

Construction Contract Admin Update

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BPD Construction Standards and Oversight Section Chief

WTBA Contractor-Engineer Conference
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Safety

- Safety is a culture
 - Make it personal
 - Do what is right, not what is easy
 - See something, say something



Overview

- BPD Construction Standards and Oversight Team
- 2023 Construction Year Highlights
- SB-270 – Trans 220 Update
- Revisions to the Contract – ss104.2 and ss109.4
- 2024 Standard Spec – Part 1 Updates
- 2023 November CMM Updates



BPD Construction Standards and Oversight Section

- Section Chief – Tyler Rongstad
- Construction Oversight Engineers
 - NCR – Chad Hayes
 - NWR – **vacant** (Chad Hayes – interim)
 - NER – Craig Pringle
 - SER – **filled 2/25/24** (Wayne Chase – interim)
 - SWR – Wayne Chase
 - SE-Freeways – Brian DuPont
- Standard Spec & CMM Engineer
 - Mark Zander



2023 Construction Year - Highlights

- Executed 314 new construction contracts, worth ~\$1.2 billion
- Processed 4,150 payment estimates, worth ~\$1.5 billion
- Processed 1,793 change orders, worth ~\$31 million

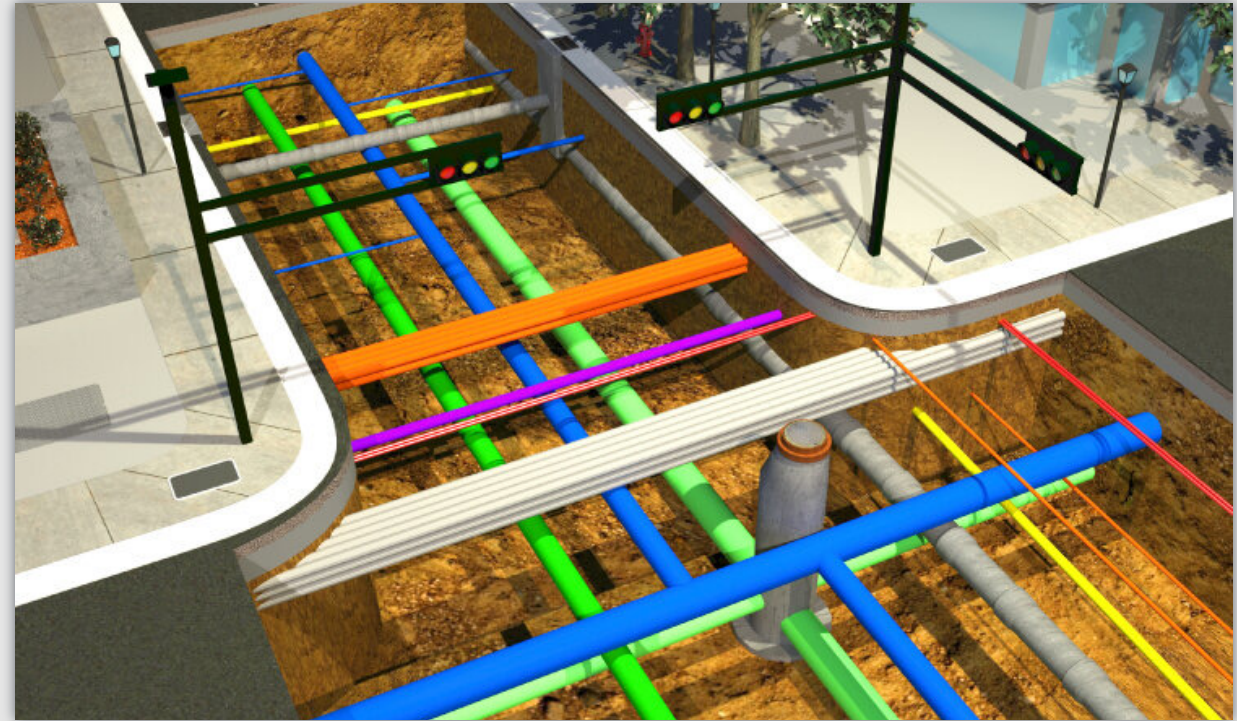
TOGETHER, WE'RE BUILDING A BETTER WISCONSIN.



ACT 46, SB-270 – Trans 220 Update

• 2023 WISCONSIN ACT 46

- Act 46 establishes a process for compensating costs a contractor incurred as a result of a utility relocation delay and addresses responsibility for these costs.
- Under the act, a contractor that incurs costs as a result of a utility relocation delay may file a damages claim with DOT, which must notify the owner of the receipt of the claim.
- If DOT determines that a utility relocation delay occurred, DOT must compensate the contractor for the costs incurred as a result of the delay and may not impose liquidated damages for work required by the contract that is not completed within the contract time or within extra time allowed by the department as a result of the utility relocation delay.



ACT 46, SB-270 – Trans 220 Update (cont.)

- Remove language in 108.10.2 for excusable – non-compensable delays
 - Revise 108.10.2.1(3) to remove former paragraph 6, “Delays caused by non-completion of work by utilities or other third parties, if the contract does not specify a number of days or a completion date for that utility or third-party work.”
- Revise language in 108.10.3 for excusable – compensable delays
 - Revise 108.10.3(2) item 5, “The non-completion of work that utilities or other third parties perform, if that work is not completed as specified in the contract.”



ACT 46, SB-270 – Trans 220 Update (cont.)

- Key Definition – 84.063.
 - “Utility relocation delay” means a change in operations of a contractor or the rescheduling of work by a contractor that is caused by the uncompleted relocation or adjustment of a utility facility located in the right-of-way, regardless of whether the relocation or adjustment of the utility facility is identified in a plan under sub. (3).
 - The amount of compensation is calculated and paid in accordance with DOT’s standard specification for compensable delays.



ACT 46, SB-270 – Trans 220 Update (cont.)

- 84.063 - A change in operations of a contractor:
 - Work by contractor must be done differently.
 - Contractor notification must follow specifications – section 104.3
 - Contractor must provide Engineer documentation and justification on the altered work. Work must be trackable and justifiable.
 - Follow process in 104.2 – revisions to the contract and 109.4 – price adjustments for contract revisions.



ACT 46, SB-270 – Trans 220 Update (cont.)

- 84.063 - Rescheduling of work by a contractor:
 - Work is stopped or delayed.
 - Contractor notification must follow specifications – section 104.3
 - Follow specification section 109.4.7 – price adjustments for delay costs.



ACT 46, SB-270 – Trans 220 Update (cont.)

- Important Dates:

- ACT 46 was enacted on 12/6/2023.
- Effective with WisDOT January 9th, 2024 lettings (ASP-6).

- Act 46: <https://docs.legis.wisconsin.gov/2023/related/acts/46>
- January ASP-6: <https://wisconsin.gov/hccidocs/contracting-info/asp-6-Jan2024.pdf>



Revisions to the Contract

- Revisions to the contract – follow specification section 104.2
- Step 1: Determine entitlement

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 revised work without the project engineer's prior written approval. Upon receiving written approval, proceed immediately with the revised work.
- (2) The contractor must 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 must 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.



Revisions to the Contract (cont.)

- Step 2: Unable to determine entitlement?

- Both sides should continue to track / document the issue.

(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](#).

- Step 3: Determine payment and time adjustments

(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.



Revisions to the Contract (cont.)

- Step 3: Determine payment and time adjustments
 - Price Adjustments

109.4 Price Adjustments for Contract Revisions

109.4.1 General

- (1) If the department revises the contract under [104.2](#), the department will adjust the contract price using the sequence specified in [109.4.2](#) through [109.4.5](#). This price adjustment includes payment for performing the revised work, delay costs, and all other associated costs the engineer deems reasonable and not expressly precluded in [109.4.6](#). The department may, at anytime, direct the contractor to perform all or part of the revised work under force account.

- 109.4.2 through 109.4.5
 - 1st try to use contract bid prices
 - 2nd move to negotiated prices
 - 3rd use force account



Revisions to the Contract (cont.)

- Step 3: Determine payment and time adjustments
 - Time adjustments:

108.10 Determining Contract Time Extensions and Payment for Excusable Delays

108.10.1 General

- (1) The department may extend contract time by change order. The department will only extend contract time if an excusable delay affects the controlling item of work. Excusable delays are unforeseen and unanticipated delays not resulting from the contractor's fault or negligence. Provide documentation and schedule updates to support requested time extensions as specified:
 1. In [108.4.2.4](#) for bar chart progress schedules.
 2. In [108.4.3.5](#) for RBC progress schedules.
 3. In [108.4.4.6](#) for CPM progress schedules.
- (2) The department may choose not to consider time extensions for delays unless the contractor notifies the engineer as specified in [104.3](#) and updates the schedule. The engineer will evaluate the facts, pay adjustment, and time extension for the delay. The engineer's findings are final and conclusive.



2024 Standard Spec Changes

Key Part 1 Spec Updates:

- 101.3
 - Added a definition for “floor” in relation to a structural component of a bridge.
- 105.13
 - Updated claims process to add information relating to the dispute review board (DRB).
- 106.3.4.1 and global spec. book change
 - Revise to add information and link for WisDOT’s Manual of Test Procedures (MOTP).
 - Global change throughout spec. book to update select test method references to WisDOT’s MOTP.

STATE OF WISCONSIN



STANDARD SPECIFICATIONS
FOR
HIGHWAY AND STRUCTURE
CONSTRUCTION

2024 Edition
Effective with November 2023 letting

The annotations, shown in boxed text, in this 2024 edition of the standard specifications identify substantive changes made since the 2023 edition. A brief explanation of each change is shown both in the table of contents and again adjacent to each revised passage. These annotations are not part of the contract.



2024 Standard Spec Changes (cont.)

Key Part 1 Spec Updates:

- 108.9.4.1 (asp-6, effective Nov. 23' lettings)
 - Winter suspension for completion date contracts.
- 108.10.2.1 (asp-6, effective Jan. 24' lettings)
 - Remove non-completion of utilities from excusable non-compensable delays.
- 108.10.3 (asp-6, effective Jan. 24' lettings)
 - Add non-completion of utilities to excusable compensable delays.
- 109.1.4.3
 - Add option for electronic load tickets.

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2023 CMM Updates - November

Key Part 1 & 2 CMM Updates:

- 228 – Laws and Standards
 - Revise 228.5 Buy America Provision to be in accordance with updated Federal Register 88 FR 57750 (2 CFR Parts 184 and 200).
 - Includes information on two acceptable waivers for construction materials. ****A MUST READ****
 - De Minimis Costs
 - Small Grants

Construction and Materials Manual

Wisconsin Department of Transportation
Bureau of Project Development

November 2023 Edition



Annotations, shown in boxed text on the table of contents with updates, in this edition of the Construction and Materials Manual identify the substantive revisions made since the last edition. A brief explanation of each provision revised is provided both in the table of contents with updates and again adjacent to each revision within the chapter.



Thank you

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