

1-08 PROSECUTION AND PROGRESS

1-08.1 Subcontracting

Work done by the Contractor's own organization shall account for at least 30-percent of the Awarded Contract price. Before computing this percentage, however, the Contractor may subtract (from the Awarded Contract price) the costs of any subcontracted Work on items the Contract designates as specialty items.

The Contractor shall not subcontract Work unless the Engineer approves in writing. Each request to subcontract shall be on the form the Engineer provides. If the Engineer requests, the Contractor shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. The Contractor shall require each Subcontractor to comply with [Section 1-07.9](#) and to furnish all certificates and statements required by the Contract.

Prior to subcontracting any work, the Contractor shall verify that every first tier Subcontractor meets the responsibility criteria stated below at the time of subcontract execution. The Contractor shall include these responsibility criteria in every subcontract, and require every Subcontractor to:

1. Possess any electrical contractor license required by 19.28 RCW or elevator contractor license required by 70.87 RCW, if applicable;
2. Have a certificate of registration in compliance with chapter 18.27 RCW;
3. Have a current State unified business identifier number;
4. If applicable, have
 - a. Industrial insurance coverage for the bidder's employees working in Washington (Title 51 RCW);
 - b. An employment security department number (Title 50 RCW);
 - c. A State excise tax registration number (Title 82 RCW);
5. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
6. Verify these responsibility criteria for every lower tier subcontractor at the time of subcontract execution; and,
7. Include these responsibility criteria in every lower tier subcontract.

Along with the request to sublet, the Contractor shall submit the names of any contracting firms the Subcontractor proposes to use as lower tier subcontractors. Collectively, these lower tier subcontractors shall not do Work that exceeds 25-percent of the total amount subcontracted to a Subcontractor. When a Subcontractor is responsible for construction of a specific Structure or Structures, the following Work may be performed by lower tier Subcontractors without being subject to the 25-percent limitation:

1. Furnishing and driving of piling, or
2. Furnishing and installing concrete reinforcing and post-tensioning steel.

Except for the 25-percent limit, lower tier subcontractors shall meet the same requirements as Subcontractors.

The Engineer will approve the request only if satisfied with the proposed Subcontractor's record, equipment, experience, and ability. Approval to subcontract shall not:

1. Relieve the Contractor of any responsibility to carry out the Contract,
2. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond,
3. Create any contract between the Contracting Agency and the Subcontractor, or
4. Convey to the Subcontractor any rights against the Contracting Agency.

The Contracting Agency will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the Work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in 1 and 2 above in accordance with WAC 296-127. If this should occur, the provisions of [Section 1-07.9](#), as modified or supplemented, shall apply.

On all projects funded with Contracting Agency funds only, the Contractor shall certify to the actual amounts paid Disadvantaged, Minority, or Women's Business Enterprise firms that were used as Subcontractors, lower tier subcontractors, manufacturers, regular dealers, or service providers on the Contract. This Certification shall be submitted to the Project Engineer on WSDOT form 421-023, "Annual Report of Amounts Paid as MBE/WBE Participants", annually for the State fiscal year July 1 through June 30, or through Physical Completion of the Contract, whichever occurs earliest. The report is due July 20th following the fiscal year end or 20-calendar days after Physical Completion of the Contract.

On all projects funded with both Contracting Agency funds and Federal assistance the Contractor shall submit a "Quarterly Report of Amounts Credited as DBE Participation" on a quarterly basis for every quarter in which the Contract is active (Work is accomplished) or upon completion of the project, as appropriate. The quarterly reports are due on the 20th of April, July, October, and January for the four respective quarters. When required, this "Quarterly Report of Amounts Credited as DBE Participation" is in lieu of WSDOT form 421-023, "Annual Report of Amounts Paid as MBE/WBE Participants".

If dissatisfied with any part of the subcontracted Work, the Engineer may request in writing that the Subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

1-08.1(1) Subcontract Completion and Return of Retainage Withheld

The following procedure shall apply to all subcontracts entered into as a part of this Contract:

Requirements

1. The Subcontractor shall make a written request to the Contractor for the release of the Subcontractor's retainage or retainage bond.
2. Within 10-working days of the request, the Contractor shall determine if the subcontract has been satisfactorily completed and shall inform the Subcontractor, in writing, of the Contractor's determination.

3. If the Contractor determines that the subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond shall be released by the Contractor within 10-working days from the date of the written notice.
4. If the Contractor determines that the Subcontractor has not achieved satisfactory completion of the subcontract, the Contractor must provide the Subcontractor with written notice, stating specifically why the subcontract Work is not satisfactorily completed and what has to be done to achieve completion. The Contractor shall release the Subcontractor's retainage or retainage bond within 8-working days after the Subcontractor has satisfactorily completed the Work identified in the notice.
5. In determining whether satisfactory completion has been achieved, the Contractor may require the Subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the Subcontractor's Work have been paid in full. The Contractor may also require any documentation from the Subcontractor that is required by the subcontract or by the Contract between the Contractor and Contracting Agency or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the Subcontractor's Work.
6. If the Contractor fails to comply with the requirements of the Specification and the Subcontractor's retainage or retainage bond is wrongfully withheld, the Subcontractor may seek recovery against the Contractor under applicable prompt pay statutes in addition to any other remedies provided for by the subcontract or by law.

Conditions

1. This clause does not create a contractual relationship between the Contracting Agency and any Subcontractor as stated in [Section 1-08.1](#). Also, it is not intended to bestow upon any Subcontractor, the status of a third-party beneficiary to the Contract between the Contracting Agency and the Contractor.
2. This section of the Contract does not apply to retainage withheld by the Contracting Agency from monies earned by the Contractor. The Contracting Agency shall continue to process the release of that retainage based upon the Completion Date of the project as defined in [Section 1-08.5](#) Time for Completion and in accordance with the requirements and procedures set forth in chapter 60.28 RCW.

Payment

The Contractor will be solely responsible for any additional costs involved in paying retainage to the Subcontractors prior to total project completion. Those costs shall be incidental to the respective Bid items

1-08.2 Assignment

The Contractor shall not assign all or any part of the Work unless the Engineer approves in writing. The Engineer will not approve any proposed assignment that would relieve the original Contractor or Surety of responsibility under the Contract.

Money due (or that will become due) to the Contractor may be assigned. If given written notice, the Contracting Agency will honor such an assignment to the extent the law permits. But the assignment shall be subject to all setoffs, withholdings, and deductions required by law and the Contract.

1-08.3 Progress Schedule

1-08.3(1) General Requirements

The Contractor shall submit Type A or Type B Progress Schedules and Schedule Updates to the Engineer for approval. Schedules shall show Work that complies with all time and order of Work requirements in the Contract. Scheduling terms and practices shall conform to the standards established in *Construction Planning and Scheduling, Second Edition*, published by the Associated General Contractors of America. Except for Weekly Look-Ahead Schedules, all schedules shall meet these General Requirements, and provide the following information:

1. Include all activities necessary to physically complete the project.
2. Show the planned order of Work activities in a logical sequence.
3. Show durations of Work activities in working days as defined in [Section 1-08.5](#).
4. Show activities in durations that are reasonable for the intended Work.
5. Define activity durations in sufficient detail to evaluate the progress of individual activities on a daily basis.
6. Show the Physical Completion of all Work within the authorized Contract time.

The Contracting Agency allocates its resources to a Contract based on the total time allowed in the Contract. The Contracting Agency may accept a Progress Schedule indicating an early Physical Completion Date but cannot guarantee the Contracting Agency's resources will be available to meet an accelerated schedule. No additional compensation will be allowed if the Contractor is not able to meet their accelerated schedule due to the unavailability of Contracting Agency's resources or for other reasons beyond the Contracting Agency's control.

If the Engineer determines that the Progress Schedule or any necessary Schedule Update does not provide the required information, then the schedule will be returned to the Contractor for correction and resubmittal.

The Engineer's approval of any schedule shall not transfer any of the Contractor's responsibilities to the Contracting Agency. The Contractor alone shall remain responsible for adjusting forces, equipment, and Work schedules to ensure completion of the Work within the time(s) specified in the Contract.

1-08.3(2) Progress Schedule Types

Type A Progress Schedules are required on all projects that do not contain the Bid item for Type B Progress Schedule. Type B Progress Schedules are required on all projects that contain the Bid item for Type B Progress Schedule. Weekly Look-Ahead Schedules and Schedule Updates are required on all projects.

1-08.3(2)A Type A Progress Schedule

The Contractor shall submit five copies of a Type A Progress Schedule no later than the first working day of the Contract as defined in [Section 1-08.5](#). The schedule may be a critical path method (CPM) schedule, bar chart, or other standard schedule format. The Engineer will evaluate the Type A Progress Schedule and approve or return the schedule for corrections within 15-calendar days of receiving the submittal.

1-08.3(2)B Type B Progress Schedule

The Contractor shall submit a preliminary Type B Progress Schedule no later than five calendar days after the date the Contract is executed. The preliminary Type B Progress Schedule shall comply with all of these requirements and the requirements of [Section 1-08.3\(1\)](#), except that it may be limited to only those activities occurring within the first 60-working days of the project.

The Contractor shall submit five copies of a Type B Progress Schedule depicting the entire project no later than 30-calendar days after the date the Contract is executed. The schedule shall be a critical path method (CPM) schedule developed by the Precedence Diagramming Method (PDM). Restraints may be utilized, but may not serve to change the logic of the network or the critical path. The schedule shall display at least the following information:

- Contract Number and Title
- Construction Start Date
- Critical Path
- Activity Description
- Milestone Description
- Activity Duration
- Predecessor Activities
- Successor Activities
- Early Start (ES) and Early Finish (EF) for each activity
- Late Start (LS) and Late Finish (LF) for each activity
- Total Float (TF) and Free Float (FF) for each activity
- Physical Completion Date
- Data Date

The Engineer will evaluate the Type B Progress Schedule and approve or return the schedule for corrections within 15-calendar days of receiving the submittal.

1-08.3(2)C Vacant**1-08.3(2)D Weekly Look-Ahead Schedule**

Each week that Work will be performed, the Contractor shall submit a Weekly Look-Ahead Schedule showing the Contractor's and all Subcontractors' proposed Work activities for the next two weeks. The Weekly Look-Ahead Schedule shall include the description, duration and sequence of Work, along with the planned hours of Work. This schedule may be a network schedule, bar chart, or other standard schedule format. The Weekly Look-Ahead Schedule shall be submitted to the Engineer by the midpoint of the week preceding the scheduled Work or some other mutually agreed upon submittal time.

1-08.3(3) Schedule Updates

The Engineer may request a Schedule Update when any of the following events occur:

1. The project has experienced a change that affects the critical path.
2. The sequence of Work is changed from that in the approved schedule.
3. The project is significantly delayed.
4. Upon receiving an extension of Contract time.

The Contractor shall submit five copies of a Type A or Type B Schedule Update within 15 calendar days of receiving a written request, or when an update is required by any other provision of the Contract. A “significant” delay in time is defined as 10-working days or 10-percent of the original Contract time, whichever is greater.

In addition to the other requirements of this Section, Schedule Updates shall reflect the following information:

1. The actual duration and sequence of as-constructed Work activities, including changed Work.
2. Approved time extensions.
3. Any construction delays or other conditions that affect the progress of the Work.
4. Any modifications to the as-planned sequence or duration of remaining activities.
5. The Physical Completion of all remaining Work in the remaining Contract time.

Unresolved requests for time extensions shall be reflected in the Schedule Update by assuming no time extension will be granted, and by showing the effects to follow-on activities necessary to physically complete the project within the currently authorized time for completion.

1-08.3(4) Measurement

No specific unit of measurement shall apply to the lump sum item for Type B Progress Schedule.

1-08.3(5) Payment

Payment will be made in accordance with [Section 1-04.1](#), for the following Bid item when it is included in the Proposal:

“Type B Progress Schedule”, lump sum.

The lump sum price shall be full pay for all costs for furnishing the Type B Progress Schedule and preliminary Type B Progress Schedule.

Payment of 80-percent of the lump sum price will be made upon approval of the Progress Schedule.

Payment will be increased to 100-percent of the lump sum price upon completion of 80-percent of the original total Contract Award amount.

All costs for providing Type A Progress Schedules and Weekly Look-Ahead Schedules are considered incidental to other items of Work in the Contract.

No payment will be made for Schedule Updates that are required due to the Contractors operations. Schedule Updates required by events that are attributed to the actions of the Contracting Agency will be paid for in accordance with [Section 1-09.4](#).

1-08.4 Prosecution of Work

The Contractor shall begin Work within 21-calendar days from the date of execution of the Contract by the Contracting Agency, unless otherwise approved in writing. The Contractor shall diligently pursue the Work to the Physical Completion Date within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the Work within the time(s) specified in the Contract.

1-08.5 Time for Completion

The Contractor shall complete all physical Contract Work within the number of “working days” stated in the Contract Provisions or as extended by the Engineer in accordance with [Section 1-08.8](#). Every day will be counted as a “working day” unless it is a nonworking day or an Engineer determined unworkable day. A nonworking day is defined as a Saturday, a Sunday, a day on which the Contract specifically suspends Work, or one of these holidays: January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. When any of these holidays fall on a Sunday, the following Monday shall be counted a nonworking day. When the holiday falls on a Saturday, the preceding Friday shall be counted a nonworking day. The days between December 25 and January 1 will be classified as nonworking days.

An unworkable day is defined as a half or whole day the Engineer declares to be unworkable because of weather or conditions caused by the weather that prevents satisfactory and timely performance of the Work shown on the critical path of the Contractor’s approved progress schedule. Other conditions beyond the control of the Contractor may qualify for an extension of time in accordance with [Section 1-08.8](#).

Contract time shall begin on the first working day following the 21st calendar day after the date the Contracting Agency executes the Contract. If the Contractor starts Work on the project at an earlier date, then Contract time shall begin on the first working day when onsite Work begins. The Contract Provisions may specify another starting date for Contract time, in which case, time will begin on the starting date specified.

Each working day shall be charged to the Contract as it occurs, until the Contract Work is physically complete. If Substantial Completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the Contract the week before; (2) specified for the Physical Completion of the Contract; and (3) remaining for the Physical Completion of the Contract. The statement will also show the nonworking days and any half or whole day the Engineer declares as unworkable. Within 10-calendar days after the date of each statement, the Contractor shall file a written protest of any alleged discrepancies in it. To be considered by the Engineer, the protest shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of time disputed. By not filing such detailed protest in that period, the Contractor shall be deemed as having accepted the statement as correct.

The Engineer will give the Contractor written notice of the Physical Completion Date for all Work the Contract requires. That date shall constitute the Physical Completion Date of the Contract, but shall not imply the Secretary’s acceptance of the Work or the Contract.

The Engineer will give the Contractor written notice of the Completion Date of the Contract after all the Contractor’s obligations under the Contract have been performed by the Contractor. The following events must occur before the Completion Date can be established:

1. The physical Work on the project must be complete; and
2. The Contractor must furnish all documentation required by the Contract and required by law, to allow the Contracting Agency to process final acceptance of the Contract. The following documents must be received by the Project Engineer prior to establishing a Completion Date:

- a. Certified Payrolls (Federal-aid Projects)
- b. Material Acceptance Certification Documents
- c. Annual Report of Amounts Paid as MBE/WBE Participants or Quarterly Report of Amounts Credited as DBE Participation, as required by the Contract Provisions.
- d. Final Contract Voucher Certification

1-08.6 Suspension of Work

The Engineer may order suspension of all or any part of the Work if:

1. Unsuitable weather and such other conditions beyond the control of the Contractor that prevent satisfactory and timely performance of the Work; or
2. The Contractor does not comply with the Contract or the Engineer's orders.

When ordered by the Engineer to suspend or resume Work, the Contractor shall do so immediately.

If the Work is suspended for reason (1) above, the period of Work stoppage will be counted as unworkable days. But if the Engineer believes the Contractor should have completed the suspended Work before the suspension, all or part of the suspension period may be counted as working days. The Engineer will set the number of unworkable days (or parts of days) by deciding how long the suspension delayed the entire project.

If the Work is suspended for reason (2) above, the period of Work stoppage will be counted as working days. The lost Work time, however, shall not relieve the Contractor from any Contract responsibility.

If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the Contracting Agency in the administration of the Contract, or by failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), the Engineer will make an adjustment for any increase in the cost or time for the performance of the Contract (excluding profit) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for any suspension, delay, or interruption if (1) the performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) an equitable adjustment is provided for or excluded under any other provision of the Contract.

If the Contractor believes that the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time and such suspension, delay, or interruption is the responsibility of the Contracting Agency, the Contractor shall immediately submit a written notice of protest to the Engineer as provided in [Section 1-04.5](#). No adjustment shall be allowed for any costs incurred more than 10-calendar days before the date the Engineer receives the Contractor's written notice of protest. If the Contractor contends damages have been suffered as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the protest (stating the amount of damages) is asserted in writing as soon as practicable, but no later than the date of the Contractor's signature on the Final Contract Voucher Certification. The Contractor shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit the Engineer to have access to those records and any other records as may be deemed necessary by the Engineer to assist in evaluating the protest.

The Engineer will determine if an equitable adjustment in cost or time is due as provided in this section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in [Section 1-09.4](#), provided that no profit of any kind will be allowed on any increase in cost necessarily caused by the suspension, delay, or interruption.

Request for extensions of time will be evaluated in accordance with [Section 1-08.8](#).

The Engineer's determination as to whether an adjustment should be made will be final as provided in [Section 1-05.1](#).

No claim by the Contractor under this clause shall be allowed unless the Contractor has followed the procedures provided in this Section and in Sections [1-04.5](#) and [1-09.11](#).

1-08.7 Maintenance During Suspension

Before and during any suspension (as described in [Section 1-08.6](#)) the Contractor shall protect the Work from damage or deterioration. Suspension shall not relieve the Contractor from anything the Contract requires unless this section states otherwise.

At no expense to the Contracting Agency, the Contractor shall provide through the construction area a safe, smooth, and unobstructed Roadway for public use during suspension (as required in [Section 1-07.23](#) or the Special Provisions). This may include a temporary road or detour.

If the Engineer determines that the Contractor failed to pursue the Work diligently before the suspension, or failed to comply with the Contract or orders, then the Contractor shall maintain the temporary Roadway in use during suspension. In this case, the Contractor shall bear the maintenance costs. If the Contractor fails to maintain the temporary Roadway, the Contracting Agency will do the Work and deduct all resulting costs from payments due to the Contractor.

If the Engineer determines that the Contractor has pursued the Work diligently before the suspension, then the Contracting Agency will do the routine maintenance work (and bear its cost). This Contracting Agency-provided maintenance work will include only routine maintenance of:

1. The Traveled Way, Auxiliary Lanes, Shoulders, and detour surface,
2. Roadway drainage along and under the traveled Roadway or detour, and
3. All barricades, signs, and lights needed for directing traffic through the temporary Roadway or detour in the construction area.

The Contractor shall protect and maintain (and bear the costs of doing so) all other Work in areas not used by traffic.

After any suspension during which the Contracting Agency has done the routine maintenance, the Contractor shall accept the traveled Roadway or detour as is when Work resumes. The Contractor shall make no claim against the Contracting Agency for the condition of the Roadway or detour.

After any suspension, the Contractor shall retain all responsibilities the Contract assigns for repairing or restoring the Roadway, its slopes, and its drainage system to the requirements of the Plans.

1-08.8 Extensions of Time

The Contractor shall submit any requests for time extensions to the Engineer in writing no later than 10-working days after the delay occurs. The requests for time extension shall be limited to the affect on the critical path of the Contractor's approved schedule attributable to the change or event giving rise to the request.

To be considered by the Engineer, the request shall be in sufficient detail (as determined by the Engineer) to enable the Engineer to ascertain the basis and amount of the time requested. The request shall include an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the Work or by using other reasonable alternatives. If a request combined with previous extension requests, equals 20-percent or more of the original Contract time then the Contractor's letter of request must bear consent of Surety. In evaluating any request, the Engineer will consider how well the Contractor used the time from Contract execution up to the point of the delay and the effect the delay has on any completion times included in the Special Provisions. The Engineer will evaluate and respond within 15-calendar days of receiving the request.

The authorized time for Physical Completion will be extended for a period equal to the time the Engineer determines the Work was delayed because of:

1. Adverse weather causing the time requested to be unworkable, provided that the Engineer had not already declared the time to be unworkable and the Contractor has filed a written protest according to [Section 1-08.5](#).
2. Any action, neglect, or default of the Contracting Agency, its officers, or employees, or of any other contractor employed by the Contracting Agency.
3. Fire or other casualty for which the Contractor is not responsible.
4. Strikes.
5. Any other conditions for which these Specifications permit time extensions such as:
 - a. In [Section 1-04.4](#) if a change increases the time to do any of the Work including unchanged Work.
 - b. In [Section 1-04.5](#) if increased time is part of a protest that is found to be a valid protest.
 - c. In [Section 1-04.7](#) if a changed condition is determined to exist that caused a delay in completing the Contract.
 - d. In [Section 1-05.3](#) if the Contracting Agency does not approve properly prepared and acceptable drawings within 30-calendar days.
 - e. In [Section 1-07.13](#) if the performance of the Work is delayed as a result of damage by others.
 - f. In [Section 1-07.17](#) if the removal or the relocation of any utility by forces other than the Contractor caused a delay.
 - g. In [Section 1-07.24](#) if a delay results from all the Right of Way necessary for the construction not being purchased and the Special Provisions does not make specific provisions regarding unpurchased Right of Way.
 - h. In [Section 1-08.6](#) if the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of the Contracting Agency.

- i. In [Section 1-09.11](#) if a dispute or claim also involves a delay in completing the Contract and the dispute or claim proves to be valid.
- j. In [Section 1-09.6](#) for Work performed on a force account basis.
6. If the actual quantity of Work performed for a Bid item was more than the original Plan quantity and increased the duration of a critical activity. Extensions of time will be limited to only that quantity exceeding the original Plan quantity.
7. Exceptional causes not specifically identified in items 1 through 6, provided the request letter proves the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

Working days added to the Contract by time extensions, when time has overran, shall only apply to days on which liquidated damages or direct engineering have been charged, such as the following:

If Substantial Completion has been granted prior to all of the authorized working days being used, then the number of days in the time extension will eliminate an equal number of days on which direct engineering charges have accrued. If the Substantial Completion Date is established after all of the authorized working days have been used, then the number of days in the time extension will eliminate an equal number of days on which liquidated damages or direct engineering charges have accrued.

The Engineer will not allow a time extension for any cause listed above if it resulted from the Contractor's default, collusion, action or inaction, or failure to comply with the Contract.

The Contracting Agency considers the time specified in the Special Provisions as sufficient to do all the Work. For this reason, the Contracting Agency will not grant a time extension for:

1. Failure to obtain all materials and workers unless the failure was the result of exceptional causes as provided above in subsection 7;
2. Changes, protests, increased quantities, or changed conditions ([Section 1-04](#)) that do not delay the completion of the Contract or prove to be an invalid or inappropriate time extension request;
3. Delays caused by nonapproval of drawings or plans as provided in [Section 1-05.3](#);
4. Rejection of faulty or inappropriate equipment as provided in [Section 1-05.9](#);
5. Correction of thickness deficiency as provided in [Section 5-05.5\(1\)B](#).

The Engineer will determine whether the time extension should be granted, the reasons for the extension, and the duration of the extension, if any. Such determination will be final as provided in [Section 1-05.1](#).

1-08.9 Liquidated Damages

Time is of the essence of the Contract. Delays inconvenience the traveling public, obstruct traffic, interfere with and delay commerce, and increase risk to Highway users. Delays also cost tax payers undue sums of money, adding time needed for administration, engineering, inspection, and supervision.

3. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within 15-calendar days of receipt of a request for assurance from the Contracting Agency;
4. If the Contractor disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
5. If the Contractor disregards the authority of the Contracting Agency;
6. If the Contractor performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work; or
7. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract.

Once the Contracting Agency determines that sufficient cause exists to terminate the Contract, written notice shall be given to the Contractor and its Surety indicating that the Contractor is in breach of the Contract and that the Contractor is to remedy the breach within 15-calendar days after the notice is sent. In case of an emergency such as potential damage to life or property, the response time to remedy the breach after the notice may be shortened. If the remedy does not take place to the satisfaction of the Contracting Agency, the Engineer may, by serving written notice to the Contractor and Surety either:

1. Transfer the performance of the Work from the Contractor to the Surety; or
2. Terminate the Contract and at the Contracting Agency's option prosecute it to completion by contract or otherwise. Any extra costs or damages to the Contracting Agency shall be deducted from any money due or coming due to the Contractor under the Contract.

If the Engineer elects to pursue one remedy, it will not bar the Engineer from pursuing other remedies on the same or subsequent breaches.

Upon receipt of a notice that the Work is being transferred to the Surety, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons satisfactory to the Engineer to finish the Work and provide the materials without termination of the Contract. Such employment shall not relieve the Surety of its obligations under the Contract and the bond. If there is a transfer to the Surety, payments on estimates covering Work subsequent to the transfer shall be made to the extent permitted under law to the Surety or its agent without any right of the Contractor to make any claim.

If the Engineer terminates the Contract or provides such sufficiency of labor or materials as required to complete the Work, the Contractor shall not be entitled to receive any further payments on the Contract until all the Work contemplated by the Contract has been fully performed. The Contractor shall bear any extra expenses incurred by the Contracting Agency in completing the Work, including all increased costs for completing the Work, and all damages sustained, or which may be sustained, by the Contracting Agency by reason of such refusal, neglect, failure, or discontinuance of Work by the Contractor. If liquidated damages are provided in the Contract, the Contractor shall be

liable for such liquidated damages until such reasonable time as may be required for Physical Completion of the Work. After all the Work contemplated by the Contract has been completed, the Engineer will calculate the total expenses and damages for the completed Work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the Contracting Agency to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the Surety shall be jointly and severally liable to the Contracting Agency and shall pay the difference to the State of Washington, Department of Transportation on demand.

In exercising the Contracting Agency's right to prosecute the Physical Completion of the Work, the Contracting Agency shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. In the event that the Contracting Agency takes Bids for remedial Work or Physical Completion of the project, the Contractor shall not be eligible for the Award of such Contracts.

In the event the Contract is terminated, the termination shall not affect any rights of the Contracting Agency against the Contractor. The rights and remedies of the Contracting Agency under the Termination Clause are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the Contracting Agency will not release the Contractor from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Termination for Public Convenience in [Section 1-08.10\(2\)](#). This shall include termination for default because of failure to prosecute the Work, and the delay was found to be excusable under the provisions of [Section 1-08.8](#).

1-08.10(2) Termination for Public Convenience

The Engineer may terminate the Contract in whole, or from time to time in part, whenever:

1. The Contractor is prevented from proceeding with the Work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
2. The Contractor is prevented from proceeding with the Work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
3. The Engineer determines that such termination is in the best interests of the Contracting Agency.

1-08.10(3) Termination for Public Convenience Payment Request

After receipt of Termination for Public Convenience as provided in [Section 1-08.10\(2\)](#), the Contractor shall submit to the Contracting Agency a request for costs associated with the termination. The request shall be prepared in accordance with the claim procedures outlined in Sections [1-09.11](#) and [1-09.12](#). The request shall be submitted promptly but in no event later than 90-calendar days from the effective date of termination.

The Contractor agrees to make all records available to the extent deemed necessary by the Engineer to verify the costs in the Contractor's payment request.

1-08.10(4) Payment for Termination for Public Convenience

Whenever the Contract is terminated in accordance with [Section 1-08.10\(2\)](#), payment will be made in accordance with [Section 1-09.5](#) for the actual Work performed.

If the Contracting Agency and the Contractor cannot agree as to the proper amount of payment, then the matter will be resolved as outlined in [Section 1-09.13](#) except that, if the termination occurs because of the issuance of a restraining order as provided in [Section 1-08.10\(2\)](#), the matter will be resolved through mandatory and binding arbitration as described in Sections [1-09.13\(3\)A](#) and [B](#), regardless of the amount of the claim.

1-08.10(5) Responsibility of the Contractor and Surety

Termination of a Contract shall not relieve the Contractor of any responsibilities under the Contract for Work performed. Nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Contract Bond or retainage bond for Work performed.