Section 1108. Prosecution and Progress

1108.01 SUBLETTING OF CONTRACT.

A. The Contractor's own organization shall perform work amounting to not less than 30% of the total contract cost unless otherwise specified in the contract documents. The percent total contract subcontracted will be computed on Contract Unit Prices for the work performed by the subcontractor, unless the subcontractor is only doing partial work on the contract item. In order to meet this 30% requirement, the Contractor shall not purchase any materials for a subcontracted item nor shall they place other contractor's employees on their payroll. Employees must be hired in accordance with the AA hiring process as detailed elsewhere in the contract documents. Any item designated as a specialty item may be performed by subcontract, and the cost of any such specialty item as performed by subcontract may be deducted from the total cost before computing the amount of work required by the Contractor's organization. Any items that have been selected as specialty items for the contract are listed as such in the contract documents.

B. Except for the furnishing and transportation of materials, no portion of the contract shall be sublet, assigned, or otherwise disposed of except with written consent of the Contracting Authority. Where a subcontract has been approved, the approved subcontractor shall be responsible to complete that portion of the contract with its own organization.

C. Where a subcontract does not exist, but a DBE firm is manufacturing, supplying, or trucking materials to the job site; terms of the agreement shall be described and documented on the Subcontract Request and Approval form (Form 830231). This will assure the Engineer that a Contractor is meeting commitments previously stated on the Statement of DBE Commitments form (Form 102115). This dollar value will not be used to determine the percent subcontracted as specified previously. Where Davis/Bacon wage requirements apply, the Contractor shall be responsible for collecting and submitting certified payrolls for all drivers. Owner/operators shall be listed on the certified payrolls as owner/operators.

D. Request for permission to subcontract, assign, or otherwise dispose of any portion of any contract shall be submitted in writing with the Contractor's signed contract to the Office of Contracts, on a Subcontract Request and Approval form (Form 830231). For contracts that exceed $600,000, the Contractor shall submit the Subcontract Request and Approval form electronically using the software furnished by the Department. In certain situations, with approval of the Department, the Contractor may request an extension of up to 30 calendar days to submit the Subcontract Request and Approval forms.

E. Either the Contractor or approved subcontracts (e.g. contractors) can use leased employees from a firm that does not perform highway construction with its own organization. Work performed by a DBE firm using leased employees will not count towards meeting the Department's annual DBE goal.

When used, leased employees will be considered part of the Contractor's "own organization" if:

- The use of the employee leasing company is documented with the submittal of a Request to Subcontract.
- The Contractor maintains supervisory control over day-to-day activities of leased employees.
- The Contractor remains responsible for the quality of work of leased employees.
- The leasing company is responsible for customary employer responsibilities including EEO/AA in hiring, training, promotions, and submittal of required employee information to the Department and other governmental agencies.
- The Contractor retains power to accept or exclude individual employees from work on the project.
- The employee leasing company prepares and submits required certified payrolls. The Contractor remains ultimately responsible for payment of predetermined minimum wages and submission of payrolls.
- The Contractor retains responsibility for compliance with contract requirements.

1108.02 PROSECUTION OF WORK.

A. General.

1. The proposal form may designate the contract period by either a Specified Start Date, Approximate Start Date, or Late Start Date. The proposal form may also indicate the contract period by a Completion Date for non-highway type contracts (e.g. buildings, furnishing materials, etc.). The number of working days will be designated for the three types of start dates. Working days will not apply for a Completion Date contract period.

2. The return of the signed and executed contract to the Contractor shall serve as notice that the contract bond is acceptable, that the contract is in force, and that the Contractor may complete arrangements for materials and other work in accordance with the contract documents.

3. Should a delay become apparent before or after the work is started, the Engineer will immediately notify the Contractor in writing that work on the contract will be delayed, and if possible, the approximate duration of the delay.

B. Completion Date Contracts.

The Contractor shall complete the contract on or before the Completion Date. Unless noted otherwise in the proposal form, the Contractor may commence work any time after receipt of the signed contract, specifications permitting. Articles 1108.02, E, Charging of Working Days and 1108.02, F, Winter Work will not apply. Liquidated damages will be assessed in accordance with Article 1108.08 for each calendar day beyond the Completion Date that the contract remains uncompleted.

C. Working Day Contracts.

The three types of start dates are as follows:

1. **Specified Start Date.**
   Working days will be charged to the Contractor starting on the Specified Start Date, but not prior to 15 calendar days after the contract has been signed by the Contracting Authority. Starting work prior to the Specified Start Date will be considered upon request, and working days will be charged when work starts.

2. **Approximate Start Date.**
   It is expected the site will be available by the Approximate Start Date. If it appears the site will not be available by the Approximate Start Date, the Engineer will inform the Contractor of the delay and if possible the duration of the delay. The Contractor may commence work, weather and specifications permitting, any time after execution of the contract and on or after the Approximate Start Date provided the site has become available. If work is started under these conditions, working days will be charged. Starting work before the Approximate Start Date and before the site is available, will be considered only after the Contractor has submitted a signed waiver of any right to claim extra compensation for damages due to delays from any cause related to early commencement. If approved, working days will not be charged when working prior to the date of site availability. If the Contractor is working on the project when the site becomes available, working days will be first charged on the following day.

3. **Late Start Date.**
   a. Unless noted otherwise in the proposal form, the Contractor may commence work any time after receipt of the signed contract, weather and specifications permitting. Except as noted in Article 1108.02, F, working days will begin to be charged whenever the Contractor starts work. Charging of working days will begin on the Late Start Date if the Contractor has not started work prior to this date.
   b. If the Contractor wishes to start preliminary work prior to the Late Start Date and move out intending to return at a later date to complete the project, the Contractor shall request approval from the Engineer for temporary suspension of work in accordance with Article 1108.06. Approval of suspension of work in this circumstance will be based on if the road is open to traffic and the roadway is in a condition that is at least as safe as it was before the start of the preliminary work. The Engineer will submit in writing to the Contractor approval for suspension of work and a computed revised Late Start Date. The revised Late Start Date will be computed by adding the working days used for the preliminary work to the Late Start Date listed on the proposal form. The charging of the remainder of the working days will resume on the revised Late Start Date or when the Contractor recommences work prior to the revised Late Start Date.

D. Intermediate Contract Periods.

Intermediate contract periods may be designated for construction of certain portions of the contract. The intermediate contract period may be the same type as listed in Articles 1108.02, B and 1108.02, C. The intermediate contract period, description, working days (if applicable), and liquidated damages will be shown as a site number on the proposal form.

E. Charging of Working Days.

1. The Contractor will be charged working days as defined in Article 1101.03 and this article. For multiple site contracts, working day charges for each site will be charged independently based on the controlling operation for the site.

2. Working days will be charged beginning with the following circumstances:

- **a.** On the date specified for projects with a Specified Start Date.
- **b.** On the date that has been agreed to at the preconstruction conference for projects with an Approximate Start Date.
- **c.** On the start date indicated in the Notice to Proceed for projects with an Approximate Start Date.
- **d.** On the day following the date the site becomes available if the Contractor is already working on the site for projects with an Approximate Start Date.
- **e.** On the date the Contractor begins work prior to the Late Start Date.
- **f.** On the date specified for projects with a Late Start Date and the Contractor has not begun work prior to that date. However, working days will not be charged prior to 15 calendar days after the contract has been signed by the Contracting Authority, as long as the Contractor furnished the signed contract, performance bond, and proof of insurance within the time allowed by Article 1103.07; and has not begun work on the contract.

3. The Contractor will be charged 1/2 working day when weather or other conditions beyond the control of the Contractor permits work for at least 1/2 but less than 3/4 of a working day. The Contractor will not be charged a working day when weather or other conditions beyond the control of the Contractor work for less than 1/2 of a working day. In the event of adverse weather when work on a project is ready to be started or resumed and the Contractor is not on the project, working days will not be charged during the inclement weather period provided the Contractor starts work as soon as weather and ground conditions permit work to be started or resumed.

4. Working days will not be charged for Sundays and recognized legal holidays the Contractor does not work. Working days will be charged for Sundays and recognized legal holidays the Contractor does work.

5. Working days will not be charged for Saturdays the Contractor does work, unless a 6 day work week is specified in the contract documents.

6. Working days will be charged for cure time of pavement and structural concrete when it is the controlling item of work.

F. Winter Work.

1. Winter work is work done at the project site between November 15 and April 1. The proposal form may require winter work on all or portions of the project. If winter work is required on a project, the proposal form will indicate how the working days will be counted. When winter work is not required in the contract documents, the following shall apply:

- **a.** The Contractor may start or resume work before April 1. Working days will not be charged if the proposal form does not indicate that working days will be charged during winter work. Working days will be charged if the proposal form indicates that working days will be charged during winter work.
- **b.** For projects started prior to November 15, the Contractor may work between November 15 and April 1 with no working days charged if working days remain on November 15.

2. If the number of working days specified on the contract has been exceeded, the Engineer may require the Contractor to continue work after November 15 if it is in the best interest of the Contracting Authority. These working days will be charged.

G. Notice to Proceed.

1. A notice to proceed will be issued when, in the opinion of the Engineer, considering the approximate starting date, site availability, and working days allowed, failure of the Contractor to commence work places the timely completion of the project in jeopardy. The starting date in the notice to proceed will not be less than 15 calendar days after the date of the issuance of the notice.

2. Working days will be charged beginning with the starting date established by the notice or when the Contractor starts work if prior to that date.

H. Weekly Report of Working Days.

Whenever the Contractor is subject to being charged with working days, the Engineer will furnish the Contractor a weekly statement indicating the working days to be charged to the Contractor for that period. Should the Contractor believe the statement to be inaccurate, the Contractor shall submit to the Engineer, in writing, an objection and reasons within 10 calendar days after receipt of the statement.

I. Work Progress.

1. The progress of the work shall be at a rate sufficient to complete the contract within the time allowed. If it appears that the rate of progress is such that the contract will not be completed within the time allowed, or if the work is not being executed in a satisfactory manner, the Engineer may order the Contractor to take such steps as necessary to complete the contract within the period of time specified or to prosecute the work in a satisfactory manner. If the Contractor fails to comply with such order within 14 calendar days after receipt of the order, the Contractor may be disqualified from receiving any additional bidding proposals, and the Contracting Authority will have the right to declare the contract in default and to complete the work in accordance with Article 1108.11. Failure of the Contracting Authority to issue such order shall not alter the Contractor's responsibility under the contract.

2. The Contractor's sequence of operations shall be such as to cause as little inconvenience to the general public as possible.

J. Schedule of Staging.

On any project, or part of a project, on an existing road where the work may prohibit or restrict public or private access that has been previously available, the Contractor may be required to submit a schedule of staging for the Engineer's approval before work is started. Preliminary work may be required in stage construction, even though the work involved in these operations is similar, in order to minimize the inconvenience to the public and those to whom access has been previously available. This requirement will apply equally to work that is subcontracted.

K. Accelerated Work Schedule.

1. An accelerated work schedule may be required by a note on the proposal. When required, the Contractor shall marshal the necessary forces, including but not limited to, extra crews, subcontractors, extra work hours, or other acceptable methods to insure completion of the project, or various stages of the project, within the contract period and in compliance with the specifications.

2. A work plan shall be submitted to the Engineer for review prior to commencement of work. Work will be permitted on a 24 hour day basis and on Sundays and holiday, though work may be restricted as identified in the contract documents. Credit will not be allowed for delayed or slow delivery of materials.

3. The proposal form may specify a completion bonus. An accelerated work schedule, as provided in this article, is allowed for work necessary to earn the bonus.

L. Preconstruction Conference.

The Engineer may schedule and conduct a preconstruction conference. The Contractor and the intended subcontractors, if known, shall participate in this conference. The Engineer will invite representatives of railroads and utilities and others having responsibilities or interest in the work.

M. Notification of Traffic Impacts.
The Contractor shall provide the Engineer with 10 calendar days notice before commencing or resuming work on a Primary or Interstate road or bridge open to traffic. This notification is needed to suspend the issuance of permits for oversized loads when width or vertical clearance restrictions occur during construction.

1108.03 LIMITATIONS OF OPERATIONS.

A. The Contractor shall conduct the work so as to create a minimum amount of inconvenience to traffic. At any time, when in the judgment of the Engineer, the Contractor has obstructed or closed, or is conducting operations on, a greater portion of the road than is necessary for the proper prosecution of the work, the Engineer may require the Contractor to finish the sections on which work is in progress before work is started on any additional sections.

B. Whenever work which is being done by other contractors or subcontractors is contiguous to, or a part of, the work included in this contract, the Engineer will, in case of dispute, determine and define the respective rights of the various interests involved, in order to secure the completion of all parts of the work in general harmony and with satisfactory results.

C. Except when an accelerated work schedule is required, no work requiring inspection will be permitted on Sundays or holidays observed by the Department except with permission of the Engineer. The Contractor should request a determination of the holidays to be observed at the beginning of each calendar year.

D. Work on Primary Roads where traffic is maintained through the project and work on all Interstate highways will not be permitted during the times identified below without approval of the Engineer:

1. **Memorial Day and Labor Day weekends** - No work will be allowed the preceding Friday and all day Saturday.

2. **Independence Day** – When Independence Day is observed as a State Holiday on Monday, no work will be allowed beginning the preceding Friday through the holiday. When Independence Day is observed as a State Holiday on Friday, no work will be allowed the preceding Thursday through the following Saturday**.**

E. If the Contractor requests permission to work for the times identified above and the Engineer approves this request, working days will be charged for the times requested.

1108.04 METHODS AND EQUIPMENT.

A. The methods and equipment used shall produce a satisfactory quality of work and shall be adequate to maintain the schedule of progress specified. Equipment used on any portion of the project shall be such and its use so regulated that no serious or irreparable damage to the roadway, adjacent property, or other highways will result from its use. If damage does occur to the highway, suitable repairs shall be made.

B. When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the contract documents, the Contractor is free to use any methods or equipment that will accomplish the contract work in conformity with the requirements of the contract documents, as demonstrated to the satisfaction of the Engineer.

C. When the contract documents specify that the construction be performed by use of certain methods and equipment, these methods and equipment shall be used unless others are authorized by the Engineer.

D. If the Contractor desires to use a method or type of equipment other than specified in the contract documents, 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 method 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 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 the requirements of the contract documents, the Contractor shall discontinue use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the defective work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. Change will not be made in basis of payment for the construction items involved or in contract time as a result of authorizing a change in methods or equipment under these provisions.

1108.05 CHARACTER OF WORKERS.

Any employee of the Contractor who is careless, incompetent, or disorderly, or who refuses or neglects to perform the work in accordance with the contract documents or who shall commit trespass upon any public or private property in the vicinity of the work, shall be discharged upon the written request of the Engineer and shall not be re-employed on any of the work unless written permission is given by the Engineer.

1108.06 TEMPORARY SUSPENSION OF WORK.

A. Work shall be suspended wholly or in part when, in the opinion of the Engineer, weather or other conditions are unfavorable to its satisfactory prosecution. Work shall also be suspended at the direction of the Engineer pending settlement of disputes arising out of failure of the Contractor to comply with provisions of the contract.

B. The start of work may be delayed or work may be suspended upon request of the Contractor and with approval of the Engineer. The Engineer may require the request to be in writing and also may require the Contractor to include with the request a schedule for satisfactory completion of the work. Prior to temporary suspension of work, all obstructions or hazards that prevent safe travel by public traffic shall be removed from the project.

C. The Engineer will notify the Contractor in writing of directed or approved temporary suspension of work. Working days will not be charged during periods of suspension of work directed or approved by the Engineer except when the suspension is a result of a violation of terms of the contract.

1108.07 EXTENSION OF CONTRACT PERIOD.

An extension of the contract period will be granted by the Engineer for additional work requiring additional construction time that adds additional work to the controlling item of work.

1108.08 LIQUIDATED DAMAGES.

A. Liquidated damages will be assessed as follows:

1. Completion Date Contracts.
The amount of liquidated damages specified in the proposal form will be assessed, not as a penalty but as predetermined and agreed liquidated damages, for each calendar day that any work remains uncompleted beyond the Completion Date or any extension granted under Article 1108.07. Assessment of liquidated damages will be based only on the number of calendar days required to complete the contract beyond the completion date, plus authorized extensions.

2. Working Day Contracts.
The amount of liquidated damages specified in the proposal form will be assessed, not as a penalty but as predetermined and agreed liquidated damages, for each working day that any work remains uncompleted beyond the number of working days allowed or any extension granted under Article 1108.07. If work remains uncompleted on more than one portion for which working days and liquidated damages have been specified, the liquidated damages assessed will be the total of the damages per day listed for each uncompleted portion. Assessment of liquidated damages will be based only on the number of working days required to complete the contract in excess of the specified working days allowed, plus authorized extensions.

B. The final payment will be withheld until the amount of liquidated damages are agreed upon.

C. This provision for the assessment of liquidated damages for failure to complete work within the contract period does not constitute a waiver of the Contracting Authority's right to collect any additional damages other than time delays which the Contracting Authority may sustain by failure of the Contractor to carry out the terms of the contract.

1108.09 FAILURE TO COMPLETE WORK WITHIN CONTRACT PERIOD.

A. If the Contractor fails to complete the work within the contract period, or any extension thereof, as provided in Article 1108.07, upon written notice to the Contractor and surety, said contract shall be in default. The Contracting Authority may, at its option, permit the Contractor or the Contractor's surety to complete the work included in the contract, or may proceed to complete the work in accordance with Article 1108.11. In either event, the Contractor or the Contractor's surety shall be responsible for all costs incident to the completion of the work, and also for the liquidated damages stipulated in the proposal form.

B. The Contracting Authority may waive such portion of the liquidated damages as may accrue after all of the following conditions are met:

1. Traffic must have complete use of the roadways, shoulder to shoulder, with no delays or one way traffic and no obstructions except for signs warning of construction work ahead.

2. The remaining work to be completed is confined to the areas outside the shoulder edge.

3. Only minor work is left for completion such as clean up or erosion control work if it is a small item, not part of an erosion control contract, and the erosion control work is completed during the first available seeding period.

4. The remaining work is completed without excessive delay on the part of the Contractor.

1108.10 CONTRACTS IN DEFAULT.

The Contracting Authority may declare a contract in default for any one of the following reasons:

A. Failure to complete the work within the contract period or any extension thereof;

B. Failure or refusal to comply with an order of the Engineer within a reasonable time;

C. Failure or refusal to remove rejected materials;

D. Failure or refusal to correct any defective or unacceptable work;

E. Bankruptcy or insolvency, or the making of an assignment for the benefit of creditors;

F. Failure to carry on the work in an acceptable manner.

1108.11 COMPLETION OF CONTRACTS IN DEFAULT.

A. If for any reason a contract is declared in default, the Contracting Authority shall have the right, without process or action at law, to take over all or any portion of the contract and complete it, at its option, either by day labor or by reletting the work. Written notice will be given the Contractor by the Contracting Authority that the Contractor's contract has been declared in default, and upon receiving this notice, the Contractor shall relinquish possession of the project site or the parts of the project specified in the notice.

B. The Contracting Authority may, at its option and at a rental which it considers reasonable, retain all material, equipment, and tools on the project site until the work has been completed.

C. Neither the Contracting Authority nor any member or employee thereof shall be in any way liable or accountable to the Contractor or the Contractor's surety for the method by which the completion of the contract, or any portion thereof, may be accomplished, or for the price paid therefor. Should the cost of completing work be in excess of the original contract price, the Contractor and the Contractor's surety will be held responsible for such excess cost. Should the cost of such completion, including all proper charges, be less than the original contract price, the amount so saved shall be paid to the Contractor. Neither by taking over the portions of the contract nor by

declaring the contract in default will the Contracting Authority forfeit the right to recover damages from the Contractor or the Contractor's surety for failure to complete the entire contract.

1108.12 TERMINATION OF CONTRACTOR'S RESPONSIBILITY.

The contract will be considered completed when the work has been accepted in writing by the Engineer. Such acceptance will release the Contractor from all further obligation with respect thereto, except to conditions and requirements set forth in the bond.