

SECTION 108—PERFORMANCE AND PROGRESS

108.01 SUBLETTING OR ASSIGNMENT OF CONTRACTS—

(a) General. Do not sublet, sell, transfer, assign, or otherwise dispose of the contract or contracts or any portion or rights, title, or interest, without the written consent of the Representative.

If consent is given, subletting a portion of the contract will be allowed; however, do not sublet a portion exceeding 50% of the original total contract price except as provided herein.

Use only prequalified subcontractors, classified for the type of work undertaken and not exceeding their assigned maximum capacity rating.

For prequalification capacity evaluation, the amount of subcontracted work will be charged solely to the subcontractor when the subcontractor and items of work to be undertaken are named in the bid on the page titled “List of Subcontractors for Financial Credit,” and to both the prime contractor and the subcontractor when the subcontractor is named after the award of the contract.

Do not replace or cancel a subcontractor named in the bid without the approval of the Representative, which approval will not be unreasonably withheld.

Subcontracts or transfer of contract will not release Contractor liability under the contracts and bonds.

(b) Specialty Items. “Specialty Items,” as identified in the proposal, may be performed by subcontract. The cost of any specialty items performed by subcontract may be deducted from the original total contract price before computing the amount of work allowed to be performed by subcontract.

(c) Disadvantaged Business Enterprises (DBE). For Federal-Aid contracts when requirements for DBE are included in the proposal, the cost indicated on the original Attachment A (Form EO-380) submitted for DBE's utilization may be deducted from the original total contract price before computing the amount of work allowed to be performed by subcontract, provided a completed Form D-431 has been submitted with the bid. In cases where specialty items and DBE involvement overlap, any cost deducted is restricted to a single assignment of either specialty item or DBE goal amount, but not both. The maximum amount of the DBE cost that may be deducted is equal to 40% times the difference between the original total contract price and the specialty items' cost.

(d) Minority Business Enterprises (MBE) and Women Business Enterprises (WBE). For contracts financed with other than Federal funds when requirements for MBE and WBE are included in the proposal, the cost of the Agreement Amount indicated on the original Form EO-16 submitted for MBE's and WBE's utilization may be deducted from the original total contract price before computing the amount of work allowed to be performed by subcontract, provided a completed Form D-432 has been submitted with the bid. In cases where specialty items and MBE/WBE involvement overlap, any cost deducted is restricted to a single assignment of either specialty item or MBE/WBE agreement amount, but not both. The maximum amount of the MBE/WBE cost that may be deducted is equal to 40% times the difference between the original total contract price and the specialty items' cost.

(e) Subcontract Approval. Do not allow any work on the project that is assigned to others (including services) to be performed until a copy of the executed subcontract (agreement or any other assignment of the contract), containing a copy of each provision that is a part of the prime contract and that has a statement requiring inclusion, has been reviewed and acknowledged by the Department to have satisfied these requirements and is available on the project to Department representatives for purposes of monitoring contract compliance.

108.02 NOTICE TO PROCEED—As soon as practical after approval of the contracts, bonds, and insurance certificates by the Chief Counsel, the General Counsel, or the Attorney General, or their respective designees, and subject to the provisions specified in [Section 103.07](#), a written Notice to Proceed will be sent, specifying the calendar date on which to begin the work.

(a) Requirements for Starting Work. Begin work on the Notice to Proceed Date specified in the Notice to Proceed and complete all physical work, including any authorized additional or extra work, on or before the Required Completion Date.

(b) Notice to Proceed Period. The Notice to Proceed will be issued within 30 days after the award of the contract. Extension(s) of the 30-day period will be made only by mutual written consent of the parties to the contract provided such written consent is given before the expiration of the 30-day period.

108.03 PERFORMANCE AND PROGRESS—

(a) Preconstruction Conference. Before the Notice to Proceed and start of work, a preliminary conference will be held in the District Executive's office. The purpose of this conference will be to discuss the scope of the project work, to discuss all essential matters pertaining to the satisfactory project completion, and to resolve any questions regarding contract interpretation.

(b) Construction Project Scheduling. Prepare a complete Schedule that adheres to and incorporates all contract time requirements, shows work being completed on or before the Required Completion Date, meets any specified Milestone Date(s), and is in compliance with all contractual requirements.

If, between the date of the award of the contract and the Preconstruction Conference, circumstances beyond the control of the Contractor arise that may substantially affect the contract time, immediately contact the District Executive for a time adjustment. Make such request before the Notice to Proceed is issued.

The Representative may require that the Contractor attend a scheduling conference for the purpose of reviewing this specification and the applicable contract special provision for construction project scheduling (i.e., Narrative, Network, or Critical Path Method). This scheduling conference may be held in conjunction with the Preconstruction Conference. Be prepared to discuss the concepts and logic to be used in sequencing work activities for development of the construction Schedule.

Acceptance of the Contractor's Schedule or any revision(s) thereto, by the Department, will not constitute the Department's approval of or agreement with the sequence of operations, the durations of activities, the adequacy or propriety of resources, the identity of controlling operations, nor the feasibility or any other characteristics of the Schedule or its revisions.

Show all contracted work in the Schedule. Show the sequence and interdependence of activities for completion of all work. Consider and make appropriate scheduling and operational allowances for seasonal weather conditions and ambient temperatures.

Incorporate in the Schedule coordination with all entities (subcontractors, utilities, railroads, etc.) and adjacent or private contracts that could impact the Schedule. In addition to construction activities, include in the Schedule, at a minimum, the procurement, fabrication, and delivery of critical or special materials and equipment, and indicate restraints (i.e., relationships) between activities.

1. Construction Scheduling Coordinator. Have the individual responsible for supervising the work, as specified in [Section 105.05\(a\)](#), serve as the Construction Scheduling Coordinator or be responsible for and oversee all activities of the Construction Scheduling Coordinator.

2. Project Control Meetings. Project control meetings will be held on an as needed basis, as directed. During project control meetings, the Representative and the Contractor's superintendent will conduct a site visit and jointly review project progress. Submit, 2 working days before each project control meeting, a written report, in an acceptable format, that includes the following:

- Progress of project activities.
- Impacts on the current Schedule.
- Planned progress for the next 2 weeks.
- Other Schedule-related information, as required.

3. Submittals. Prioritize and schedule submissions to allow sufficient time for Department review. Make submissions at least 21 calendar days before information is needed for purchasing, fabricating material, or obtaining equipment, unless otherwise indicated or directed. The 21-calendar day review period will begin on the date the Representative receives the submission. Any delays caused by incomplete submissions, including drawings and designs, will be the responsibility of the Contractor.

4. Adjustment of Required Completion Date or Specified Milestone Date(s). If an event or occurrence, as specified in [Section 108.06](#), warrants a time extension, submit a request to the Representative, in writing, within 10 calendar days of the event or occurrence. Include, with the time extension request, a revision to the Schedule in the form indicated for the project, at no additional cost to the Department. The Representative will respond to the request within 10 calendar days of receipt.

Submission of an initial Schedule, or a proposed revision thereto, that shows a change to the Required Completion Date and/or any specified Milestone Date(s) will constitute a request for a time extension or reduction and, if approved, will result in a corresponding change to the Required Completion Date and/or Milestone Date(s). The Representative will respond to the request within 10 calendar days of receipt. If the request for a time extension or reduction is approved, the Department will use the changed Required Completion Date and/or Milestone Date(s) for the purpose of monitoring progress, assigning resources, authorizing additional and/or extra work, processing contract adjustments associated with incentive/disincentive clauses, and assessing liquidated damages. Contractor imposed dates in the Schedule; other than the Required Completion Date, specified Milestone Date(s), and/or any contractually specified sequences; will not be binding on the Department.

5. Recovery. If the latest completion time for any work on the current Schedule results in an activity being delayed beyond the Required Completion Date or any specified Milestone Date(s), as adjusted if appropriate, the Representative may require the Contractor to submit a written description of the plan to recover all lost time and maintain the Required Completion Date or specified Milestone Date(s). If required, submit the written recovery plan within 7 calendar days of notification by the Representative. If the order of project operations is changed to the extent that the Contractor is no longer following the accepted Schedule, the Representative may require that a revision to the Schedule be submitted as specified in [Section 108.03\(b\)4](#).

108.04 LIMITATION OF OPERATIONS—

(a) Maintenance of Traffic. Conduct the work in a manner and sequence that assures minimal interference to traffic.

(b) Completion of Sections of Project. Complete any designated section or sections of the project as indicated; as specified; or when directed, in writing, as specified in [Section 107.15](#).

The Contractor will be relieved of responsibility for further physical work, maintenance, and third party liability only for work items within the section of the project which are satisfactorily completed at the time of, or subsequent to, opening of the section to traffic. The Contractor's responsibility for further physical work, maintenance, and third party liability remains for work items within the section of the project which are not satisfactorily completed at the time of, or subsequent to, opening of the section to traffic.

Release of Contractor responsibility is further contingent on the following:

- a final inspection of the section has been made as specified in [Section 110.08\(a\)](#);
- the Contractor's obligation under the contract to replace defective work or material is not relieved;
- the Contractor's responsibility for repairing any damage to satisfactorily completed work items within the section, which occurs due to construction operations, is not relieved; and
- any work done by the Department, on a designated section of the project that may have been satisfactorily completed, as provided, does not waive the rights of either party to the entire contract.

(c) Maintenance of Existing Vegetation. In order to maintain natural vegetation in all undisturbed areas, do not cross these areas with construction equipment or make any other use of these areas, except at allowed locations.

108.05 CHARACTER OF WORKERS; METHODS AND EQUIPMENT—

(a) General. Employ at all times sufficient labor and equipment for performing the work, as specified in [Section 108.03](#).

(b) Competence of Workers. Employ only competent and efficient superintendents, forepersons, clerks, timekeepers, equipment operators, laborers, mechanics, or artisans for every kind of work. Whenever, in the Representative's opinion, any person is unfit to perform the task, does the work contrary to instructions, or exhibits improper conduct, discharge the person immediately and do not employ the person again on the project without written permission of the Representative. Failure to remove such person, as ordered, or failure to furnish suitable and sufficient personnel for the proper completion of the work, after being ordered to correct the deficiency, may result in suspension of the work, by written notice from the District Executive, until such orders are followed.

If the superintendent or representative on the project fails to cooperate with the Department's authorized representatives in any way, the District Executive will give a written order for dismissal and replacement of that superintendent or representative.

(c) Equipment. Furnish the type, condition, and quantity of equipment that meets the qualifications necessary for the proper execution of the work within the specified contract time. Maintain the equipment in good condition, subject to acceptance, before and during use in connection with the project. If special equipment, not normally used in highway construction, is required to be used, comply with [Section 108.05\(c\)21](#).

1. Alternate Method and/or Equipment. If the contract specifies that construction be performed by the use of certain methods and equipment, use such methods or equipment, unless others are authorized. To use a method or type of equipment other than those specified, request authority to do so. Provide the request in writing and include a full description of the methods and equipment proposed to be used, with an explanation of the reasons for desiring to make the change. If acceptance is given, it will be on condition that construction work is performed in conformity with contract requirements. If, after trial use of the substituted methods of equipment, it is determined that the work produced does not conform to the contract requirements, discontinue the use of the substitute method or equipment. Complete the remaining construction with the specified methods and equipment. Remove the deficient work and replace it with work of specified quality, or take such other corrective action, as directed. No change will be made in the 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.

2. Test of New Special Equipment. A vendor or manufacturer of equipment not currently used may submit the necessary technical data concerning the item to the MTD. If the item warrants further investigation, the MTD may grant permission to the vendor to contact a contractor for the experimental use of the equipment on an appropriate project under construction. The experimental operation will be observed by representatives of the MTD and the District Executive's office, to obtain data necessary to substantiate a final recommendation to the Department.

3. Roller Requirements. Provide rollers, of the type(s) specified for the various items of construction, complying with the following:

3.a Three-wheel power rollers, with an unballasted load of not less than 52 N/mm (300 pounds per linear inch) of tread of rear wheels, having a manufacturer's certified metal mass (weight) of not less than 9 tonnes (10 tons).

3.b Tandem power-driven rollers, with a ballasted load of not less than 58 N/mm (330 pounds per linear inch) of tread of drive roll, having a manufacturer's certified metal mass (weight) of not less than 9 tonnes (10 tons).

3.c Tandem power-driven rollers, with a load of not less than 21 N/mm (120 pounds per linear inch) of tread of drive roll, having a manufacturer's certified metal mass (weight) of either not less than 4.5 tonnes (5 tons) or more than 7 tonnes (8 tons) or either not less than 7 tonnes (8 tons) or more than 9 tonnes (10 tons).

3.d Trench-type rollers that develop a minimum of 52 N/mm-width (300 pounds per inch-width) of compaction roll.

3.e Pneumatic-tire rollers, used to compact soils, subbases, and base courses, may be either single or multiple-axle type and may be equipped with pneumatic tires of equal size and diameter on any one axle. Uniformly inflate tires so that air pressure does not vary more than 35 kPa (5 pounds per square inch). Use rollers of

sufficient mass (weight) and dimensions that, when loaded, will cause the pneumatic tire wheels to exert a ground pressure of not less than 52 N/mm (300 pounds per inch) of width of tread, as measured on a hard surface.

3.f Pneumatic-tire rollers, used to compact hot bituminous mixtures of a self-propelled type. Use rollers having not less than seven wheels mounting smooth tread pneumatic tires, not less than 205 mm x 390 mm (7 1/2 inch by 15 inch) size, each tire capable of exerting an average contact pressure through a range from 415 kPa to 655 kPa (60 pounds per square inch to 95 pounds per square inch). Use rollers with wheels equally spaced along both axles and so arranged that those on one axle track midway between those of the other, with the wheels on one or both axles arranged to oscillate in pairs or to be individually sprung.

Use rollers equipped with power steering and fluid drive or a torque converter, capable of turning or reversing on the hot material without surface scuffing or displacement, and provided with means of wetting and cleaning the tires during operation, to prevent adhesion of hot bituminous mixture to the tires.

Make provision for checking tire pressures during operation. Keep the tires uniformly inflated at the designated pressure and with the difference in pressure between any two tires not to exceed 35 kPa (5 pounds per square inch).

In operation, adjust the tire pressure and wheel load, as required, to provide an average contact pressure of from 415 kPa to 655 kPa (60 pounds per square inch to 95 pounds per square inch) over the surface, to conform to the requirements of both the particular application and the material being compacted.

Equip the roller with means of adjusting the wheel load by ballasting and provide tires with a ply-rating that supports the maximum operating wheel load, at the specified maximum contact pressure.

Furnish copies of the roller manufacturer's charts or tabulations, showing the contact areas and average contact pressures for the full range of both tire inflation pressures and tire loadings for each type and size of compactor tire furnished. Also, furnish copies of the calibration table or chart for the ballast box, showing both the volume of the box in cubic meters (cubic feet), for at least each 75 mm (3-inch) increment of depth, and the empty or tare mass (weight) of the roller.

3.g Tamping rollers with an operating mass (weight) of not less than 1725 kPa (250 pounds per square inch) of cross-sectional area on each tamping foot, face, or end.

3.h Vibratory rollers of a self-propelled type, with the necessary frequency and amplitude to achieve required density without objectionable undulations, material pickup, or other surface defects. Use a vibrator drive that automatically stops when the roller changes direction or stops.

4. Other Compaction Equipment. Permission may be given for the use of other types of vibratory and/or compaction equipment designed for, and capable of accomplishing, compaction and consolidation at least equivalent to the rollers specified.

5. Material Transfer Vehicle (MTV) Provide a Material Transfer Vehicle (MTV) to be used as an intermediate and separate motorized, self-propelled unit between the haul vehicle and the bituminous paver as follows:

- Provide adequate covers of sufficient size to protect the material in the MTV, under all conditions.
- Capable of transferring the material from the haul vehicle to the paver hopper at a uniform and continuous rate to allow the continuous movement of the paver.
- Equipped with remixing augers for remixing the bituminous material before transferring to the paver hopper.
- Free of petroleum oils, solvents, or other material, which adversely affect bituminous concrete.

In addition, equip the bituminous paver with a manufactured hopper insert to provide a mass flow of material directly to the slat conveyors of the paver. Deliver mixture through the MTV at the correct laying temperature as specified in [Section 409.2\(e\) Table A](#), and free from lumps of chilled material.

108.06 TIME EXTENSIONS AND REDUCTIONS—A time extension or time reduction may be granted by the Department as a result of the following events or occurrences, provided the required written request and supporting Schedule revision are submitted to the Representative as specified in [Section 108.03\(b\)4](#).

- The anticipated Notice to Proceed Date in the proposal has not been reasonably met. Such time extension will only be made if it is requested by the Contractor within 10 days after the Notice to Proceed is issued and the anticipated Notice to Proceed Date in the proposal has not been reasonably met through no fault of the Contractor.
- Progress on one or more controlling operations is adversely affected by an act or omission of the Department that is not the fault of the Contractor, all of which will be determined by the Representative.
- Satisfactory project completion requires work in greater or lesser quantities than those indicated in the contract for one or more controlling operations.
- The District Executive, in writing, eliminates an item of work or reduces the quantity of an item of work and the elimination or reduction affects progress on one or more controlling operations.
- The District Executive, in writing, authorizes additional or extra work, which affects progress on one or more controlling operations.
- A strike or labor dispute that causes, despite all reasonable efforts by the Contractor to avoid it, a shutdown of the entire project or of one or more controlling operations as specified in [Section 108.10](#).

108.07 LIQUIDATED DAMAGES—

(a) Construction Engineering Liquidated Damages. For each day that any physical work remains uncompleted after the Required Completion Date, the sum per day specified in the following schedule, unless otherwise stated in the proposal, will be deducted from money due or to become due. This deduction will not be as a penalty, but as Construction Engineering Liquidated Damages.

Original Contract Amount		Schedule of Daily Charges For Construction Engineering Liquidated Damages
From More Than	To and Including	Per Calendar Day
\$ 0	\$ 400,000	\$ 350
400,000	1,000,000	700
1,000,000	5,000,000	925
5,000,000	10,000,000	1,200
10,000,000	15,000,000	1,500
15,000,000		1,975

In the event the Contractor is declared in default, as specified in [Section 108.08](#), Construction Engineering Liquidated Damages will be charged as provided by this section. If the total amount chargeable as Construction Engineering Liquidated Damages exceeds the amount payable to the Contractor or the surety, the excess is to be paid to the State by the Contractor or the surety.

(b) Road Users Liquidated Damages. When indicated in the proposal, Road Users Liquidated Damages will be charged for each day that the roadway is not opened to unrestricted traffic after the specified Milestone Date. The sum per day will be deducted from money due or to become due. This deduction will not be as a penalty, but as Road Users Liquidated Damages.

In the event the contractor is declared in default, as specified in [Section 108.08](#), Road Users Liquidated Damages will be charged in the amount indicated. If the total amount chargeable as Road Users Liquidated

Damages exceeds the amount payable to the Contractor or the surety, the excess is to be paid to the State by the Contractor or the surety.

(c) Work Zone Liquidated Damages. A sum of no less than \$1,000 per 24 hour period will be charged as work zone liquidated damages for failure to comply with Maintenance and Protection of Traffic requirements and drawings or other contract traffic control requirements. This deduction will not be as a penalty, but as work zone liquidated damages.

108.08 DEFAULT AND TERMINATION OF CONTRACT—In the following paragraphs, the word “Contractor” also means the surety, in case of default, and completion of the contract by the surety.

(a) Delay, Neglect, or Default. The Contractor may be declared in default for the following reasons:

- failure to begin work within the time specified in the Notice to Proceed;
- failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work according to the contract terms;
- unsatisfactory performance of the work;
- failure or refusal to remove material, or to repair or remove and replace any work, rejected as defective or unsatisfactory;
- discontinuing work without approval;
- failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- insolvency or bankruptcy;
- commission of any act of bankruptcy or insolvency;
- making assignment for the benefit of creditors;
- failure or refusal within 10 days after written notice by the Secretary, to make payment or show cause why payment should not be made, of any amounts due for material furnished, labor supplied or performed, for equipment rentals, or for utility services rendered, as covered by the Payment Bond;
- failure to protect, to repair, or to make good any damage or injury to property, as specified in [Section 107.12](#); and
- not performing work in an acceptable manner for any cause.

The Secretary, upon written notice from the District Executive or upon other proof satisfactory to the Secretary, and after having given written notice to the Contractor and the surety of such delay, neglect, or default on the part of the Contractor, will have power and authority, without violating the contract to:

- declare the Contractor in default;
- take the completion of the work out of the hands of the Contractor;
- appropriate or use any or all material and equipment of the Contractor assembled for the project;
- enter into a contract or contracts for the completion of the work, according to the contract; or

- use such other methods that will be expedient for the completion of the contract in a satisfactory manner.

(b) Completion by Surety. The Secretary may elect to take the performance of the work from the Contractor. The Secretary may at that time notify and require the surety to complete the contract according to its terms. Also, require the surety to render within 3 months from the completion certificate date, but before payment on the final certificate, a detailed statement of the costs of the completion of the work, including receipts and disbursements of all funds received and paid on account. However, the responsibility of the surety extends only to the limit of the bond amount.

(c) Completion by Department Forces. The Secretary may elect to take the performance of the work from the Contractor and fulfill the contract with Department forces. At that time and in the State's name, the Secretary may take all right, title and interest in and to the equipment and material owned by the Contractor and assembled for use in the execution of the contract, and may use them for completion.

(d) Settlement of Contract. If the contract completion by any of the methods specified results in financial loss to the State, the Secretary may dispose of any of the remaining equipment and material taken over as specified in [Section 108.08\(a\)](#) or (c), without further legal process and in the manner that may be considered in the State's best interests. Any equipment or material not required for completion or recoupment of loss, or for legal charges against the contract, or any balance remaining from the disposition of material and equipment after deducting losses by the State, or any legal charges against the contract, will be turned over to the party legally or equitably entitled to them.

In the event the contract is completed by Department forces, all proper costs and legal charges incurred by the Department in connection with the contract will be deducted from money due or to become due to the Contractor. The Department will credit the Contractor with the amount realized from the disposal of equipment or material.

If legal charges against the contract and the expense incurred by the Department in connection with contract completion by any of the methods specified, less the credits herein provided for, exceed the sum which would have been payable under the contract for the completed work, the Contractor or the surety are liable to the State for the excess amount.

If such legal charges and expenses are less than the contract value of the completed work, the difference will be paid to the Contractor or such difference may be paid to the surety, in an amount not exceeding the total amount which has been paid by the surety on its obligations under the Performance Bond and the Payment Bond. In this event, the surety is required to furnish evidence satisfactory to the Secretary that such payments have been made and that any balance remaining after payment to the surety will be paid to the Contractor.

(e) Termination Clause. The State may, by written notice, with the approval of the FHWA where applicable, terminate the contract or any portion because of any of the following conditions:

- the Contractor is prevented from proceeding with the construction contract as a direct result of a President's Executive Order with respect to the occurrence of war or in the interest of national defense;
- the State or the Contractor is prevented from proceeding with the construction contract as direct result of an Order of a Court of competent jurisdiction;
- funds necessary for the project completion become unavailable;
- for the Department's convenience, the Department has determined that such termination will be in the State's best interest; or
- all of the work of any controlling operation is delayed for more than 90 consecutive calendar days, for any cause beyond the responsibility of the Contractor. The Secretary may enter into an Agreement with the Contractor or may terminate the contract by written notice to the Contractor. If an agreement is entered into, it will be executed by the Contractor and the Secretary, approved by the Surety and the Chief Counsel, the General Counsel or the Attorney General, or their designees.

When the contract, or any portion is terminated before completion of all items of contract work, payment will be made for each unit of work fully completed at the contract unit price and payment for each partially completed

unit of work will be as mutually agreed or at the percentage of the contract unit price that the cost of the partially completed unit is of a fully completed unit with a maximum allowable of 100%. No claim for lost profits or damages of any kind will be allowed for the termination.

Acceptable material, obtained by the Contractor for the work, will be purchased from the Contractor at actual cost, as shown by receipted bills and actual cost records, at such points of delivery as may be designated.

Termination of any portion of the contract does not relieve the Contractor of responsibilities for the completed work, nor will it relieve the surety of its obligation for any claim arising out of the performance of the work.

108.09 NONCOMPLIANCE BY THE CONTRACTOR—In addition to the elective measures the Secretary may take for violation of the contract, as specified in [Section 108.08](#), the Secretary will also have the discretionary right to take any or all of the following actions if the Contractor fails, neglects, or refuses to comply with the requirements specified in Sections [105.03](#), [107.12](#), [107.16\(c\)](#), [110.03\(d\)](#), or [901](#):

- The Secretary may shut down the work until the requirements of the violated section are met. In this event, no remission will be made in contract time for the period for which the work is shut down.
- The Secretary may withhold payment of estimates for work completed until the requirements of the violated section are met.
- The Secretary may enter upon the project and perform all work necessary to conform to the requirements of the section violated, then deduct the cost from money due or to become due to the Contractor or the surety. If the Contractor fails to comply with the requirements specified in Sections [107.12](#) and [107.16\(c\)](#), the Secretary will not proceed until 48 hours after written notice to the Contractor and the surety that the Secretary will take such action.
- The Secretary has the right to enter upon the project and repair or replace public or private property which has been damaged in violation of [Section 107.12](#), to estimate the amount of such damage, and to deduct the amount from money due or to become due to the Contractor or the surety. When money is deducted as provided, the Secretary will settle with the property owner and secure a written statement, releasing the State and the Contractor from further responsibility for such damage.

108.10 STRIKES OR LABOR DISPUTES—Time extensions will be considered appropriate in the event of a strike or labor dispute which causes, despite all reasonable efforts of the contractor to avoid it, a shutdown of the entire project or of one or more controlling operations, whether the strike or labor dispute involves a union bargaining with the Contractor, a subcontractor, the Department, or third parties. In no event, however, will the Contractor be entitled to any delay costs for labor, material, equipment, or related expenses such as overhead or administrative costs, profit, etc., resulting from the strike or labor dispute, regardless of whether the strike or labor dispute involves a union bargaining with the Contractor, a subcontractor, the Department, or third parties affecting a controlling operation.