

SECTION 8.00**PROSECUTION AND PROGRESS****8.01 Subletting or Assignment of Contract.**

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of his/her right, title or interest therein, without written consent of the Engineer. 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 50 percent of the original total Contract 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 Subcontracts may be deducted from the total cost computing the amount of work required to be performed by the Contractor with his/her own organization. No Subcontractors, or transfer of Contract, shall in any case release the Contractor of liability under the Contract and Bonds.

The Contractor shall notify the Engineer, as soon as practicable after execution of the Contract, the name and address of each Subcontractor the Contractor intends to employ, the portion of the work which the Subcontractor is to do, and such other information the Engineer may require in order to ascertain whether the Subcontractor is reliable and able to perform the work.

The Contractor shall direct the attention of his/her Subcontractors to the requirements of:

(1) Subsection 7.05 regarding insurances, and also the Minimum Wage Rates and Health and Welfare and Pensions Fund Contributions as determined by the Commission of Labor and Industries of the Commonwealth and also to the provisions of Subsections 7.21 and 7.22, and

(2) Chapter 30, General Laws, Section 39L requires (1) that the Commonwealth and every county, city, town, district, board, commission, shall not enter into a Contract for such work with, and shall not approve as a Subcontractor furnishing labor and materials for a part of any such work, a foreign corporation which has not filed with the Department a certificate of the State Secretary stating that such corporation has complied with Sections 3 and 5 of Chapter 181 and the date of such compliance. Chapter 181, Section 3 requires foreign corporations to appoint the Secretary of the Commonwealth as an attorney for service of process, and Section 5, Chapter 181 requires foreign corporations to file certain documents with the Secretary of State which will permit them to do business in Massachusetts.

The Contractor shall also direct the attention of his/her Subcontractors and of all suppliers of material to the requirements of Subsection 5.09 regarding facilities for the Engineer's inspectors.

8.02 Schedule of Operations.

The Contractor shall submit, to and for the comments of the Engineer, a schedule of operations within ten days after the mailing of the executed Contract to the Contractor. The schedule shall show the proposed methods of construction and sequence of work and the time the Contractor proposes to complete the various items of work within the time specified in the Contract.

If the Contractor's operations are materially affected by changes in the plans or in the quantity of the work, or if the Contractor has failed to comply with the submitted and reviewed schedule, the Contractor shall submit a revised schedule if requested by the Engineer within seven days after the date of the Engineer's request. This revised schedule shall show how the Contractor proposes to prosecute the balance of the work, so as to complete the work within the time specified in the Contract.

8.03 Prosecution of Work.

The Contractor shall commence work within 15 days after the mailing of the executed Contract to the Contractor unless otherwise ordered in writing by the Engineer, and the Contractor shall thereafter prosecute the work at such places and in such order as the Engineer may from time to time prescribe.

Should the prosecution of the work for any reason be discontinued, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

8.04 Removal or Demolition of Buildings and Land Takings.

When the removal or demolition of buildings within highway locations is done under other and separate Contracts the provisions of Subsection 5.06 shall apply and it is expressly agreed between the parties that the Party of the First Part shall not be held liable for any expense to the Contractor on account of any delay or interference with his/her work due to removal or demolition of the buildings or on account of any failure to remove or demolish any building or because of failure to make necessary land takings, and it is further expressly agreed that no allowance of any kind will be made except as provided in Subsections 8.05 or 8.10.

8.05 Claim for Delay or Suspension of the Work.

The Contractor hereby agrees that he/she shall have no claim for damages of any kind on account of any delay in commencement of the work or any delay or suspension of any portion thereof, except as hereinafter provided.

Provided, however, that if the Commission in their judgment shall determine that the performance of all or any major portion of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the Department in the administration of the Contract, or by the Department's failure to act as required by the Contract within the time specified in the Contract (or if no time is specified, within a reasonable time) and without the fault or negligence of the Contractor, an adjustment shall be made by the Department for any increase in the actual cost of performance of the Contract (excluding profit and overhead) necessarily caused by the period of such suspension, delay or interruption. No adjustment shall be made if the performance by the Contractor would have been prevented by other causes even if the work had not been so suspended, delayed, or interrupted by the Department.

No claims shall be allowed under this Subsection for the Department's failure to act as required by the Contract within the time specified in the Contract (or if no time is specified, within a reasonable time) for any cost incurred more than two weeks before the Contractor shall have notified the Department in writing of his/her claim due to the Department's failure to act.

The contractor shall submit in writing not later than 30 days after the termination of such suspension, delay or interruption the amount of the claim and breakdown of how the amount was computed in accordance with Subsection 9.03B except no allowance for overhead and profit shall be allowed.

Any dispute concerning whether the delay or suspension is unreasonable or any other question of fact arising under this paragraph shall be determined by the Commission, and such determination and decision, in case any question shall arise, shall be a condition precedent to the right of the Contractor to receive any money hereunder.

The Contractor further agrees that the sole allowance for any such delay or suspension, other than as provided above, is an extension of time as provided in Subsection 8.10.

8.06 Limitations 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 abutters. The Contractor shall have 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.

8.07 Character of Workmen, 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 workmen shall have sufficient skill and experience to perform properly the work assigned to them. Workmen engaged in special work 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, in the Engineer's judgment, does not perform his/her work in a proper and skilled manner or is intemperate or disorderly or otherwise unsatisfactory or not employed in accordance with the provisions of Subsection 7.21, 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 take the necessary action 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 which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet 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/she demonstrates to the satisfaction of the Engineer which will accomplish the contract work in conformity with the requirements of the Contract.

When the Contract specifies the methods and equipment by which the construction is to be performed, such methods and equipment shall be used unless others are authorized by the Engineer, in writing. If the Contractor desires to use a method or type of equipment other than that 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 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 shall be in writing and 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 changes 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.

8.08 Preservation of Roadside Growth.

In general, the Contractor shall take special precautions at all times to protect and preserve natural surroundings and roadside growth either within or adjacent to the location from damage or injury due to his/her operations. The Contractor shall not, except by written permission of the Engineer, remove, destroy, or trim such roadside trees or shrubs.

Any trees or landscape features carelessly scarred or damaged by the Contractor's operations shall be removed and replaced or neatly trimmed and restored as nearly as possible to the original condition as required by the Engineer. In general the Contractor shall be responsible for all damage to roadside growth due to his/her operations and shall, without compensation, satisfactorily repair or replace all such damage.

All scars on trees shall be painted as soon as possible with an approved tree paint.

8.09 Delay and Suspension of Work.

The Engineer shall have the authority to delay the commencement of the work and delay or suspend any portion thereof; for such period or periods as the Engineer may deem necessary because of conditions beyond the control of the Commonwealth, or the Contractor; or beyond the control of the Commonwealth and the Contractor; for the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for causes and conditions considered unsuitable for the prosecution of the work; for acts of third persons not a party to the Contract; or for any other cause, condition, or reason deemed to be in the public interest.

Upon receipt of written order of the Engineer, the Contractor shall immediately delay the commencement of the work or delay or suspend any portion thereof in accordance with said order. No work shall be suspended or delayed without the prior written approval or order of the Engineer. The work shall be resumed when conditions so warrant or deficiencies have been corrected and the conditions of the Contract satisfied as ordered or approved in writing by the Engineer. The Contractor's attention is also directed to the requirements of Subsections 7.09 and 7.18 which shall govern during any period of temporary or partial suspension of work.

8.10 Determination and Extension of Contract Time for Completion.

The maximum time limit for the satisfactory completion of the work set forth in the Proposal is based upon the requirements of public convenience and the assumption that the Contractor will prosecute the work efficiently and with the least possible delay, in accordance with the maximum allowable working time per week as specified herein.

It is an essential part of this Contract that the Contractor shall perform fully, entirely, and in an acceptable manner, the work required within the time stated in this Contract, except that the contract time for completion shall be adjusted as follows:

A. If the Contractor does not receive the Notice to Proceed for a Federally Aided project within 70 days of bid opening (or for a Non-Federally Aided project, within 55 days of bid opening), it shall be entitled to an extension of time equivalent to the number of days beyond 70 (or 55) that it takes for the Contractor to receive the Notice to Proceed.

Any such extension of time shall be reduced by the number of days beyond 14 days from the date of receipt of the Notice of Award that the Contractor takes to return the executed Contract and the required surety.

B. In case the commencing of the work is delayed or any part thereof is delayed or suspended by the Party of the First Part (except for unsuitable weather, winter months, or reasons caused by the fault or neglect of the Contractor), the Contractor will be granted an extension of time in which to complete work or any portion of the work required under the Contract equivalent to the duration of the delay less a reasonable period of time within which the Contractor could have done necessary preliminary work.

C. If satisfactory completion of the work shall require performance of work in greater quantities than those set forth in the Proposal, the time allowed for performance shall be increased in the same ratio as the total final estimate value of the contract items bears to their total bid value.

D. When delay occurs due to reasonable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to "Acts of God", to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, acts of the Government, acts of the State or any political subdivision thereof, acts of other contracting parties over whose acts the Contractor has no control, fires, floods, epidemics, abnormal tides (not including Spring tides), severe coastal storms accompanied by high winds or abnormal tides, freezing of streams and harbors, abnormal time of Winter freezing or Spring thawing, interference from recreational boat traffic, use of beaches and recreational facilities for recreational purposes during the Summer season, abnormal ship docking and berthing, unanticipated use of wharves and storage sheds, strikes except those caused by improper acts or omissions of the Contractor, extraordinary delays in delivery of materials caused by strikes, lockouts, wrecks, freight embargoes, the time for completion of work shall be extended in whatever amount is determined by the Engineer to be equitable.

An "Act of God" as used in this article is construed to mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense of. A rain, windstorm, or other natural phenomenon of normal intensity, based on United States 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 construed as an "Act of God" and no extension of time will be granted for the delays resulting therefrom.

Within the scope of acts of the Government, consideration will be given to properly documented evidence that the Contractor has been delayed in obtaining any material or class of labor because of any assignment or preference ratings by the Federal Government or its agencies to War, Navy or other defense Contracts. **E.** In case the work is delayed by Public Service Corporations or Municipal Corporations see Subsection 5.05.

F. Each Extra Work Order as issued will include a statement of additional time, if any, that is agreed upon by the Contractor and the Engineer as required for the completion of this Contract by reason of this Extra Work Order, and no other time allowance on account of the performance of the work covered by such Extra Work Order will be allowed.

No extension of time will be granted for any delay or any suspension of the work due to the fault of the Contractor, nor if a request for an extension of time on account of delay due to any of the aforesaid causes is not filed within 15 days of the date of the commencement of the delay nor if the request is based on any claim that the contract period as originally established was inadequate.

If the approved extended date of completion falls within the period from December 1st to March 15th, due to reasons above then the Contractor will be allowed the same number of days beyond December 1st, extended after March 15th. The contract period has been carefully considered and has been established for reasons of importance to the Party of the First Part. This time limit will be enforced and any prospective Bidder who is not willing to accept this Contract

with the intention of complying with the time limit is cautioned not to submit a bid.

The probable slowdown or curtailment of work during inclement weather and winter months has been taken into consideration in determining the total time required to complete the project, hence no extension of time will be allowed due to this reason.

8.11 Failure to Complete Work on Time.

On or before the date stated in the proposal for completion or the date to which the time of completion shall have been extended under the provisions of Subsection 8.10 the whole work shall have been performed in accordance with the terms of the Contract. The time in which the various portions and the whole of the Contract are to be performed and the work is to be completed is an essential part of the Contract.

In case the work embraced in the contract shall not have been physically completed by the time stipulated therein (according to the foregoing requirements) the Contractor shall pay to the Party of the First Part a designated sum per day for the entire period of overrun in accordance with the following Schedule of Deductions. In the event the Contract has been substantially completed and the project opened for traffic as directed in writing by the Engineer, but physical completion of the work is subject to delay because of minor uncompleted items which do not impair the usefulness of the project, the designated sum per day shall be 1/2 the charges shown. In addition to the daily charge, the Contractor shall pay without reimbursement the entire cost of all traffic officers, railroad flagmen and inspectors the Engineer or the Chief Engineer of the railroad determines to be necessary during the period of overrun of time.

Schedule of Deductions

Project Value	Deduction
0 to \$100,000	\$250.00
\$100,000 to \$500,000	\$375.00
\$500,000 to \$1,000,000	\$425.00
\$1,000,000 to \$2,000,000	\$550.00
\$2,000,000 to \$3,000,000	\$675.00
\$3,000,000 to \$4,000,000	\$800.00
\$4,000,000 to \$5,000,000	\$925.00
\$5,000,000 to \$10,000,000	\$1,050.00
\$10,000,000 to \$15,000,000	\$1,175.00
over \$15,000,000	\$1,500.00

In the event the physical work embraced in the Contract has been completed and accepted in writing by the Chief Engineer but there remains to be submitted to the Department by the Contractor any reports or other documents in accordance with the provisions of the Contract, the Contract shall not be considered satisfactorily completed within the meaning of Section 39G of Chapter 30 of the General Laws until the receipt of such reports or documents by the Department, but the designated sum per day during this interval shall be zero.

Whatever sum of money may become due and payable to the Party of the First Part by the Contractor under this Subsection may be retained out of money belonging to the Contractor in the hands and possession of the Party of the First Part. It is agreed that this Subsection shall be construed and treated by the parties to the Contract not as imposing a penalty upon said Contractor for failing fully to complete said work as agreed on or before the time specified in the Proposal, but as liquidated damages to compensate said Party of the First Part for all additional costs incurred by said Party because of the failure of the Contractor fully to complete said work on or before the date of completion specified in the Proposal.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in nowise operate as a waiver on the party of the Party of the First Part of any of its rights under the Contract.

8.12 Default Termination.

If the Contractor shall be adjudged a bankrupt, or if the Contractor shall make a general assignment for the benefit of his/her creditors, or if a receiver of his/her property shall be appointed, or if the work to be done under the Contract shall be abandoned, or if the Contract or any part thereof shall be sublet without the previous written consent of the Party of the First Part, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time in the Engineer's judgment and the Engineer so certifies in writing to the Party of the First Part that the work, or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract, the Party of the First Part may notify the Contractor to discontinue all work, or any part thereof. Such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work or such part thereof, as the Party of the First Part may designate, and the Party of the First Part shall require the surety or sureties to complete the Contract.

If the Engineer shall certify that the rate of progress is not satisfactory, the Party of the First Part may instead of notifying the Contractor to discontinue all work or any part thereof, notify him/her from time to time to increase the force, equipment and plant, or any of them, employed on the whole or any part of the work, stating the amount of increase required to insure the proper completion of the work. The Contractor shall provide and maintain, at no additional cost to the Department, any lights necessary to protect the work or the traveling public, for the safety of his/her construction forces and to insure the proper construction, inspection and prosecution of the work (see Subsections 7.09 and 7.10). Unless the Contractor shall, within five days after any such notice, increase his/her force, equipment and plant to the extent required therein, and maintain and employ the same from day to day until the completion of the work or such part thereof or until the conditions as to the rate of progress shall, in the Engineer's judgment, be fulfilled, the Party of the First Part may employ and direct the labors of such additional force, equipment and plant as may, in the Engineer's judgment, be necessary to insure the completion of the work or such part thereof within the time specified, or at the earliest possible date thereafter, and charge the expense thereof to the Contractor. Neither the notice from the Party of the First Part to the Contractor, to increase his/her force, equipment or plant, nor the employment of additional force, equipment or plant by the Party of the First Part shall be held to prevent a subsequent notice from the Party of the First Part to him/her to discontinue work under the provisions of the preceding portion of this article.

All expenses charged under this article shall be deducted and paid by the Party of the First Part out of any moneys then due or to become due the Contractor under the Contract, or any part thereof, and in such accounting the Party of the First Part shall not be held to obtain the lowest figures for the work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefor shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under the Contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Party of the First Part, upon completion of the work without further demand being made therefor.

8.13 Convenience Termination.

If the Department determines that it is in the public interest to do so, the Department may notify the Contractor to discontinue all work, or any part thereof. Such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work, or such part thereof, as the Department may designate.

If the Department notifies the Contractor to discontinue all work, or any part thereof, the Department shall pay and the Contractor shall accept, as full payment for all work done and materials provided, a sum agreed to by the Contractor and the Department or, if a sum cannot be agreed upon, the sum of (A) plus (B) determined as follows:

A. For Construction Related Costs

(1) The actual costs for direct labor (direct labor costs shall include the actual salary costs of laborers, equipment operators, truck drivers, steel workers and other trades persons up to and including working foremen. The costs of general superintendence shall be considered included in field and/or home office overhead.), materials (less salvage value, if any) and use of equipment (determined in accordance with subsection 9.03 of the Standard Specifications), plus 10% of this total for overhead (the 10% additive is inclusive of both field and home office overhead); and

(2) The actual cost for Salary Related Costs such as Workmen's Compensation and Liability Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits; and

(3) 10% of the total of (1) and (2) for profit; and

(4) The estimated proportionate cost of surety bonds; and

(5) The actual cost to the Contractor for work performed by a subcontractor, plus 10% of such cost.

No allowance shall be made for general superintendence and the use of small tools and manual equipment. General superintendence is that next level above the working foreman. The costs of general superintendence as well as use of small tools and manual equipment shall be considered included in field and/or home office overhead.

B. For Discontinuance Costs

The reasonable and necessary costs of storage, transportation and other costs incurred for the preservation, protection or disposition of the discontinued work which are pre-approved by the Department to be determined as follows:

(1) The actual costs for direct labor (Direct Labor costs shall include the actual salary costs of laborers, equipment operators, truck drivers, steel workers and other trades persons up to and including working foremen. The costs of general superintendence shall be considered included in field and/or home office overhead.), materials (less salvage value, if any) and use of equipment (determined in accordance with subsection 9.03 of the Standard Specifications), plus 10% of this total for overhead (the 10% additive is inclusive of both field and home office overhead); and

(2) The actual cost for Salary Related Costs such as Workmen's Compensation and Liability Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits.

No allowance shall be made for general superintendence and the use of small tools and manual equipment. General superintendence is that next level above the working foreman. The costs of general superintendence as well as use of small tools and manual equipment shall be considered included in field and/or home office overhead.

The reasonable and necessary legal costs of work discontinuance, plus an additive of 10% for overhead (the additive is inclusive of both field and home office overhead), is allowable. The legal costs for litigation and/or negotiation purposes with the Department in settlement of said discontinuances is not allowable.

Any other reasonable and necessary costs for discontinuance that are pre-approved by the Department, plus an additive of 10% for overhead (the additive is inclusive of both field and home office overhead).

When requested by the Department, the Contractor shall furnish itemized statements of the cost of the work performed and shall give the Department (and/or the Department's Auditors) access to any and all financial and/or project records and documents, relating thereto. Unless the Contractor, when requested to do so, furnishes such itemized statements and access to any and all financial and/or project records and documents, the Contractor shall not be entitled to payment for the work for which such information is sought by the Department.

The Contractor shall not be paid and the Contractor shall not have any claim for loss of anticipated profits or for any costs or profit in addition to those stipulated above; for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all work or from unbalanced allocation, among the contract items, of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefor or any other cause.

The Contractor shall incorporate the provisions of this section as provisions in its contracts with each of their subcontractors.

The authority of the Department under this section shall be in addition to the authority of the Department and/or Engineer under other sections of these specifications.