

107.25 – LEAD EXPOSURE IN CONSTRUCTION

The Contractor will comply with all aspects of 29CFR, Part 1926, Lead Exposure in Construction, by the United States Department of Labor, Occupational Safety and Health Administration.

**SECTION 108
PROSECUTION AND PROGRESS**

108.1-SUBLETTING OF CONTRACT:

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or Contracts or any portion thereof, or of their right, title, or interest, without written approval of the Engineer prior to any of the subject work being performed. The Contractor will be permitted to sublet a portion thereof but shall perform, with their own organization, work amounting to not less than 50 percent of the total contract cost, except that any items designated in the Contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor with their own organization. No subcontracts, or transfer of contract, shall in any case release the Contractor of their liability under the Contract and Bonds.

The Contractor shall request the approval of each subcontractor, including lower-tier subcontractors. Each subcontract, including lower-tier subcontracts, shall be in writing and shall physically contain all of the applicable provisions, requirements and specifications. The Contractor may certify that a copy of all the applicable provisions, requirements and specifications has been provided and is physically incorporated in each subcontract including lower-tier subcontracts. Requests for approval of DBE subcontractors, however, shall also be accompanied by a copy of the proposed subcontract without the required attachments.

The Contractor shall maintain a complete subcontract file including lower-tier subcontractors at the home office which shall be available to authorized personnel for review without notice or at any other appropriate location as determined by the Division after a five day notice. Such file may contain a single copy of all the applicable provisions, requirements and specifications in lieu of individual subcontract files containing the applicable attachments.

Roadside production of materials is construed to be the production of crushed stone, gravel, or other materials with portable or semiportable crushing, screening or washing plants established or re-opened in the vicinity of the work for the purpose of supplying materials to be incorporated into the work on a designated project or projects and in all cases, unless performed by the Contractor, shall be considered as subcontracting.

The purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mixed concrete or any other materials produced at and

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furnished from established and recognized commercial plants, together with the delivery of such materials to the site of work by means of vehicles owned or operated by such plants or by recognized commercial hauling companies, shall not be considered as subcontracting under these provisions.

Except as stated, all hauling of materials from roadside production sources, or from railroad or water delivery points, to batching plants, mixing plants, or directly to their place of use in the road, and all hauling of materials from batching plants and mixing plants to their place of use in the road, unless done by the Contractor's own equipment or by recognized hauling companies, shall be considered as subcontracting under these provisions.

If batching plants or mixing plants are set up at rail or water delivery points and materials in part supplied to such plants by rail or water transportation companies, the remaining materials required at such batching or mixing plants may be hauled to such plants without such hauling being considered as subcontracting.

108.2-NOTICE TO PROCEED:

The "Notice to Proceed" will stipulate the date on which it is expected the Contractor shall begin the construction and from which date contract time will be charged. Commencement of work by the Contractor may be deemed and taken as a waiver on their part of this notice.

108.3-PROSECUTION OF THE WORK:

108.3.1-GENERAL: The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the Plans and Specifications within the time set forth in the Proposal.

The Contractor shall submit a Detailed Construction Schedule and any subsequent schedules, as required by this specification, in the form of an Activities Schedule Chart (ASC) or a Critical Path Method (CPM) Schedule with all graphic and tabular supporting documentation, hereinafter referred to as "Schedule".

Schedules will not be required for projects on which the major portion of the work is resurfacing, landscaping, signing, lighting, installing signals, guardrail or bridge painting or on which the Contract Bid Amount is \$1,000,000 or less.

Critical Path Method (CPM) Schedules will be required for all projects on which the Contract Bid Amount is equal to or exceeding \$5,000,000 or containing an I/D Clause.

The submitted Schedule shall include a written certification on the face of the schedule, as well as on any diagrams and drawings stating that the Schedule is within the contractual limits and that the submitted Schedule is the only schedule the Contractor will use for all critical work activities, interdependent work activities, phase construction, stage construction, resource needs, transmittals for Contractor designs, drawings and other submissions, activities for subcontractors, vendors, and suppliers, and all other controlling

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and subsequent activities. This same written certification shall be included on all Schedule updates and revisions.

The Schedule shall show the interdependent and logical sequence of construction activities. The Schedule shall reflect that all contract time requirements are essential conditions of the Contract and shall also include allowances for seasonal weather conditions, the influence of high or low ambient temperatures, as well as any extra shifts, overtime, or additional manpower and equipment necessary to complete the critical and non-critical activities within the allotted contract time without additional cost to the Division.

Should the Schedule indicate an earlier completion than the time for completion set forth in the Contract, the Schedule shall define any float developed between an early completion point and the Contract completion date as part of the project float. It is understood by the Contractor and the Division that float is a shared commodity, not for the exclusive use or benefit of either party. Either party has the full use of the float until it is depleted. Time extensions will only be considered when the delay exceeds the remaining float time on the activity(s) affected by a change.

The Division's review of the Schedule does not represent approval of the Contractor's estimate of resources (labor, material and equipment), method of operation, or production rates.

108.3.1.1-SUBMISSION OF CONSTRUCTION SCHEDULES: No item of work under the contract may be pursued following the "Notice to Proceed" until a Preliminary Construction Schedule or Detailed Construction Schedule has been submitted by the Contractor and reviewed by the Engineer.

The Contractor shall designate a competent representative, hereinafter referred to as Construction Coordinator, who shall have the decision-making authority for the Contractor to control the work in accordance with the Schedule(s) for the duration of the Contract.

108.3.1.2-PRELIMINARY CONSTRUCTION SCHEDULE: Within thirty (30) calendar days of the contract award date, the Contractor may submit a sixty (60) calendar day Preliminary Construction Schedule for review by the Engineer. The preliminary Schedule shall include a generalized project schedule for the balance of the work in summary form meeting the contract completion date. The Contractor shall maintain and submit monthly a sixty (60) calendar day Preliminary Construction Schedule until the Detailed Construction Schedule is submitted by the Contractor and reviewed by the Engineer

108.3.1.3-DETAILED CONSTRUCTION SCHEDULE: The Detailed Schedule shall include a report system that is maintained throughout the life of the project to measure all factors that affect the completion date. Within sixty (60) calendar days of the contract award date, the Contractor shall submit a Detailed Construction Schedule meeting the contract completion date for review by the Engineer.

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The Engineer will review the Detailed Construction Schedule and supporting documentation for compliance with the Contract within seven (7) calendar days after receipt in accordance with provision 108.6.2. The Contractor shall provide the Engineer with a revised Detailed Schedule incorporating any recommendations made in the Engineer's review, which schedule shall become the official Schedule and shall be used by the Contractor. The official Schedule must be completed within ninety (90) calendar days of the contract award date. The Engineer will not release further current estimate payments for any item of work under the Contract after ninety (90) calendar days until the Contractor's official Detailed Construction Schedule is submitted.

108.3.1.4-CONSTRUCTION SCHEDULE REQUIREMENTS: The Preliminary Schedule and the official Detailed Construction Schedules shall be submitted in hard copy and shall include a legend for symbols and abbreviations used. Activities with duration times in excess of fifteen (15) working days, except for non-construction activities, shall be kept to a minimum and be subject to review by the Engineer. The Schedule shall provide a minimum of 20 activities or categories, hereafter referred to as "activities", per million dollar value of the Contract and a maximum of 300 activities or as directed by the Engineer.

The Schedule shall indicate the interdependence of activities (how the start of a given activity depends on the completion of preceding activities) and the sequence of work (how failure to complete a given activity may restrain the start of following activities).

The Schedule shall include the Contract completion date and any interim completion dates contained in the Contract, as well as any coordination and cooperation requirements, construction restrictions or other requirements of the Contract.

The Schedule shall include activities for all work required by the Contract, including activities for subcontractors, vendors, and suppliers. In addition to construction activities, the Schedule shall include as a minimum the procurement, fabrication and delivery of critical or special materials and equipment, as well as submission and review of all shop/work drawings, Contractor designs and all other submissions required by the Contract.

The activities are to be described by contract item number, location, phase, and sequence so that the work is readily identifiable and the progress of each activity can be measured. The dollar value designated for each activity shall be based on the amount of labor, material and equipment involved. The sum of all activity dollar values shall equal the Contract amount. Activity duration shall be logical and consistent with the Contract documents and shall be based on realistic and available resources of the Contractor.

The above requirements are applicable for all ASC and CPM Schedules, including the Preliminary Schedule and the official Detailed Construction Schedules, required updates, and any revised Schedules.

Requiring the Contractor to submit Schedules allocating resources to

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project activities does not imply acceptance, approval or agreement by the Division that the Contractor's scheduled allocation of resources is sufficient to complete either the project or a scheduled activity in a scheduled time.

108.3.2-ACTIVITIES SCHEDULE CHART (ASC) SCHEDULE: The Schedule shall be submitted as a written narrative accompanied by bar chart, chronologically sequenced and to time scale, showing construction prosecution or preparation, including an activity description, for each activity, as well as its duration by working days (for working day Contracts only) or calendar days. The controlling operation must be distinguished from other operations on the schedule. The duration represented by a bar shall note periods of non-work when the non-working period exceeds three (3) consecutive calendar days. The percentage of completion for each activity for each month, based on the monetary value of the work, shall be listed in numbers above the bar chart.

108.3.3-CRITICAL PATH METHOD (CPM) SCHEDULE: The Schedule shall be in CPM Network Schedule precedence format. Refer to "The Use of CPM in Construction – A Manual for General Contractors and the Construction Industry," published by the Associated General Contractors of America (AGC).

The precedence diagram shall be submitted on standard D size sheets (24" x 36"). The critical path shall be distinguished from other paths on the Schedule. All back-up data used to generate the Schedule shall be submitted in digital form on electronic disk(s) using the current version of the "P3" scheduling and cost control system by Primavera Systems, Inc. to allow for direct digital entry of data into the Engineer's system.

The Schedule shall include the following data for each activity in the initial submittal and in all updates and revisions:

1. Activity number, as well as preceding and following activity numbers;
2. Activity description;
3. Duration of activity, in working days;
4. All quantities in accordance with pay items;
5. Number of work days per week for activity;
6. Number of shifts per work day and hours per shift for activity;
7. Major equipment and corresponding hours for activity;
8. Manpower by Trade or entity and corresponding hours for activity;
9. Dollar value of activity;
10. Remaining duration of activity, in working days;
11. Earliest start date, by calendar date;
12. Earliest finish date, by calendar date;
13. Actual start date, by calendar date;
14. Actual finish date, by calendar date;
15. Latest start date, by calendar date;

16. Latest finish date, by calendar date;
17. Total float for activity;
18. Free float for activity.

108.3.4-PROGRESS REPORTING AND SCHEDULE UPDATING:

The Contractor shall submit weekly a summary of work force by Trade including all workmen and subcontractors together with a weekly summary of all equipment used on the project. The Division shall maintain the Contractor's resource information in a confidential manner.

A Project Control Meeting shall be held monthly by the Engineer with the Contractor's Construction Coordinator to review actual progress, planned progress for the next period, and any changes since the previous update(s). Two (2) working days before the meeting, the Construction Coordinator shall provide the Engineer with a complete update of all schedule activity information included in 108.3.2 and 108.3.3 above.

The Contractor shall submit with the monthly update a narrative report which shall include, but not be limited to, a description of progress along the critical path in terms of days ahead or behind the Schedule dates, any problem areas (current and anticipated), any delaying factors and their impact, and an explanation of any corrective actions taken or proposed. The narrative report shall state any and all changes made in the Schedule since the previous update(s) and detail all activities or portions of activities, including dollar value, completed during the update period.

Extension of interim completion dates or the contract completion date will be governed by the provisions of 108.6.

If the Division revises work which would affect the sequence of operations or duration of time on work activities, the Contractor shall submit to the Engineer, within seven (7) calendar days after receipt of the revision, a written report in accordance with 108.6 outlining the effect on work time and cost that the revision is expected to have on the Schedule.

Should the Contractor fail to submit a monthly Schedule update for review when due, the Engineer will not release further current estimate payments for any item of work under the Contract until such Schedule is submitted.

108.3.5-SUBMISSION OF REVISED CONSTRUCTION SCHEDULE:

The Engineer shall request the Contractor to submit a revised Schedule when any one of the following conditions is reflected by the latest Schedule:

1. A delay greater than ten (10) calendar days in the completion of any critical activity.
2. The performance of any work in a sequence or manner which varies from that represented on the Schedule.
3. The addition, deletion or revision of activities required by Contract modification.

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The revised schedule shall indicate all additional resources (labor, material and equipment) and modification(s) of operations necessary to meet the contract time requirements.

The Engineer will review the Revised Construction Schedule and supporting documentation for compliance with the Contract. The Contractor shall incorporate any recommendations made in the Engineer's review.

Should the Contractor fail to submit a revised Schedule within seven (7) calendar days of the Engineer's written request, the Engineer will not release further current estimate payments for any item of work under the Contract until such Schedule is submitted.

108.4-LIMITATION OF OPERATIONS:

The Contractor shall conduct the work at all times in such manner and in such sequence as will assure the least interference with traffic. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started, and the Engineer may require the Contractor to finish a section on which work is in progress before work is started on any additional sections if the opening of such section is essential to public convenience.

108.5-CHARACTER OF WORKERS; METHODS AND EQUIPMENT:

The Contractor shall at all times employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by these Specifications.

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

Any person who, in the opinion of the Engineer, does not perform their work in proper and skillful manner or is intemperate or disorderly shall, at the request of the Engineer, be removed forthwith. Any Contractor or their subcontractor employing such person shall not reemploy such person on the project without the written approval of the Engineer.

Should a Contractor fail to remove such a person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until such order is complied with.

All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall be such that no injury to the roadway, adjacent property, or other highways will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the

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Contractor is free to use any methods or equipment that the Contractor demonstrates to the satisfaction of the Engineer will accomplish the contract work in conformity with the requirements of the Contract.

When the Contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer. Should the Contractor desire to use a method or type of equipment other than specified in the Contract, the Contractor shall request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and as explanation of the reasons for desiring to make the change. If approval 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 meet contract requirements, the Contractor shall discontinue the use of the substitute methods or equipment and shall complete the remaining construction with the specified methods or equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved nor in contract time as result of authorizing a change in method or equipment under these provisions.

108.6-DETERMINATION AND EXTENSION OF CONTRACT TIME:

108.6.1-GENERAL: The Division shall determine and specify in the Contract the number of working days and/or a fixed calendar date allowed for completion of the Work, hereinafter called Contract time.

A potential working day is every day on the calendar except Saturday, Sunday and holidays as set forth in [101.42](#).

When the Contract time is specified on a working day basis, the Engineer will inform the Contractor weekly, by written statement, of the number of working days charged for the preceding week, the accumulated number of working days charged against the Contract and number of working days remaining for completion of the Contract. The Contractor shall submit in writing to the Engineer any protest concerning the weekly statement within seven (7) calendar days after receipt of the statement. The written protest shall set forth what the Contractor considered incorrect, along with supporting information; otherwise, the statement shall be deemed to have been accepted by the Contractor as correct. The Engineer shall review any such protest and supporting information and shall render a decision either affirming or correcting the number of working days previously reported for the contested week.

When the Contract time is specified on a fixed calendar date basis, it will consist of the number of calendar days counting from the effective date of the Engineer's issuance of the Notice to Proceed to the calendar date specified

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for completion of the project, including all Saturdays, Sundays, holidays and non-working days. All calendar days elapsing between the effective dates of any orders of the Engineer to suspend Work and to resume Work for suspensions not the fault of the Contractor shall be excluded.

When the Work on the Contract is substantially complete so that the Project could be opened continuously for the safe, convenient, and unimpeded use of the traveling public, as determined solely by the Engineer, the Contract time charges shall be discontinued prior to final acceptance being made by the Engineer as prescribed in 105.16.

108.6.2-EXTENSION OF CONTRACT TIME: The Contractor shall be responsible for any delays caused by failing to start work activities on the early start dates, the earliest date any activity can begin after its' predecessors have been completed, unless the activity has float. The Contractor shall also be responsible for any delays caused by lack of continuous effort, inadequate allocation and scheduling of resources and coordination of the work, inadequate or insufficient application of resources, or inability to meet interim completion dates due to Contractor's approach to the work. Such delays shall not be considered for an extension of interim completion dates or the contract completion date.

If the Contractor finds it impossible for reasons beyond his control to complete the Work within the Contract time as specified or as extended according to the provisions of this Section, the Contractor shall make a written request to the Engineer within seven (7) calendar days for an extension of time.

The Contractor shall notify the Engineer, in writing, within seven (7) calendar days if a problem develops requiring direction to the Contractor by the Engineer or after the occurrence of any delay including delays in critical path activities or, in the absence of a CPM schedule, delays in the controlling operation during the prosecution of Work that the Contractor believes may warrant revision of an interim completion date or the contract completion date. The notification shall set forth therein the reasons that shall justify the granting of the request, and as a minimum, identify the cause(s) for the delay; the particular critical path activity(s) or controlling operation(s) affected, the affect of any Division act or omission on each activity or operation delayed, and the significant dates that encompass the periods of delay. The notification shall be considered by the Division as a request by the Contractor for a contract time extension.

If notification is not given within the prescribed time, or if, having given notification as provided herein, the Contractor does not afford the Engineer proper facilities for keeping strict account of actual costs and loss of time, the Contractor waives any claim for additional compensation and Contract time extension. Delay costs allegedly incurred before notifying the Engineer, in the manner provided herein, that operations have been delayed shall not be allowed.

If the Engineer determines that the Work was delayed because of conditions beyond the control of and without the fault or negligence of the

Contractor, the Engineer may extend the time for project completion as the conditions justify.

Only delays in the activities on the critical path or, in the absence of scheduling requirements, delays in the controlling operation will be considered for a contract time extension provided, when required, the Contractor has submitted proper notification and supporting documentation justifying the request. The Engineer shall promptly advise the Contractor in writing of the approval or rejection of the time extension request. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

108.6.2.1-EXCUSABLE NONCOMPENSABLE DELAYS:

An excusable noncompensable delay is a delay in the critical path activity or, in the absence of a CPM schedule, a delay in the controlling operation that was beyond the Contractor's control and not caused by the Contractor's fault or negligence. Consideration may be given to an adjustment in Contract time, but no consideration shall be given for additional monetary compensation. Excusable noncompensable delays include:

- A.** Delay of Notice to Proceed more than thirty (30) calendar days (seven (7) calendar days on contracts with Incentive/Disincentive clauses) after the contract letting date for reasons beyond the control of and without the fault or negligence of the Contractor. Consideration for an adjustment of Contract time will be limited to the number of calendar days in excess of thirty (30) calendar days (seven (7) calendar days on contracts with Incentive/Disincentive clauses), counting from the Contract letting date to the effective date of the Engineer's issuance of the Notice to Proceed.
- B.** Delays due to Acts of God, labor strike (not within the Contractor's power to settle) freight embargoes, state of national emergency or other reasons beyond the control of the Contractor. Consideration for an adjustment of contract time shall be limited to the number of potential working days lost as determined by the Engineer.
- C.** Delays in obtaining materials due to extraordinary market conditions caused by industry wide strike, natural disaster, area-wide shortage, official federal declaration that a material is critical due to national defense efforts, or for other reasons beyond the control of the Contractor. Consideration for an adjustment of contract time shall be limited to the number of potential working days lost as determined by the Engineer.
- D.** Delays due to adverse weather from April 1 to November 30.

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An adjustment of contract time shall not be considered for loss of time due to adverse weather:

- i) before the start of construction operations,
- ii) after November 30 and before April 1 of the following year;
- iii) during periods other than on-site time, nor;
- iv) after the Contract completion date.

Consideration for an adjustment of contract time shall be limited to the number of potential working days lost each month, as determined by the Engineer, in excess of twenty (20)% of the potential working days within that month or portion thereof.

108.6.2.2-EXCUSABLE COMPENSABLE DELAYS: An excusable compensable delay is a delay in the critical path activity or, in the absence of a CPM schedule, a delay in the controlling operation that was caused solely by the Department. An adjustment in Contract time may be considered along with additional monetary compensation, if entitled. Excusable compensable delays include:

- A. Delays in a critical path activity or, in the absence of a CPM schedule, a delay in the controlling operation due to contract modifications resulting in the performance of added Work, revised Work, or Work in greater quantities than those set forth in the Proposal. The Division reserves the right to negotiate unit prices that includes the cost for additional resources (labor, material and equipment) required to complete added Work, revised Work, or Work in greater quantities within the originally scheduled dates, thereby negating the need for a contract time adjustment.

Consideration for adjustment of Contract time for added or revised Work shall be limited to the extra time allowances as agreed on and specified in the Change Order that covers the added or revised Work.

Any adjustment of Contract time for Work authorized in accordance with [104.11](#) that requires the performance of Work in greater quantities than those specified in the Contract shall be made at the discretion of the Engineer in accordance with one of the two options below:

1. The extra time allowances as agreed on and specified in the Change Order that covers the additional or increased Work; or
2. The same ratio that the total cost of the added or increased work shall bear to the total contract bid amount, provided the added or increased work is judged to be a critical path activity or, in the absence of a CPM schedule, a

controlling operation.

- B.** Loss of time due to differing site conditions. Consideration for adjustment of Contract time shall be according to section 104.9.
- C.** Loss of time due to any written orders of the Engineer suspending work or delaying critical path activities on the project not the fault of the Contractor. Consideration for adjustment of contract time shall be according to section 104.10.
- D.** Loss of time due solely to acts or omissions by the Division and not caused or contributed to by the Contractor's fault or negligence.

The normal time required for the Division to take action on properly prepared programs such as an acceptable on-the-job training program, a temporary pollution control program, shop drawings, mill test reports, or other submissions as required by the Contractor shall be considered to be seven (7) calendar days after receipt.

Consideration for an adjustment of contract time shall be limited to the number of potential working days lost as determined by the Engineer.

108.7 – COMPLETION DATES:

108.7.1 – FAILURE TO COMPLETE ON TIME AND LIQUIDATED DAMAGES: Time is an essential element of the Contract and it is important that the work be completed within the time specified. The cost to the Division for the administration of the Contract, including engineering, inspection and supervision, will increase as the time required to complete the work is increased.

Therefore, the Division will assess liquidated damages against the Contractor for each calendar day any work remains uncompleted during the months of April through November after the contract time specified for completion of the work, subject to such extensions of contract time required or permitted in 108.6. Daily charges will be deducted for each calendar day, as defined in 101.10, on all contracts, except daily charges will not be deducted on any contract between November 30 and April 1. The total amount of daily charges will be deducted from any monies due the Contractor, not as a penalty but as liquidated damages. Unless specified elsewhere in the contract, the amount of the daily charge will be calculated from TABLE 108.7.1.

**TABLE 108.7.1
SCHEDULE OF LIQUIDATED DAMAGES**

ORIGINAL CONTRACT AMOUNT		DAILY CHARGE
FROM MORE THAN	TO AND INCLUDING	PER CALENDAR DAY
0	25,000	120
25,000	100,000	150
100,000	500,000	290
500,000	1,000,000	490
1,000,000	2,000,000	840
2,000,000	5,000,000	1,390
5,000,000	10,000,000	2,220
10,000,000	-----	3,870

108.7.2 - Interim Completion Date: When an interim completion date has been specified in the contract documents for the Contractor to complete a specific amount of work, pay item, or structure, and if the Contractor fails to meet the interim date, the Division will assess a per calendar day charge, as liquidated damages, as specified elsewhere in the contract documents until such amount of work, pay item, or structure has been completed. Extension of interim completion dates will be governed by the provisions of 108.6. The liquidated damages provided for in this subsection are in addition to those provided for elsewhere in this section.

108.7.3 - Incentive/Disincentive for Early Completion: When an Incentive/Disincentive (I/D) provision has been included in the contract documents, Subsection 108.7.1 relating to liquidated damages remains in effect and is applicable to the total contract time; however, there will be concurrent assessment of liquidated damages with disincentive assessments. Extension of the date(s) established for completion of work stages covered by the I/D provision and/or the contract completion date will be governed by the provisions of 108.6.

108.8-DEFAULT AND TERMINATION OF CONTRACT:

If the Contractor:

- i. fails to begin work under the Contract within the time specified in the "Notice to Proceed",
- ii. fails to perform the work with sufficient employees and equipment or with sufficient materials to assure the prompt completion of the work,
- iii. performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable,
- iv. discontinues the prosecution of the work,
- v. fails to resume work, which has been discontinued, within a reasonable time after notice to do so,

- vi. becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency,
- vii. allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days,
- viii. makes an assignment for the benefit of creditors, or
- ix. for any other cause whatsoever, fails to carry out the contract terms in an acceptable manner, the Engineer will give notice in writing to the Contractor and their surety of such delay, neglect or default.

If the Contractor or Surety, within a period of 10 days after such notice, shall not proceed in accordance therewith, the Division will, upon written notification from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to comply with such notice, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor. The Division may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of the contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of the Contract in an acceptable manner.

All cost charges incurred by the Division, together with the cost of completing the work under Contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the Division the amount of such excess.

108.9-TERMINATION OF CONTRACT FOR CONVENIENCE OF THE STATE:

The Division may terminate the entire Contract or any portion thereof, if the Engineer determines that a termination is in the Division's interest. The Engineer will deliver to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- A. **Submittals and Procedures.** After receipt of a Notice of Termination, the Contractor shall immediately proceed with the following obligations:
- 1. Stop work as specified in the notice.
 - 2. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
 - 3. Terminate all subcontracts to the extent they relate to the work terminated.
 - 4. Settle all outstanding liabilities and termination settlement Proposals arising from the termination of the contract or portion thereof.

5. Transfer title and deliver to the Division (1) fabricated, partially fabricated, or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (2) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Division.
6. Complete performance of the work not terminated.
7. Acceptable materials obtained by the Contractor for the Project that have not been incorporated in the work shall be inventoried in conjunction with the Engineer at a date identified by the Engineer.
8. Take any action necessary, or that the Engineer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the Division has or may acquire an interest.

B. **Settlement Provisions.** When the Division orders termination of all or a part of the Contract effective on a certain date, completed items of work as of that date will be paid for at the Contract bid price. Payment for partially completed work will be made either at agreed prices or under the provisions below. Items that are eliminated in their entirety by such termination shall be paid for as provided in Subsection 109.5.

1. **Additional Costs.** Within sixty working days of the effective termination date, the Contractor shall submit a claim for additional damages or costs not covered above or elsewhere in the Contract. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage for which the Contractor feels reimbursement should be made. Anticipated profits will not be considered as part of any settlement.

The Contractor and the Division may agree upon the whole or any part of the amount to be paid because of the termination.

The amount may include a reasonable allowance for profit on work done. The agreed amount may not exceed the total Contract price as reduced by the amount of payments previously made, and the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed

amount.

2. **Additional Cost Review.** If the Contractor and the Division fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Division will pay the amounts determined as follows, but without duplication of any amounts agreed upon above:
 - a. For Contract work performed before the effective date of termination, the total (without duplication of any items) of:
 1. The cost of work performed;
 2. The cost of settling and paying termination settlement Proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract if not included in subparagraph 1 above; and
 3. A sum, as profit on (1) above determined by the Division to be fair and reasonable. The Division shall allow no profit under this subdivision if the Contractor's costs incurred on work performed exceed the bid item payments made.
 - b. The reasonable costs of settlement of the work terminated, including:
 1. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement Proposals and support data;
 2. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 3. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
 - c. Except for normal spoilage, and to the extent that the Division expressly accepts the risk of loss, Division will exclude from the fair value, as that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Division or to the buyer.
 - d. In arriving at the amount due the Contractor under this clause, there will be deducted--
 1. All unliquidated advance or other payments to the Contractor under the terminated portion of the Contract;

2. Any claim that the Division has against the Contractor under the Contract; and
3. The agreed price for, or the proceeds from the sale of materials, supplies, or other things acquired and sold by the Contractor not recovered by or credited to the Division.

If termination is partial, the Contractor may file a Proposal with the Division for an equitable adjustment of the price(s) of the continued portion of the Contract. The Division will make any equitable adjustment agreed upon. Any Proposal for an equitable adjustment under this clause shall be requested within sixty working days from the effective date of termination unless extended in writing by the Engineer.

The Division may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the termination portion of the Contract, if these payments will not exceed the amount to which the Contractor is entitled.

The Contractor shall maintain and make available all project cost records to the Division for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on the Contractor's costs and expenses under the Contract. These records and documents shall be made available to the Division at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Division, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

Termination of the Contract or portion thereof shall not relieve the Contractor of contractual responsibilities of the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.