

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01 - Prosecution of Work

The Contractor shall begin work within 15 calendar days of the date of contract execution unless otherwise permitted by specific language in the Contract or as permitted by the provisions of Section 108.02.

Prior to beginning construction operations, the Contractor shall attend a pre-construction scheduling meeting to discuss the Contractor's general plan of operations, work times, and proposed means and methods for accomplishing the work. The pre-construction scheduling meeting may be held in conjunction with the pre-construction conference or in a separate meeting as mutually agreed to by the Department and the Contractor.

The Contractor shall provide a sufficient force of workers, materials, equipment, and tools; and shall prosecute the work with such diligence as is required to attain and maintain a rate of progress necessary to ensure completion of the project in accordance with the plans, specifications, and other requirements of the Contract.

Once the Contractor has begun work, it shall be prosecuted continuously and to the fullest extent possible except for authorized suspensions ordered by the Engineer as defined in Section-108.05. If approval is given to discontinue the work temporarily, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

At least once every 30 days or as specified in the contract documents, the Contractor shall meet with the Engineer to discuss his current progress relative to his Schedule of Record (SOR) and to establish the approximate date for starting each critical inspection stage during the following 30 days. The Engineer shall be advised at least 24 hours in advance of any changes in the Contractor's planned operations or critical stage work requiring inspection. For the purposes stated herein, the Schedule of Record (SOR) is defined in accordance with the provisions of Section 108.03.

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-Documents. 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.

108.02 - Limitation of Operations

(a) General.

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.

(b) Holidays

Except as is necessary to maintain traffic, work shall not be performed on Sundays or the following holidays without the permission of the Engineer: January 1, Easter, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

108.03 - Progress Schedule

General Requirements: The Contractor shall plan and schedule the work on the project so as to complete the work within the time limit and budget established by the contract and shall submit his plan to accomplish these objectives in the form of a Progress Schedule for the Engineer's review and acceptance. The Progress Schedule shall be used by the Engineer for planning, coordination and inspection activities, and for evaluation of the Contractor's rate of progress and the effects of time-related impacts on the project.

Prior to preparing the schedule, the Engineer or the Contractor may request a meeting to discuss any project specific items required for preparation of the progress schedule. The Contractor shall prepare and submit a practicable schedule to reflect a logical progress of the work. The progress schedule shall represent the Contractor's overall work plan to accomplish the work in accordance with the requirements herein and

those of the Contract as detailed in the Contract documents. It shall include all time-based tasks required for timely completion of the work, including as applicable the work to be performed by sub-contractors, suppliers, the Department, and/or others. When preparing the schedule, the Contractor shall consider all applicable constraints and restrictions such as seasonal, weather, traffic, utility, railroad, right-of-way, environmental, permits, and other limitations to the work.

(a) Progress Schedule Requirements:

1 **Baseline Progress Schedule** – The Contractor shall submit to the Engineer his Baseline Progress Schedule at least 7 calendar days prior to beginning work. The Baseline Progress Schedule submittal shall include three (3) sets of a written Progress Schedule Narrative and, where applicable, a Progress Earnings Schedule as defined below:

a) *Progress Schedule Narrative:* The Progress Schedule Narrative shall consist of the following information, as applicable:

(i.) A description of the Contractor's overall plan of operations including the planned procedures and crew(s) required to accomplish each major operation;

(ii.) A Tabular Schedule to establish milestone(s) for completing each phase, feature, or stage of work as specified by contract or, where not specified by the contract, as determined by the Contractor. The schedule shall also indicate the planned sequence and start/finish dates for all time-based tasks required to complete each milestone;

(iii.) A discussion on the working calendar with considerations for applicable constraints or restrictions; (i.e. normal weather, traffic, holidays, time of year, utility, etc.);

(iv.) A description of any potential issues that may impact the schedule.

b) *Progress Earnings Schedule:* Progress Earnings Schedule will not be required for projects with a contract duration of sixty (60) calendar days or less. The Progress Earnings Schedule shall be prepared on forms furnished by the Department to indicate the anticipated earnings for each payment period as of the Contractor's payment cut-off date as determined in accordance with Section 109.08. Progress earnings shall be based on the total contract value. Total contract value will be considered to mean the original amount of the contract including any authorized adjustments in accordance with, but not limited to, the provisions of Sections 104 and 109.05. Payments for stored or stockpiled material in accordance with Section 109.09 of the Specifications will not be considered in the earnings schedule.

2 **Revised Progress Schedule:**

The Contractor shall submit a Revised Progress Schedule as determined and requested by the Engineer, if prosecution of the work deviates significantly from the phasing, general sequence, or the proposed means and methods as represented on the Schedule of Record (SOR). The Contractor will also be required to submit a Revised Progress Schedule to reflect any impacts to the schedule for changes authorized by the Engineer including, but not limited to changes in the work in accordance with the requirements of Section 104 and Section 109.05 of the Specifications.

The Contractor shall submit the Revised Progress Schedule within 10 calendar days of the date of the Engineer's written request. The Revised Progress Schedule shall be in the form of a Revised Baseline Progress Schedule which shall reflect the actual progress of accomplished work (actual work to date), any impact of a change authorized by the Engineer, and the proposed time based plan for completing the remaining work. Upon acceptance by the Engineer, the latest Revised Progress Schedule shall replace the previously accepted Baseline or Revised Progress Schedule.

3 **Failure to Furnish Progress Schedules** – Work shall not commence until the Contractor submits his Baseline Progress Schedule in accordance with the requirements of this section, unless otherwise approved in writing by the Engineer.

Delays in work resulting from the Contractor's failure to provide the progress schedule will not be considered just cause for extension of the contract time limit or for additional compensation.

(b) Review and Acceptance

The Engineer will review all progress schedule submittals within 7 calendar days of receipt of the Contractor's complete submittal. Review and acceptance by the Engineer will be based on completeness and conformance with the requirements of this section, the Contract and the Specifications. If the Contractor's Progress Schedule is deemed to be unacceptable, the Engineer will issue a written notification for resubmission describing the deficiencies in completeness or conformance prompting the Engineer's decision.

Upon acceptance, the Engineer will issue a written notice of acceptance that may include comments or concerns on the schedule. The Contractor shall respond within 7 calendar days of receipt of the Engineer's comments, concerns or written notification for resubmission.

Upon acceptance, the latest Baseline Progress Schedule or Revised Progress Schedule shall become the Schedule of Record (SOR). The SOR is defined as the currently accepted progress schedule by which all schedule references will be made and progress evaluated.

Review and acceptance by the Engineer will not constitute a waiver of any contract requirements and will in no way assign responsibilities of the work plan, scheduling assumptions, and validity of the schedule to the Department. Failure of the Contractor to include in the Progress Schedule any element of work required for timely completion of the project shall not excuse the Contractor from completing the entire scope of work within the Contract specified completion milestone(s).

(c) Monitoring the Work and Assessing Progress

- 1 Monitoring the Work – The Engineer will monitor the work regularly to identify any deviations from the Contractor's scheduled performance relative to the currently accepted Baseline or Revised Progress Schedule. The Engineer may request a meeting with the Contractor to discuss the Contractor's current progress or to establish the approximate date for starting each critical inspection stage during the following 30 days. At least once a week, the Contractor shall advise the Engineer of the approximate timing for anticipated critical stages for the subsequent week. The Engineer shall be advised at least 24 hours in advance of any changes in the Contractor's planned operations or critical stage work requiring Department inspection.
 - 2 Progress Evaluation – The Engineer will evaluate the Contractor's progress monthly relative to the currently accepted Baseline or Revised Progress Schedule. The Contractor's actual progress may be considered unsatisfactory if:
 - a) The cumulative actual earnings for work completed is 10 or more percentage points behind the cumulative earnings for work scheduled; or
 - b) Any interim milestone is later than the scheduled milestone by more than 7 calendar days or the projected project completion date is later than the contract completion date by the least of 14 calendar days or 10 percent of the remaining contract time.
- (d) Progress Deficiency and Schedule Slippage: When the Contractor's actual progress is deemed to be unsatisfactory, the Engineer will issue a written notice of unsatisfactory performance to indicate that further actions may be taken as defined in Sections 102.01 and 109.08 of the Specifications, if progress remains unsatisfactory at the time of preparation of the next monthly progress estimate. Within 10 calendar days of the date of the Engineer's notice of unsatisfactory progress, the Contractor may submit to the Engineer, a recovery plan to reflect a proposed plan to correct the progress deficiency or schedule slippage, or submit to the Engineer a written explanation and supporting documentation to establish that such delinquency is due to conditions beyond the Contractor's control. Any schedule revisions resulting from a recovery plan will be reviewed in accordance with subsection (c) herein, but shall not replace the SOR.

108.04 - Determination and Extension of Contract Time Limit

The Contract time limit for completion will be determined by the Department and specified in the Contract Documents. 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.

With a fixed date contract when the date of contract execution is not within 60 calendar days after the opening of bids, or when 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 will

be given an extension of time based on the number of days delayed beyond the 60 calendar days. No time extension will be allowed for a delay in the date of contract execution when the delay is the fault of the Contractor.

The Engineer will determine if an extension of the Contract time limit for completion is warranted by additions to the Contract. The Contractor shall inform the Department, in writing, of a request for time extensions in his Work Order in accordance with the applicable portion(s) of Section 104 or 109. The Contractor shall provide written supporting data for any request for extension of time due to quantity additions and or additional or altered work.

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, their criticality to project milestones or overall contract completion, and the significant dates that encompass the periods of delay. The Contractor shall furnish all such information necessary for the Department to make an adequate evaluation of any claim received from the Contractor for an extension of the contract time limit within three days of experiencing such a delay.

- (a) **Fixed Date:** Unless otherwise indicated in the Contract, the contract time limit will be specified as a fixed date for completion. 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 specified contract time limit.

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

For the purposes of this Section normal weather is defined as that which is not considered extraordinary or catastrophic and is not reasonably conducive to the Contractor progressively prosecuting critical path work under the Contract. Weather events considered extraordinary or catastrophic include, but are not limited to tornados, hurricanes, earthquakes, and floods that exceed a 25-year storm event as defined by National Oceanic and Atmospheric Administration (NOAA) for the NOAA data gathering location that is nearest the project site.

If there is a delay in the progress of the work due to unforeseen causes described within these Specifications, 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 continuous prosecution or completion of the work, then consideration may only be given to granting an extension of time that will encompass a suitable period during which such work can be expeditiously and acceptably performed.

108.05 - 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 seven 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 review the Contractor's documentation and 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, his suppliers, or subcontractors at any approved tier, and was not caused by normal 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 regarding 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 the contract.

108.06 - Failure To Complete on Time

(a) General

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 will be assessed at the rate applicable to the Contract in accordance with the Schedule of Liquidated Damages, Table I-1, or as otherwise specified in the contract provisions. Liquidated damages will be deducted from any monies due the Contractor for each calendar day of additional time consumed until final completion and acceptance of the work, subject to such adjustments as provided in accordance with the requirements of Section 108.04, not as a penalty, but as liquidated damages.. The Contractor waives any defense as to the validity of any liquidated damages stated in the Contract, the Contract Documents, or these Specifications and assessed by the Department against the Contractor on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

(b) 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 fixed contract time that the Contract remains in an incomplete state:

**TABLE I-1
Schedule of Liquidated Damages**

Original Contract Amount in Dollars	Daily Charge in Dollars
0 – 500,000.00	350
500,000.01 – 2,000,000.00	600
2,000,000.01-8,000,000.00	1,350
8,000,000.01- 15,000,000.00	2,500
15,000,000.01- Plus	3,100

108.07 – 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 15 calendar days of the date of contract execution except as otherwise permitted by specific contract language or the provisions of Section 108.02.
- (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, or
- (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 the date of such notice the Contractor or his surety has not taken measures that will, in the judgment of the Chief 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 the provisions of Section 108.08.

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 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 had the work 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 Commonwealth the amount of the excess.

108.08 - 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 Commonwealth, U.S. government, or court order, or
 - 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, purchase orders, bills of lading or other similar 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 or remaining to be performed.

108.09 - Acceptance

- (a) **Contractor's Responsibility for Work:** Until final acceptance of the work by the Engineer in accordance with the requirements of this Section, the Contractor shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. The Contractor shall rebuild, repair, restore, and make good on damage to any portion of the work occasioned by any of the foregoing causes before final acceptance and shall bear the expense thereof. The Department may reimburse the Contractor for repair of damage to work attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor as determined by the Engineer.

In case of suspension of work, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the work, provide for erosion control and drainage, and erect any necessary temporary structures, signs, or other facilities as determined by the Engineer. During the suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect

new tree growth and other important vegetation against damage.

- (b) **Partial Acceptance:** If at any time during the prosecution of the project the Contractor completes a unit or portion of the project, such as a structure, an interchange, slopes, pavement, or a section of a roadway in its entirety, he may ask the Engineer to make final inspection of such work. If the Engineer finds upon inspection that the work conforms to the requirements of the Contract and that acceptance is in the best interest of the public, he may accept the work as being completed, and the Contractor will be relieved of further responsibility for the work. Partial acceptance shall in no way void or alter any terms of the Contract.

If any damage is sustained by an accepted unit or portion of the project attributable to causes beyond the control of the Contractor, the Engineer may authorize the Contractor to make the necessary repairs. These repairs will be paid for at the contract price for the items requiring repair. In the absence of contract prices covering the items of repair, the work will be paid for in accordance with the requirements of Section 109.05.

- (c) **Final Acceptance:** Upon receipt of a written notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection. If all work specified in the Contract has been completed, the inspection will constitute the final inspection and the Engineer will make the final acceptance. The Contractor will be notified in writing, of the determination of final acceptance within five days of the date of the Engineer's final acceptance.

If the Engineer's inspection discloses that any work, in whole or in part, is incomplete or unacceptable, the Contractor shall immediately correct the deficiency. A written list of deficiencies will be provided to the Contractor by the Engineer. Upon completion or correction of the work, another inspection will be made of the deficient work. If the work is then satisfactory, the Engineer will notify the Contractor in writing within five days of the Engineer's final acceptance. In any event, the Contractor shall be responsible for and maintain the project until final acceptance except under conditions that may be specifically exempted by the Specifications or specific contract language.

108.10 - Termination of Contractor's Responsibilities

The Contract will be considered complete upon final acceptance. The Contractor's responsibility to the work of the Contract will then cease except as set forth in his bond and the requirements of Sections 109.08 and 109.10.