

ENGINEERING DIRECTIVES AND STANDARDS

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SUBJECT: POLICY ON DAMAGE TO ACTIVE CONSTRUCTION PROJECTS DUE TO “ACTS OF GOD”

1. **PURPOSE:** Section 107.19 of the *Louisiana Standard Specifications for Roads and Bridges*, states that the Department of Transportation and Development (“DOTD” or “Department”) shall bear the expense to repair unavoidable damage to the work due to Acts of God. This policy statement provides guidance on the types of expenditures DOTD will fund, and the measurement and payment methods to be used.
2. **POLICY:** Acts of God are not the fault of the Department or the contractor. The Department’s obligations to the contractor are limited to paying for the repair or replacement, as directed by the engineer, of work damaged or destroyed by the Act of God, as provided by this EDSM. While appropriate time extension will be granted by DOTD, the contractor is not entitled to compensable delay damages due to Acts of God. By contract, the costs associated with Acts of God are a shared risk. DOTD and the public bear the costs of repairing or replacing the work, as limited by this EDSM. Road users bear costs associated with the delayed use of the completed project. The contractor and its insurers bear all other costs the contractor incurs, including the contractor’s delay costs and losses due to the contractor’s decision to self-insure, to the contractor’s failure to carry sufficient property damage or business interruption insurance to cover its costs, or the contractor’s insurer’s failure to cover the contractor’s costs. DOTD and the contractor’s precise obligations are described in subparagraphs of this EDSM.

A. Damage to the Work

DOTD’s obligation to bear the expense of repairs to or replacing the work is limited to materials or equipment at the project site and within the right-of-way that is or will become a permanent part of the completed roadway, bridge, or other structure. DOTD is also responsible for repairing damage to any plan-required temporary assets not owned by the state but required by the contract, such as detour roads or bridges that cannot be removed from potential damage. However, DOTD is not responsible for any damages associated with an Act of God that could have been avoided by reasonable safeguarding of the work by the contractor. (See Subsections 107.17 and 107.19.)

The contractor shall be reimbursed for the cost of repairing damage to or replacing the work in accordance with the contract’s unit prices or, where appropriate, force accounting under Subsection

109.04. Nonetheless, in no case will an Act of God predicate an allowance for increased expense under Subsection 109.03 (Compensation for altered quantities).

The contractor’s equipment, forms, signage, support vehicles and other items used during the construction process are insurable movables, whose repair or replacement is the responsibility of the contractor.

B. Project Delay:

Acts of God may result in delays to the project’s completion date as damages are investigated and repairs or replacement completed. Appropriate time extensions to complete these tasks will be provided by DOTD in accordance with Subsection 108.07 (Determination and extension of contract time).

C. Other Expenses:

Acts of God may lead to escalations in the cost of labor, material, equipment, subcontractors, and other resources; shortages of these resources; and other circumstances that may result in increased cost to the contractor to complete the contract or delays. DOTD is not responsible for these increased costs, including the cost of delay, escalated costs or resources, the cost to transport these resources from other states or regions, inefficiencies, or any other similar costs associated with the Act of God except as provided above.

3. OTHER ISSUANCES AFFECTED: This EDSM expounds upon Subsection 107.19 (b) and any directives, memoranda or instructions in conflict with this policy are hereby rescinded.

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