

SECTION 8 PROSECUTION AND PROGRESS

- 8.1 SUBLETTING OF CONTRACT** - The Contractor shall not sublet, sell, transfer, assign, or dispose of the contract or contracts or any portion of them, without written consent of the Engineer. The Contractor will be permitted to sublet up to 50 percent of the work, but shall perform work amounting to not less than 50 percent of the total contract cost with his own organization. Any items designated in the contract as "specialty items" may be performed by subcontract and the cost of designated specialty items performed by subcontract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor's own organization. The Contractor shall give assurance to the Engineer that all pertinent provisions of the prime contract including minimum wage for labor shall apply to the work sublet. Subcontract, or transfer of contract, shall not relieve the Contractor of his responsibilities and liability under the contract and bonds.
- 8.2 NOTICE TO PROCEED** - The written notice to proceed with the work is issued as a part of the notification of award. The contract time will start on the date the Contractor actually starts construction work or 30 days after the date the Contractor receives the notification of award, whichever date is earlier. The Contractor shall not begin work prior to the date of the contract award.
- 8.3 PROSECUTION AND PROGRESS** - The successful bidder shall include with the signed contract the proposed starting date.

The Contractor shall provide sufficient materials, equipment and labor to guarantee the completion of the project, within the contract time set forth within the Contract.

Should the prosecution of the work be discontinued for any reason, the Contractor shall provide at least 24 hours notice to the Engineer prior to resuming operations.

- 8.4 LIMITATION OF OPERATIONS** - The Contractor shall conduct the work in a manner and sequence that will assure the least interference with traffic. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Engineer may require the Contractor to finish a section of work before starting any additional sections if the opening of a section is essential for the public convenience.
- 8.5 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT** - The Contractor shall employ workmen who have sufficient skill and experience to perform the work assigned to them. Workmen engaged in special work or skilled work shall have experience in such work and in the operation of the equipment required to perform the work.

Equipment used on the work shall be of sufficient size and mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used shall not cause damage to the roadway, adjacent property, or other highways.

When the methods and equipment to be used are specified in the Contract other methods and equipment shall not be used in the performance of the work without written authorization from

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the Department. The request shall be in writing and shall include a full description of the methods and equipment proposed and provide the Contractor's explanation for the proposed change. If 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 work with the methods and equipment specified. Deficient work shall be removed and replaced or repaired to the specified quality by and at the Contractor's expense. A authorized change in methods and equipment will not be a basis for adjusting the payment for the work involved or the contract time.

8.6 DETERMINATION AND EXTENSION OF CONTRACT TIME - The time allowed for the completion of the work included in the contract will be stated in the proposal form and contract, and will be known as the "Contract Time".

A. Working Day Contracts - When the time is on a working day basis, the Area Engineer will, except for the period between December 1 and March 31, inclusive, and during periods of suspension, furnish the Contractor a bi-weekly statement showing the number of days charged to the contract for the preceding two weeks. The Contractor will be allowed one week in which to file a written protest setting forth in what respect said biweekly statement is incorrect, otherwise, the statement shall be deemed to have been accepted by the Contractor as correct. If the Area Engineer and the Contractor fail to reach an agreement on any statement of working days, the Area Engineer shall refer the statement and the written protest to the Region Engineer for review and final decision.

A working day shall be defined as any calendar day between April 1 and November 30, inclusive, except Saturdays or legal holidays. If a Contractor utilizes a Saturday or holiday for construction work, it will then be considered a working day. The Contractor shall not carry on construction operations on holidays, without written permission from the Region Engineer, except for purpose of making emergency repairs and providing proper protection of the work such as curing of concrete. Written permission from the Region Engineer will not be required to carry on construction operations on the second Monday in October. Days designated by the Governor of this State as a holiday for state employees will be considered for working day purposes the same as Saturdays.

A full working day will be charged for any day described in the foregoing on which conditions are such that the Contractor would be expected to do or does a full days work on the controlling item. A full working day will be charged on days when the Contractor could be working on a controlling item, but elects not to work, or elects to work elsewhere.

Allowance will not be made for delay or suspension of the work due to the fault of the Contractor.

The Engineer will determine which days are working days.

When the Contractor is or could be working on the controlling item, but, in the judgement of the Engineer, weather or job conditions beyond the Contractor's control

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are such that the Contractor could or does work only approximately one half day or the Contractor's efficiency is materially reduced, the Engineer may count one half of a working day.

No working days will be charged under the following conditions:

1. When adverse weather prevents work on the controlling item.
2. When job conditions due to recent weather prevent work on the controlling item.
3. When work has been suspended by an act or omission of the Department.
4. When strikes, lockouts, extraordinary delays in transportation suspend work on the controlling item, as long as these delays are not due to any fault of the Contractor.
5. When seasonal limitations cause suspension of work on the controlling item.
6. When the concrete curing period is the controlling item.
7. When only minor miscellaneous or finishing work remains and all of the following conditions are met:
 - a) The Contractor is prosecuting the remaining work in a manner satisfactory to the Engineer.
 - b) The project is or could be opened to traffic.
 - c) Traffic will not be inconvenienced by prosecution of the remaining work.

The number of days for performance allowed in the contract as awarded is based on the estimated quantities as defined in Section 2.4. If satisfactory fulfillment of the contract requires performance of extra work, or work on items with an increase in quantities that will take additional time to complete, the number of days allowed for performance shall be increased in the same proportion as the cost of increased work bears to the total original contract amount. Should the Contractor feel that the time extension based on a monetary basis is insufficient for the increased work involved, he may submit written information which will justify additional time. Such information must show how the increased work delays the overall completion of the entire project. Information shall be submitted as soon as possible after the increased work has been performed. If the information submitted justifies additional time a Construction Change Order increasing the contract time will be prepared.

If for reasons beyond the Contractor's control the work cannot be completed within the contract time as specified or as extended according to the provisions of this section, the

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Contractor may make a written request for an extension of contract time. The written request shall be made at any time prior to the expiration of the contract time as extended. The Contractor's time extension request shall set forth the reasons which will justify an extension of time. The written request will be reviewed by the Time Extension Committee for determination of contract time extension. The Time Extension Committee will consist of the Department Secretary, Director of Engineering & Planning, Director of Fiscal and Public Assistance, and the State Highway Engineer. If after review/decision by the Time Extension Committee, the Contractor does not believe that the correct procedures were followed, a request for a hearing by the Transportation Commission may be made by the Contractor. However, the Transportation Commission will only determine whether or not the correct procedures were followed and it may ask the Time Extension Committee to review its decision in light of procedural omissions noted.

The Contractor shall immediately notify the Engineer in writing when it becomes evident that there will be a delay in obtaining critical materials. Delays due to slow delivery of materials from the supplier or fabricator, material delayed for reasons of late ordering, financial considerations or other causes which could have been foreseen and prevented will be considered as within the Contractor's control. However, delays in delivery of materials to the Contractor due to some unusual market condition caused by an industry wide strike, national disaster, area-wide shortage, or other reason beyond the control of the Contractor, Subcontractor or Supplier, will be considered a basis for granting additional time.

The Contractor's plea that insufficient time was specified is not a valid reason for extension of time.

If the **Time Extension Committee** finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, they may extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

When final acceptance has been duly made as prescribed in Section 5.16, the daily time charge will cease.

- B. Fixed Completion Date Contracts** - When the contract time is a fixed calendar date it shall be the date on which all work on the project shall be completed. If work is not completed by the date specified, the Engineer will keep a record of working days charged after that date and furnish the Contractor a biweekly statement showing the number of days charged to the contract for the preceding two weeks. The Contractor will be allowed one week in which to file a written protest setting forth in what respect said biweekly statement is incorrect, otherwise, the statement shall be deemed to have been accepted by the Contractor as correct. If the Area Engineer and the Contractor fail to reach an agreement on any statement of working days, the Area Engineer shall refer the statement and the written protest to the Region Engineer for review and final decision.

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A working day shall be defined as any calendar day except Saturdays or legal holidays. If a Contractor utilizes a Saturday or holiday for construction work, it will then be considered a working day. The Contractor shall not carry on construction operations on holidays without written permission from the Region Engineer except for purpose of making emergency repairs and providing proper protection of the work such as curing of concrete. Written permission from the Region Engineer will not be required to carry on construction operations the second Monday in October. Days designated by the Governor of this State as a holiday for State employees, will be considered for working day purposes the same as Saturday.

A full working day will be charged for any day described in the foregoing on which conditions are such that the Contractor could be expected to do or does a full days work on the controlling item. A full working day will be charged on days when the Contractor could be working on a controlling item, but elects not to work or elects to work elsewhere.

Allowance will not be made for delay or suspension of the work due to the fault of the Contractor.

The Engineer will determine which days are working days.

When the Contractor is or could be working on the controlling item, but, in judgement of the Engineer, weather or job conditions beyond the Contractor's control are such that the Contractor could or does work only approximately one half day or the Contractor's efficiency is materially reduced the Engineer may count one half of a working day.

No working days will be charged under the following conditions:

1. When adverse weather prevents work on the controlling item.
2. When job conditions due to recent weather prevent work on the controlling item.
3. When work has been suspended by an act or omission of the Department.
4. When strikes, lockouts, extraordinary delays in transportation suspend work on the controlling item, as long as these delays are not due to any fault of the Contractor.
5. When seasonal limitations cause suspension of work on the controlling item.
6. When the concrete curing period is the controlling item.
7. When only minor miscellaneous or finishing work remains and **all of** the following conditions are met:
 - a) The Contractor is prosecuting the remaining work in a manner

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satisfactory to the Engineer.

- b) The project is or could be opened to traffic.
- c) Traffic will not be inconvenienced by prosecution of the remaining work.

Contract time specified for performance of the contract as awarded is based on the estimated quantities as defined in Section 2.4. If satisfactory fulfillment of the contract requires performance of extra work, or work on items with an increase in quantities that will take additional time to complete, the contract time allowed for performance shall be increased in the same proportion as the cost of increased work bears to the total original contract amount. Should the Contractor feel that the extension based on a monetary basis is insufficient for the increased work involved, he may submit in writing information which will justify additional time. Such information must show how the increased work delays the overall completion of the entire project. Information shall be submitted as soon as possible after the increased work has been performed. If the information submitted justified additional time, a Construction Change Order increasing the contract time will be prepared.

If for reasons beyond the Contractor's control the work cannot be completed within the contract time as specified or as extended according to the provisions of this section, the Contractor may make a written request for an extension of contract time. The written request shall be made at any time prior to the expiration of the contract time as extended. The Contractor's time extension request shall set forth the reasons which will justify an extension of time. The written request will be reviewed by the Time Extension Committee for determination of contract time extension. The Time Extension Committee will consist of the Department Secretary, Director of Engineering & Planning, Director of Fiscal and Public Assistance, and the State Highway Engineer. If after review by the Time Extension Committee, the Contractor does not believe that the correct procedures were followed, a request for a hearing by the Transportation Commission may be made by the Contractor. However, the Transportation Commission will only determine whether or not the correct procedures were followed and it may ask the Time Extension Committee to review its decision in light of procedural omissions noted.

The Contractor shall immediately notify the Engineer in writing when it becomes evident that there will be a delay in obtaining critical materials. Delays due to slow delivery of materials from the supplier or fabricator, material delayed for reasons of late ordering, financial considerations or other causes which could have been foreseen and prevented will be considered as within the Contractor's control. However, delays in delivery of materials to the Contractor due to some unusual market condition caused by an industry wide strike, national disaster, area wide shortage, or other reason beyond the control of the Contractor, Subcontractor or Supplier, will be considered a basis for granting additional time.

Delays caused by rain, windstorm or other natural phenomenon of normal intensity,

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based on U.S. Weather Bureau reports, for the particular locality and for the particular season of the year in which the work is being prosecuted, shall not be justification for an extension of time.

The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. Any time extension granted under this section must be justified on the basis of unavoidable delay in starting or completing the progress controlling operations and then only when and to the extent that it is shown that delay time could not be overcome and the work brought back on schedule through reasonable adjustments in the Progress Schedule. Provided the Contractor has made all reasonable efforts to maintain an adequate and acceptable Progress Schedule, the specified completion date may be extended, except as noted above, in such amount as the conditions justify for conditions beyond the control and without fault of the Contractor. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

When final acceptance has been duly made as prescribed in Section 5.16, the daily time charge will cease.

- 8.7 FAILURE TO COMPLETE ON TIME** - Time is an essential element of the contract. It is important that the work be pressed vigorously to completion. The cost to the Department of the administration of the contract, including engineering, inspection, and supervision, will be increased as the time occupied in the work is lengthened. The public is subject to detriment and inconvenience when full use cannot be made of an incomplete project.

Should the Contractor fail to complete the work within the time provided in the contract or as allowed by increases in the contract or by formally approved extensions granted by the Department, there shall be deducted from monies or amounts due or that may become due the Contractor, the sum set forth in the following schedule for each and every working day, that the work shall remain uncompleted. This sum shall be considered and treated not as a penalty but as liquidated damages due the Department from the Contractor by reason of inconveniences to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds resulting from failure to complete the work within the time specified in the contract.

Permitting the Contractor to continue and complete the work covered by the terms of the contract after the expiration of the working time provided for therein and inclusive of any extensions granted, shall in no way be construed as a waiver by the Department of its rights under the contract.

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SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount		Amount of Liquidated Damages Per Working Day
From More Than	To and Including	
\$ 0	\$ 25,000	\$ 75.00
\$ 25,000	\$ 50,000	\$ 200.00
\$ 50,000	\$ 100,000	\$ 250.00
\$ 100,000	\$ 500,000	\$ 450.00
\$ 500,000	\$1,000,000	\$ 650.00
\$ 1,000,000	\$2,000,000	\$ 800.00
\$ 2,000,000	\$4,000,000	\$1,300.00
\$ 4,000,000	\$6,000,000	\$1,500.00
\$ 6,000,000	\$9,000,000	\$1,800.00
\$ 9,000,000	Over \$9,000,000	\$2,100.00

8.8 DEFAULT AND TERMINATION OF CONTRACT - If the Contractor:

- A. Fails to perform the work with sufficient resources to assure the prompt completion of said work, or
- B. Fails to perform the work in accordance with the Contract and/or neglects or refuses to remove and replace rejected materials or unacceptable and unsuitable work, or
- C. Discontinues the prosecution of the work, or
- D. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- E. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- F. Allows any final judgement to remain unsatisfied for a period of ten days, or
- G. Makes an assignment for the benefit of creditors, without the Departments approval or
- H. Fails to carry on the work in an acceptable manner;

The Engineer will give notice in writing to the Contractor and the Contractor's surety of such delay, neglect, or default.

If the Contractor or surety does not proceed to comply, within ten days after the written notice then the Department will, have full power and authority without violating the contract, to terminate the Contract and take the prosecution of the work out of the hands

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of the Contractor. The Department may use materials on the project and may enter into an agreement to complete the contract according to the terms and provisions thereof, or use such other methods as recommended by the Engineer for the completion of this contract.

Costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from monies due or which may become due said Contractor. If such expense exceeds the sum which would have been payable under the contract, the Contractor and the surety shall be liable and shall pay to the Department the amount of such excess.

8.9 TERMINATION OF CONTRACT FOR NATIONAL EMERGENCIES - The Department may, by written order, terminate the contract or any portion thereof after the Department determines that for reasons beyond the Departments or Contractors control the contractor is prevented from proceeding with or completing the work as originally contracted for, and termination would be in the public interest. Reasons for termination may include, but not be limited to, Executive Orders of the President relating to prosecution of war or national defense, national emergency which creates a serious shortage of materials, orders from duly constituted authorities relating to energy conservation, restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.

When the Department orders termination of a contract effective on a certain date, completed items of work as of that date will be paid for at the contract bid price. Payment for partially completed work will be made either at agreed prices or by force account methods. Items which are eliminated in their entirety will be paid for as provided in Section 9.6.

Acceptable materials obtained by the Contractor which have not been incorporated into the project, may, at the option of the Department, be purchased from the Contractor at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

Reimbursement for organization of the work, other overhead expense, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered; the intent being that an equitable settlement will be made with the Contractor.

The Contractor agrees to make all cost records available to the Department for determining validity and amount of each item claimed and to provide a basis for negotiating an equitable settlement.

Termination of a contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.