02/25/2025

## Section 109. — MEASUREMENT AND PAYMENT

Include if project has quantities split between funding sources (for example FLAP and ERFO). Not required if funding sources are separated by schedule and option.

**109.01 Measurement of Work.** Add the following after the eighth paragraph:

Prepare, sign, and submit electronic measurement notes (pay notes and supporting field documentation) using EEBACS. Assign measurement note quantities to the correct funding source and account description for the work performed as designated in the plans. Measurement notes will be reviewed by the CO. Unacceptable measurement notes will be electronically rejected and returned. Correct rejected measurement notes and resubmit electronically.

Include if project does NOT have quantities split between funding sources. Use this for most projects.

**109.01 Measurement of Work.** Add the following after the eighth paragraph:

Prepare, sign, and submit electronic measurement notes (pay notes and supporting field documentation) using EEBACS. Measurement notes will be reviewed by the CO. Unacceptable measurement notes will be electronically rejected and returned. Correct rejected measurement notes and resubmit electronically.

*Asphalt Binder Price Adjustment Provision*

Include if all of the following apply:

(a) Duration longer than 1 year

(b) Construction Cost Estimate more than $5 million

(c) Approved by the COE and PM

**109.06A Asphalt Binder Price Adjustment Provision.** (Added Subsection).

**(a) General.** The Asphalt Binder Price Adjustment Provision provides for a price adjustment in the form of payment to the Contractor or a rebate to the Government for fluctuations in the cost of asphalt binder used in the performance of applicable construction work. Price adjustment provisions are applicable only to the asphalt binder, as defined in Subsection 702.01, and incorporated in the following contract pay items:

Edit this list to contain only items that apply to the contract. Be sure to enter the correct bid item number and description.

**(1)** <<<40101-XXXX Asphalt concrete pavement, ....>>>

**(2)** <<<40201-XXXX Asphalt concrete pavement, ….>>>

The price adjustment provisions are also applicable to eligible pay items when the Government adds work to the contract.

The provision will remain in effect throughout the duration of the contract. Enactment of the Asphalt Binder Price Adjustment Provision will only be considered when the increase or decrease in the price of asphalt binder exceeds 10 percent.

The Asphalt Binder Price Adjustment Provision is intended to reduce but not eliminate the cost effects of price uncertainty to the Contractor and the Government for asphalt binder used in the construction of this contract. It provides for sharing by the Government a portion of the Contractor’s risk, which could result from unusual price fluctuations. The provision is not intended to compensate the Contractor for normal day-to-day fluctuations and seasonal changes or to serve as a guarantee of full compensation for asphalt binder price fluctuations.

Contact the Construction Support Team for the applicable region.

The Construction Support Team will calculate and provide the base price index (shown in underline below in (b)(1). The BPI will be inserted into the spec by Acquisitions.

**(b) Price indexes.** The Government will post a monthly performance price index at <https://highways.dot.gov/federal-lands/business/escalation-factors-cfl>.

Poten & Partners, Inc. publishes a weekly report (*Asphalt Weekly Monitor*®) on high and low selling prices for states in five regions throughout the United States including East Coast/Northeast, Mid-Continent/Midwest, Gulf Coast/Mid-South, Rocky Mountains, and West Coast/Northwest.

Weekly high and low selling price data reported for <<<Select applicable region: East Coast/Northeast, Mid-Continent/Midwest, Gulf Coast/Mid-South, Rocky Mountains, or West Coast/Northwest>>> will be averaged and used to establish a base price index (BPI) for this project and a monthly performance price index (MPPI) for the duration of the contract. These indexes are defined as follows:

**(1) Base price index.** The BPI is the price index posted by the Government as determined by arithmetic average, as specified above, shown in the four *Asphalt Weekly Monitor*® publications immediately before contract award. It is as follows:

BPI for asphalt binder = $ See Note (1) below per ton

Note (1): BPI calculated by the Government and inserted here immediately before contract award.

**(2) Monthly performance price index.** The MPPI is the monthly price index at the time of performance of applicable work as determined by arithmetic average, as specified above, shown in the four *Asphalt Weekly Monitor*® publications issued before the last Wednesday of the month (the MPPI during which asphalt binder is used in the performance of applicable construction work).

**(c) Price adjustments.** Price adjustments calculated by the Government are not intended to reflect the Contractor’s actual purchase price. The ratio of the monthly performance price index and the base price index (MPPI/BPI) is calculated and used to determine price adjustments as follows:

**(1) No price adjustment.** when the ratio MPPI/BPI falls within the range of 0.90 to 1.10, no price adjustment will be made for any asphalt binder used in construction work performed during the relevant month.

**(2) Government rebate.** When the ratio MPPI/BPI is calculated to be less than 0.90, the Government is due a rebate determined according to the following formula:

Government Rebate = [0.90 – (MPPI/BPI)] (BPI) (Q)

**(3) Contractor payment.** When the ratio MPPI/BPI is calculated to be greater than 1.10, the Contractor is due additional payment determined according to the following formula:

Contractor Payment = [(MPPI/BPI) – 1.10] (BPI) (Q)

The following definitions are applicable to both the Government rebate and the Contractor payment formulas:

MPPI = Monthly Performance Price Index for the month during which asphalt binder is used in the performance of applicable construction work.

BPI = Base Price Index that is established immediately before contract award.

Q = Quantity in tons of asphalt binder for each pay item that was used on the project during the progress payment period. The quantity will be calculated using the asphalt content of the approved mix design and the following formula:

Q = Asphalt Concrete Pavement tons placed x (% Asphalt/100)

**(d) Price adjustment compensation.** Monthly adjustments will be accrued. The final price adjustment will be paid, or rebated, after completion of all work for each eligible pay item. The Contractor may request in writing a partial price adjustment payment once every 12 months, or when the unpaid accrued increase exceeds $10,000. The Government will take a rebate when the deductive accrual exceeds $10,000.

No price adjustments will be made for work performed beyond the Government-approved contract completion date.

The maximum allowable monthly and final price adjustment to the Contractor or rebate to the Government is limited to a (MPPI/BPI) ratio of 1.6 and 0.4, respectively.

*Fuel Price Adjustment Provision*

Include if all of the following apply:

(a) Duration longer than 1 year

(b) Construction Cost Estimate more than $5 million

(c) Approved by the COE and PM

**109.06B Fuel Price Adjustment Provision.** (Added Subsection).

**(a) General.** The Fuel Price Adjustment Provision contained herein provides for a price adjustment in the form of payment to the Contractor or a rebate to the Government for fluctuations in the cost of diesel fuel consumed in the performance of applicable construction work. The price adjustment provisions are applicable only to contract items listed as eligible pay items in Table 109-1 below. The price adjustment provisions are also applicable to these eligible pay items when the Government adds work to the contract.

The provision will remain in effect throughout the duration of the contract. Enactment of the Fuel Price Adjustment Provision will only be considered when the increase or decrease in the price of diesel fuel as defined herein exceeds 10 percent.

The Fuel Price Adjustment Provision is intended to reduce but not eliminate the cost effects of price uncertainty to the Contractor and the Government for diesel fuel used in the construction of this contract. It provides for sharing by the Government in a portion of the Contractor’s risk, which could result from unusual price fluctuations. The provision is not intended to compensate the Contractor for normal day-to-day fluctuations and seasonal changes or to serve as a guarantee of full compensation for diesel fuel price fluctuations.

**(b) Price indexes.** The Government will post a monthly performance price index at: <https://highways.dot.gov/federal-lands/business/escalation-factors-cfl>.

If the project is in California replace Gross Ultra Low Sulfur, No. 2 Diesel Fuel below with “Gross CARB Ultra Low Sulfur, No. 2 Diesel Fuel”.

Contact the Construction Support Team for the applicable rack city.

<<<Gross Ultra Low Sulfur, No. 2 Diesel Fuel>>> using price data obtained from the Oil Price Information Service (OPIS), which publishes a weekly newsletter on the distillate wholesale rack prices for major cities throughout the United States. The OPIS 5-day newsletter average rack price reported for <<<insert the applicable rack city>>> will be averaged and used to establish a base price index (BPI) for this project and a monthly performance price index (MPPI), for the duration of the contract. These indexes are defined as follows:

**(1) Base price index.** The BPI is the price index posted by the Government as determined by arithmetic average, as specified above, shown in the four weekly publications immediately before contract award. It is as follows:

If the project is in California replace Gross Ultra Low Sulfur, No. 2 Diesel Fuel below with “Gross CARB Ultra Low Sulfur, No. 2 Diesel Fuel”.

BPI for <<<Gross Ultra Low Sulfur, No. 2 Diesel Fuel>>> = $ See Note (1) below per gallon

Note (1): BPI calculated by the Government and inserted here immediately before contract award.

**(2) Monthly performance price index.** The MPPI is the monthly price index at the time of performance of applicable work as determined by arithmetic average, as specified above, shown in the four weekly publications issued before the last Wednesday of the month (the MPPI during which diesel fuel is consumed in the performance of applicable construction work).

**(c) Price adjustments.** Price adjustments calculated by the Government are not intended to reflect the Contractor’s actual purchase price. The ratio of the monthly performance price index and the base price index (MPPI/BPI) is calculated and used to determine price adjustments for eligible pay items as follows:

**(1) No price adjustment.** when the ratio MPPI/BPI falls within the range of 0.90 to 1.10, no price adjustment will be made for any diesel fuel consumed in construction work performed during the relevant month.

**(2) Government rebate.** When the ratio MPPI/BPI is calculated to be less than 0.90, the Government is due a rebate determined according to the following formula:

Government Rebate = [0.90 – (MPPI/BPI)] (BPI) (Q) (FUF)

**(3) Contractor payment.** When the ratio MPPI/BPI is calculated to be greater than 1.10, the Contractor is due additional payment determined according to the following formula:

Contractor Payment = [(MPPI/BPI) – 1.10] (BPI) (Q) (FUF)

The following definitions are applicable to both the Government rebate and the Contractor payment formulas:

MPPI = Monthly Performance Price Index for the month during which motor diesel fuel is consumed in the performance of applicable construction work.

BPI = Base Price Index that is established immediately before contract award.

Q = Quantity of work on the project during the progress payment period for eligible pay items shown in Table 109-1 below. The Government, to agree with the units associated with the applicable Fuel Usage Factor, will convert work quantities, as necessary.

FUF = Fuel Usage Factor shown in Table 109-1 applicable to No. 2 diesel fuel.

**Table 109-1**

**Fuel Usage Factors**

| **Pay Items** | **Fuel Usage Factor(2)** |
| --- | --- |
| **Section 204 – Excavation and Embankment**20401 Roadway excavation20402 Subexcavation20403 Unclassified borrow20404 Unclassified borrow(1)20410 Select borrow20411 Select borrow(1)20420 Embankment construction20421 Rock excavation | 0.30 gallons per cubic yard |
| **Section 301 – Untreated Aggregate Courses**30101 Aggregate base30102 Aggregate base(1)30103 Aggregate base(1)30105 Subbase30106 Subbase(1)30107 Subbase(1)30110 Aggregate Surface Course30111 Aggregate Surface Course(1)30112 Aggregate Surface Course(1)  | 0.70 gallons per ton |
| **Section 305 – Full Depth Reclamation (FDR) with Cement**30501 FDR with Cement(1)30502 FDR with Cement | 0.30 gallons per square yard |
| **Section 306 – FDR with Asphalt**30601 FDR with Emulsified Asphalt(1) 30602 FDR with Emulsified Asphalt30603 FDR with Foamed Asphalt(1)30604 FDR with Foamed Asphalt | 0.30 gallons per square yard |
| **Section 308 – Emulsified Asphalt- Treated Base Course**30801 Emulsified asphalt treated aggregate base30802 Emulsified asphalt treated aggregate base(1)30803 Emulsified asphalt treated aggregate base(1) | 0.70 gallons per ton |
| **Section 310 – Cold In-Place (CIP) Recycled Asphalt Base Course**31001 CIP Recycled asphalt base(1)31002 CIP Recycled asphalt base | 0.15 gallons per square yard |
| **Section 311 – Stabilized Aggregate Surface Course**31101 Stabilized aggregate surface course(1)31102 Stabilized aggregate surface course(1)31103 Stabilized aggregate surface course | 0.70 gallons per ton |
| **Section 401 – Asphalt Concrete Pavement by Gyratory Mix Design Method**40101 Asphalt concrete pavement, gyratory mix40102 Asphalt concrete pavement, gyratory mix wedge and leveling course | 2.40 gallons per ton |
| **Section 402 – Asphalt Concrete Pavement by Hveem or Marshall Mix Design Method**40201 Asphalt concrete pavement, Hveem or Marshall mix40202 Asphalt concrete pavement, Hveem or Marshall mix, wedge and leveling course | 2.40 gallons per ton |
| **Section 405 – Open-Graded Asphalt Friction Course**40501 Open-graded asphalt friction course | 2.40 gallons per ton |

(1) The Government will convert pay item quantities to match Fuel Usage Factor units.

(2) Fuel Usage Factor based on U.S. gallons.

**(d) Price adjustment compensation.** Monthly adjustments will be accrued. The final price adjustment will be paid, or rebated, after completion of all work for eligible pay items. The Contractor may request in writing a partial price adjustment payment once every 12 months, or when the unpaid accrued increase exceed $10,000. The Government will take a rebate when the deductive accrual exceeds $10,000.

No price adjustments will be made for work performed beyond the Government-approved contract completion date.

The maximum allowable monthly and final price adjustment to the Contractor or rebate to the Government is limited to a (MPPI/BPI) ratio of 1.6 and 0.4, respectively.

Use on all projects.

**109.08(a) General.** Delete the last sentence and substitute the following:

The CO may withhold partial progress payment according to Subsection 109.08(h) for failure to make satisfactory progress until a construction schedule or schedule update is approved.

**109.08(c) Government’s receiving report.** Delete this Subsection and substitute the following:

The Government’s receiving report will be developed using the measurements and quantities from Pay Notes received by the CO in EEBACS and determined acceptable.

**109.08(d) Closing date and invoice submittal date.** Add the following:

No closing dates will be permitted from September 1 to October 5. Do not submit invoices between September 1 and October 5.

**109.08(e)(1) Proper invoices.** Delete this Subsection and substitute the following:

**(1) Invoices received by the 7th day following the closing date.**

*(a) Proper invoices.* If the invoice meets the requirements of Subsection 109.08(b), and the quantities and unit prices shown on the Contractor's invoice agree with the corresponding quantities and unit prices shown on the Government's receiving report, the invoice will be paid.

*(b) Defective invoices.* If the invoice does not meet the requirements of Subsection 109.08(b), or if any of the quantities or unit prices shown on the Contractor's invoice exceed the corresponding quantities and unit prices shown on the Government's receiving report, the invoice will be deemed defective, and the Contractor so notified according to FAR Clause 52.232-27(a)(2). Defective invoices will not be corrected by the Government and will be returned to the Contractor within 7 days after the Government's designated billing office receives the invoice.

Revise and resubmit returned invoices by the 18th day following the closing date. The CO will evaluate the revised invoice. If the invoice is deemed proper, it will be forwarded for processing within 7 days of receipt. If the invoice still does not meet the requirements of Subsection 109.08(b), the Contractor will be so notified according to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the revised invoice meets the requirements of Subsection 109.08(b), but still has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Government's receiving report, the Government's data for that item or work will be used. The Contractor's invoice, as revised by the Government's receiving report, will be forwarded for processing by the 23rd day following the closing date. The Contractor will be notified by the 23rd day following the closing date of the reasons for any changes to the invoice.

**109.08(e)(2) Defective invoices.** Delete this Subsection and substitute the following:

**(2) Invoices received between the 8th and 16th day following the closing date.**

*(a) Proper invoices.* If the invoice meets the requirements of Subsection 109.08(b), and the quantities and unit prices shown on the Contractor's invoice agree with the corresponding quantities and unit prices shown on the CO's receiving report, the invoice will be deemed proper and forwarded for processing within 7 days of receipt.

*(b) Defective invoices.* If the invoice does not meet the requirements of Subsection 109.08(b), the invoice will be deemed defective, the Contractor so notified according to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the invoice meets the requirements of Subsection 109.08(b) but has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Government's receiving report, the Government's data for that item of work will be used. The Contractor's invoice, as revised by the Government's receiving report, will be forwarded for processing within 7 days of the Government's receipt of the invoice. The Contractor will be notified of the reasons for any changes to the invoice.

**109.08(f) Partial payments.** Delete this Subsection and substitute the following:

**(f) Partial payments.** Progress payments may include partial payment for material to be incorporated in the work according to FAR Clause 52.232-5(b)(2), provided the material meets the requirements of the contract and is delivered on, or in the vicinity of, the project site or stored in acceptable storage places.

Partial payments for stockpiled manufactured material (aggregates) will be based on Contractor process control test results. If test results show the material to be out-of-specification, or in “reject” where statistical evaluation procedures are used, no payment for stockpiled materials will be made.

Partial payment for material does not constitute acceptance of such material for use in completing items of work. Partial payments will not be made for living or perishable material until incorporated into the project.

Individual and cumulative partial payments for preparatory work and material will not exceed the lesser of:

**(1)** 80 percent of the contract bid price for the item; or

**(2)** 100 percent of amount supported by copies of invoices submitted.

The quantity paid will not exceed the corresponding quantity estimated in the contract. The CO may adjust partial payments as necessary to protect the Government.