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107-26 FINES AND LEVIES AGAINST THE DEPARTMENT

In the event there are fines or charges levied against the Department, actions taken by the Department, or remediation required by the Department due to the contractor’s negligence, carelessness, or failure, due to violations charged to the Contractor, or due to the Contractor’s failure to comply with the contract, monies will be deducted from monies to be paid to the Contractor on this project.

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PROSECUTION AND PROGRESS

108-1 GENERAL

It is the intent of these Specifications that the Contractor shall commence work on the date of availability shown in the contract or as soon thereafter as practicable, except that when required by permits included in the proposal, that work in jurisdictional waters and wetlands shall not begin until a meeting is held between the Department, Regulatory Agencies and the Contractor. The Contractor shall not begin work before the date of availability without written approval of the Engineer. If such approval is given, the Department will assume no responsibility for any delays caused before the date of availability by any reason whatsoever, and such delays, if any, will not constitute a valid reason for extending the completion date.

The Contractor shall pursue the work diligently with workmen in sufficient numbers, abilities and supervision, and with equipment, materials and methods of construction as may be required to complete the work described in the contract or as may be amended by the completion date.

108-2 PROGRESS SCHEDULE

The Contractor shall prepare and submit for review and approval a schedule of proposed working progress. This schedule shall be submitted on forms supplied by the Engineer or in a format that is approved by the Engineer. A detailed Critical Path Method (CPM) schedule shall not be submitted to replace the progress schedule details required below.

The proposed progress schedule shall be submitted no later than 7 calendar days before the date of the project preconstruction conference and shall be approved before any payments will be processed for the project.

When the Engineer has extended the completion date or if the project overrun is anticipated to exceed 5%, the Contractor may submit a revised progress schedule to the Engineer for review and approval. If plan revisions are anticipated to change the sequence of operations in such a manner as will affect the progress but not the completion date, then the Contractor may submit a revised progress schedule for review and approval but the completion date shall remain unchanged.

The proposed progress schedule shall contain the following items:

(A) A time scale diagram with major work activities and milestone dates clearly labeled.

(1) For purposes of composing the progress schedule, major work activities are defined as components comprising more than 5% of the total project cost or occupying more than 10% of total contract time and shall include, if applicable, the following:

(a) Clearing and grubbing
(b) Grading
(c) Drainage
(d) Soil stabilization
(e) Aggregate base course
(f) Pavement
(g) Culverts
(h) Bridges (including removal)
(j) Signals, ITS and lighting

(j) Overhead signs

(2) For purposes of composing the progress schedule, major milestones are derived from the project construction phasing and shall include, if applicable, the following:

(a) Start of construction
(b) Intermediate completion dates or times
(c) Seasonal limitation/observation periods/moratoriums
(d) Traffic shifts
(e) Beginning and end of each traffic control phase or work area
(f) Road openings
(g) Completion date

(B) A cash curve corresponding to the milestones and work activities established in Subarticle 108-2(A) above.

(C) A written narrative that explains the sequence of work, the controlling operations, intermediate completion dates, milestones, project phasing, anticipated work schedule and estimated resources. In addition, explain how permit requirements, submittal tracking and coordination with subcontractors, utility companies and other entities will be performed.

108-3 PRECONSTRUCTION CONFERENCE

Immediately after receipt of notice of award, the Division Engineer and the Contractor will establish a mutually agreeable date on which the preconstruction conference will be held. The Contractor's project superintendent and other individuals representing the Contractor who are knowledgeable of the Contractor's proposed progress schedule or who will be in charge of major items of the work shall attend the preconstruction conference.

108-4 CONSTRUCTION CONFERENCES

After work on the project has begun, construction conferences will be held periodically. The construction conferences are to be scheduled at times that are mutually agreeable to both the project superintendent and the Resident Engineer. It shall be the superintendent's responsibility to attend the conferences.

108-5 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT

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

Department employees who elect to become employed by a Contractor may not perform any function on a project with which they have been involved during employment with the Department without written consent of the State. Any person employed by the Contractor and assigned to a project who has previously been involved in the project as a Department employee shall be, at the written direction of the Engineer, removed from the project. An exception to these terms may be granted when recommended by the Secretary and approved by the Board.

Failure of the Contractor to comply may be justification for disqualifying him from further bidding in accordance with Article 102-15 and shall be grounds for termination of this contract.

No person shall be employed by the Contractor or by any subcontractor who has been determined by the Engineer to have engaged in fraudulent activities in connection with any work for the Department.
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Any person employed by the Contractor or by any subcontractor who, in the opinion of the Engineer, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, or disorderly or who has been determined by the Engineer to have engaged in fraudulent activities in connection with any work for the Department 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 persons as required above, the Engineer may suspend the work in accordance with Article 108-7.

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

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 he demonstrates to the satisfaction of the Engineer will accomplish the contract work in conformity with 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 approved by the Engineer. If the Contractor desires to use a method or type of equipment other than those specified in the contract, he may request approval 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 or equipment, the Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the unsatisfactory work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved or in the completion date as a result of authorizing a change in methods or equipment under these provisions.

108-6 SUBLETTING OF CONTRACT

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof; or of his right, title, or interest therein; without written consent of the Engineer. All requests to sublet work shall be submitted within 30 calendar days of the date of availability or prior to expiration of 20% of the contract time, whichever date is later, unless otherwise approved by the Engineer. In case such consent is given, the sublet work shall be performed by the subcontractor unless otherwise approved in writing by the Engineer. Failure of the Contractor to comply with the Standard Specifications will be just cause for the work to be considered unauthorized in accordance with Article 105-12. A firm that has been disqualified due to its failure to maintain satisfactory progress under Article 108-8 will not be approved as a subcontractor until the firm demonstrates the ability to perform the work in a satisfactory manner. When directed by the Engineer, the Contractor shall submit a certified copy of the actual subcontract agreement executed between the Contractor and subcontractor before written consent being issued by the Engineer. In case such consent is given, the Contractor will be permitted to sublet a portion thereof, but shall perform with his own organization, work amounting to not less than 40% of the total original contract amount, except:

(A) Any items designated in the contract as specialty items may be performed by subcontract and the cost of any such special items so performed by subcontract will be deducted from 1-70 NCDOT 2018 Standard Specifications
the total amount bid before computing the amount of work required to be performed by
the Contractor with his own organization, and

(B) Any other items sublet to Disadvantaged Business Enterprise (DBE), Minority
Business (MB) or Women's Business (WB), up to the value of the contract DBE, MB or
WB goal, will be deducted from the total amount bid before computing the amount of
work required to be performed by the Contractor with his own organization.

In any event, the Contractor shall perform with his own organization work amounting to not
less than 35% of the difference between the total amount bid and the value of specialty items
that have been sublet. Purchasing materials for subcontractors is not included in the
percentage of work required to be performed by the Contractor. If the Contractor sublets
items of work but elects to purchase material for the subcontractor, the value of the material
purchased will be included in the total dollar amount considered to have been sublet.

Extra work performed in accordance with Article 104-7 will not be considered in the
computation of work required to be performed by the Contractor.

An assignment by operations of law or assignment for the benefit of creditors, or the
bankruptcy of the Contractor, shall not vest any right in this contract in the Trustee in
bankruptcy, the Contractor's creditors, or the agent of the creditors.

A subcontractor shall not sublet, sell, transfer, assign, or otherwise dispose of his contract
with a contractor or any portion thereof; or of his right, title, or interest therein; without
written consent of the Engineer. When directed by the Engineer, the contractor shall submit
a certified copy of the actual subcontract agreement executed between the subcontractor and
the second tier subcontractor. In the event of an assignment by operations of law or the
bankruptcy of the subcontractor, the contractor shall have the right, power and authority, in its
discretion, without violating the contract or releasing the Surety, to terminate the subcontract.
An assignment by operations of law or assignment for the benefit of creditors or the
bankruptcy of the subcontractor shall not vest any right in this contract in the Trustee in
bankruptcy, nor the subcontractor's creditors or agents of the creditors.

Neither the Contractor, nor any subcontractor, shall enter into any written or oral equipment
lease or rental agreement, materials purchase agreement or labor agreement that circumvents
this article.

If the Contractor or a subcontractor enters into a lease or rental agreement for equipment
based upon payment for a unit of work, such agreement will be considered subletting of the
contract unless the lease or rental agreement is with a commercial equipment company,
manufacturer or commercial leasing agency and such firm has been approved by the
Engineer. An equipment lease or rental agreement that is based upon unit prices per unit of
time will not be considered subletting of the contract.

The approval of any subcontract will not release the Contractor of his liability under the
contract and bonds, nor will the subcontractor or the second tier subcontractor have any claim
against the Department by reason of the approval of the subcontract. The Chief Engineer will
review and consider subcontractor claims for additional time or compensation provided such
claims are submitted by the Contractor in accordance with Article 107-24 and NCGS § 136-29.

Failure of the Contractor to comply with any of the requirements of this article may be
justification for disqualifying the Contractor from further bidding in accordance with
Article 102-15.

108-7 TEMPORARY SUSPENSION OF THE WORK

The Engineer will have the authority to suspend the work wholly or in part by written order
for such periods, as he may deem necessary for any of the following reasons:

(A) Conditions considered unfavorable for the suitable prosecution of the work, or
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(B) The Contractor's failure to correct conditions unsafe for workmen or the general public, or

(C) The Contractor has not carried out orders given to him by the Engineer, or

(D) The Contractor's failure to perform any provisions of the contract.

No extension of the completion date will be allowed for the above suspensions except as may be provided for in Article 108-10.

108-8 FAILURE TO MAINTAIN SATISFACTORY PROGRESS

The Engineer will check the Contractor's progress at the time each partial pay estimate is prepared. The Contractor's progress may be considered as unsatisfactory as follows:

(A) The Contractor's progress is found to be less than that described in either count below:

(1) The dollar value of the work completed, excluding material payments allowed by Article 109-5, is less than the dollar value of the work that should have been completed, on the basis of the Contractor's approved progress schedule, by more than 15% of the current contract amount.

The dollar value of the work completed will be the total estimate to date shown in the latest partial pay estimate, excluding material payments allowed by Article 109-5. The current contract amount will be the total amount bid plus accumulated overruns less accumulated underruns shown in the latest partial pay estimate.

(2) The percentage of the work completed is less than the percentage of contract time elapsed on the work by more than 15%. The percentage of work completed will be the dollar value of the work completed as defined above, divided by the current contract amount as defined above.

The percentage of contract time elapsed will be the number of calendar days elapsed as shown in the latest partial pay estimate divided by the total contract time in calendar days.

(B) The Contractor fails to begin and pursue the work in accordance with Article 108-1 before the expiration of 5% of the original contract time after the date work was scheduled to begin based upon the approved progress schedule.

(C) The Engineer anticipates the Contractor will not complete the work described in the contract by the intermediate contract time or the contract completion date.

When the Contractor's progress is found to be unsatisfactory as described in Subarticles 108-8(A), 108-8(B) and 108-8(C) above, the Engineer may make written demand of the Contractor to state in writing the reason for the unsatisfactory progress and produce such supporting data as the Engineer may require or the Contractor may desire to submit. The Engineer will consider the justifications submitted by the Contractor and extensions of the completion date have or may be allowed in accordance with Subarticle 108-10(B).

When the Contractor cannot satisfactorily justify the unsatisfactory progress, the Engineer may invoke one or more of the following sanctions:

(1) Withhold anticipated liquidated damages from amounts currently due or that become due.

(2) Remove the Contractor from the Department's Prequalified Bidders List.

When any of the above sanctions have been invoked, they shall remain in effect until rescinded by the Engineer.
DEFAULT OF CONTRACT

(A) Declaration of Default

The Department shall have the right to declare default of the contract for breach by the Contractor of any material term or condition of the contract as determined by the Department. Material breach by the Contractor shall include, but specifically shall not be limited to failure to begin work under the contract within the time specified; failure to provide workmen, equipment, or materials adequate to perform the work in conformity with the contract by the completion date; unsatisfactory performance of the work; refusal or failure to replace defective work; failure to maintain satisfactory work progress; failure to comply with equal employment opportunity contract requirements; insolvency or bankruptcy, or any act of insolvency or bankruptcy; and making an assignment for benefit of creditors.

(B) Corrective Actions upon Default

In the event of a breach of the contract by the Contractor, the Department shall have the right, power and authority, in its sole discretion, without violating the contract or releasing the Surety: to assume full control of the prosecution of the contract in the place and stead of the Contractor in directing Contractor’s agents, employees and subcontractors in the performance of the work and in utilizing all materials, tools, machinery, equipment and structures located on the project; to perform the work or any part thereof with Department personnel and equipment or to use any or all materials and equipment located on the project that are suitable and acceptable; to relet the work upon such terms and conditions as the Department shall deem appropriate; to employ any other methods that it may determine are required for completion of the contract in an acceptable manner; and to withhold any sums due the Contractor under the contract without penalty or interest until the work is completed and accepted by the Department.

(C) Notice

Before invoking any of the corrective actions provided for herein, the Department will give the Contractor at least 7 calendar days written notice with a copy to the Surety, that will set forth the breach of contract involved and the corrective actions to be imposed. The Department, in its discretion, may grant the Contractor time in excess of 7 calendar days within which to comply with the contract and the time allowed will be set forth in writing. If the Department determines during such period that the Contractor is not proceeding satisfactorily to compliance, it may impose the corrective actions after 24 hours’ notice to the Contractor. If the Department determines that the Contractor is not in compliance at the end of the time allowed, it may immediately impose any of the corrective actions set forth herein and will advise the Contractor, in writing, with a copy to the Surety of the corrective actions imposed.

(D) Payment

After declaration of default has been made final, the Contractor will be entitled to receive payment for work satisfactorily completed or portions of work satisfactorily completed, less any sums that may be due the Department from the Contractor but in no event shall payment exceed the contract unit or lump sum price for such work. The Department, at its election, may retain the sum due the Contractor, or any portion thereof, without interest or penalty, until the contract work is completed; or it may make payment to the Contractor upon declaration of default for work satisfactorily completed to the date that notice of default is received by the Contractor. The Contractor may be required by the Engineer to carry to a stage of completion satisfactory to the Engineer any work in progress, the value of which, otherwise, would be lost by immediate cessation of work. Payment for such work will be made upon the basis hereinafter set out.

In the event that the Contractor’s employees, equipment, or materials are used in prosecution of the work, or any part thereof, after default is declared, payment to the

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Contractor may be by contract unit or lump sum prices for the work performed, or, if the
Engineer determines that such prices do not represent the value of the work performed,
payment for the type of work or services performed will be made on a force account
basis, as set forth in Article 109-3, less any sums that may be due the Department; but in
no event shall payment exceed the contract unit or lump sum price for such work or
services. Determination of the method of payment shall be in the sole discretion of the
Engineer, and he will advise the Contractor, in writing, of his determination with
reference to the specific type of work or service to be performed.

If all costs and expenses incurred by the Department arising out of the breach and
imposition of sanctions, together with the total cost to the Department of securing the
performance of the work set forth in the contract, exceed the sum that would have been
payable under the contract, the Contractor and the Surety shall be liable to the
Department for such excess and shall pay such amount to the Department.

(E) Power of Engineer

The Engineer will exercise the powers and discretion vested in him by the contract in
carrying out the terms of this article. He will have full power and authority to carry out
any orders, directives, or resolutions issued by the Department in connection with
a declaration of default. In the event that the Department fails to specify the sanctions to
be imposed, the notice to be given or the method of completing the work, the Engineer
may, at his discretion, impose such sanctions, give such notice and select such methods
of completing the work, as are authorized by this article; and such actions shall have the
same effect and validity as if taken pursuant to an express order, directive or resolution of
the Department.

(F) Obligation of Contractor and Surety

No term or terms of this article and no action taken pursuant hereto by the Department of
Transportation, its agents, or employees, will be construed to release or discharge the
Contractor or the Surety upon the obligation set forth in the contract bonds, and the
Contractor and the Surety shall remain bound thereon unto the Department until the work
set forth in the contract has been completed and accepted by the Department and all
obligations of the Contractor and the Surety arising under the contract and contract bond
have been discharged.

(G) Provision Not Exclusive

The provisions shall be in addition to and not in place of, any other provisions relating to
default, breach of contract and sanctions to be imposed in connection therewith appearing
in the contract.

108-10 CONTRACT TIME AND INTERMEDIATE CONTRACT TIME

(A) General

The contract time will be as defined in Section 101. No extensions to the completion
date will be authorized except as allowed by this article. No modifications in the date of
availability will be made for any reason whatsoever.

Intermediate contract time, as defined in Section 101 will be that as allowed in the
contract to complete a part, portion or phase of the total work covered in the contract.
Intermediate completion dates and intermediate completion times set forth in the contract
may be extended on the same basis as completion dates and as described in this article.

When the liquidated damages stipulated in the contract are to be hourly, extensions, as
described in this article, will be considered on an hourly basis.
(B) Completion Date, Intermediate Completion Date and Intermediate Completion
Time Extensions

No extension of the completion date, intermediate completion date, or intermediate
completion time will be allowed for any reason except as provided for below:

(1) If the total dollar value of the final quantities adjusted as provided below, less the
dollar value of quantities represented by supplemental agreements that previously
extended the completion date, intermediate completion date or intermediate
completion time, exceeds the dollar value of the total amount bid, the completion
date, intermediate completion date, or intermediate completion time will be extended
by the number of calendar days or hours obtained by multiplying the contract time
(days), intermediate contract time (days), or intermediate contract time (hours) as set
forth in the contract by that percentage that such reduced final dollar value exceeds
the total amount bid. The total dollar value of the final quantities for pro-rata
computations shall be adjusted by excluding the following:

(a) Unit bid price changes caused by price adjustments to asphalt cement,

(b) Fuel adjustments,

(c) Unit price reductions under Article 105-3,

(d) Payment for trainees and

(e) Unit price changes due to pay factors established by the Standard Specifications.

(2) If supplemental agreements covering the performance of extra work include
provisions for an extension of the completion date, intermediate completion date, or
intermediate completion time and the final dollar value of the extra work exceeds the
estimated dollar value, the number of days or the number of hours by which the the
completion date, intermediate completion date or intermediate completion time was
extended will be increased by the percentage that the final dollar value exceeds the
estimated value.

(3) If the Contractor's current controlling operation is delayed by circumstances
originating from work required under the contract and beyond his control and
without his fault or negligence, he may, at any time before payment of the final
estimate, make a written request to the Engineer on the Contractor Claim Submittal
Form, available through the Construction Unit, for an extension of the completion
date, intermediate completion date, or intermediate completion time. This request
shall include:

(a) The circumstances resulting in the alleged delay and documentation of said
circumstances as may be required by the Engineer,

(b) The controlling operation alleged to have been delayed,

(c) The calendar dates or calendar dates and times on which the controlling
operation was delayed and

(d) The number of calendar days or hours by which he is requesting the completion
date, intermediate completion date, or intermediate completion time to be
extended.

If the Engineer determines that the controlling operation was delayed because of
circumstances beyond the control of and without the fault or negligence of the
Contractor, and that the Contractor has pursued the work in accordance with
Article 108-1, he will extend the completion date, intermediate completion date, or
intermediate completion time unless otherwise precluded by other provisions of the
contract. No extension of the completion date, intermediate completion date, or
intermediate completion time will be allowed for delays caused by restrictions,
limitations or provisions contained in the contract.
Consideration will be given for an extension in the completion date, intermediate completion date, or intermediate completion time involving an intermediate contract time of more than 96 hours if the Contractor's current controlling operation(s) is delayed in excess of 40% of the total contract time (days), as defined in Section 101, excluding the time between December 15 and March 16; the total intermediate contract time (days), as defined in Section 101, excluding the time between December 15 and March 16; or the total intermediate contract time (hours), as defined in Section 101; due to weather or conditions resulting from weather. No other consideration will be given for extensions in the completion date, intermediate completion date, or intermediate completion time due to delays caused by weather.

Where the intermediate contract time is 96 hours or less, no consideration whatsoever will be given for an extension in the intermediate completion time due to weather or conditions resulting from weather.

(4) If changes in the work from that originally contemplated in the contract are ordered by the Engineer and these changes result in reduction in quantities, elimination of items, additional work or extra work, the Engineer will allow an extension in the completion date, intermediate completion date, or intermediate completion time as he may deem warranted by such changes. Pursuit of the work with adequate forces and equipment and efficiency of the Contractor's operations will be considered by the Engineer in determining an extension in the completion date, intermediate completion date, or intermediate completion time. It is, however, the Contractor's responsibility to show just cause for an extension in the completion date, intermediate completion date, or intermediate completion time due to the aforesaid conditions. If the Contractor elects to file a written claim or requests an extension of contract time, it shall be submitted on the Contractor Claim Submittal Form available through the Construction Unit.

(5) In the event accumulated authorized extensions in the completion date or intermediate completion date resulting from Subarticles 108-10(B)(1) through 108-10(B)(4) above extend the completion date or intermediate completion date beyond December 15 following expiration of the completion date or intermediate completion date as established in the contract, the completion date will be further extended by the number of calendar days between December 15 of one year and March 16 of the following year. If any portion of such accumulated authorized extensions are for delays that occurred after the original contract time or intermediate contract time (days) expired and during the period between December 15 of one year and March 16 of the following year, this portion of the extension will be deducted from the number of additional calendar days awarded due to extension of the completion date or intermediate completion date beyond December 15.

The Contractor's claim that insufficient contract time (days), intermediate contract time (days), or intermediate contract time (hours) was specified in the contract will not be considered as a valid reason for an extension in the completion date, intermediate completion date, or intermediate completion time.

When all work on the project is totally complete, with the exception of an item or items on which work is precluded by seasonal limitations set forth in the contract, the Engineer may, provided that the Contractor has, as determined by the Engineer, diligently pursued the work with adequate forces and equipment, waive the assessment of liquidated damages during the period of time from the date all work other than that precluded by seasonal limitations was completed until the date of expiration of the seasonal limitations. The Contractor shall make the request to waive the assessment of liquidated damages in writing before the beginning date of the requested waiver. The non-assessment of liquidated damages during the aforesaid period shall not operate to waive any other liquidated damages that may be assessable, or any other terms of the contract.
108-11 LIQUIDATED DAMAGES

The parties acknowledge that time is of the essence for the performance of the work under the contract. Time is an essential element of the contract. Delay in completing the work will result in damages including but not limited to public inconvenience, obstruction to traffic, interference with business and the increasing of engineering, inspection and administrative costs to the Department. It is therefore agreed that in view of the difficulty of making a precise determination of such damages, a sum of money in the amount stipulated in the contract, will be charged against the Contractor for each calendar day, each hour, or portion thereof that the work, or any portion of the work as described in the contract, remains uncompleted after the expiration of the completion date, intermediate completion date, or intermediate completion time shown in the contract, not as a penalty but as liquidated damages.

Should the Contractor or, in case of default, the Surety fail to complete the work or any portion of the work by any of the applicable completion dates, intermediate completion dates, or intermediate completion times shown in the contract, a deduction of the amount stipulated in the contract as liquidated damages will be made for each and every calendar day, for each and every hour, or portion thereof that the work or any portion of the work remains uncompleted after the expiration of any completion date, intermediate completion date, or intermediate completion time applicable to the uncompleted work. This amount will be deducted from any money due the Contractor or his Surety under the contract and the Contractor and his Surety will be liable for any liquidated damages in excess of the amount due.

In the event that the contract establishes one or more intermediate completion dates or times in addition to the completion date, each of the liquidated damages stipulated will be considered to be cumulative to any other liquidated damages stipulated.

In case of Contractor default of the contract and the completion of the work by the Department, the Contractor and his Surety will be liable for the liquidated damages under the contract, but no liquidated damages will be chargeable for any delay in the final completion of the work by the Department due to any action, negligence, omission, or delay of the Department.

In any suit for the collection of or involving the assessment of liquidated damages, the reasonableness of the amount stipulated in the contract will be presumed. The liquidated damages referred to herein are intended to be and are cumulative and will be in addition to every other remedy now or hereafter enforceable at law by statute or under the contract.

Permitting the Contractor to continue and finish the work or any part thereof after the expiration of the completion date, intermediate completion date, or intermediate completion time shall in no way operate as a waiver on the part of the Department of any of its rights under this contract.

108-12 EXTENSION OF CONTRACT TIME AND APPORTIONMENT OF LIQUIDATED DAMAGES

In accordance with Articles 108-10 and 108-11, when a contract is not completed by the completion date, intermediate completion date, or intermediate completion time, the Contractor shall be entitled to an extension of the completion date, intermediate completion date, or intermediate completion time and apportionment and remittance of liquidated damages to the extent that the failure to complete was due to the conditions set forth in Article 108-10. The Contractor, however, shall be entitled to an extension of the completion date, intermediate completion date, or intermediate completion time, or an apportionment and remittance of liquidated damages only to the extent and in the proportion that such delays were caused by the conditions set forth in Article 108-10, and it is understood that any extension granted shall not operate to waive any liquidated damages or any claim which the Department has or may have against the Contractor by reason of failure of the Contractor to
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complete the said contract by the completion date, intermediate completion date, or
intermediate completion time specified therein or as revised by authorized extensions.

108-13 TERMINATION OF CONTRACT

The Department may terminate the contract in accordance with the following provisions:

(A) The Department will consider termination of the contract upon written notification by the
Contractor that any of the following circumstances exist. The Contractor shall include
adequate documentation of these circumstances along with such notification:

(1) If it is impossible for the Contractor to obtain critical materials for completion of
the contract within a practical time limit, or

(2) If it is impossible for the Contractor to complete the work in accordance with the
contract by reason of unanticipated conditions at the site, including slides and
unstable subsoil, without a major change in the design of the project and the
Contractor will be unduly delayed in completing the project by reason of such
unanticipated conditions and changes in design, or

(3) If the Contractor is prevented from proceeding with the contract as a direct
result of an Executive Order of the President with respect to the prosecution of
war or in the interest of national defense, or

(4) If the Contractor is prevented from proceeding with the work required by the
contract as a direct result of a restraining order, or other court order, or by
reason of a permit requirement, and the Contractor will be unduly delayed in
completing the project by reason of such order or requirement, or

(5) If the Contractor is prevented from proceeding with the work due to the
unavailability of the site

(B) The Contract will be terminated under this article if:

(1) Request by Contractor

(a) The Department concurs in the determination by the Contractor of the
circumstances or makes an independent determination that such circumstances
herein above indicated exist, and

(b) The Department determines that such circumstances are beyond the control of
the Contractor, and the Contractor was not at fault in creating the circumstances,
and

(c) The Department determines that a termination of the contract is in the best
public interest.

(2) Authority of the Department

The Department determines that a termination of the contract is in the best public
interest.

(C) The Contractor will be notified in writing by the Engineer of the action of the
Department.

(D) After a contract is terminated in accordance with this termination provision, the following
provisions shall be applicable:

(1) When the contract is terminated before completion of all items of work in the
contract, payment will be made for the actual number of acceptably completed items
of work or acceptably completed portions thereof at the contract unit or lump sum
prices. When the contract is terminated before completion of all items of work in the
contract and items of work are partially completed or not begun, payment will be
made in accordance with Article 104-6.
(2) Payment for costs incurred in organization of the work will be based on verified actual costs and will be included in the adjusted contract lump sum price for Mobilization in accordance with Subarticle 108-13(D)(1). The Contractor shall demonstrate through submission of appropriate documentation that these costs were included in the bid item of Mobilization. After reviewing the submitted cost records and the submitted documentation, the Engineer will make such adjustments as he deems warranted.

(3) Upon request from the Contractor, materials meeting the requirements of the contract that were to have been incorporated into the work or were to remain the property of the Department but are not used in the work will be paid in accordance with Article 109-6.

(4) No claim for loss of anticipated profits will be considered and no payment will be made for loss of anticipated profits.

(5) Termination of a contract shall not relieve the Contractor of his responsibilities for any completed portion of the work, nor shall it relieve his Surety of its obligation for and concerning any just claims arising out of the work performed.

108-14 TERMINATION OF CONTRACTOR’S RESPONSIBILITY

After the project has been completed and accepted, as provided for in Article 105-17, the Contractor’s responsibility will cease except as provided in Article 107-20 and as set forth in his contract bonds or any warranties provided for under the contract. The Contractor shall remain responsible for any amounts determined to be owed the Department in the processing of the final estimate and such amounts shall be paid by the Contractor upon notification by the Department before processing of the final estimate.

SECTION 109

MEASUREMENT AND PAYMENT

109-1 MEASUREMENT OF QUANTITIES

All work completed under the contract will be measured by the Engineer according to United States standard measures unless otherwise stated in the contract.

The method of measurement and computations used in the determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to accepted engineering practice.

The terms “gauge” and “thickness,” when used in connection with the measurement of plates, sheets and steel wire, shall be applied as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Test Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncoated Steel Sheets and Light Plates</td>
<td>United States Standard Gauge</td>
</tr>
<tr>
<td>Galvanized Sheets</td>
<td>AASHTO M 218 or M 167</td>
</tr>
<tr>
<td>Aluminum Sheets</td>
<td>AASHTO M 196 or M 197</td>
</tr>
<tr>
<td>Steel Wire</td>
<td>AASHTO M 32</td>
</tr>
</tbody>
</table>

The term “ton” will mean short ton (mass) consisting of 2,000 pounds.

Trucks used to haul material being paid by weight will be either weighed empty before each loading or weighed empty daily. When trucks are weighed empty daily, each truck shall be weighed before hauling its first load of the day and shall bear a legible identification mark.

Where aggregates that are to be paid by weight have been stockpiled after being produced, measurement for purposes of payment will be made after the aggregates have been loaded on trucks for direct delivery to the project.