



SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.1 Laws to be Observed. The contractor shall know, observe and comply with all federal and state laws, local laws, codes, ordinances, orders, decrees and regulations existing at the time of or enacted subsequent to the execution of the contract that in any manner affect the prosecution of the work, except as specified in the contract or as directed by the engineer. The Contractor shall also ensure that any subcontractor know, observe and comply with all federal and state laws, local laws, codes, ordinances, orders, decrees and regulations as outlined above. The contractor and surety shall indemnify and save harmless the State, the Commission, the Commission's agents, employees and assigns from any claim or liability arising from or based on the violation of any such law, code, ordinance, regulation, order or decree, except any local regulations, decrees, orders, codes or ordinances that the contract or the engineer has specifically directed that the contractor need not obey.

107.1.1 Contract and Legal Inconsistency. The engineer shall be notified immediately in writing if any discrepancy or inconsistency is discovered between the contract and any law, ordinance, regulation, order or decree.

107.1.2 Local Building and Zoning Codes or Ordinances. The projects of the Commission are not typically subject to local building or zoning codes or ordinances. Therefore, the contractor usually need not obtain a local building or zoning permit or variance for work done exclusively as the Commission's contractor on the Commission's project and the Commission's right of way. Other local codes or ordinances may not apply to the Commission, and thus to the contractor as well. If any questions arise concerning whether the contractor shall comply with a local code, ordinance, decree or order of any type, the contractor shall advise the engineer of the problem immediately, for resolution by the engineer. This provision will not exempt the contractor from the requirement of thoroughly researching and determining, before submitting a bid on the contract and from complying with, all federal, state or local laws, regulations, codes, ordinances, decrees or orders that may apply to the contract work. The Commission will not be responsible for the contractor's failure to be informed before bidding as to the federal, state and local laws, regulations, codes, ordinances, decrees or orders that may govern the contract work, or for the contractor's failure to determine before bidding which of these do not govern the contract work.

107.1.3 Authentication of Certain Documents. If plans, plats, detailed drawings or specifications for falsework, cofferdams or any other work are required to be submitted to the engineer, the documents shall be signed, sealed and stamped in accordance with the laws relating to the practice of architecture and professional engineering in the State of Missouri (Chapter 327, RSMo).

107.2 Permits, Licenses and Taxes. Except as otherwise provided in the contract, the contractor shall procure all permits and licenses, shall pay all charges, fees and taxes, and shall give all notices necessary and incidental to the due and lawful prosecution of the work. No direct payment will be made for the cost of complying with this requirement.

107.3 Patented or Copyrighted Devices, Material and Processes. If the contractor is required or desires to use any design, device, material or process covered by letters, patent,

copyright, service or trademark, the contractor shall arrange and provide for such use by suitable agreement with the patentee or owner, and a copy of the agreement may be required by the Commission. The contractor and surety shall indemnify and save harmless the State, the Commission, the Commission's agents, employees and assigns from any suits, claims or damages arising from the infringement upon or use of any patented, copyrighted or registered design, device, material, process or mark.

107.4 Safety and Sanitary Provisions. The contractor shall at all times take necessary precautions to protect the life and health of all persons employed on the project or, who at the direction of the contractor are present on the right of way. The contractor shall be familiar with the latest accepted accident prevention methods and shall provide necessary safety devices and safeguards accordingly. The Commission will refuse to provide inspection services at plants or work sites where adequate safety measures are not provided and maintained.

107.4.1 Apparel. All workers within highway right of way shall wear approved ANSI/ISEA 107 Performance Class 2 or 3 safety apparel and more specifically as follows:

107.4.1.1 During daytime activities, flaggers shall wear a high visibility hard hat, safety glasses, a Performance Class 3 top OR a Performance Class 2 top, and safety footwear. Hard hats other than high visibility orange or green shall be covered with a high visibility covering.

107.4.1.2 During daytime activities, workers shall wear a hard hat, safety glasses, a Performance Class 3 top OR a Performance Class 2 top, and safety footwear.

107.4.1.3 During nighttime activities, flaggers shall wear a high visibility/reflective hard hat, safety glasses, a Performance Class 3 top AND Class E bottoms, OR Performance Class 2 top AND Class E bottoms, and safety footwear. Hard hats shall be reflective or covered with a high visibility covering.

107.4.1.4 During nighttime activities, workers shall wear a hard hat, safety glasses, a Performance Class 3 top OR Performance Class 2 top AND Class E bottoms, and safety footwear.

107.4.2 The contractor shall provide and maintain in a neat and sanitary condition, such accommodations for the use of employees as may be necessary to comply with the requirements and regulations of any agency having jurisdiction over public health and sanitation. The contractor shall permit no public or private nuisance.

107.4.3 All sanitary facilities and safety devices shall be furnished free to employees and no direct payment will be made for such facilities or devices.

107.5 Public Convenience and Safety. The contractor shall conduct the work in a manner that will ensure, as far as practical, the least obstruction to traffic and shall provide for the convenience and safety of the general public and residents along and adjacent to the highway in an adequate and satisfactory manner.

107.5.1 Obstructions Prohibited. Fire hydrants on and adjacent to the highway shall be kept accessible to fire fighting apparatus at all times, and no obstruction shall be placed within 15 feet of any such hydrant. Footways, gutters, sewers, outlets, inlets and portions of highways adjoining the work under construction shall not be obstructed. Pavements over which hauling is performed shall be kept clean of spilled or tracked-on material at all times when in use by traffic.

107.5.2 Objects Potentially Affecting Navigable Airspace. The contractor shall comply with all federal regulations pertaining to constructing, erecting or installing any object, temporary or permanent, which could potentially affect navigable airspace.

107.5.3 Material and Equipment. During construction hours, equipment, material and vehicles utilized in construction of the project will only be permitted on shoulders, medians or pavements where the locations are closed to traffic, properly signed and occupied by ongoing construction operations, unless otherwise approved by the engineer. Except in cases of emergency, construction equipment, material and vehicles will not be permitted on pavements or shoulders being utilized by traffic. If the contract specifies time periods the contractor will not be permitted to perform work, construction equipment or vehicles shall not enter or leave the construction area via the pavements handling traffic nor be operated on the pavements handling traffic within the construction area during the restricted time periods. During non-construction hours, construction equipment, material and vehicles will not be permitted within 30 feet of the edge of the pavement or shoulders carrying traffic unless the equipment, material and vehicles are located in a properly protected area, an off-site storage area or as otherwise directed by the engineer.

107.6 Bridges over Navigable Waters. All work on navigable waters shall be conducted such that free navigation of the waterways will not be interfered with and that existing navigable depths will not be impaired except as allowed by permit issued by the USCG or the USACE.

107.7 Use of Explosives. All blasting operations shall be conducted under the direct supervision of a licensed blaster as required by the Missouri Blasting Safety Act. When explosives are used in the prosecution of the work, the contractor shall use the utmost care to prevent bodily injury and property damage. The contractor shall be responsible for damage resulting from the use of explosives. The engineer will have the authority to suspend any unsafe blasting operation. The contractor shall be familiar and comply with the rules and regulations of any city, county, state or federal agency or any other agency that may have jurisdiction in the handling, loading, transporting, storage and use of explosives. All places used for explosives storage shall be marked clearly "DANGEROUS EXPLOSIVES".

107.7.1 Before beginning work, the contractor shall furnish the engineer letters of approval for the proposed operation from the appropriate regulating agencies. The contractor shall notify in writing the appropriate fire protection jurisdiction of the intent to store, transport or use explosives and shall provide proof of notice to the engineer. The contractor shall provide the engineer with copies of all permits, blasting logs and seismic monitoring data.

107.7.2 The contractor shall notify in advance each property owner, tenant and public utility company having structures or facilities close to the work of any intention to use explosives.

107.7.3 Removal of any item or material of any nature by blasting shall be done in such a manner and at such time as to avoid damage affecting the integrity of the design and to avoid damage to any new or existing structure, whether on Commission right of way or private property, included in or adjacent to the work. Unless the contract documents or the engineer restricts such operation, the contractor shall be responsible for determining a method of operation to ensure the desired results and the integrity of the completed work.

107.7.4 The contractor and surety shall indemnify and save harmless the State, the Commission, the Commission's agents, employees and assigns from any claim related to the possession, transportation, storage or use of explosives.

107.8 Preservation of Monuments and Artifacts.

107.8.1 Monuments. The contractor shall not disturb or damage any land monument or property landmark unless authorized by the engineer.

107.8.2 Human and Archaeological Remains. The contractor shall report to the engineer the discovery of human remains, artifacts, fossils and other items of historical, archaeological or geological significance discovered within the right of way during construction. Such items will remain in the Commission's custody and shall not be removed from the site unless directed by the engineer. The preservation and handling of such items shall be in accordance with [Sec 203.4.8](#).

107.9 Forest and Park Protection. Environmental and sanitary laws and regulations regarding the performance of work within or adjacent to state or national forests or parks shall be obeyed. The contractor shall keep the project site in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with the regulations and instructions issued by the forest or park supervisor. The contractor shall require employees and subcontractors, independently, and at the request of forest officials, to prevent and suppress forest fires, and to notify a forest official of the location and extent of any fire.

107.10 Environmental Protection. The contractor shall comply with all federal, state and local laws and regulations controlling pollution of the environment. Pollution of streams, lakes, ponds and reservoirs with fuels, oils, bitumens, chemicals or other harmful material and pollution of the atmosphere from particulate and gaseous matter shall be avoided.

107.10.1 Forging of streams and fill for temporary work not specified on design plans will not be permitted unless the plan for such operation is authorized by the Corps of Engineers, meets the approval of the engineer, complies with the current MoDOT Pollution Plan and results in minimum siltation to the stream. Temporary stream crossings shall not be constructed unless specifically designated as a condition of the Corps of Engineers Section 404 permit or a permit is obtained, and the temporary stream crossing is in accordance with [Sec 806](#).

107.10.2 When work areas or pits are located in or adjacent to streams, the areas shall be separated from the main stream by a dike or barrier to keep sediment from entering the stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

107.10.3 Disposal of Portland cement concrete residue and wash water, water from aggregate washing or other operations resulting in sediment shall be treated by filtration, settling basins or other means sufficient to reduce the sediment concentration to applicable limits established by MDNR.

107.11 Responsibility for Claims for Damage or Injury. The contractor and insurance company shall indemnify and save harmless the State, the Commission, the Commission's agents, employees and assigns from all claims or suits made or brought for bodily injury, death or property damage, arising from performance of the work to the extent of:

(a) The negligent acts or omissions of the contractor, subcontractors, suppliers or their respective officers, agents or employees.

(b) The creation or maintenance of a dangerous condition of or on the Commission's property or right of way, which condition occurred due to the acts or omissions of the contractor, subcontractors, suppliers or their respective officers, agents or employees or for which the contractor had knowledge of or could have had knowledge of the condition in time to warn of or repair said condition.

(c) The failure of the contractor, subcontractors, suppliers or their respective officers, agents or employees, to perform the work in accordance with the plans and specifications.

107.11.1 The contractor will not be required to defend, indemnify or hold harmless any other person, including the State, the Commission, or the Commission's agents, employees or assigns for any acts, omissions or negligence of other persons.

107.11.2 Neither the Commission nor the contractor, by execution of a contract, shall intend to or create a new or enlarge an existing cause of action in any third party. This provision shall not be interpreted to create any new liability that does not exist under the statutory limited waiver of sovereign immunity, or to waive or extinguish any defense that either party to this contract or their respective agents and employees may have to an action or suit by a third party.

107.12 Contractor's Responsibility for Work. From the earlier of the date of commencement of the work or the effective date of the notice to proceed, and until any work is accepted by the engineer, the work shall be in the custody and under the charge and care of the contractor. Issuance of a payment estimate on any part of the work done will not be considered as final acceptance of any work completed up to that time.

107.12.1 Damages to any portion of the work before the work is completed and accepted, caused by the action of the elements or from any other reason, shall be repaired or replaced at the contractor's expense. The contractor, at the contractor's option, may insure against any such damages. The Commission may, in its discretion, make such a payment, determined in accordance with [Sec 109.4](#), for damage to the work due to unforeseeable causes beyond the control of, and without fault or negligence on the part of the contractor, unless the contractor has been reimbursed for such damages by the contractor's insurer. Prior to reimbursement, the contractor shall furnish documentary evidence of all efforts to recover such repair costs.

107.12.2 The contractor shall immediately give written notice to the engineer of any pedestrian or vehicular accident. The contractor may be directed by the engineer to repair permanent Commission facilities that have been damaged by events that are beyond the control of the contractor. Reimbursement will be provided by the Commission, determined in accordance with [Sec 109.4](#), for the actual direct cost of labor, equipment and material, exclusive of overhead, indirect or consequential costs of profit. The Commission may elect to make such repairs in lieu of the contractor.

107.13 Insurance Requirements. The contractor shall procure and maintain at the contractor's expense until acceptance of the project by the engineer, insurance for all damages and losses imposed by law and assumed under the contract, of the kinds and in the amounts specified in [Secs 107.13.1](#) through [107.13.4](#). Before the contractor begins the work, the contractor shall require the insurance company or companies to furnish to the engineer evidence of such insurance showing compliance with these specifications. All insurance required in [Sec 107.13](#) shall be occurrence policies in a form acceptable to the engineer, and shall remain in force until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by formal acceptance by the engineer. Each policy or policy's declaration pages shall provide that the policy shall not be materially changed or canceled until the engineer has been given at least 30 days advance notice in writing. If any policy is canceled before the contract work is complete, a satisfactory replacement policy shall be in force, with notice and evidence of insurance submitted to the engineer, prior to the effective date of cancellation of the former policy. All evidence of insurance and notices shall be submitted to: Construction and Materials, MoDOT, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Upon request, the contractor shall promptly furnish the engineer with a complete copy of the policy. Failure to furnish evidence of proper insurance,

or complete insurance policies when requested, will result in the temporary suspension of work as provided in [Sec 108](#), and may result in other claims or actions for breach of contract or otherwise, as may be recognized at law or in equity.

107.13.1 Workers' Compensation Insurance. The contractor shall furnish evidence to the engineer that, with respect to the operations the contractor performs, the contractor carries workers' compensation insurance, or is qualified by the Missouri Division of Workers' Compensation as self-insured, and carries insurance for employer's liability sufficient to comply with all obligations under state laws relating to workers' compensation and employer's liability. The contractor shall require each subcontractor on the project to furnish the same evidence to the engineer. This evidence shall be furnished to and approved by the engineer prior to the time the contractor or subcontractor commences work on the site of the project.

107.13.2 Contractor's Liability Insurance with Additional Insured Parties.

107.13.2.1 Commercial Liability Insurance. The contractor shall carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri. Each such policy shall name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds, in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. These amounts are \$392,734 for any one person in a single accident or occurrence and \$2,618,230 for all claims arising out of a single accident or occurrence. Each policy shall be endorsed to cover liability arising from blasting if applicable, other inherently dangerous activities, and underground property damage. Each policy shall be endorsed to include broad form general liability, contractual liability and completed operations coverage.

107.13.2.2 Annual Updates. The contractor shall cause the insurer to update the contractor's liability insurance coverage minimums annually to correspond to the statutory limits as adjusted on an annual basis effective January 1st, and published in the Missouri Register as provided for in section 537.610 RSMo. If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits for that insurance coverage which shall be subject to adjustment periodically, in a written notice from the Commission to the Contractor.

107.13.2.3 Subcontractor's Coverage. If any part of the contract is subcontracted, each subcontractor, or the contractor on behalf of that subcontractor, shall obtain the same commercial general liability insurance and commercial automobile liability insurance coverage. The commercial general liability insurance shall name the same entities specified in [Sec 107.13.2.3](#) as additional insureds, and shall have the same separation of insureds conditions.

107.13.3 Navigable Waters Insurance Protection.

107.13.3.1 Description. Any contractor performing contract work on or adjacent to the Missouri and Mississippi rivers, and any other waters classified as "navigable waters of the United States" by the USACE, shall obtain insurance coverage in accordance with these specifications. The contractor may also obtain this insurance coverage for any subcontractor who will perform contract work under that contract. Employees of contractors or subcontractors that perform marine construction work on or near a waterway that is a navigable water of the United States may be subject to maritime law liability for injuries to employees working from vessels in waterways or working from nearby facilities in relation to construction on or over such waterways. Contractors and subcontractors for such work on

these navigable waters of the United States shall purchase coverages as required in [Secs 107.13.3.2.1](#) and [107.13.3.2.2](#).

107.13.3.2 Insurance Requirements. Jones Act Insurance, Longshore and Harbor Workers' Compensation Act Insurance, and Maritime Law Liability Insurance will apply as provided in [Secs 107.13.3.2.1](#) and [107.13.3.2.2](#).

107.13.3.2.1 Jones Act Insurance. Insurance shall be purchased by any contractor or subcontractor performing work on or near the Missouri or Mississippi Rivers, or any other navigable waters of the United States, for exposures under the Jones Act, 46 USC, with a minimum limit of \$2,000,000 per occurrence and in the aggregate, or as may be specified by law, whichever amount is higher. The contractor or subcontractor may obtain insurance covering employees under the Jones Act for any other project for which the contractor's insurer deems there is exposure. Insurance under this section covers any employee deemed by the courts as masters or members of crews of vessels who are entitled to seek recovery as "seamen" for injury or death under the Jones Act, or general maritime law. Such coverage may be provided through appropriate endorsements to the contractor's or subcontractor's workers' compensation policy.

107.13.3.2.2 US Longshore and Harbor Workers' Compensation Act Insurance. Insurance shall be purchased by any contractor or subcontractor performing work on or near the Missouri or Mississippi Rivers, or any other navigable waters of the United States, for exposures under the US Longshore and Harbor Workers' Compensation Act, USC, Title 33, with a minimum limit of \$2,000,000 per occurrence, and in the aggregate, or as may be specified by law, whichever amount is higher. The contractor or subcontractor may obtain insurance covering employees under the US Longshore and Harbor Worker's Act as defined in this section for any other project for which the contractor's insurer deems there is exposure. Insurance under this section covers any employees who do not qualify as masters or members of a crew of a vessel, but perform work in loading or unloading vessels or work from docks, barges or other platforms, and who may be deemed by the courts as entitled to seek compensation for injury or death under the US Longshore and Harbor Workers' Compensation Act. Such coverage may be provided through appropriate endorsements to the contractor's or subcontractor's workers' compensation policy.

107.13.4 Railroad Protective Liability Insurance. In addition to other forms of required insurance, the contractor shall carry railroad protective liability insurance when any of the contractor's work is to be performed within any railroad right of way. The policy shall be written using one of the following combinations of Insurance Services Office ("ISO") Form Numbers: CG 00 35 01 96 and CG 28 31 10 93, or CG 00 35 07 98 and CG 28 31 07 98. The name or names of the railroad companies to be insured will be specified in each contract. The minimum limits of the insurance will be established in the contract documents and provided to the contractors prior to the opening of bids. The contractor shall submit the original policy in its entirety and one duplicate to the Commission for review and transmittal to the railroad. No work will be permitted within any railroad's right of way until the railroad involved has reviewed and approved the insurance policy. Any day upon which the contractor cannot perform work due to such a policy not being approved by the railroad will not be counted as a working day under [Sec 108.7](#). Subcontractors for any part of the work that is sublet will not be required to obtain railroad protective liability insurance or provide evidence thereof, if the contractor's insurance for that purpose covers subcontractors.

107.13.5 Insurance with Other Than Missouri Companies. Any insurance policy required as specified above, if written by an insurance company organized in a state other than Missouri, shall be signed by an agent or broker licensed by the State of Missouri. In the case of policies written by companies organized in a state other than Missouri, the evidence of insurance submitted as authorized in the contract shall be signed by an agent or broker

licensed by the State of Missouri. Nothing in this provision limits or waives the requirement that each insurance policy shall be issued by a company authorized to issue such insurance in Missouri.

107.13.6 Combinations. Employer's liability insurance, commercial general liability insurance and commercial auto liability insurance and insurance under the Jones Act or Longshore and Harbor Workers Compensation Act or Maritime Law Liability requirements, as required by this section, may be arranged under a single policy for the full limits required or by a combination of underlying policies and an excess liability policy, or "umbrella" coverage, which follows the form of the underlying policy.

107.14 Third Party Liability. Neither the State of Missouri, including the Commission, nor the contractor, by execution of the contract including these specifications, intend to create a right of action in a third party beneficiary, except as specifically set out in these specifications and the contract. It is not intended by any required contractual liability in the contract or in these specifications that any third party beneficiary has a cause of action arising out of the condition of the project when completed in accordance with the plans and accepted by the Commission.

107.15 Personal Liability of Public Officials. There shall be no personal liability upon the Chief Engineer, or any member, employee or agent of the Commission in carrying out any of the provisions of the contract or in exercising any power or authority granted to the individual, it being understood that in such matters the individual acts as an agent and representative of the State, with official and public duty doctrine immunity. If any provision of the contract appears to impose a duty on such an individual, the duty will remain exclusively that of the Commission and will not be a personal duty or obligation of the individual.

107.16 Contractors That Are Not Resident In Missouri. Any contractor that is not a permanent resident of or domiciled in Missouri shall provide to the Commission proof of compliance with the Missouri "nonresident employers" financial assurance laws at Sections 285.230 to 285.234, RSMo, before the contractor performs any work on a project.

107.16.1 A nonresident contractor that is a "transient employer" as that term is defined in Section 285.230.1, RSMo, and 12 CSR 10-2.017(1)(A), shall file with the Commission a photocopy of the contractor's current transient employer's certificate of registration issued by the Missouri Department of Revenue before performing any work on a project. A nonresident contractor that is not classified by the Missouri Department of Revenue as a "transient employer" because the nonresident contractor has properly registered with the Missouri Department of Revenue and the Missouri Division of Employment Security, and has filed and paid Missouri state income taxes for more than 24 consecutive months, shall file with the Commission a photocopy of the contractor's certificate of registration, issued by the Missouri Department of Revenue, that it is not a "transient employer" before performing any work on a project.

107.16.2 The contractor shall require a nonresident subcontractor to file with the Commission a photocopy of the subcontractor's current transient employer's or alternate certificate of registration, as issued by the Missouri Department of Revenue, before that subcontractor performs any work on a project.

107.16.3 Any nonresident contractor or subcontractor that fails to file the financial assurance forms with the Missouri Department of Revenue as required by Missouri law will be prohibited from contracting for or performing labor on any project for a period of one year.

107.17 Basis of Payment. No direct payment will be made for compliance with [Sec 107](#), except as provided by [Sec 618](#).