

Section 108—Prosecution and Progress

108.01 Subletting of Contract

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or Contracts, or any portion thereof, or of his/her right, title, or interest therein, without written consent of the Engineer. For Subcontracts, consent of the Engineer will not be considered until after award of the Contract.

In case such consent is given, the Contractor will be permitted to sublet a portion thereof, but shall perform, with his/her own organization, work amounting to not less than thirty percent (30%) of the total Contract cost, including materials, equipment, and labor.

As further exception, any items designated as Specialty Items may be performed by Subcontract and the cost of any such Specialty Items so performed by Subcontract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor with his/her own organization.

Purchase of materials by the Prime Contractor for use by a Subcontractor will not be allowed when computing the 30% requirement.

No Subcontracts, or transfer of Contract, shall in any case release the Prime Contractor of his/her liability under the Contract and Bonds. No Subcontractor shall commence work in advance of the written approval of the Subcontract by the Department. Except for certain items exempted by the State Transportation Board, or for Subcontracts totaling \$250,000 or less, each Subcontractor shall be prequalified or registered with the Department. Each Subcontract for a Registered Subcontractor shall not exceed \$1,000,000 and Subcontracts for Prequalified Contractors shall not exceed their current capacity. Prequalified or Registered Subcontractors shall be qualified or registered with the Department in accordance with Chapter 672-5 of the Rules and Regulations Governing the Prequalification of Prospective Bidders adopted by the State Transportation Board.

In the event any portion of a Subcontract is further sublet, all of the provisions governing subletting, including registration and written approval by the Engineer, shall apply.

This Sub-Section shall not apply to Contracts between the Department and counties, municipalities, or other State agencies.

All subcontract agreements between the Prime Contractor and subcontractor shall be in writing and shall contain all of the Federal-Aid requirements and pertinent provisions of the Prime Contract. The Prime Contractor shall, upon request by the Engineer, furnish copies of any subcontract agreement to the Department within ten (10) days of such request. This provision applies to all subcontracts, including second or multi-tier subcontracts.

According to the provisions stated above, the following items are designated Specialty Items for general transportation system construction and building construction whenever they appear in the Contract:

General Transportation System Contracts

- Grassing items
- Fencing items
- Highway lighting items
- Sign items
- Guardrail items (except bridge handrail)
- Utility items
- Comfort and convenience items in rest areas
- Landscaping items
- Pressure grouting, slab removal and replacement
- Permanent traffic markings

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- Signal systems
- Railroad track work above sub-ballast
- Drilled caisson foundations
- Construction layout
- Asphaltic concrete leveling and asphalt concrete patching (when used on surface treatment and slurry seal resurfacing contracts)

Building Contracts

- Structural Steel
- Plumbing
- Heating, ventilation, and air conditioning (HVAC)
- Electrical
- Telephone service
- Masonry
- Glass work
- Drywall
- Ceiling installation
- Roofing
- Carpentry
- Floor covering
- Raised flooring
- Landscaping
- Security system
- Fire protection
- Gutters
- Painting
- Insulation
- Doors
- Elevators
- Construction layout

The Contractor's cost for Construction Layout shall be fully documented prior to deduction from the original Contract amount)

108.02 Notice to Proceed

The delivery to the Contractor of a notice, stating that construction is authorized, constitutes Notice to Proceed. The Contractor shall do no work under the Contract until receipt of the Notice to Proceed, and the Department will not be obligated to pay for work done prior to receipt of the Notice to Proceed.

Within 10 calendar days after the Notice to Proceed has been issued, the Contractor shall begin the Work. Contract Time charges for Available Day and Calendar Day projects will begin on the date the Contractor starts to work, or 10 days after the Notice to Proceed, whichever occurs first. For Completion Date projects Contract Time charges shall begin on the day after the Notice to Proceed.

Where the Contractor's access to part of the right-of-way is restricted, either the Special Provisions in the Contract or the Conditional Notice to Proceed will indicate such restrictions. The Department may, at its option, issue a Conditional Notice to Proceed if, in the opinion of the Engineer, a sufficient portion of the right-of-way is available to the Contractor to allow construction to proceed.

108.03 Prosecution and Progress

The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the Project in accordance with the Plans and Specifications within the time set forth in the Proposal. Unless otherwise required by the Engineer, each operation shall begin as soon after the Contract is awarded as conditions will permit. Each class of work will be expected to continue from the date it is begun until it is completed.

The Contractor shall furnish the Engineer, for approval, a Progress Schedule immediately following the receipt of the Notice to Proceed. Unless otherwise specified, the schedule shall be prepared on forms furnished by the Department or an acceptable critical path schedule will be used as the basis for establishing the controlling items of work and as a check on the progress of The Work. This Schedule will not be required on resurfacing projects.

Approval of the Progress Schedule shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Contractor of providing sufficient materials, equipment, and labor to guarantee the completion of the Project in accordance with the Plans, Specifications, and Special Provisions within the time set forth in the Proposal. Contract Time as shown in the Proposal is the allowable time. The Contractor's proposed Progress Schedule may indicate a completion date in advance of the Contract Specified Completion Date; however, the Department will not be liable in any way for the Contractor's failure to complete the project prior to the Contract Specified Completion Date.

At least 48 hours before commencing The Work, the Contractor shall notify the Engineer of his intention to begin so that proper inspection may be provided. Should the prosecution of The Work be discontinued for any reason, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

If the Contractor's operations are materially affected by changes in the Plans or in the amount of work, or if he has failed to comply with the approved schedule, the Contractor shall submit a revised Progress Schedule, if requested by the Engineer, which schedule shall show how he proposes to prosecute the balance of The Work. The Contractor shall submit the revised Progress Schedule within 10 days after the date of the request. The Contractor shall incorporate into every Progress Schedule submitted, any contract requirements regarding the order of performance of portions of The Work.

No payments will be made to the Contractor while he is delinquent in the submission of a Progress Schedule or a revised Progress Schedule.

108.04 Limitation of Operations

The Contractor shall conduct The Work at all times in such a manner and in such sequence as will assure the least interference with traffic and shall provide for smooth and safe traffic flow. It shall be the decision of the Engineer as to what will assure the least interference with traffic and smooth, safe traffic flow. Also, the Engineer may require the Contractor to finish a section on which work is in progress before work is started on any additional sections if the opening of such section is essential to public convenience.

108.05 Character of Workers, Methods and Equipment

The Contractor shall at all times employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by these Specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

Any person employed by the Contractor or by any Subcontractor who the Engineer determines does not perform work in a proper and skilled manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith

by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of The Work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of The Work, the Engineer may suspend The Work by written notice until such orders are complied with.

All equipment that is proposed to be used on The Work shall be of sufficient size and in such mechanical condition as to meet the requirements of The Work and to produce a satisfactory quality of work. Equipment used on any portion of the Project shall be such that no injury to the roadway, adjacent property, or other highways will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he demonstrates to the satisfaction of the Engineer will accomplish The Work in conformity with the requirements of the Contract.

When the Contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, he may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved nor in Contract Time as a result of authorizing a change in methods or equipment under these provisions.

108.06 Temporary Suspension of Work

The Engineer has the authority to suspend The Work wholly or in part, for as long as he may deem necessary, because of unsuitable weather, or other conditions considered unfavorable for continuing The Work, or for as long as he may deem necessary by reason of failure of the Contractor to carry out orders given, or to comply with any provisions of the Contract. No additional compensation will be paid the Contractor because of suspension. If it becomes necessary to stop The Work for an indefinite period, the Contractor shall store all materials in such a way that they will not impede the traveling public unnecessarily or become damaged in any way, and he shall take every precaution to prevent damage or deterioration of The Work done; provide suitable drainage of the roadway, and erect temporary structures where necessary. The Work shall be resumed when conditions are favorable or when corrective measures satisfactory to the Engineer have been applied; when, and as ordered by the Engineer in writing. The Contractor shall not stop The Work without authority.

If The Work is stopped by any temporary or permanent injunction, court restraining order, process or judgment of any kind, directed to either of the parties hereto, then such period or delay will not be charged against the Contract Time nor shall the Department be liable to the Contractor on account of such delay or termination of work.

108.07 Determination of Contract Time

The definition of Contract Time and when Contract Time officially begins is stated in [Subsection 101.19](#). After the Contract has been signed by all parties, Contract Time becomes the specified period of time, agreed upon by the Contractor, the Surety, and the Department, during which all Items and quantities of work set forth in the Proposal and included in the original Contract will be completed.

A. Available Day Contracts

An available day is defined in [Subsection 101.04](#). The Engineer will furnish the Contractor a written monthly statement showing the total number of available days charged through the preceding month. The Contractor will be allowed one

week in which to file a written protest setting forth in what respect said statement is incorrect, otherwise the statement shall be deemed to have been accepted by the Contractor as correct.

B. Calendar Day Contracts

When the Contract Time is on a calendar day basis it shall consist of the number of calendar days stated in the Contract counting from the date Contract Time starts as defined in [Subsection 108.02](#), including all Sundays, holidays, and non-work days.

C. Completion Day Contracts

When the Contract completion time is a fixed date, it shall be the date on which all work on the Project shall be completed.

D. Settlement Periods

Settlement Periods shall be computed in calendar days unless otherwise stated in the contract documents.

E. Extension of Contract Time

If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the Proposal, the Contract Time allowed for performance shall be extended on a basis commensurate with the amount and difficulty of the added work as determined by the Engineer, whose decision shall be final and conclusive.

If the estimated time for the consolidation of embankments at bridge ends is extended, the Contract Time will be extended as provided in [Subsection 208.3.05.B.3](#).

If the normal progress of The Work is delayed for reasons beyond his control, the Contractor shall, within 15 days after the start of such delay, file a written request to the Engineer for an extension of time setting forth therein the reasons and providing complete documentation for the delay which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that The Work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion in such amount as the conditions justify.

Any authorized extension of the Contract Time will be in full force and effect the same as though it was the original Contract Time.

F. Suspension of Time Charges

If the Engineer suspends the Work by reason of failure of the Contractor to carry out written orders given, or to comply with any provision of the Contract, Time Charges will continue through the period of such suspension.

If the Contractor is declared in default, Time Charges will continue.

Except on Completion Date Contracts, Time Charges will not be made against the Contract when the only remaining controlling items of work are shut down by the Engineer because of seasonal limitations or temperature controls.

G. When Time Charges Cease

Time charges will cease when all work on Contract Items have been completed to the satisfaction of the Engineer. The only exception to this requirement is that a satisfactory growth of vegetative cover and application(s) of nitrogen will not be required when Time Charges are stopped, provided all filling of washes and repairs to planted areas have been accomplished. Maintenance of planted areas in order to produce a satisfactory growth after Time Charges have stopped will be performed without assessment of liquidated damages provided this work is diligently prosecuted. If, during this waiting period, maintenance of any part of the Project is inadequate, the Engineer may resume Time Charges 10 days after written notification to the Contractor and will continue Time Charges until the unsatisfactory conditions are corrected.

108.08 Failure or Delay in Completing Work on Time

Time is an essential element of the Contract, and any delay in the prosecution of The Work may inconvenience the public, obstruct traffic, or interfere with business. In addition to the aforementioned inconveniences, any delay in completion of The Work will always increase the cost of engineering. For this reason, it is important that The Work be pressed vigorously to completion. Should the Contractor or, in case of default, the Surety fail to complete The Work within the time stipulated in the Contract or within such extra time that may be allowed, charges shall be assessed against any money due or that may become due the Contractor in accordance with the following schedule:

Schedule of Deductions for Each Day of Overrun in Contract Time			
Original Contract Amount		Daily Charges	
From More Than	To and Including	Available Day	Calendar Day or Completion Date
\$0	\$50,000	\$105	\$ 75
\$50,000	\$100,000	\$150	\$110
\$100,000	\$500,000	\$210	\$150
\$500,000	\$1,000,000	\$350	\$225
\$1,000,000	\$2,000,000	\$420	\$300
\$2,000,000	\$5,000,000	\$630	\$450
\$5,000,000	\$10,000,000	\$840	\$600
\$10,000,000	\$20,000,000	\$1,050	\$800
\$20,000,000	\$40,000,000	\$1,900	\$1,000
\$40,000,000	—	\$4,000	\$2,100

When the Contract Time is on either the calendar day or completion date basis, the schedule for calendar days shall be used. When the Contract Time is based on an available day basis, the schedule for available days shall be used.

For each Calendar Day or Available Day, as specified, that any work shall remain uncompleted after the contract time specified for the completion of the Work required by the Contract, the sum specified in the Contract will be deducted from any money due the Contractor, not as a penalty, but as liquidated damages; provided however, that due account shall be taken of any adjustment of the contract time for completion of the work granted under the provisions of [Subsection 108.07.E](#).

The Department may waive such portions of the liquidated damages as may accrue after the work is in condition for safe and convenient use by the traveling public.

A. Liquidated Damages

The amount of such charges is hereby agreed upon as fixed liquidated damages due the Department after the expiration of the time for completion specified in the Contract. The Contractor and his Surety shall be liable for liquidated damages in excess of the amount due the Contractor on the final payment.

These fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the Department and the Contractor due the uncertainty and impossibility of making a determination as to the actual and consequential damages which are incurred by the Department, the State, and the general public as a result of the failure on the part of the Contractor to complete The Work on time.

- 1. Deduction From Partial Payments:** Liquidated damages, as they accrue, will be deducted from periodic partial payments.

2. **Deduction From Final Payment:** The full amount of liquidated damages will be deducted from final payment to the Contractor and/or his Surety.
3. **No Liquidated Damages Charged for Delay by the Department:** In case of default of the Contract and the subsequent completion of The Work by the Department as hereinafter provided, the Contractor and his Surety shall be liable for the liquidated damages under the Contract, but no liquidated damages shall be chargeable for any delay in the final completion of The Work by the Department due to any unreasonable action, negligence, omission, or delay of the Department. In any suit for the collection of or involving the assessment of liquidated damages, the reasonableness of the amount shall be presumed. The liquidated damages referred to herein are intended to be and are cumulative and shall be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under the Contract.

B. No Waiver of Department's Rights

Permitting the Contractor to continue and finish The Work or any part of it after the expiration of the time allowed for completion or after any extension of time, shall not operate as a waiver of the rights of the Department under the Contract.

108.09 Default of Contract

If the Contractor fails to begin The Work within the time specified, or fails to perform The Work with sufficient workers, equipment, or materials to ensure its prompt completion, or performs The Work unsuitably, or neglects or refuses to remove materials or perform anew such work as shall be rejected as defective and unsuitable, or discontinues the prosecution of The Work, or from any other cause whatsoever does not carry on The Work in an acceptable manner, or becomes insolvent or is adjudicated a bankrupt, or commits any act of bankruptcy or insolvency, or allows any final judgement to stand against him unsatisfied for a period of 10 days, or makes an assignment for the benefit of creditors, or fails to comply with the contract requirements regarding wage payments or EEO requirements, or fails to sign the standard release form as stipulated in [Subsection 109.08](#) "Final Payment," the Engineer may give notice in writing by registered or certified mail to the Contractor and the Surety, stating the nature of the deficiencies and directing that The Work including its progress be remedied and made satisfactory.

If, within 10 days after such notice, the Contractor or his Surety does not proceed in satisfactory way to remedy the faults specified in said notice, the Engineer will notify the Contractor and his Surety by registered or certified mail that the Contractor is in default and, by the same message, direct the Surety to take over The Work including all of the obligations pertaining to the Contract. If the Surety takes over the work in a satisfactory way within 10 days after such notice of default, the Department will thenceforth pay to the Surety the amounts due and to become due under the Contract, less all deductions provided herein including liquidated damages. The Department shall not be liable for any sums not due under the Contract and shall not be made a party to any dispute between the Contractor and the Surety.

If the Contractor is declared in default and The Work and other Contract obligations are taken over by the Surety as required by its Bond, and when all parts of The Work have been completed and found to be satisfactory by the Engineer, as provided for in [Subsection 105.16](#) "Final Inspection and Acceptance," the said Surety is hereby constituted the attorney in fact of the Contractor for the purpose of executing such final releases as may be required by the Department or to do any other act or thing, including the execution of any documents, necessary to the completion of the Contract and a final settlement of same, including but not limited to those documents required by the provisions regarding final payment and release as set forth in [Subsection 109.08](#).

For all purposes, as herein set out and defined, including the execution of documents necessary to the final completion and settlement of the Contract, the Surety, under such circumstances, is hereby authorized and directed by the Contractor to perform such acts and execute such documents as fully and completely as though the same were performed or executed by such contractor, and to be lawfully binding upon such Contractor as though such acts had been performed or such documents executed by him in person.

If the Surety does not take over The Work in a satisfactory way within 10 days after the notice of default, or does not proceed to finish The Work according to the Contract, the Department shall have full power and authority, without impairing the obligation of the Contract or the Contract Bond, to take over the completion of The Work; to appropriate or use any or all material and equipment on the ground that may be suitable, to enter into agreements with others for the completion of the Contract according to the terms and provisions thereof; or to use such other methods as may be required for the completion of the Contract. In so assuming the obligations of the Contractor, the Department does so as the agent of the Contractor.

Assumption of these duties and obligations by the Department will not act as a release of the Contractor or his Surety from any of the provisions of this Contract. The Contractor and his Surety shall be liable for all costs incurred by the Department in completing The Work and also for all liquidated damages in conformity with the terms of the Contract. If the sum of such liquidated damages and the expense so incurred by the Department is less than the sum which would have been payable under this Contract if it had been completed by the Contractor or his Surety, the Contractor, or his Surety, shall be entitled to receive the difference; and if the sum of such expense and such liquidated damages exceeds the sum that would have been payable under the Contract, the Contractor and his Surety shall be liable and shall pay to the Department the amount of such excess. Notice to the Contractor shall be deemed to have been served when delivered to the person in charge of any office used by the Contractor, his representative at or near The Work or by registered or certified mail addressed to the Contractor at the last known place of business.

Time Charges shall continue through a period of a default in compliance with the provisions of [Subsection 108.07.F](#).

108.10 Termination of Contractor's Responsibility

Except as specified in the Contract Bond and in [Subsection 107.20](#), the Contractor's responsibility for The Work shall terminate upon final acceptance of The Work by the Department.