

[Back](#)

**Section 108 - Prosecution and Progress**

<a href="#">108.01 Subletting of Contract</a>	<a href="#">108.07 Extension of Contract Time</a>
<a href="#">108.02 Notice to Proceed</a>	<a href="#">108.08 Failure to Complete on Time</a>
<a href="#">108.03 Performance and Progress</a>	<a href="#">108.09 Schedule of Liquidated Damages</a>
<a href="#">108.04 Progress Schedules</a>	<a href="#">108.10 Default of Contract</a>
<a href="#">108.05 Traffic Requirements and Contractor's Operations</a>	<a href="#">108.11 Termination of Contract</a>
<a href="#">108.06 Character of Workers and Equipment</a>	<a href="#">108.12 Termination of Contractor's Responsibility</a>

[Top](#)

**108.01 Subletting of Contract.** The Contractor shall not subcontract, sublet, sell, transfer, assign, purchase work or materials from an organization other than its own, or otherwise dispose of the contract or contracts or any portion thereof, or of its right, title or interest therein, without written consent from the Engineer. The Contractor shall perform with its own organization work amounting to not less than 50% of the total Contract bid price, except that any items designated in the Contract 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 original total bid price before computing the amount of work required to be performed by the Contractor with its own organization. Only the original Contract bid price and the value of subcontracted work approved by the Engineer will be used to compute the percentage of subcontracted work.

Adjustments in quantities or additional items of work will not require an adjustment of the percentage computed as described above. The Contractor's organization shall be construed to include only those workers on its payroll, employed and paid directly by the Contractor, and equipment owned or rented by the Contractor with or without the operator(s) as is consistent with normal industry practice.

If the Contractor to whom a contract is awarded proposes to subcontract any part of work, the scope and value of the work to be done by the subcontractor shall be outlined. The cost of materials to be used by the subcontractor shall be outlined. The cost of materials to be used by the subcontractor shall be included in the value of the subcontracted work. A subcontractor shall not subcontract further a portion of the work intended to be done by the original subcontractor organization.

All traffic control work and related items shall either be performed entirely by the Contractor's own organization or totally subcontracted. Maintenance of the equipment shall not be subject to this requirement.

When the Contractor has sublet a portion of the Contract or a bid

item to a subcontractor, the actual payment to the subcontractor shall be applied to fulfill Disadvantaged Business Enterprise (DBE) requirements of the Contract, were applicable. The cost of a portion of the Contract or bid item performed by a DBE shall be applied against the Contractor to determine if the Contractor is performing at least 50% of the total Contract bid price, as required herein.

The Contractor must obtain written permission from the Engineer for each subcontractor to whom the Contractor intends to subcontract or sublet a portion of the work prior to execution of the subcontract agreement. As a prerequisite to payment for any work done by a subcontractor or on a subcontractor's behalf and prior to any work being done on the Project by the said subcontractor, the Contractor shall submit a certified copy of the Contractor-subcontractor agreement and any and all other contracts with suppliers or any other person, firm, or organization for review and approval by the Engineer. Each subcontract shall be in writing and shall contain and state that all pertinent provisions and requirements of the prime contract are incorporated into the subcontract. It shall be the Contractor's responsibility to determine that all such provisions are included and such provisions shall be implied where not specifically included.

The Contractor may also be required to submit additional information concerning the prospective subcontractor or supplier, including any additional information required by the terms of this Contract, by the Department or by the FHWA, or other governmental agency, where necessary. Such information may include but may not necessarily be limited to:

- A. The organization which performs the work is particularly experienced and equipped for such work.
- B. Assurance by the Contractor that the Labor Standards Provisions set forth in this Contract shall apply to labor performed on all work encompassed by the Contract.
- C. All Civil Rights Provisions and DBE requirements have been satisfied.
- D. The Department is indemnified and saved harmless from the action of the subcontractor or supplier.
- E. Disputes Resolution Clause is included in the subcontract.
- F. Contractor saves harmless and indemnifies the Department for omissions in the Contractor-subcontractor agreement.

Any review performed or permission or approval granted under these Specifications shall not operate, nor be interpreted as approval of the work to be performed by the subcontractor or

material supplied by a supplier, nor shall it operate to relieve the Contractor of the sole responsibility for satisfactory completion of the Contract. No contracts, subcontracts, supplier agreements, sales, transfers, leases, assignments, or any other agreements applicable to this Contract shall in any case release the Contractor of its sole responsibility and liability under the Contract and bonds.

The Department, in its discretion, may refuse to pay for all or part of the work or materials or may refuse to accept any work performed by such unapproved subcontractor or materials supplier and may refuse to consider work performed or materials supplied as part of the subcontracted work.

[Back](#)

**108.02 Notice to Proceed.** Following the Contract execution, the Engineer may schedule a preconstruction meeting. Prior to the preconstruction meeting, the Contractor shall submit the progress schedule per [Subsection 108.04](#). The Engineer will issue to the Contractor a notice to proceed which will stipulate the date on or before which the Contractor is expected to begin work. The date specified in the notice will be at least ten calendar days subsequent to the date of issuance of the notice to proceed. No work is to be started before receipt of the notice to proceed. The specified Contract time shall begin on the day the work actually starts or on the date stipulated in the notice to proceed, whichever is earlier.

[Back](#)

**108.03 Performance and Progress.** The Contractor shall begin work no later than the date stipulated in the notice to proceed.

A. Calendar Day Contracts. Contract time will begin as specified in [Subsection 108.02](#) and continue each and every day shown on the calendar until the substantial completion of work as determined by the Engineer. For working on Sundays and holidays, the Contractor shall submit a written request to the Engineer at least three working days prior to the Sunday or holiday for written permission to work on such Sunday or holiday. The Contractor shall provide notice to the Engineer no later than 12 PM Friday if any work is to be performed the next day so that adequate inspection can be provided by the Department.

B. Working Day Contracts. Contract time will begin as specified in [Subsection 108.02](#) and continue as specified in [Subsection 101.91](#) until substantial completion of work as determined by the Engineer. No work will be permitted on Sundays or holidays unless the Engineer determines that such work is in the best interest of the Department. Submit a written request to the Engineer at least three working days prior to the Sunday or holiday for written permission to work on such Sunday or holiday. Provide notice

to the Engineer no later than 12 PM Friday if any work is to be performed the next day so that adequate inspection can be provided by the Department.

[Back](#)

**108.04 Progress Schedules.** Sufficient materials, equipment, and labor shall be provided by the Contractor to guarantee the completion of the Project within the Contract time.

The Contractor shall submit a progress schedule to the Engineer for review. The Work shall not be started until the progress schedule and methods of construction operations for each phase of construction are acceptable to the Engineer and are in conformance with all applicable erosion and sediment control requirements. The progress schedule shall be used to establish the critical construction operations and to monitor the progress of the work. The progress schedule chart shall be in the form specified below, unless the Contract requires a Critical Path Method (CPM) schedule.

If Contractor elects to use a CPM schedule when it is not required in the Contract, the Contractor shall comply with the requirements of [Subsection 108.04](#), and no additional payment will be made for the CPM schedule.

[Back](#)

- A. **Progress Schedule Chart (PSC).** The PSC prepared shall show in detail the time (working days or calendar days as specified) involved in performing construction activities for the duration of the Project. The Project shall be scheduled in such manner and sequence as to minimize the time and surface area of erodible earth material. The PSC shall be used for the coordination of work under the Contract including the activities of subcontractors, vendors, and suppliers. The Department will use the PSC to monitor the progress of the work.

The PSC shall show the interdependence of all major work activities required for the complete performance of all items of work under this Contract, including working drawing preparation, submittal, and approval; permits; fabrication and delivery activities; curing time; utility activity; etc. Also, the interdependence of work between separate project locations, if applicable, is to be shown.

The PSC shall include a description of the number of workdays per week, holidays to

be taken, number of shifts per day, and number of hours per shift used for the preparation of the schedule.

- B. **Preparation of Initial Schedule.** Prior to the Notice to Proceed, the Contractor shall develop the initial PSC and present three copies to the Engineer.

The construction time, as determined by the PSC shall fully use, but not exceed the specified Contract duration. It should be noted that time charges will begin no later than the time stipulated in the notice to proceed. Review and approval of the PSC will not bind the Department or constitute acceptance of any individual time period for scheduled activities.

- C. **Biweekly and As-Required Look-Ahead Schedules.** The Contractor shall be required to submit to the Engineer a two-week activity schedule on each Friday for each two-week period. This activity schedule shall provide specific details related to actual construction activities the Contractor plans to have in progress during the two-week period. When requested by the Engineer, the Contractor shall submit a revised detailed progress schedule showing the remaining work to be completed when requesting an extension of Contract time as specified in [Subsection 108.07](#).

[Back](#)

**108.05 Traffic Requirements and Contractor's Operations.** The Contractor shall conduct work at all times in such a manner and in such sequence as will ensure the least interference with traffic. The Contractor shall give due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started, and the Engineer may require the Contractor to finish a section on which the work is in progress before work is started on any additional sections.

[Back](#)

**108.06 Character of Workers and Equipment.** In the construction of all public works for the State or any political subdivision thereof, or by persons contracting with the State or any political subdivision thereof, preference in employment of laborers, workers, or mechanics shall be given to bonafide legal citizens of the State who have established citizenship by residence of at least 90 days. Each public works contract for the construction of public works for the State or any political subdivision thereof shall contain a stipulation

that any person, company, or corporation who violates the provisions of this Section shall pay penalty to the State Treasurer equal to the amount of compensation paid to any person in violation.

The Contractor shall employ only competent and efficient persons. Whenever, in the opinion of the Engineer, any employee is careless or incompetent, obstructs the progress of the work, acts contrary to instructions of the superintendent or foreman, or conducts oneself improperly, the Contractor shall, upon the request of the Engineer, discharge the employee from the work and shall not again employ that person on the Contract or any other contract for the Department, except with the written consent of the Engineer.

All machinery and equipment owned or controlled by the Contractor, that is proposed to be used by the Contractor on the work, shall be of sufficient size and capacity and 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 results from its use.

When methods and/or 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 and/or equipment that it demonstrates to the satisfaction of the Engineer will accomplish the Contract work in conformity with the requirement of the Contract.

When the Contract specifies that the construction be performed by the use of certain methods and/or equipment, such methods and/or equipment shall be used unless others are authorized by the Engineer. If the Contractor desires to use a method and/or type of equipment other than those specified in the Contract, the Contractor may request authority from the Engineer to do so. The request shall be in writing and shall include a full 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 and/or equipment, the Engineer determines that the work produced does not meet the Contract requirements, the Contractor shall discontinue the use of the substitute method and/or equipment and shall complete the remaining construction with the specified methods and/or 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 to the unit price for the Contract items involved, nor in Contract time as the result of authorizing a change in methods and/or equipment under these provisions unless it is as a credit or a VEP.

[Back](#)

**108.07 Extension of Contract Time.** An extension of the Contract time may be granted by the Department under the following

conditions provided documentation has been given to the Engineer. If the Contractor finds that it will be impossible to complete the work on or before the time allowed by the Contract, the Contractor shall, prior to the termination of such time, submit a written request to the Engineer for an extension of time for completion of the Contract. The Contractor shall set forth fully therein the reasons which it considers would justify the request. If requested by the Engineer, the Contractor shall submit a revised detailed progress schedule showing the remaining work to be completed on or before the requested extended completion date. If the Engineer finds that the work was delayed on account of unusual conditions beyond the control of the Contractor, or that the quantities of work done or to be done are sufficiently in excess of the estimated quantities to warrant additional time, the Engineer will grant an extension of time for completion in such amounts as appears to be reasonable and proper. Upon written notice being sent by the Engineer, the new completion time shall be incorporated into and become part of the Contract and shall be binding upon the Contractor and Surety. The Contractor shall not be entitled to any additional time as a result of any delay caused by the Contractor's failure to prosecute the work and/or the Contractor's failure to work in accordance with the progress schedule without valid reason as permitted by these Specifications.

[Back](#)

**108.08 Failure to Complete on Time.** For each calendar day or work day that work remains uncompleted after the Contract time has expired or beyond the completion date established by the Contract, the sum specified in [Subsection 108.09](#) will be deducted from any money due the Contractor. This sum shall not be considered and treated as a penalty but as liquidated damages due the Department by reason of inconvenience to the public, added cost of engineering and supervision, and other extra expenditures of public funds due to the Contractor's failure to complete the work on time. Any adjustment of the Contract time for completion of the work granted under [Subsection 108.07](#) will be considered in the assessment of liquidated damages.

The column indicated in the chart as "Calendar Day" will also be used in the assessment of liquidated damages for contracts with a predetermined completion date.

Computations for the assessment of liquidated damages shall be made in accordance with the daily computations described in the definition of working day, when the Contract is a working day contract. On all other contracts each and every consecutive calendar day, including Saturdays, Sundays, and holidays, shall be included in the computations for the assessment of liquidated damages.

The Contractor shall become liable for liquidated damages for delays commencing from the date on which the Contract time, as adjusted by [Subsection 108.07](#), shall expire.

If there is a delay in the delivery of critical materials, such as steel, copper, or aluminum, due to defense needs, energy crisis, etc., a time extension shall be allowed for such delays. Each case will be independently evaluated to determine if the delays were, in fact, beyond the control of the Contractor or fabricator and delayed the Project completion. Satisfactorily supported time extension requests shall be made concurrently with the delay and not after the fact.

Requests for time extensions shall be subject to review by the Engineer, and the Engineer will determine the amount of time extension allowed.

There will be no acceptance of unsupported claims of delays in delivery of material as a basis for time extensions. The Contractor is presumed to have included in its Contract price, allowance for any anticipated delays in procurement of materials, which procurement is its sole responsibility. Unless some unusual market condition such as an industry-wide strike, natural disaster, or area-wide shortage arises after bids are taken and prevents procurement of materials within the allowable time limitations, delays in delivery of such materials do not provide sufficient reason for suspending time charges.

Permission for the Contractor or surety to continue and finish work after the Contract time and approved extensions have elapsed shall not waive the Department's rights under the Contract.

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

Payment of liquidated damages will be deducted from payments otherwise due the Contractor or be made by direct payment by the Contractor in the event the total liquidated damages due exceed said deductions.

[Back](#)

**108.09 Schedule of Liquidated Damages.** The specific rates for liquidated damages are as follows:

Awarded Contract		Value Daily Charge	
For More Than	To and Including	Work Day	Calendar Day
\$ 0	\$ 25,000	\$ 275.00	\$ 195.00
25,000	50,000	300.00	210.00
50,000	100,000	395.00	270.00
100,000	500,000	710.00	500.00
500,000	1,000,000	825.00	580.00
1,000,000	2,000,000	850.00	595.00
2,000,000	5,000,000	900.00	630.00
5,000,000	10,000,000	950.00	665.00
10,000,000	15,000,000	1,500.00	1,200.00
15,000,000	20,000,000	2,500.00	2,200.00
20,000,000	25,000,000	3,500.00	3,200.00
25,000,000	30,000,000	4,500.00	4,200.00

25,000,000	30,000,000	4,500.00	4,200.00
30,000,000	35,000,000	5,500.00	5,200.00
35,000,000	over	6,500.00	6,200.00

[Back](#)

**108.10 Default of Contract.** The Engineer may give notice to the Contractor and the surety, in writing, declaring the Contract to be in default under the following conditions:

- A. If the Contractor fails to begin the work within the time specified in the notice to proceed.
- B. If the Contractor fails to perform the work with sufficient labor, equipment, and material resources to ensure the prompt completion of the work in accordance with the approved schedule.
- C. If the Contractor's work is unacceptable, or if the Contractor refuses to remove materials or perform any such work as shall be determined by the Engineer to be defective or otherwise unacceptable work.
- D. If the Contractor discontinues the prosecution of the work or fails to resume the work which has been discontinued.
- E. If the Contractor becomes insolvent, declares bankruptcy, commits any acts of bankruptcy or insolvency, or allows any final judgment to stand unsatisfied for a period of ten days.
- F. Makes an assignment for the benefit of creditors without authorization by the Department.
- G. For any other cause whatsoever, fails to carry on the work in a manner acceptable to the Department.  
If the Contractor or surety, within a period of ten days after such notice, does not proceed in accordance therewith, then the Engineer will declare the Contractor to be in default on the Contract, terminate the Contractor's right to proceed with the work, and have full power and authority, without violating the Contract, to take over the prosecution of the work from the Contractor. The Department may appropriate or use the Contractor's materials at the site as may be suitable for use in the Project and may enter into an agreement with another contractor for the completion of the Contract according to the terms and provisions thereof, or use other methods as in the opinion of the Engineer will be required for the completion of the Contract.

All costs and changes incurred by the Department, as a result of the default, including the cost of completing the work under contract or remedying defective or otherwise unacceptable work, and any applicable liquidated damages or disincentives will be deducted from monies due the Contractor for completed work. If such cost exceeds the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the

Department the balance of such costs in excess of the Contract price.

If it is determined, after termination of the Contractor's right to proceed, that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department in accordance with [Subsection 108.11](#). Thus, damages to which a Contractor may be entitled as a result of an improper default termination will be limited to amounts as provided for in [Subsection 108.11](#).

[Back](#)

**108.11 Termination of Contract.** The Department may, by written order to the Contractor, terminate the Contract or any portion of the Contract when such termination would be in the best interest of the Department. In the event such termination occurs without fault and for reasons beyond the control of the Contractor, all completed items as of the date of termination will be paid for at the Contract price. Payment for partially completed and eliminated work will be paid for as provided in Subsection 109.06.

Acceptable materials, obtained by the Contractor for the work, but which have not been incorporated therein, 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.

After receipt of notice of termination from the Department, the Contractor shall submit, within 60 days of the effective termination date, its claim for additional damages or costs not covered above or elsewhere in these Specifications. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, uncompensated bidding and project investigation costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor costs if work is stopped in advance of the termination date, guaranteed payments for private land usage as part of original Contract, and any other cost or damage item for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an adjusted figure be reached with the Contractor. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Contractor agrees to make its cost records available to the extent necessary to determine the validity and amount of each item claimed.

Termination of the Contract or portion thereof shall not relieve the Contractor of its 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.

[Back](#)

**108.12 Termination of Contractor's Responsibility** The

termination of the Contractor's responsibility occurs upon the completion of the work.

[Back](#)

**Section 109 - Measurement and Payment**

<a href="#">109.01 Measurement of Quantities</a>	<a href="#">109.08 Payment for Material</a>
<a href="#">109.02 Scope of Payment</a>	<a href="#">109.09 Retainage of Funds</a>
<a href="#">109.03 Compensation for Altered Quantities</a>	<a href="#">109.10 Final Payment</a>
<a href="#">109.04 Payment for Differing Site Conditions, Major Changes, Extra Work and Force Account</a>	<a href="#">109.11 Source of Supply and Carrier Rates on Construction Materials</a>
<a href="#">109.05 Basis of Payment for Fixed Quantity Items</a>	<a href="#">109.12 Transportation Tax Exemption</a>
<a href="#">109.06 Eliminated Items</a>	<a href="#">109.13 Asphalt Cement Cost Adjustment</a>
<a href="#">109.07 Partial Payment</a>	

[Top](#)

**109.01 Measurement of Quantities.** Work completed under the Contract will be measured by the Engineer according to the United States customary units (English units) or the modern metric system, SI (System of International Units) as designated on the Plans.

Unless stated otherwise, all material that is to be measured by weight shall be measured as follows:

A. The weight of each load shall be determined by weighing each loaded truck or other approved hauling equipment and then deducting the tare weight of the truck or hauling equipment. The tare weight shall be checked once daily, or as often as directed by the Engineer. Appropriate adjustments shall be made in the use of the tare weight as directed by the Engineer.

B. The scale platform shall be of such length and width that it will conveniently accommodate all trucks and other approved hauling equipment. The entire vehicle, including its load, must rest on the scale platform and be weighed as one unit.

C. Scales will be certified by the State sealer of weights and measures.

D. Weight tickets showing a net weight of each load of material delivered to the Project will be signed by a Department inspector.

A station when used as a definition or term of measurement will be 100 linear feet (1 km).

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (such as manholes, utility poles, etc.)