

SECTION 108 - PROSECUTION AND PROGRESS

108.01 Subletting of Contract. The Contractor shall not sublet, sell, transfer, assign, mortgage, engage or dispose the contract without the written consent of the Engineer. Also, the Contractor shall not sublet, sell, transfer, assign, mortgage, engage or dispose its right, title, or interest without the written consent of the Engineer.

After complying with Section 103-29, H.R.S., the Contractor may subcontract a portion of the project work according to this section. The Department will hold the Contractor responsible for the work subcontracted. The Department will not permit the Contractor to subcontract project work:

- (1) to suspended subcontractors, nor
- (2) to subcontractors not properly listed in its bid proposal.

The following provisions applies only to State and Federal-Aid projects:

- (1) If there are no "specialty items", the Contractor shall do more than fifty (50) percent of the total contract cost with its own organization.

If the contract specifies "specialty items", the Contractor may subcontract the "specialty items". The Department will deduct the cost of the "specialty items" so done by subcontract from the total contract cost. The Department will then compute the amount of work required to be done by the Contractor with its own organization.

If the Contractor is subcontracting an entire item, the Department will base the value of work subcontracted on the contract item bid price. If the Contractor is subcontracting a portion of an item, the Department will base the value of work subcontracted on the cost as estimated by the Engineer.

- (2) The Contractor shall submit a fully executed subcontract with the "Request for Approval of Subcontractor", form DOT 4-055. The subcontract shall have the pertinent provisions and the requirements of its contract with the Department. The pertinent provisions include the special provisions, standard specifications, contract plans and addenda. The requirements include wage rate schedules, equal employment opportunity (EEO), federal forms FHWA-1273, and disadvantaged business enterprise (DBE).

The Contractor shall limit form DOT 4-055 to its use of its subcontractors. DOT-4-055 does not include approval or an endorsement of contracts, agreements or arrangements between the Contractor and its subcontractors.

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The Contractor may substitute a certification for the provisions and requirements. An officer of the Contractor shall sign the certification. *|

The Engineer will return the subcontract agreement to the Contractor *| after verifying and logging the verification. *|

When the subcontractor is not prosecuting the work according to the *| contract, the Contractor shall remove the subcontractor immediately from *| the project upon receipt of a written notice from the Engineer. The *| Contractor shall not employ that subcontractor again for that project. *|

Subcontract or transfer of contract shall not release the Contractor *| of the liability under the contract and bonds. |

108.02 Notice to Proceed (NTP). When the Director accepts the contract, the *| Department will give a NTP to the Contractor. The Department will show the *| date the Contractor expects to begin the work and charge contract time. The *| date specified in the NTP will be at least forty-five (45) days from the date *| of award unless there is no execution of contract. *|

The Contractor shall begin work within ten (10) working days from the *| specified date. The Contractor shall pursue the work diligently to completion *| within the contract time allowed. The Contractor shall not work before the *| specified date without a written acceptance. *|

If the Contractor begins work before receiving the NTP, the Department *| will consider the Contractor doing work at its own volition and risk. If the *| Department gives written consent to work before the specified date, the *| Contractor may begin work. However, the Contractor shall assume the risk that *| the Department may disapprove the contract. Also, in case the Department *| disapproves the contract, the Contractor shall: *|

- (1) Take precautions required for public safety. *|
- (2) Observe the provisions in the contract before beginning operations. *|
- (3) Work as is necessary to leave the project site in a neat condition *| at no cost to the State and according to the contract. *|
- (4) Restore the site to its former condition at no cost to the State if *| the work done affects existing roads or highways. *|

The Department will pay the Contractor as provided in the contract when *| the Department accepts the contract. The Department may not allow additional *| compensation nor an extension of time for delay, hindrance or interference *| caused by doing the project work before the approved date. The Department may *| allow additional compensation or extension of time to the Contractor if the *| Contractor begun work on the approved date and the progress been the same as *| that made. *|

108.03 Prosecution and Progress. The Contractor shall submit to the Engineer four (4) progress schedules for review on the date of NTP or sixty (60) calendar days after the date of award of the contract, whichever is earlier. The Engineer will not authorize progress payments until the Engineer acknowledges receipt of the schedule in writing.

The Contractor shall submit supplementary revision to or adjustment to schedules within ten (10) working days when requested by the Engineer. Non-compliance with this request will be grounds for delaying the processing of the progress payment until receiving the submittal.

The progress schedule shall be a Comprehensive Bar Chart or a Critical Path Basis Schematic (arrow) Diagram.

(A) For Contracts One Million (\$1,000,000) Dollars Or Less Or For Contract Time Of One Hundred (100) Working Days Or Less. For contracts of less than one million (\$1,000,000) dollars or for contract time of one hundred (100) working days or less, the schedule will be a Comprehensive Bar Chart or a Critical Path Basis Schematic (arrow) Diagram showing:

- (1) The major features of work, such as grubbing, roadway excavation, structure excavation, structure construction, in the order which the Contractor proposes to work;
- (2) Features not listed in the Special Provisions that the Contractor considers a controlling factor for the timely completion of the contract work;
- (3) The time span of the activities for each feature, and its relationship in time to other features;
- (4) The total anticipated time necessary to complete work required by the contract;
- (5) Sufficient space for each feature to permit two additional plots parallel to the original time span plot. One (1) plot will be for revisions and one (1) will be for showing the actual time spans achieved;
- (6) An anticipated work completion graph plotting contract time and gross payment anticipated;
- (7) A listing of using equipment anticipated. Include type, size, make and information necessary to identify the equipment in the Rental Rate Blue Book for Construction Equipment;
- (8) An anticipated manpower requirement graph plotting contract time and total manpower required. This may be superimposed over the payment graph;

(9) A chronological listing of critical intermediate dates or time periods for features that can affect timely completion of the project; and

(10) Major activities related to the location on the project.

(B) For Contracts Which Have Both A Contract Amount More Than One Million (\$1,000,000) Dollars And Contract Time Of More Than One Hundred (100) Working Days. For contracts which have both a contract amount more than one million (\$1,000,000) dollars and contract time of more than one hundred (100) working days, the schedule will be a Critical Path Schedule (arrow) Diagram, showing:

(1) The information listed in A above;

(2) A detailed schematic network on a time basis of the work stages and operations of work including non-controlling work leading to timely completion of the contract;

(3) Sufficient detail to allow at least weekly monitoring of the Contractor's and subcontractor's operations;

(4) The time scaled schematic shall be on a working days basis. The Contractor shall plot the critical calendar dates anticipated. The Contractor shall provide sufficient space for plotting actual calendar dates;

(5) The Contractor shall do the sequences of activities and events, interrelationships, and interdependences to complete the project;

(6) Non-construction activities, such as submittal and acceptance periods for shop drawings and material, procurement, testing, fabrication, mobilization, and demobilization.

(7) Breakdown of activity, such as forming, placing reinforcing steel, concrete pouring and curing, and stripping in concrete construction, when necessary;

(8) Latest start dates for critical phasing; and

(9) Identify responsible subcontractor, supplier, and others for their respective activity.

The Contractor shall not construe receipt of progress schedule to assign responsibility of performance or contingencies to the State. Also, receipt of progress schedule does not relieve the Contractor of responsibility to adjust forces, equipment and work schedules.

The Contractor shall show how the Contractor intends to adjust and remain on the anticipated schedule and within the contract time including accepted extensions when making work schedule adjustment submittals.

The Contractor shall begin work according to the submitted progress schedule after receiving NTP. The Contractor shall prosecute the work in the order of the schedule expeditiously. The Engineer may require the Contractor to provide additional force and equipment to bring the operation up to the submitted progress schedule if failure to proceed as provided in the schedule or prosecution of the work does not insure completion within the specified time.

The Engineer will consider employing a working force and equipment if the Contractor fails to comply with the above. The Engineer will charge the Contractor the cost to do the work including depreciation for plant and equipment.

108.04 Limitation of Operations. The Contractor shall conduct work with the least interference of traffic. The Contractor shall use care to the location of detours and the provisions for handling traffic. The Contractor shall not create more work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a section before starting work on additional sections if the opening of that section is essential to public convenience.

108.05 Character of Workers, Methods and Equipment. Workers shall have sufficient skill and experience to do the assigned work properly. Workers engaged in special work or skilled work shall have sufficient experience to do that work properly and satisfactorily. Also, workers engaged in special work or skilled work shall have sufficient experience in the operation of the equipment to do that work properly and satisfactorily.

The Contractor shall remove workers who do not carry out the assigned work in a proper and skillful manner from the project at the written request of the Engineer. Also, the Contractor shall remove workers who are excessive or disorderly from the project at the written request of the Engineer. Such worker shall not work on State or County projects for two (2) years from the date of departure without the written acceptance of the Department.

If the Contractor fails to remove such worker or fails to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work in writing until such orders are complied with.

The Department may declare the Contractor using such worker in material default of the project contract. Also, the Contractor shall be subject to penalties according to Sections 103-33 and 103-48, Hawaii Revised Statutes.

Proposed equipment on the work shall be of sufficient size and in such mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on the project shall not injure the roadway, adjacent property, or other highway facilities.

The Contractor may use methods or equipment that will complete the non-prescribed work according to the contract.

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If the contract specifies certain methods and equipment for that work, *
the Contractor shall use such methods and equipment unless the Engineer *
accepts the Contractor's choice of methods and equipment. *

The Contractor shall submit a written request that includes a full *
description of the methods and equipment that the Contractor is proposing. *
Also, the Contractor shall submit a written request that includes an *
explanation of the reasons for changing such methods and equipment. If the *
Engineer grants the request, the request will be on the condition that the *
Contractor shall be fully responsible for completing the work according to the *
contract. If the Engineer concludes that the work does not meet contract *
requirements after trial use of the requested methods or equipment, the *
Contractor shall stop using the requested method or equipment. The Contractor *
shall complete the remaining work with the specified methods and equipment. *
The Contractor shall remove and replace the deficient work with work of *
specified quality or take such other corrective action. The authorized *
requested methods or equipment will not change the basis of payment for the *
contract items involved nor the project contract time. |

108.06 Temporary Suspension of Work. The Engineer will have the authority to |
suspend the project in whole or in part for such period as the Engineer may |
deem necessary. Causes for temporary suspension of work include: *

- (1) unsuitable weather; *
- (2) other conditions out of the control of the Contractor which may *
prevent proper prosecution of the work or; *
- (3) failure to prosecute or do the work according to the contract; *
- (4) non-compliance with non-discrimination, Affirmative Action, EEO and *
wage and hour contract provisions. *

The Contractor shall immediately comply with the Engineer's written order *
to suspend the affected work. The Contractor shall resume the suspended work *
only upon written NTP from the Engineer. |

If the Department orders such suspension of project work, the Department *
shall assume the cost of eliminating the hazards and inconveniences caused by *
such suspension according to Subsection 104.03 - Extra Work. The Department *
may do the work at no cost to the Contractor at the Engineer's option. The *
Department will apply this provision only to the portion of the work *
suspended. *

If the Department causes suspension of work and the Department chooses *
not to do the work of eliminating the hazards and inconveniences, the *
Department will pay the Contractor to do the work to such amount as the *
Department may in writing find to be fair, reasonable and auditable. The *
amount compensated will be the actual cost considered unavoidable by the *
Department. The Contractor shall take immediate steps, after consultation *
with the Engineer, to minimize costs. *

If suspension of the contract, a contract phase or a controlling item of work is more than two (2) weeks, the Department may pay compensation for the following: *

- (1) Direct project overhead costs excluding overhead equipment plus a markup of ten (10) percent for profit and indirect general and administrative expenses;
- (2) Overhead equipment at the Blue Book Rental Rate for actual operating hours;
- (3) Rental at rate determined by cost divided by expected useful life for major construction materials used temporarily in the construction work when their actual period of use is extended by the suspension;
- (4) Idle equipment at forty (40) percent of the applicable Blue Book Rental Rate without operation costs or equal to the direct cost;
- (5) Demobilization and mobilization of workers and equipment as extra work according to Subsection 109.04.

The Contractor shall submit its claim for additional compensation in writing within twenty (20) calendar days of the start of the suspension. The Contractor shall submit the amount of claim and the detailed supporting documents to justify the claim in writing within sixty (60) calendar days after the completion of the suspension period.

Notwithstanding the suspension which may still be in progress, the Department may make progress payments for costs incurred under provisions of this Section upon submission of cost documentation which the Engineer in writing deems acceptable.

If the Contractor causes the suspension of the work, the Contractor shall do work necessary to eliminate and repair hazards and inconveniences caused by such suspension at no cost to the State. If the Contractor fails to do the work as specified herein, the Department may do such work. The Contractor shall pay the cost and the Department will deduct from payments due. *

Before the Department assumes the cost of maintenance, the Contractor shall eliminate hazards and inconveniences and repair damages to the work that the Contractor could have done before the suspension. If the Contractor fails to do this work, the Department will do the work. The Contractor shall pay the cost of that work and the Department will deduct from payments due or become due. *

The Department will not charge the Contractor a working day, if: *

- (1) the Department orders such suspension of project work and *

(2) the Contractor is unable to proceed with sixty (60) percent of *
 its normal labor and equipment force engaged in the current *
 controlling operation for at least five (5) hours on working days. *

If a non-controlling item of work does become the current controlling *
 operation, the Contractor shall make the time of completion of the work on the *
 current controlling operation. *

If the Contractor causes the suspension of the work, the Department will *
 consider the days during which the suspension order is in effect to be working *
 days. The Department will charge those days as part of completion time. *

The Engineer will decide who is responsible for suspensions. |

108.07 Determination and Extension of Contract Time. When the contract time
 is on a working day basis, the Engineer will furnish the Contractor a weekly
 statement. The Engineer will show the number of days charged to the contract *
 for the preceding week. Also, the Engineer will show the number of days *
 specified for completion of the contract. The Engineer will allow the *
 Contractor one (1) week in which to file a written protest setting forth in *
 what respect said weekly statement is incorrect. If the Contractor does not *
 file a written protest within such time period, the Engineer will assume that *
 the Contractor accepts the statement as correct. *

When the contract time is on a calendar day basis, the Engineer will *
 include the number of calendar days stated in the contract. This includes the *
 NTP, Sundays, holidays and non-work days. The Engineer will exclude calendar *
 days elapsing between the orders of the Engineer to suspend work and to resume *
 work for suspensions not the fault of the Contractor. *

When the contract completion time is a fixed calendar date, the contract
 completion time shall be the date when completing work. *

The Department determines the completion time allowed as awarded from the *
 original proposal quantities. If the Department orders more quantities than *
 those set forth in the proposal, the Department will increase the contract *
 time allowed for performance. The Department will decide the increase in *
 contract time. *

If the Contractor desires an extension of time for delays, the Contractor *
 shall notify the Engineer in writing seven (7) days before the start of that *
 delay. The Contractor shall then submit to the Engineer within thirty (30) *
 days of that delay a written request for an extension of time. The extension *
 of time shall set forth reasons in support of the request. Claiming *
 insufficient time is not a valid reason for extension of time. If the delayed *
 work was because of conditions beyond its control and without the fault of the *
 Contractor, the Engineer may extend the time for completion. The extended *
 time for completion shall then be in full force and effect the same as though
 the extended time was the original time for completion. |

When the Engineer gives final acceptance or relief of maintenance *|
according to Subsection 105.17 - Acceptance, the daily time charge will
cease.

108.08 Failure to Complete on Time and Liquidated Damages. The Contractor
shall complete the work within the number of working days specified in the
contract. The contract will begin officially from the date designated in the *|
NTP. If the contract specifies a calendar date as the date of completion, *|
the Contractor shall complete the work by that date. *|

Delay in the completion of the work within the required time will *|
inconvenience the public, obstruct traffic and interfere with business. *|
The State will sustain damages if the Contractor fails to complete the work *|
on or before the completion date or extended completion date according to *|
Subsection 108.07 - Determination and Extension of Contract Time. *|

Table 108-I - Schedule of Liquidated Damages shows the amount of damages *|
for each working day that the Contractor has delayed in the completion of the *|
contract. The Contractor shall pay that amount as liquidated damages and not *|
by way of a penalty. The Department may deduct the amount from monies due or *|
that may become due under the contract if the Contractor does not pay the *|
liquidated damages. Table 108-I do not include actual cost of engineering, *|
superintendence, inspection, and traveling expenses. *|

TABLE 108-I - SCHEDULE OF LIQUIDATED DAMAGES		
Total Amount Including Extras Set Up on Contract		Liquidated Damages Amount
For More Than	To and Including	Per Working Day
\$ 0	\$ 25,000	\$ 125.00
25,000	50,000	200.00
50,000	100,000	260.00
100,000	500,000	440.00
500,000	1,000,000	700.00
1,000,000	2,000,000	1,000.00
2,000,000	5,000,000	1,300.00
5,000,000	10,000,000	2,300.00
10,000,000	---	2,800.00

The Contractor shall comply with the contract terms regarding opening
lanes to traffic during the hours specified in Section 107. The Engineer
will assess liquidated damages of one hundred dollars (\$100.00) for every
one-to fifteen-minute increment for each lane not open to the public if the
Contractor fails to comply with the requirement. The maximum amount assessed
per day shall be one thousand dollars (\$1,000.00). The Engineer will decide
the time and liquidated damages assessed.

The Engineer may consider delays caused by a problem beyond the *|
Contractor's control in opening lane(s) closure on time for not charging *|

108.08

liquidated damages. Equipment breakdown is not a cause to waive liquidated damages.

Before the Contractor closes lane(s), the Contractor shall submit a contingency plan in case the Contractor does not open lane(s) to the public on time for acceptance by the Engineer. The Engineer will not allow lane closures until the Engineers accepts the contingency plan. The Department will not make separate payment for work to implement a contingency plan.

108.09 Default and Termination of Contract. If the Contractor commits the following acts of defaults, the Engineer will give notice to the Contractor and its surety in writing of default:

- (1) Fails to begin the work under the contract within the time specified in the NTP, or
- (2) Fails to do the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work, or
- (3) Does the work unsuitably or neglects or refuses to remove materials or to correct such work as unacceptable and unsuitable, or
- (4) Does not continue the prosecution of the work, or
- (5) Fails to resume work that has not continued within ten working days after notice to do so, or
- (6) Becomes insolvent, declares bankrupt, or commits acts of bankruptcy or insolvency, or
- (7) Allows final judgments to stand against the Contractor unsatisfied for ten (10) days, or
- (8) Makes an assignment for the benefit of creditors, or
- (9) Fails to submit required project documentation, including project progress schedule, labor compliance reports and payroll records, on time or
- (10) Makes a false or misleading statement in the contract, including declaration, certification, affidavit, warranty, or verification submitted with the project or engage in conducts perpetuating a falsehood, fraud or erroneous impression relating to this project, or
- (11) For other cause fails to carry on the work according to the contract.

If the Contractor or surety receives written notification from the Engineer of the above, the Department may take the prosecution of the work out of the hands of the Contractor or surety without violating the contract. The Department may appropriate or use materials and equipment in the project area

as may be suitable and acceptable. Also, the Department may make an agreement *|
 for the completion of said contract with a third party according to contract *|
 or use such other methods for the completion of said contract according to *|
 the contract. *|

The Department will deduct costs and charges incurred from monies due or *|
 that would or might have become due. If such expense exceeds the sum that *|
 have been payable under the contract, then the Contractor and its surety *|
 shall be liable. The Contractor shall pay the Department the total amount of *|
 that excess. *|

The Department will bar the Contractor from bidding and working on *|
 construction projects of the Department for two (2) consecutive years from *|
 the date of termination. This includes its owners, officers, and managerial *|
 and supervisory staff terminated under provisions of this section. *|

108.10 Emergency and Legally Justifiable Cause for Termination of Contract.
 The Engineer may end the contract when a national emergency or other reasons *|
 beyond the control of the Engineer makes the termination necessary. The *|
 Department will give the Contractor a written notice of termination. The *|
 Department will pay the Contractor for work done and accepted at the contract *|
 unit prices or lump sum prices upon termination. The Department will *|
 reimburse the Contractor for required expenditures in preparing for and *|
 moving to and from the project site. Also, the Department will reimburse the *|
 Contractor for required expenditures not compensated for. The Contractor *|
 shall not consider claims for interest or loss of anticipated profits. *|

The Department will purchase from the Contractor materials at actual *|
 cost per receipted bills. Also, the Department will purchase other proper *|
 evidence of actual cost as may be acceptable to the Department. The *|
 Contractor shall deliver these materials at locations designated by the *|
 Engineer. The Engineer will inspect, test, and accept these materials. The *|
 Contractor shall get these material for the work. The Contractor shall not *|
 have incorporated these materials in the work yet. The Contractor shall store *|
 and maintain these material properly. *|

108.11 Overtime Payment For County Inspection Service. The Contractor shall *|
 apply this subsection only to non-Federal Aid County Projects. The Contractor *|
 shall pay for overtime inspectional services rendered by the County. *|

The Contractor shall reimburse the Department the cost of engineering *|
 and inspection necessary for the proper execution and control of the work if: *|

- (1) the Engineer grants permission to work overtime or at nights, or *|
- (2) work requiring overtime compensation for County employees is *|
 necessary due to its scheduled operations. *|

108.11

The costs chargeable to the Contractor includes the cost of salaries for *|
the engineering and inspectional personnel. Also, the Contractor shall *|
reimburse the County's share of contributions. Contributions includes *|
retirement, medical plan, social security, vacation, sick leave, worker's *|
compensation funds, per diem, and overhead expenses. |