

shall work begin before the Contract is executed by the Department. The Contractor shall notify the Engineer at least 3 days prior to the date on which work will begin.

#### **108.03—Prosecution of Work.**

The Contractor shall begin work within 10 days of the date specified in the Notice to Proceed. Work shall be conducted in such a manner and with sufficient materials, equipment, tools, and labor as are necessary to ensure its completion in accordance with the plans and these specifications within the time limit specified in the Contract and these specifications. Once the Contractor has begun work, it shall be prosecuted continuously and to the fullest extent possible except for interruptions caused by weather or delays authorized or ordered by the Engineer. If approval is given to discontinue the work temporarily, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

#### **108.04—Critical Materials.**

When the supply of critical materials becomes scarce because of the needs of national defense or industrial conditions beyond the control of the Department or Contractor, the provisions of this Section will become applicable to the Contract.

When all items of work involving noncritical materials have been completed by the Contractor or have progressed to a point where no further work is practicable prior to receipt of critical materials, a complete suspension of work will be granted by the Department. Requests for partial suspension orders because of delays attributable to nonreceipt of critical materials will be considered on the basis of merit in each case.

The Department reserves the right to substitute materials by means of an extra work order.

#### **108.05—Limitation of Operations.**

The Contractor shall conduct the work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Contractor shall not open any work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a section of work before work is started on any other section.

#### **108.06—Gratuities.**

Gifts, gratuities, or favors shall not be given or offered by the Contractor to personnel of the Department. A gift, gratuity, or favor of any nature whatsoever or offer of such by the Contractor shall be a violation of this provision.

The Contractor shall not employ any personnel of the Department for any services without the prior written consent of the Engineer.

If the Engineer determines that the Contractor or the Contractor's employees, representatives, or agents of any person acting in his behalf have violated this provision, the Contractor may, at the discretion of the Engineer, be disqualified from bidding on future contracts with the Department. Any implicated employees, agents, or representatives of the Contractor may be prohibited from working on any contract awarded by the Department. The decision of the Engineer shall be binding on all parties. A Contractor so disqualified may be reinstated only by petition to and approval by the Board.

### **108.07—Character of Workers, Work Methods, and Equipment.**

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

Any person employed by the Contractor or any subcontractor who, in the opinion of the Engineer, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing the person and shall not be employed again on any portion of the work without the approval of the Engineer. If the Contractor fails to remove the person or furnish suitable and sufficient personnel for proper prosecution of the work, the Engineer may withhold all monies that are or may become due the Contractor and may suspend the work until the Contractor has complied with the request or order. Equipment shall be of sufficient size and in such mechanical condition as to meet the requirements of the work and produce a satisfactory quality of work. Equipment shall be such that no damage to the roadway, adjacent property, or other highways will result from its use. The Engineer may order the removal and require replacement of unsatisfactory equipment.

When methods and equipment to be used by the Contractor are not prescribed in the Contract, the Contractor is free to use methods or equipment approved by the Engineer that will accomplish the contract work in conformity with the requirements of the Contract.

When the Contract specifies that construction be performed by the use of particular methods and equipment, they shall be used unless others are authorized by the Engineer. If the Contractor desires to use a different method or type of equipment, he may request permission from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment he proposes to use and an explanation of the reasons for desiring to make the change. If permission is given, it will be on the condition that the Contractor shall 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 conform to the requirements of the Contract, 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 any deficient work and replace it with work of the specified quality or take such other corrective action as the Engineer may direct. No change will be made in the basis of payment for the construction items involved or the contract time limit as the result of authorizing a change in methods or equipment under these provisions.

#### **108.08—Progress Schedule.**

The Contractor shall submit a progress schedule satisfactory to the Engineer that shows the proposed order of work and indicates the time required to complete the items of work. The schedule shall conform to the requirements of Section 103.06(e). The schedule may be used as the basis for establishing major construction operations and as a check on the progress of the work. The schedule shall, however, be subject to revision in accordance with the requirements of Section 105.08. Payment for material stockpiled or stored in accordance with the requirements of Section 109.08 will not be considered in determining the Contractor's rate of progress.

#### **108.09—Determination and Extension of Contract Time Limit.**

The contract time limit will be determined by the Department and specified in the Contract in calendar days or as a fixed date. No request for an extension of time will be considered that is based on any claim that the contract time limit as originally established was inadequate.

If the satisfactory fulfillment of the Contract with extensions and increases authorized in accordance with the requirements of Sections 104.02 and 104.03 requires the performance of work in greater quantities than those specified in the Contract, the contract time limit may be increased according to one of two options selected at the discretion of the Engineer: (1) the extra time allowances as agreed on and set forth in the extra work order that covers the additional work, or (2) the same ratio that the total cost of work actually performed shall bear to the total cost shown in the bid schedule.

With a fixed-date contract, when the Notice to Proceed is not issued within 45 days after the opening of bids, or the Contractor is unable to commence work because of any failure of the Department, or when the Contractor is delayed because of the fault of the Department, the Contractor may be given a time extension based on the number of days delayed beyond the 45 days. No time extension will be allowed for a delay in the issuance of the Notice of Proceed when the delay is the fault of the Contractor.

During prosecution of the work, the Contractor shall identify the causes for any delays attributable to conditions he deems to be beyond his control and shall identify the particular construction operations affected and the significant dates that encompass the periods of delay. The timely submission to the Engineer of such information

is essential for the Department to make an adequate evaluation of any subsequent claim received from the Contractor for an extension of the contract time limit.

If the Contractor has not completed the work within the contract time limit or as extended in accordance with the requirements of this Section, he may make a written claim to the Engineer for an extension of time setting forth the reasons he believes will justify granting the claim. Such claims must be filed within 60 days after the final estimate is paid by the State. If the Engineer determines that the work was delayed because of conditions beyond the control of and without the fault of the Contractor, the Engineer may extend the time for completion as the conditions justify. The extended time shall then be in full force and effect the same as if it had been the original time for completion.

- (a) **Calendar Days:** When the contract time limit is specified in calendar days, the time includes Sundays, holidays, and nonworking days. When the Engineer authorizes the suspension of work in whole or in part in accordance with the requirements of Section 108.10 and such suspension is not attributable to any fault or negligence on the part of the Contractor, the contract time limit will be adjusted. The contract time limit may be adjusted on a day-for-day basis when the work is wholly suspended and on a prorated basis when the work is partially suspended.

To determine the number of calendar days chargeable to the contract time limit for work performed between the effective dates of a partial suspension order, the total dollar value of the Contract will be divided by the number of days in the contract time limit. The result shall be the dollar value of one day's work. The dollar value of all work actually performed during a partial suspension period will be divided by the monetary value of one day's work. The result, in days, will be charged against the contract time limit. In no case will the number of days charged be greater than the total number of calendar days between the effective dates of a partial suspension order. In determining the dollar value of work actually performed during a partial suspension period, the dollar value of adjustments made for work performed prior to the issuance of a partial suspension order and the dollar value of mobilization and stockpiled materials during the period will be excluded.

- (b) **Fixed Date:** When the contract time limit is specified as a fixed date, the Contractor shall take into consideration normal conditions considered unfavorable for the prosecution of the work, and shall place sufficient workers and equipment on the project to complete the work in accordance with the contract time limit.

The Engineer may give consideration for extension of time when a delay occurs due to unforeseen causes beyond the control of and without the fault or negligence of the Contractor. However, consideration will not be given to extensions of time attributable to weather conditions or conditions resulting from weather.

If there is a delay in the progress of the work due to unforeseen causes described hereinbefore, and the delay extends the contract time limit into the period between November 30 of one year and April 1 of the following year and working conditions during such period are unsuitable for the completion of the work, then consideration may be given to granting an extension of time that will encompass a suitable period during which such work can be expeditiously and acceptably performed.

When the Engineer determines that an extension of contract time will be made in accordance with the requirements of Section 108.09, the daily dollar value to be used in computing time extensions resulting from monetary increases will be based on the number of days resulting from deducting 45 days from the number of days between the inclusive dates of the receipt of bids and the fixed completion date.

### **108.10—Suspension of Work Ordered by the Engineer.**

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

### **108.11—Failure To Complete on Time.**

For each calendar day that any work remains incomplete after the contract time limit specified for the completion of the work, the Department will assess liquidated

damages against the Contractor. Liquidated damages, assessed in accordance with the Schedule of Liquidated Damages (Table I-1), at the rate applicable to the Contract for each day of additional time consumed, subject to such adjustments as provided in accordance with the requirements of Section 108.09, will be deducted from any monies due the Contractor, not as a penalty but as liquidated damages.

### 108.12—Liquidated Damages.

The following Schedule of Liquidated Damages, representing the cost of administration, engineering, supervision, inspection and other expenses, will be charged against the Contractor for each calendar day beyond the contract time in which the Contract remains in an incomplete state:

TABLE I-1  
Schedule of Liquidated Damages

Original Contract Amount in Dollars	Daily Charge in Dollars
Plus — 100,000	175
100,000 — 500,000	350
500,000 — 2,000,000	600
2,000,000 — 8,000,000	1000
8,000,000 — 15,000,000	1100
15,000,000 — Plus	1400

### 108.13—Default of Contract.

The Contractor may be declared in default if he does *any* one of the following:

- (a) fails to begin the work under the Contract within 10 days of the date specified in the Notice to Proceed
- (b) fails to perform the work with sufficient workers and equipment or with sufficient materials to ensure prompt completion of the work
- (c) performs the work unsuitably or neglects or refuses to remove materials or perform anew work that is unacceptable
- (d) discontinues prosecution of the work
- (e) fails to resume work that has been discontinued within a reasonable time after notice to do so
- (f) becomes insolvent, is declared bankrupt, or commits any act of bankruptcy or insolvency
- (g) allows any final judgment to stand against him unsatisfied for a period of 10 days

- (h) makes an assignment for the benefit of creditors
- (i) fails for any other cause whatsoever to carry on the work or contractual obligations in an acceptable manner

If any of these conditions exists, the Engineer will give notice in writing to the Contractor and his surety of the delay, neglect, or default. If within 10 days after such notice the Contractor or his surety has not taken measures that will, in the judgment of the Engineer, ensure satisfactory progress of the work or give assurances satisfactory to the Engineer that the provisions of the Contract will be fully carried out and instructions complied with, the Commissioner may then, or at any time thereafter, declare the Contractor in default. Without violating the Contract, the Commissioner may call upon the Contractor's surety for the satisfactory and expeditious completion of all work under the Contract or may otherwise terminate the Contract in accordance with Section 108.14.

If the Contractor is declared in default, subsequent payments will be made to the surety and further negotiations will be conducted with the surety.

If the Contractor's surety fails or refuses to proceed with the work and make satisfactory progress thereon in accordance with the instructions of the Commissioner, the Commissioner will appropriate and use any or all materials and equipment on the project site that are suitable and acceptable and will enter into an agreement with others for the completion of the work, or he will use such other methods as he deems necessary to ensure the completion of the work.

Costs and charges incurred by the Department, including the cost of completing the work under the Contract, will be deducted from any monies due or that will become due the Contractor and his surety. If the expense incurred by the Department is less than the sum that would have been payable under the Contract if it had been completed by the Contractor, the Contractor and his surety will be entitled to receive the difference. If the expense exceeds the sum that would have been payable under the Contract, the Contractor and his surety shall be liable for and shall pay to the State the amount of the excess.

#### **108.14—Termination of Contract.**

- (a) **Conditions for Termination:** The Department may terminate the Contract or any portion thereof because of *any* of the following conditions:
  1. default
  2. national emergency
  3. action by the State, U.S. government, or court order
  4. conditions beyond the control of the Department

- (b) **Provisions of Termination:** Termination will be in accordance with the following:
1. Disturbed areas shall be promptly placed in an acceptable condition as directed by the Engineer. Payment for such work will be made at the contract unit prices or, in the absence of contract unit prices, in accordance with the requirements of Section 104.03.
  2. Payment will be made for the actual number of units or items of work completed at the contract unit price, or as mutually agreed, for items of work partially completed. No claim for loss of anticipated profits will be considered, and the provisions of Section 104.02 will not apply.
  3. Reimbursement for organizing the work when not specified in the Contract and moving equipment to and from the job will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the contract unit prices.
  4. At the option of the Engineer, materials the Contractor obtains for the work that have been inspected, tested, and accepted by the Engineer and that have not been incorporated in the work may be purchased from the Contractor at actual costs as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Engineer.
  5. The termination of the Contract or a portion thereof shall not relieve the Contractor of his responsibilities for the completed work, nor shall it relieve his surety of its obligation for and concerning any just claims arising out of the work performed.

### **108.15—Termination of Contractor’s Responsibilities.**

The Contract will be considered complete upon final acceptance. The Contractor will be notified in writing of the final acceptance, and his responsibility will then cease except as set forth in his bond.

## **SECTION 109—MEASUREMENT AND PAYMENT**

### **109.01—Measurement of Quantities.**

Work specified in the Contract will be measured by the Engineer according to U.S. Standard Measure. The methods of measurement and computations to be used to determine quantities of material furnished and work performed will be those generally recognized as conforming to good engineering practice.