

**SECTION 1.08
PROSECUTION AND PROGRESS**

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1.08.01—Transfer of Work or Contract: The Contractor shall perform with its own organization Contract work with a value under the Contract of at least 50% of the original total Contract value. If the Contractor sublets, sells, transfers, or otherwise disposes of any part of the Contract work without the Commissioner's prior written consent, the Contractor will not be relieved of any Contractual or other legal responsibility in connection therewith. Such an unauthorized act by the Contractor shall constitute a material breach of the Contract, and the Commissioner may, in such a case, terminate the Contract without further compensation to the Contractor.

The Contractor shall include the following alternative dispute resolution clause in all of its Project subcontracts:

"For any dispute arising out of the agreement between the Contractor and a subcontractor, including claims of late payment or non-payment, which cannot be settled within 60 days of the subcontractor submitting a written claim to the Contractor, either party may bring the dispute before an alternative dispute resolution entity for resolution. If the parties do not agree upon a particular dispute resolution entity for that purpose, the dispute shall be resolved under the auspices and construction arbitration rules of the American Arbitration Association, or under the rules of any other alternative dispute resolution entity approved by the Department either generally or for the specific dispute. The Department may not be made a party to formal arbitration regarding such a dispute. These rights and restrictions may not be waived, and if these provisions are not included in the Contractor's subcontracts for the Project, these provisions shall nonetheless be read into them."

The Contractor shall not knowingly enter into any lower-tier transaction on a Department project with any person or entity which, under any federal or state law or regulation, or by voluntary agreement, is currently debarred or disqualified from bidding for construction contracts or participating in construction projects in any jurisdiction within the United States, unless after disclosure of such ineligibility, such participation is authorized by appropriate federal and State authorities, including the Commissioner.

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of the work provided for therein, or of its right, title, or interest therein, to any individual or entity without the written consent of the Commissioner. No payment will be made for such work until written consent is provided by the Commissioner.

1.08.02—Establishment of Construction Field Office: Prior to the start of Project construction, and within 10 calendar days after the signing of the Contract by the parties, the Contractor shall propose in writing to the Engineer a field office location. The proposal shall include the office telephone number to be used, the nearest utility pole number, and the distance from that pole to the proposed field office. The office shall be made acceptable to the Engineer and available for use, including all utility hookups, local permits and inspections, within 30 days of the Engineer's order to establish the office. Such order shall not be deemed the "Notice to Proceed."

1.08.03—Prosecution of Work: The Contractor shall commence construction operations with that part of the Project designated for such commencement in the progress schedule which it has submitted to the Department, unless the Engineer directs the Contractor to commence with a different part of the Project. The work shall be conducted in such manner and with sufficient materials, equipment and labor as are

necessary to ensure completion of the Project in accordance with the Contract within the time set forth in the Contract. The Contractor shall notify the Engineer of its intention to commence or recommence any Project operation at least 48 hours in advance of doing so. The Contractor shall also give the Engineer such advance notice of any intent to discontinue any Project operation, unless emergency conditions make it impracticable to give such notice so far in advance. The Engineer retains the right to disallow such commencement, recommencement or discontinuance of operations.

1.08.04—Limitation of Operations: The Contractor shall plan and perform the Project work in such a manner and in such sequence as will cause as little interference as is practicable with vehicular, railroad, aircraft, pedestrian or other traffic. The Contractor shall cooperate with any utilities involved in or affected by the Project operations, and shall schedule its operations in accordance with Article 1.05.06.

The Contractor shall give the Engineer 7 days' advance written notice of any proposed changes in Project activities that will alter vehicular traffic patterns, causing lane shifts, detours, temporary closure of a lane, permanent closure of a lane or lane reductions, or any other alteration of railroad, aircraft, pedestrian or other traffic patterns affecting usage of such a transportation facility by the traveling public. This advance notification will allow the Department to publish news releases and provide public radio announcements to inform the public of revised traffic patterns or possible traffic delays. Failure of the Contractor to provide such timely notice will subject the Contractor to stop work orders until such time as the 7 days of required notice have run from either the Contractor's giving of the relevant notice or the Department's discovery of the pertinent alteration of traffic conditions.

1.08.05—Personnel and Equipment: The Contractor shall assign to the Project only personnel who are careful and competent. The Engineer may demand the removal of any person employed by the Contractor on the Project who is, in the opinion of the Engineer, guilty of misconduct on a Department project or incompetent or negligent in the performance of his duties on a Department project or any portion thereof, or who neglects or refuses to comply with directions given by the Engineer in connection with the Project. Following such a demand for his removal, such person shall not work again on the Project without the prior written consent of the Engineer. Should the Contractor, following such a demand for removal, continue to employ or again employ such person on any Department project without the required consent of the Engineer, the Commissioner may withhold all estimated payments that are or may become due to the Contractor for the Project, or the Engineer may shut down the Project until the Contractor has complied with the Engineer's orders concerning that person. The use of convict labor on projects funded in whole or in part by the federal government is prohibited.

The Contractor shall furnish whatever equipment is necessary for the Project to be performed in a manner and at a rate of progress that is acceptable to the Engineer. Equipment used on any portion of the Project shall not be used in any way that may cause injury to the roadway, adjacent property, or other property on or adjacent to the Project site, unless such damage is allowed by the Engineer for the performance of the Project.

The Contractor may submit to the Engineer a request to use equipment or methods other than those specified in the Contract. If the Engineer so directs, there shall be a trial of such equipment or methods. If the results of the trial are satisfactory to the Engineer, the Contractor may begin using the proposed equipment or method on the Project. Failure of the equipment or method to meet the specified Contract performance standards in the course of the specified trial, or, in the absence of such standards, a failure to perform to the satisfaction of the Engineer, shall be cause for rejection of any such method or equipment, and any work performed with either. Such rejected equipment or work shall be removed immediately from the Project site.

1.08.06—Suspensions of Work Ordered by the Engineer: The Engineer may suspend the Project wholly or in part, for such period or periods as he considers to be in the best interests of the State, including, but not limited to, the interests of public necessity, convenience, or safety.

During such periods of suspension, and subject to any related directions from the Engineer, the Contractor shall store all materials and equipment in a way that will keep them from obstructing or impeding the traveling public unnecessarily, and that will keep the materials from being damaged; shall take all reasonable measures to prevent damage to the work performed; shall provide suitable drainage of the roadway and Project site by opening ditches, shoulder drains, etc., as appropriate; and shall erect temporary structures to prevent damage to the Project or to other property, and to protect the public, where and when necessary.

The Contractor shall maintain the Project site and all roadways and buildings thereon in a condition safe for travel or occupancy, and shall maintain all required barricades, signs, and lights during the period of

suspension:

(1) If the Engineer orders in writing that performance of all or any portion of the Project shall be suspended, or that it shall be delayed for an unreasonable period of time (not customary, within the scope of possibilities that an experienced contractor should know might occur on a construction project, or inherent in the nature of construction activities), and if the Contractor believes that additional compensation or Contract time is due to it as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for a related Contract adjustment within 7 calendar days of the Contractor's receipt of a direction from the Engineer to resume work. The request shall set forth the specific reasons and support for the requested adjustment.

(2) Upon his receipt of the Contractor's request, the Engineer will evaluate the request. If the Engineer agrees that the expenditures or time required for the Contractor's performance of the Contract have increased as a result of such suspension or delay, and if the suspension or delay was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and was not caused by weather, the Engineer will make an appropriate adjustment (excluding any profit) of the written terms of the Contract. The Engineer will give the Contractor written notice of his determination as to whether or not the requested adjustment of the Contract is warranted and will be made.

(3) No Contract adjustment will be made unless the Contractor has submitted the request for adjustment within the time prescribed.

(4) In addition to the other limits and requirements imposed by this article, no Contract adjustment will be allowed under this article to the extent (a) that the Project work would have been suspended or delayed by any cause other than the ones identified in the Contractor's request, or (b) that the requested adjustment or type of adjustment is provided for or barred by another provision of the Contract.

(With regard to Items 1-4, refer to 23 CFR, Section 635.109, "Standardized Changed Condition Clauses," Required FHWA Contract Specification.)

1.08.07—Determination of Contract Time: Unless the Contract requires the Project completion by a specified date, the number of calendar days allowed for the completion of the Project will be fixed by the Department, will be stated in the Contract, and will be known (with any subsequent adjustments) as the "Contract time." The chart or schedule upon which the Contract time is based is available from the Division of Contracts, at the Department headquarters, 2800 Berlin Turnpike, Newington, CT. If at any time the Contractor submits a schedule showing completion of the work more than 30 calendar days in advance of the Contract completion date, the Department will issue a no-cost construction order revising the allowable Contract time to that shown on the Contractor's schedule.

When the Contract time is stated on a calendar-day basis, that time shall be the number of consecutive calendar days contained in the Contract period designated in the Contract, excluding the time period from each December 1 through the following March 31 (the "winter shutdown period"). The Contract time will begin to run on the date designated in the Engineer's "Notice to Proceed" as the date for commencement of the Project, and the time will be computed as herein provided on a consecutive-day basis, including all Saturdays, Sundays, holidays, and non-work days from April 1 through November 30 of each included year.

Time will not be charged for days in the winter shutdown period, except for time used in working on planting projects and any other projects with regard to which the Standard Specifications or Project bid documents provide otherwise. If the Engineer so approves, the Contractor may work on the Project during the winter shutdown period with no charge being made against the Contract time.

If the time specified for completion of the Project, with time extensions, is due to expire before December 1 of a given year, but the Project has not been completed by that December 1, the time charged to the Contractor will continue through the winter shutdown period.

The total elapsed time in calendar days, computed as described above, from the commencement date specified in the Engineer's "Notice to Proceed" to the "Substantial Completion" date specified in the Engineer's "Notice of Substantial Completion" shall be considered as the time used in the performance of the Contract work.

Suspension involving cessation of work on all items, except minor construction not affected by or connected with the cause of suspension, shall be considered as total suspension. In case of a total suspension of the Project ordered by the Engineer, not due to any fault of the Contractor, the elapsed time during which the Project is suspended will not be charged against the Contract time. Work of an emergency nature ordered by the Engineer for the convenience or safety of the public or the protection of the Project work, if performed during a period of total suspension, will not be charged against Contract time. No such

time allowance will be granted in case of partial suspension; provided, however, that the Contractor may request and the Engineer may grant permission to perform specific limited operations during such a partial suspension, in which case Contract time chargeable for those operations shall be negotiated and agreed to in writing before such operations may commence.

1.08.08—Extension of Time: The Contractor may present to the Engineer a request in writing for an extension of Contract time if the time necessary for completion of the Project has been increased due to extra or added work or delays resulting from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, except for weather or seasonal conditions (unless extraordinary and catastrophic). Such causes include, but are not restricted to, natural catastrophes, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, the presence of utility facilities (including railroads), fires, strikes, floods, or delays by suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or such suppliers.

The Contractor's plea that insufficient Contract time was allowed under the Contract before commencement of the Project is not a valid reason for extending the Contract time. Requests for an extension of time, with adequate substantiation, must be presented within 60 calendar days from the event that is the basis of the request or from the first effect of such an event on the Project. The Contractor will be responsible for providing all the documentation necessary to support the reasonableness of the additional time requested.

Such requests will be considered by the Engineer and granted to the extent that he deems to be fair and reasonable. Requests will not be considered if based on delays caused by conditions existing at the time the bids were received and of which the Contractor might reasonably be expected to have had full knowledge at that time, or upon delays caused by failure on the part of the Contractor to anticipate properly the requirements of the Project as to materials, labor or equipment. For all Project delays or time increases, except as provided below, additional Contract time is the sole remedy that the Contractor may have, and such periods of additional Contract time shall be deemed "Non-Compensable Delays." For delays caused by the State in its Contractual capacity, the Contractor may, in addition to a time extension, request additional compensation to reimburse it for damages sustained as a direct result of such delay, and such periods of extended Contract time may be deemed "Compensable Delays."

The period of a compensable delay is limited as follows: (1) it may not include time more than 60 days prior to the Engineer's receiving written notice from the Contractor, with adequate substantiation, of its intent to claim damages for the delay, (2) and it may not include periods of delay for which the State was responsible, but during which the Contractor experienced concurrent delays for which the State was not responsible. Damages for periods of Project delay for which the State had sole responsibility shall be limited to the increased costs incurred by the Contractor (which shall not include lost profits), which the Contractor substantiates and which the Contractor shows were caused by such delays.

If an approved extension of time extends beyond November 30, the number of days of the approved extension remaining on that date will not begin to run again until the following April 1.

1.08.09—Failure to Complete Work on Time: Time is an essential element of the Contract. Since the prosecution of the Project may obstruct traffic, interfere with business, and otherwise inconvenience the public, it is important that the Project be pressed vigorously to completion. The cost to the Department of the administration of the Contract, including engineering, inspection and supervision, will also be increased as the time for Project completion is lengthened. Therefore, for each calendar day that any work shall remain uncompleted after the Contract time has expired, the per diem sum of liquidated damages specified in the Contract shall be deducted from any money due to the Contractor. Liquidated damages are not a penalty, but are a reasonable estimate of the damages caused by such delay.

If the last day of the initial Contract time or the initial Contract date determined for Substantial Completion is before December 1 in the given year, liquidated damages as specified in the Contract shall be assessed against the Contractor per calendar day (including any days during a winter shutdown period) from that day until the date on which the Project is substantially completed.

The Engineer has the right to deduct the amount of the liquidated damages assessed against the Contractor from any estimated payment for work performed under the Contract or under any other State contract, or from any other sums owed by the State to the Contractor; or to claim and recover such sums by process of law.

1.08.10—Annulment of Contract: The Commissioner may give notice in writing to the Contractor and its surety of any delay, neglect, or default of the Contractor which the Commissioner believes has occurred,

including one or more of the following:

1. Failure to begin the Project on the date specified in the Notice to Proceed.
2. Failure to perform the Project with sufficient personnel, equipment or materials to ensure timely Project completion.
3. Unsuitable performance of the Project or failure to perform Project work in accordance with the Contract.
4. Failure or refusal to remove or correct work rejected by the Engineer.
5. Discontinuance of suitable prosecution of the Project for a period of 72 hours, excluding Sundays and holidays, without written authorization to do so from the Engineer.
6. Failure to recommence discontinued work within 48 hours (excluding Sundays and holidays) after being ordered to do so by the Engineer.
7. Insolvency, filing for bankruptcy, or any act or occurrence which may render the Contractor financially incapable of completing the Project.
8. Failure to satisfy any final judgment for a period of 30 calendar days.
9. Making of any assignment for the benefit of creditors.
10. Violation of any provisions of the Contract.
11. Any other cause which, in the judgment of the Commissioner, warrants annulment, including, but not limited to, violations of the antitrust or criminal laws, and attempts to deceive or defraud the Department in material matters.

If the Contractor or surety within a period of 10 calendar days after such notice does not proceed in conformance with the directions set forth in the notification, or fails to present a remedial plan of operation satisfactory to the Commissioner, then the Commissioner may, at his discretion, order the surety to complete the Project or, without violating the Contract, take the right to control and prosecute the Project out of the hands of said Contractor and surety. No annulment or termination of the Contract for such cause will be deemed to have occurred, however, unless the Commissioner himself or herself (and not merely a designated representative of his or hers) expressly declares it in a writing to the Contractor.

The Department may acquire or rent whatever materials or equipment are necessary in order to complete the Project and may seize and use for purposes of the Project (with any appropriate compensation to the Contractor) any material or equipment that the Contractor acquired or purchased expressly for the Project in accordance with a specific Contract requirement.

The Department may also enter into an agreement, either by negotiation or public letting, for the completion of the Contract according to the terms and provisions thereof, or use such other methods or combinations thereof as in the Commissioner's opinion shall be required or desirable for the completion of the Contract in an acceptable manner. All costs and charges incurred by the Department, in connection with completing the Project under the Contract, or as a result of the Contractor's default, shall be deducted from any monies due to or which may become due to the Contractor. In case such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable for, and shall pay to the State, the amount of the excess.

1.08.11—Final Cleaning Up: The Project will not be considered complete and will not be accepted until the rights of way, borrow pits, and all other ground, both public and private, occupied by the Contractor in connection with the Project has been cleared of all surplus and discarded materials, rubbish and temporary structures. The Contractor must drain all borrow pits where practicable. All property, both public and private, which has been damaged during the prosecution of the Project, shall be restored by the Contractor to an appearance and condition acceptable to the Engineer.

All ditches, waterways, drainage structures and culverts constructed under the Contract shall be cleaned and cleared of obstructions by the Contractor, and shall be left in a condition acceptable to the Engineer. When so directed by the Engineer, the Contractor shall clean all existing ditches, waterways, drainage structures and culverts of obstructions resulting from Project operations.

1.08.12—Final Inspection: If the Engineer determines that the work may be substantially complete, a Semi Final Inspection will be held as soon as practical. After the Semi Final Inspection is held and the Engineer determines that the requirements for Substantial Completion have been satisfied the Engineer will prepare a "Notice of Substantial Completion".

When the Contractor has completed all work listed in the "Notice of Substantial Completion" the Contractor shall prepare a written notice requesting a Final Inspection and a "Certificate of Acceptance of Work". The Engineer will hold an Inspection of the Project as soon as practical after the Engineer determines that the Project may be completed. If the Engineer deems the Project complete, said inspection

shall constitute the Final Inspection, and the Engineer will notify the Contractor in writing that the Final Inspection has been performed.

If the inspection discloses any unsatisfactory or incomplete Project work, the Engineer will notify the Contractor of such deficiencies. The Contractor shall immediately correct the deficiencies. Upon such correction, another inspection will be made that shall then constitute the Final Inspection, provided that the work has been satisfactorily completed.

On projects consisting of two or more individual, geographically-separated sections of roadways, sites, or physically-separated buildings or portions of buildings, a partial final inspection of individual, fully-completed sections will be performed by the Engineer if the Contractor so requests.

If at any time during the prosecution of the Project the Contractor substantially completes a unit or portion of the Project, such as, but not limited to, a structure, an interchange, a building, a portion of a site, a branch circuit in highway illumination that has been in satisfactory and continuous operation for a period of at least 30 days, or a section of road or pavement, then, to the extent that said portion's stability and integrity are not dependent upon the completion of other Contract work, the completed unit or portion of the Project may be opened (1) to vehicular or pedestrian traffic under the provisions of Article 1.07.11; or (2) to railroad, aircraft, pedestrian or other traffic, or to occupancy, at the direction of the Engineer.

A final inspection of the substantially-completed unit or portion of the Project will be arranged by the Engineer. Upon evidence of such completion, including issuance of a Certificate of Compliance for any building, and upon agreement by the Engineer, the Contractor will be relieved of the responsibility for that work which was placed upon it by Article 1.07.12. The Contractor shall be responsible for all damages to the completed unit or portion of the Project that may be caused by or that may result from the operations of the Contractor or its subcontractors, or their employees; and the Contractor shall take such precautions and shall provide such protection as may be necessary to avoid possible damage to said unit or portion of the Project. The acceptance of the completed unit or portion shall in no way affect any other requirements governing the completion and acceptance of the Project as a whole.

1.08.13—Termination of the Contractor's Responsibility: The Contractor's responsibility for non-administrative Project work will be considered terminated when the final inspection has been held, any required additional work and final cleaning-up have been completed, all final operation and maintenance manuals have been submitted, and all of the Contractor's equipment and construction signs have been removed from the Project site. When these requirements have been met to the satisfaction of the Engineer, the Engineer will certify to the Contractor within 7 days, in writing, that the non-administrative Project work has been satisfactorily completed.

1.08.14—Acceptance of Project: The Project will be accepted by the Commissioner when all Project work has been completed, as defined by the requirements of Article 1.08.13, and the following have been submitted to the satisfaction of the Engineer:

1. Supporting information necessary to substantiate pay quantities, such as cost-plus backup documentation;
 2. Reports and forms required on all Federal Aid Projects;
 3. Warranties, guaranties, final operation and maintenance manuals, and documentation to the effect that training and start-up support required by the Contract have been completed;
- Any other documents required by the Contract.