

## **100 GENERAL PROVISIONS**

### **108 - PROSECUTION AND PROGRESS**

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**108.01 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 its right, title, or interest therein, without written consent of the Director. In case such consent is given, the Contractor will be permitted to sublet a portion thereof, but shall perform with the Contractor's own organization, work amounting to not less than 50 percent of the total contract cost, except that any items set forth in the proposal to be "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by sub-contract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor's own organization. No sub-contract, or transfer of Contract, shall in any case release the Contractor of his liability under the Contract and bonds.

**108.02 Preconstruction Conference.** Unless otherwise provided for in the plans or Bid Submittal Documents, no work shall be commenced under this Contract until a Preconstruction Conference has been held. In general, 14 days are required to notify all interested parties of a Preconstruction Conference. Upon confirmation of a valid Contract, the City will mail Preconstruction Conference notices to all parties by first-class mail. The Contractor shall take due note of this requirement and aid in the timely scheduling of the Preconstruction Conference to avoid unnecessary delays in the commencement of the work.

**108.03 Prosecution and Progress.** The Contractor shall submit a progress schedule at the Preconstruction Conference. The progress schedule shall provide a complete and detailed sequence of operations of the work within the time limits specified in the contract. The schedule shall show the order in which the Contractor proposes to carry out the work, the dates on which the various portions of the work shall commence, and the dates on which the Contractor contemplates completing the various portions of the work.

On contracts of \$100,000 (One hundred thousand dollars) or less, the Contractor shall submit to the Engineer at the Preconstruction Conference a progress schedule as described above either by use of a bar chart or by a written statement.

On contracts over \$100,000 (One hundred thousand dollars) the Contractor shall submit to the Engineer at the Preconstruction Conference a progress schedule as described above in the form of a bar chart, hand drawn CPM diagram or a computer generated CPM Schedule in a format approved by the City or as specified by the Special Provisions. Where a CPM Schedule is to be provided, the degree of detail of the CPM Schedule shall be to the satisfaction of the City; however, at a minimum all activity durations shall be in working days and no construction activity shall have a duration longer than 10 working days. In the event that the schedule indicates a completion date which is earlier than the required completion date, the Contractor shall not be entitled to any extension in contract time, nor to recover any cost for delay, disruption, interference, hindrance, extension, or acceleration costs incurred, however caused, because of an extension of the early completion date until such time as the network or activities affected increases the critical path duration of the CPM Schedule beyond the required completion date.

Unless a specific bid item is included in the contract, the cost of the progress schedule is to be included in the unit prices bid for the various contract items.

If the Contractor's operations are materially affected by changes in the plan or in the amount of the work or if the Contractor has failed to comply with the approved schedule, the Contractor shall submit a revised progress schedule, which schedule shall show how the Contractor proposes to prosecute the balance of the work. When it becomes apparent to the Engineer that the project completion date cannot be met, the Contractor shall also prepare a written plan detailing how the Contractor proposes to recover the lost time and meet the required completion date. Such measures may include but are not limited to; increasing the size of the workforce; increasing the number of working hours per shift, shifts per work day, work days per week, the amount of equipment or combination thereof; or rescheduling of work activities to achieve maximum concurrence of work efforts, all at no additional cost to the City. The Contractor shall submit the revised progress schedule and/or recovery plans within 10 days after the request is made by the Engineer.

Acceptance by the City of the revised progress schedule and/or recovery plan shall not serve as a time extension approval. Any request for an extension of the contract completion date must be processed per Section 108.07. No payment will be made to the Contractor until the progress schedule, revised progress schedule and/or recovery plan is approved by the City. Should the prosecution of the work, for any reason, be discontinued, the Contractor shall notify the Engineer at least one working day in advance of resuming operations.

If the City assigns an inspector(s) to the project and the Contractor does not notify the City of its intent not to work, charges incurred by the City for inspection services will

be deducted from monies owed to the Contractor, unless such charges are waived by the Director.

**108.04 Suspension of Work.** The Director may instruct the Contractor to delay the start of operations or suspend the Contractor's operations in whole or in part, for the length of time the Director may deem necessary. The Contractor shall start or resume the operations when notified to do so by the Director.

If, without the fault or negligence of the Contractor, the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Director in the administration of the Contract or by failure to act within the time specified in the Contract (or if no time is specified within a reasonable time), an adjustment shall be made by the Director for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the unreasonable period of such suspension, delay, or interruption, and the Contract shall be modified in writing.

If construction under these specifications is suspended, delayed, or interrupted through no fault of the Contractor by an order of a court of competent jurisdiction, or the Environmental Protection Agency, such suspension, delay, or interruption will be considered to be an unreasonable suspension, delay, or interruption.

In the event that additional expense or loss due to suspension includes machinery or equipment idled by such act or failure to act, payment therefore may be allowed only for machinery or equipment actually on the project site required for those phases of the construction work to which such order applies, and such payment shall be made at the following rates: For idled machinery or equipment owned by the Contractor, *the hourly rate of compensation will be the monthly rental rate times a factor of 0.50 divided by 176 hours per month, with no operating costs added*; and for idled machinery or equipment rented by the Contractor, the actual rental price paid plus 15 percent thereof. The maximum rental price shall be as set forth in the current Equipment Guide Blue Book. All of the provisions of Section 109.05(c) shall apply to this provision.

**108.05 Limitation of Operations.** The Contractor shall conduct the work at all times in such a manner and in such sequence as will assure the least interference with traffic and other operations of the public. 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. 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.

**108.06 Character of Workers, Methods, and Equipment.** The Contractor shall at all times employ sufficient competent labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by these specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers 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 employed by the Contractor or by any subcontractor who, in the opinion of the Engineer, does not perform their work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may withhold all estimates, which are or may become due, or may suspend the work by written notice until the Contractor complies with such orders.

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 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 streets or 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 Contractor is free to use any methods or equipment that is demonstrated 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. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, the Contractor may 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 an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction work in conformity with Contract requirements. If, after trial use of the substituted methods of 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 and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality at no expense to the City, or take such other corrective action as directed. No change will be made in basis of payment for the construction items involved nor in Contract time as a result of authorizing a change in methods or equipment under these provisions.

**108.07 Contract Completion Date.** The Contractor shall have completed the work on or before the Contract Completion Date specified in the Notice to Proceed, or on or before a later date determined as specified herein, otherwise the Director shall proceed as provided in Sections 108.08 or 108.09.

If the Contract is revised in any material respect and it is determined that said revision will cause delay in the completion of the work, the Director may postpone the completion date by the number of calendar days determined to be equitable.

If the Contractor finds it impossible for reasons beyond the Contractor's control to complete the work in the time specified or as extended in accordance with the provisions of this section, the Contractor may make a written request to the Engineer for an extension of time setting forth therein the reasons which the Contractor believes will justify the granting of the Contractor's request. Requests for extension of time shall be filed in writing by the Contractor with the Engineer. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, then an extension of the time for completion in such amount as the conditions justify may be granted.

The extended time for completion shall then be in full force and effect the same as though it were the original time for completion. If the Director should suspend the work in whole or in part as provided in Section 108.04, the date for completion shall be postponed the number of days that the suspension directly or indirectly delays the completion of the work.

Delays caused by weather or seasonal conditions should be anticipated and will be considered as the basis for an extension of time only when the actual workdays lost exceeds the number of work days lost each month due to inclement weather as determined by the following schedule:

<b>Month</b>	<b>Number of Work Days Lost Due to Weather</b>
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6

A work day will be counted as lost if, due to adverse weather, the Contractor's efficiency is reduced more than 50 percent on the critical item under construction at that time. Sundays and holidays will not be counted as lost work days.

The time between December 1 and March 31 is considered winter months and no extensions will be granted for this time.

**108.08 Liquidated Damages.** For each calendar day that any work shall remain uncompleted after the Contract completion date, the sum specified herein will be deducted from any money due the Contractor, not as a penalty but as liquidated damages; provided however, that due account shall be taken of any adjustment of the completion time granted under the provisions of Section 108.07. If the proposal contains a special provision for liquidated damages it shall be used in lieu of the schedule contained herein.

The Contractor shall complete the work by the Contract Completion Date specified in the Notice to Proceed, or by a later date determined in accordance with Section 108.07. Requests for extension of the Completion Date shall be in writing and shall be submitted to the Engineer, prior to the date set for completion in the Notice to Proceed. Failure to request an extension of the Completion Date, in writing, prior to the date set for completion in the Notice to Proceed and/or per Section 108.07, will **AUTOMATICALLY** cause the deduction of Liquidated Damages, as set forth in Section 108.08 or the proposal, from all estimates due and payable to the Contractor after such Completion Date.

Permitting the Contractor to continue and finish the work or any part of it after the date fixed for its completion, or after the date to which completion may have been extended, will in no way operate as a waiver on the part of the City of any of its rights under the Contract.

The Director may waive such portions of the liquidated damages as may accrue after the work is in condition for safe and convenient use.

In addition to the amounts specified hereinafter for each calendar day after the completion date, the Contractor will be charged for all inspection service regardless of any extension of time granted, unless such charges are waived by the Director.

#### **Schedule of Liquidated Damages**

<b>Original Contract Amount (Total Amount of the Bid)</b>		<b>Amount of Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time</b>
From More Than	To and Including	
\$0	\$25,000	\$50.00
\$25,001	\$50,000	\$75.00
\$50,001	\$100,000	\$100.00
\$100,001	\$500,000	\$300.00
\$500,001	\$1,000,000	\$400.00

\$1,000,001	\$2,000,000	\$500.00
\$2,000,001	\$5,000,000	\$600.00
\$5,000,001	\$10,000,000	\$800.00
Over \$10,000,001		\$1000.00

**108.09 Cancellation of Contract.** If the work to be done under this Contract shall be abandoned by the Contractor; or if this Contract shall be assigned or the work under this Contract sub-let by the Contractor, otherwise than herein specified; or if before the completion of the work under this Contract, the Contractor shall become financially unable to meet obligations or shall become bankrupt or shall make a general assignment for the benefit of the creditors or shall have a receiver appointed or to take charge of the Contractor's affairs or shall have Contractor's property levied upon or taken in execution or under attachment; or if, at any time, the Director shall be of the opinion that the performance of the Contract is unnecessarily or unreasonably delayed or that the Contractor is violating any of the conditions or agreements of this Contract, or is executing the same in bad faith or is not fulfilling the terms thereof, or is not making such progress in the execution of the work as to indicate its completion within the time specified in the Contract, or within the time to which the completion of the Contract may have been extended by the Director, then at the discretion of the Director, acting for the City, may at any time declare this Contract or any portion thereof, terminated by a written notice served upon the Contractor, a copy of which shall be given to the Surety or the authorized agent of the Surety.

Upon the service of such notice, the Contractor shall discontinue the work or such part thereof as the Director shall designate, whereupon the Surety may, at its option, assume this Contract or that portion thereof on which the Director has ordered the Contractor to discontinue work and proceed to perform the same and may, with the written consent of the Director, sublet the work, or portion of same taken over, provided, however, that the Surety shall exercise its option, if at all, within 2 weeks after written notice to discontinue work has been served upon the Contractor and upon the Surety or its authorized agent. The Surety, in such event, shall take the Contractor's place in all respects and will be paid by the City for all work performed by it in accordance with the terms of this Contract including the completion date and if the Surety, under the provisions hereof, shall assume said entire Contract, all monies remaining due the Contractor at the time of default, shall thereupon become due and payable to the Surety as the work progresses, subject to all of the terms of this Contract.

In the event the Director has ordered the Contractor to discontinue work on the project, the City shall have the absolute right, without liability on the part of the City to the Contractor or its surety, to continue and complete the project herein described. The Surety and the Contractor shall then be jointly and severally liable for all expenditures made by the City to complete the said project excepting and providing that the Surety shall not be liable for any amount over the obligation of its bond.

Any and all balances of payments due the Contractor by the City shall be forfeited to the City and the Contractor agrees that it shall lose all right, title and interest to said balances, excepting and providing that said balances shall be used, after forfeiture, for a set off to the benefit of the Contractor and its Surety on the expenditures of the City to complete this project.

**108.10 Certified Payroll.** The Contractor shall submit to the Prevailing Wage Coordinator of the City of Columbus a weekly copy of all project employee payrolls for the duration of the time of construction. The copy shall be accompanied by a certified statement, signed by the Contractor or an Agent, indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the prevailing wage rates in the Contract, or any subsequent revision of wage rates during the life of the Contract. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

The Contractor shall make employment records available for inspection by authorized representatives of the City and will permit employees to be interviewed during working hours by these representatives.

All weekly payrolls shall contain or have attached the following:

1. the full name and social security number of each employee;
2. the current address of the employee;
3. the Job Classification of the employee (same as shown on wage determination or provisional approval);
4. hourly rate of pay;
5. hours worked each day and total for each week;
6. fringe payments and deductions made.

Failure to furnish and submit the above information as part of the required weekly Certified Payroll will be cause for the City to withhold the preparation of the monthly estimate. In the event of a violation of the wage rate provisions by the Contractor or any subcontractor, the City may, after notice to the Contractor, suspend further payments or proceed to terminate the Contract as provided by other sections of the Contract, or these specifications.