any act or omission, neglect, or misconduct of the Contractor; or by or on account of any claims or amounts recovered by infringement of any patent, trademark, or copyright. The Commissioner may retain as much of the monies due the Contractor under and by virtue of his Contract as the Commonwealth considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If no monies are due, the Contractor's surety will be held until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Board. Any extension of time granted the Contractor, in which to complete the Contract shall not relieve him or his surety of this responsibility.

It is not intended by any of the provisions of any part of the Contract to create the public or any member thereof as a third party beneficiary hereunder or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

The Contractor shall comply with all requirements, conditions, and terms of the Contract, including but not limited to, environmental permits, commitments identified within the Contract, and applicable environmental laws. The Contractor shall not cause damage, except as allowed under the terms of the contract, or as allowed under applicable permits or laws, to the Commonwealth's air, water, or other natural resources, or cause damage to adjacent or off-site property.

When any act, omission, or other action of the Contractor occurs, which violates the requirements, conditions or terms of the Contract, and affects the health, safety, or welfare of the public or the Commonwealth's natural resources, the Engineer will direct the Contractor to take prompt action to repair, replace, or restore the damage or injury within a reasonable time frame established by the Engineer. If the Contractor fails to make such repair, replacement, or restoration within the established time frame, the Engineer will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due the Contractor.

If the Department determines by its own investigation that injury or damage has occurred as a result of work performed or neglected by the Contractor, the Department may suspend the Contractor from future bidding or initiate debarment in a manner consistent with state law, and Department regulations and policies. Injury is defined as harm or impairment to persons or natural resources. Damage is defined as the loss or harm resulting from injury to person or property. In addition, the Department may recover either (i) the loss or damage that the Department suffers as a result of such act, omission or other action or (ii) any liquidated damages established in such contract plus (iii) reasonable attorney's fees, expert witness fees, staff salaries, and equipment charges associated with any investigation.

Upon a finding against the Contractor by the Department, the Contractor shall be responsible for and shall reimburse the Department for all expenses associated with the injury or damage. Expenses include, but are not limited to: investigating the act, omission or other action, financial penalties incurred by the Department as a result of the injury or damage, salary and expenses incurred by employees or consultants of the Commonwealth, road user expenses as determined by the Department due to damage or loss of use of the project area, attorney fees, and expert witness fees. The Department may deduct the reimbursement of expenses from any payments owed the Contractor.

Upon determination by the Department of egregious or repetitious acts, omissions or other actions related to injury or damage to person or property, the Contractor shall be responsible for and shall reimburse the Department for all expenses associated with the investigation as shown herein, and the Department will impose other appropriate actions, as permitted by law, policy and Specifications, such as but not limited to, suspension of work, removal from the bidders' list, or debarment.

Once determination is made that injury or damage has resulted in an action against the Contractor, the Contractor shall have the right of appeal through the Director of Planning and the Environment.

Should any cost remain in dispute after appeal to the Director of Planning and the Environment, resolution shall be handled in accordance with the requirements of Section 105.16 of the Specifications.

Section 107.14(a) Erosion and Siltation is amended as follows:

The first paragraph is amended to replace the second sentence with the following:

Siltation control measures shall be applied to erodible material exposed by any activity associated with construction, including clearing or grubbing, but not limited to local material sources, stockpiles, disposal areas, and haul roads and shall be functional before land-disturbing activities take place.

The fourth paragraph is replaced with the following:

The Contractor shall have, within the limits of the project, an employee certified by the Department in Erosion and Sediment Control who shall inspect erosion and siltation control devices and measures for proper installation and deficiencies immediately after each rainfall, at least daily during prolonged rainfall, and weekly when no rainfall event occurs and promptly document and report his findings to the Inspector. Failure of the Contractor to maintain a certified employee within the limits of the project will result in the Engineer suspending work related to any land disturbing activity until such time as a certified employee is present on the project. Failure on the part of the Contractor to maintain appropriate erosion and siltation control devices in a functioning condition may result in the Engineer notifying the Contractor in writing of specific deficiencies. Deficiencies shall be corrected immediately. If the Contractor fails to correct or take appropriate actions to correct the specified deficiencies within 24 hours after receipt of such notification, the Department may do one or more of the following, require the Contractor to suspend work in other areas and concentrate efforts toward correcting the specified deficiencies, hold progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Contractor.

Section 107.14(b) Pollution 1. Water is amended as follows:

The second paragraph is replaced with the following

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag. Dewatering bags shall conform to the requirements of Section 245 of the Specifications. During specified spawning seasons, discharges and construction activities in

spawning areas of state waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved nonerodible materials and shall be removed by the Contractor to natural ground when the Engineer so directs.

The third paragraph is amended to add the following:

The Contractor shall provide the Engineer a contingency plan for reporting and immediate actions to be taken in the event of a dump, discharge, or spill immediately after he has mobilized to the project site.

The sixth paragraph is amended to add the following:

Stabilization of the streambed and banks shall occur immediately upon completion of work or if work is suspended for more than 15 days.

The eighth paragraph is amended to add the following:

Stabilization of the streambed and banks shall occur immediately upon completion of work or if work is suspended for more than 15 days.

The ninth paragraph is replaced with the following:

Temporary bridges or other minimally invasive structures shall be used wherever the Contractor finds it necessary to cross a stream more than twice in a 6 month period, unless otherwise authorized by water quality permits issued by the Army Corps of Engineers, Virginia Marine Resources Commission or the Virginia Department of Environmental Quality for the contract.