



SECTION 108

PROSECUTION AND PROGRESS

108.1 Subletting of Contract.

108.1.1 The contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or contracts or any portion thereof, or of any right, title, or interest therein, without written consent of the engineer. Requests for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by evidence that the organization that will perform the work is particularly experienced and equipped for such work. In case such consent is given, the contractor will be permitted to sublet a portion thereof, but the contractor's organization shall perform work amounting to no less than 40 percent of the total contract cost. Certification or classification of a contractor by type of work performed or consent to a subcontract shall not constitute the Commission's endorsement of the qualifications of the subcontractor or that the particular subcontractor's work will constitute compliance with any other provisions of the contract.

108.1.2 The value of the work sublet will be the amount designated in the contractual agreement between the contractor and the subcontractor. The subcontractor shall perform the work described in the subcontract agreement. No subcontracts, or transfer of contract, will in any case release the contractor's liability under the contract and bonds. Consent to a subcontract will not create a direct contractual relationship between the subcontractor and the Commission.

108.1.3 The contractor shall furnish to the Commission a complete copy of the signed subcontract, and all revisions upon request.

108.1.4 A contractor, at the discretion of the engineer, may make a substitution for a subcontract that was disclosed with the bid in accordance with 102.7 or may add a subcontract that would have required disclosure in accordance with 102.7. The contractor shall submit the name of the new subcontractor, the category of work, the dollar value of each subcontract and the reason for the substitution or addition in writing to the engineer for consideration.

108.2 Notice to Proceed. The notice to proceed will stipulate the date the contractor is expected to begin work. The Commission will issue the notice to proceed by stipulating the date on the notice of award sent to all successful bidders, or on a separate form for this purpose. Prior to the stipulated date, the contractor shall execute and file the prescribed number of copies of the contract and bond and shall furnish to the Commission satisfactory evidence of having complied with insurance requirements.

108.3 Prosecution of Work. The contractor will be expected to start work on the date stipulated by the notice to proceed. If all contract requirements have been met in accordance with [Sec 108.2](#) the contractor may start work before the date stipulated by the notice to proceed, provided the engineer is notified in writing at least three days prior to the date on which the contractor expects to begin.

108.3.1 The contractor shall continuously and diligently prosecute the work in such order and manner as will ensure the completion of the work within the specified time, and the contractor

shall be fully responsible for the prosecution and coordination of all work being performed under the contract.

108.3.2 The work in progress shall receive the personal attention either of the contractor or of a competent and reliable representative of the contractor who shall have full and final authority to act for the contractor. If authority is delegated to a representative of the contractor, the contractor shall notify the engineer in writing, stating the name of the person authorized to act as the contractor's representative, and stating the name or names of persons authorized to sign the various documents such as weekly reports, change orders, force account statements, labor payrolls and any other documents that may be required during the progress of the work. If progress at any time is not adequate to meet the contractor's schedule and the contract completion time, the contractor shall take all steps necessary to complete the work in the time and manner specified in the contract.

108.3.3 Prior to beginning any work on contracts involving a joint venture, the joint venturers shall appoint and maintain a single representative having full and final authority to act for the joint venture. The engineer shall be notified in writing of the name of this representative and of any replacements.

108.4 Progress Schedules. The contractor shall submit a progress schedule to the engineer for review prior to or at the pre-construction conference. The progress schedule shall be used to establish construction operations and to monitor the progress of the work, although the engineer's determination of the then major operation or controlling item of work will always prevail. The progress schedule shall be in the form specified in [Sec 108.4.1](#), unless the contract contains different requirements. The progress schedule shall be based on the number of working days, calendar days or other increments as set forth in the contract that the contractor expects to require in completing the project, recognizing the capabilities of labor, equipment, arrangements for material, mobilization, shop drawing preparation and approvals, and other relevant items. If an electronic computer software program is used to generate the schedule, the initial and any revised schedules shall be accompanied by a disk containing the schedule files in the native format of the software program used to create the schedule. The disk shall be labeled with the contract ID, route, county, date of revision, and the name of the software program used. The contractor will not be required to provide any copies of the software program.

108.4.1 Form and Contents of Progress Schedule. The progress schedule shall contain an activities schedule bar chart and may, at the contractor's option, include a written narrative that breaks down into detail the time in working days, calendar days or completion date involved in performing all construction activities for the duration of the project, and which is in a suitable scale as to indicate the percentage of work scheduled for completion at any time. The schedule shall indicate all interdependencies between activities. The progress schedule shall also clearly outline the intended maintenance of traffic, work phasing provided by the contract and such other information, as required by the contract.

108.4.2 Preparation of Initial Schedule. The contractor shall complete development of a progress schedule and present a copy to the engineer prior to or at the pre-construction conference.

108.4.2.1 The construction time, as indicated by the progress schedule, for the entire project or any milestone, shall not exceed the specified contract time. If any milestone date or contract completion date is exceeded in the schedule, time estimates on the progress schedule shall be revised. The controlling activity shall be clearly shown for each day of the schedule. A controlling activity will be defined as that part of a progress-controlling item or items that must be performed before the next progress-controlling item of work can be started. Following

a review of the progress schedule by the engineer, the engineer and contractor will meet for a joint review, correction and adjustment of the schedule, if necessary.

108.4.2.2 If necessary this process will be repeated. However, the schedule shall be finalized by the contractor within seven days after request for correction and adjustment to the schedule.

108.4.3 Cost and Intent of Progress Schedules. The review by the engineer of any progress schedule will not constitute a determination that the schedule is reasonable, that following the schedule will result in timely completion, or that deviation will result in a delayed completion. The progress schedule, and any updates provided, is not a part of the contract. If the schedule reflects a completion date different than that specified in the contract, that does not void the completion date or working days specified in the contract. If any schedule reflects a completion time earlier than that specified in the contract, the contractor specifically understands that no claim for additional contract time or compensation will lie against the Commission if the work is not completed by the earlier time shown on the schedule. It will be the contractor's responsibility to determine the most feasible order of work consistent with the requirements of the contract.

108.4.3.1 No direct payment will be made for furnishing progress schedules or revisions.

108.4.3.2 If the contractor fails to comply with the requirement to supply an initial or any revised progress schedule, the engineer may withhold progress payments until a schedule has been submitted and reviewed.

108.4.4 Revised Progress Schedules. The contractor shall provide a revised progress schedule, which will then become the current progress schedule:

(a) When departure from the existing progress schedule makes it apparent to the engineer or the contractor that the project will not be completed in the time provided in the contract.

(b) When the engineer or the contractor determines that the progress schedule requires revisions for any reason.

108.5 Labor, Methods and Equipment. The contractor shall at all times employ sufficient labor, methods and equipment for prosecuting the work to full completion in the time and manner required by the contract.

108.5.1 All workers shall have sufficient skill and experience to properly perform work assigned. The engineer may demand the dismissal of any person employed by the contractor in, about or upon the work, who engages in misconduct, is incompetent or negligent in the due and proper performance of assigned duties, or who neglects or refuses to comply with any proper directions given. Such a person shall not again be employed thereon without the written consent of the engineer. Should the contractor continue to employ or re-employ any such person, the engineer may suspend the work until the contractor complies with such orders.

108.5.2 All equipment used on the work shall be of sufficient size and in such mechanical condition to meet requirements of the work and to produce satisfactory work. The condition or use of equipment on any portion of the project shall not cause damage to the roadway, adjacent property or other highways, or injury to any person.

108.5.3 The intent of the contract is to provide performance-type specifications to the extent consistent with producing finished work meeting the intent of the contract documents. Therefore, the methods and equipment to be used by the contractor in accomplishing the work

will not be prescribed in the contract, and the contractor is free to use any method or equipment that will accomplish the contract work in conformity with the requirements of the contract. The failure of the engineer to object to contractor's equipment or methods will never constitute agreement that the equipment or methods used are appropriate.

108.5.4 If the contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the engineer. If the contractor desires to use a method or type of equipment other than those specified in the contract, authority shall be requested from the engineer. The request shall be in writing, including a full description of the proposed methods and equipment to be used and an explanation of the reasons for making the change. If approval is given, the contractor shall be fully responsible for producing work in conformity with the contract. If the engineer determines that the work produced does not meet contract requirements after use of the substitute method or equipment, the contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the methods and equipment specified in the contract. The contractor shall remove deficient work and replace the work as specified in the contract, or take such other corrective action as directed by the engineer. Except as provided in [Sec 104](#), no change will be made in the basis of payment for the construction items involved or in contract time as a result of approving any method or equipment change.

108.6 Temporary Suspension of Work. The engineer has authority to suspend any or all of the work in accordance with [Sec 105](#) for such time as necessary. If it becomes necessary to stop work for an indefinite period, the contractor shall store all material in a manner that will protect the material from theft or damage, shall not unnecessarily obstruct traffic, shall take every precaution to prevent damage to or deterioration of work performed, shall provide suitable drainage of the roadway by opening ditches, shoulder drains, etc. and shall erect temporary structures where necessary. The contractor may suspend work for reasonable cause upon written approval from the engineer. During such a period in which work is suspended, liquidated damages will not accrue unless such suspension is due to the contractor's failure to comply with the contract. If work has been suspended, the contractor shall notify the engineer in writing at least 48 hours before resuming operations.

108.7 Contract Time for Completion of the Work. The time for the completion of the work is specified by calendar days, calendar date or working days in the contract. Time is an essential element of the contract, and it is therefore important that the work be pursued vigorously to completion.

108.7.1 Completion by Calendar Days or Calendar Date. Any computation of time by calendar days or calendar date will be based on the seasonal importance of days on the basis of weighted time tables on file in the Office of the Secretary of the Commission and available on the MoDOT website. If a change in the work is directed by the engineer, the contractor will be allowed an extension of contract time based on the weighted time tables and the ratio of the cost of such additional work to the contract price, unless it can be established that the additional work required more time than is indicated. In such cases, the actual time required, as determined by the engineer, may be allowed.

108.7.1.1 If the notice to proceed is not issued and effective within 35 days after the award or the later date specified in the contract due to any failure of the Commission, the contractor will be given an extension of contract time equal to the number of calendar days after the 35th day or the later date specified in the contract, until the notice to proceed is effective. Such a delay in the effective date of the notice to proceed will be an excusable, noncompensable delay.

108.7.1.2 The contractor will not be entitled to any extension of contract time because of unsuitable weather conditions or the effects of weather conditions unless authorized in writing by the engineer as an excusable, noncompensable delay under [Sec 108.14.1](#).

108.7.2 Completion by Working Days. If the time for the completion of the work is based on working days, this time will be specified in the contract. A working day will be defined as any day when, in the judgment of the engineer, soil and weather conditions would permit the major operation of the project for six hours or more, unless other unavoidable conditions prevent the contractor's operations. If conditions require the contractor to stop work in less than six hours, the day will not be counted as a working day.

108.7.2.1 December 15 to March 15, both dates inclusive and Saturdays, Sundays, and holidays established by law will not be counted as working days.

108.7.2.2 The count of working days will start on the date the contractor starts construction operations, or the effective date of the notice to proceed, whichever is earlier. The engineer will determine when a working day is to be charged. The engineer may make allowance for working days lost due to causes justifying their elimination from the count of working days. No allowance will be made for delay or suspension of the prosecution of the work due to fault of the contractor. On each contractor pay estimate the engineer will give the contractor written notice of the number of working days charged since the preceding pay estimate. Any objection by the contractor to the number of working days so charged shall be made in writing within five days, setting forth the contractor's objections and specifying the reasons therefore, or those objections shall be forever waived and will not constitute the basis for an excusable or compensable delay.

108.7.2.2.1 Where projects specify signal or lighting equipment as the major work items, working days will not begin until 104 calendar days after the date of the Notice to Proceed or until such time as the signal or lighting equipment is available to the contractor, or until the contractor begins work, whichever date is the earliest, to allow time for the fabrication and delivery of signal posts and lighting poles.

108.7.2.3 In case the final value of all work performed exceeds the original contract amount, an extension in the working days will be granted the contractor. The extension will be made by increasing the contract time by the ratio of the total final cost of all work performed under the contract to the total amount of the original contract. Incentive/disincentive, bonus or deduction adjustments will not be used in this computation. For a combination of projects awarded as a single contract, the extension will be made in a similar manner. If it can be established that the extra work required more time than indicated, the actual number of working days required, as determined by the engineer, may be allowed.

108.8 Liquidated Damages for Failure or Delay in Completing Work on Time.

108.8.1 If the contractor or, in case of default, the surety fails to complete the work within the time specified in the contract, or within such extra time as may be allowed in the preceding sections, a deduction of an amount specified in the contract will be made for each day that the contract remains incomplete after the time allowed for completion. The amount specified in the contract is agreed upon, not as a penalty, but as liquidated damages for loss to the Commission and the public. This amount will be deducted from any money due the contractor. The contractor and surety will be liable for all liquidated damages. Permitting the contractor to continue the work after the expiration of the specified time or any extension of time will not constitute a waiver by the Commission of any contractual rights.

108.8.1.1 The liquidated damages shown in the contract will be listed separately as contract administrative costs and project road user costs. A combination of projects awarded as a

single contract will be considered as one unit for the determination and assessment of the administrative liquidated damages. The road user costs will be specified independently for each project in the contract and will be assessed independently for each project not completed within the time specified in the contract.

108.8.1.2 The Commission may waive the road user cost as may accrue if the work is deemed to be significantly complete. A project will be considered significantly complete when all necessary signing, pavement markings in accordance with [Sec 620](#), guardrail, signals, all permanent traffic control devices and other safety appurtenances have been installed and are operational. At a minimum, traffic must have complete use of the roadways and shoulders, with no delays due to construction activity. The suspension of the road user cost by the engineer will not constitute a waiver by the Commission of any contractual rights, and its application will be contingent upon the discretion of the engineer in completing the remaining items of work.

108.8.1.3 Regardless of the method used to specify contract time for completion of the work, liquidated damages will not be charged as follows:

(a) From December 15 through March 15, both dates inclusive.

(b) For Saturdays, Sundays, and holidays established by law.

(c) During any period of sod maintenance, as specified in [Sec 803](#), if such maintenance is the only work remaining and the contractor can perform the maintenance without inconveniencing the traveling public.

(d) During the final 15 consecutive day test period for a signal system, as specified in [Sec 902](#), provided all other work has been completed.

108.8.2 The Commission will not be required to file a claim or counterclaim under [Sec 105.16.5](#) or any other provision, to assess or retain liquidated damages.

108.8.3 The contractor and surety shall be liable for liquidated damages chargeable under the contract when the work is completed after default of the contract, unless the delay is caused by the Commission. A delay in the work or the final completion of the project caused by the Commission shall not void the provisions of the contract as to liquidated damages and will be considered an excusable, noncompensable delay.

108.9 Signal and Lighting Malfunctions. If the engineer invokes the option under [Secs 901, 902 or 903](#) to have MoDOT personnel or a third party correct a lighting, signal or sign lighting malfunction, the contractor will be charged for the service. If MoDOT personnel make the correction, the charge will be computed as five times the cost for all replacement parts, equipment rental, salaries and fringe benefits. If a third party makes the correction, the contractor will be charged 1.2 times the charges billed the Commission by the third party. However, in no case will the charge be less than \$100.

108.10 Default of Contract. After notice and an opportunity to remedy, the engineer may declare the contractor in default, if the contractor:

(a) Fails to begin the work under the contract within the time specified to begin work.

(b) Fails to perform the work with sufficient resources to assure the timely completion of the work.

(c) Fails to perform the work in accordance with the contract requirements, or neglects or refuses to remove and replace rejected material or unacceptable work.

(d) Discontinues the prosecution of the work.

(e) Fails to resume work that has been discontinued within a reasonable time after notice to do so.

(f) Becomes insolvent, is declared bankrupt or commits any act of bankruptcy or insolvency, allows any final judgment to remain unsatisfied or makes an assignment for the benefit of creditors.

(g) Fails to comply with contract requirements regarding prevailing wage payments, DBE or EEO requirements.

(h) Is a party to fraud.

108.10.1 The engineer will give notice in writing to the contractor and surety of the condition described in [Sec 108.10](#), and advise the contractor and surety of the actions required for remedy. If the contractor does not proceed to remedy the condition within ten days of receipt of this notice, the engineer may declare the contractor in default. The declaration of default will be made in writing to the contractor and the surety.

108.10.2 If within ten days after receipt of the declaration of default, the surety does not proceed to assume the contract for completion under the direction of the engineer, the Commission has full power and authority, without impairing the obligation of the contract or the bond:

(a) To take over the completion of the work.

(b) To appropriate or use any or all project material and equipment that is suitable and acceptable.

(c) To enter into agreements with others.

(d) To use such other methods as in its judgment may be required for the completion of the contract in an acceptable manner.

108.10.3 Liability for Costs. The contractor and surety shall be liable for all costs and expenses incurred in completing the work, and for all liquidated damages in conformity with the contract. The contractor and surety are obligated to comply with all change orders and directives of the engineer to the same extent, and for the same compensation, if any, as the contractor would have been in the absence of default. In case the sum of such liquidated damages and the expense so incurred is less than the sum that would have been payable under the contract if the work had been completed by the contractor, the contractor or surety will be entitled to receive the difference. If the sum of such expense and such liquidated damages exceeds the sum that would have been payable under the contract, the contractor and surety will be liable and shall pay the amount of such excess. This provision will apply regardless of whether the surety or the Commission completes the contract work. The contractor and surety will solely be liable for the costs and expenses of a completing contractor, laborers and suppliers with which either has contracted.

108.10.4 If it is determined after termination of the contractor's right to proceed that the contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Commission under [Sec 108.11](#). Sums

to which a contractor may be entitled as a result of the contract termination will be limited to amounts determined under [Sec 108.11](#).

108.10.5 Sureties' Continued Acceptability. A surety failing to proceed within ten days after the written declaration of default by the engineer under [Sec 108.10](#) may be required to show cause to the Commission why the surety should continue to be accepted for future bonds.

108.11 Termination of Contract for Convenience of the Commission. The Commission may terminate the entire contract, or any portion thereof, if the engineer determines that a termination is in the Commission's best interest. The engineer will deliver to the contractor and surety a notice of termination specifying the extent of termination and the effective date. A termination of the contract for convenience may be directed at any time after the Commission has made a determination to award a contract. The bidding documents may provide for a termination of the contract for convenience under this section upon the occurrence or nonoccurrence of a specified event after bid opening.

108.11.1 Submittals and Procedures. After receipt of a notice of termination, the contractor shall immediately proceed with the following obligations:

- (a) Stop work as specified in the notice.
- (b) Place no further subcontracts or orders for material, supplies, services or facilities, except as necessary to complete the portion of the contract that has not been terminated.
- (c) Terminate all subcontracts to the extent they relate to the work terminated.
- (d) Settle with subcontractors and suppliers all outstanding liabilities arising from the termination.
- (e) Transfer title and deliver to the Commission, work in progress, completed work, supplies and other material produced or acquired for the work terminated, and completed or partially completed plans, drawings, information and other property that, if the contract had been completed, would be required to be furnished to the Commission.
- (f) Complete performance of the work not terminated.
- (g) Take any action that the engineer directs to protect and preserve contract-related property that is in the possession of the contractor in which the Commission has or may acquire an interest.

108.11.2 Settlement Provisions. When the Commission orders termination of all or a part of the contract effective on a certain date, completed items of work as of that date will be paid for at the contract unit price. Payment for partially completed work will be made either at agreed prices or under the provisions below. When items are eliminated in their entirety by such termination, the contractor will be paid for actual work done and actual costs incurred before notification, including mobilization of equipment or material.

108.11.2.1 Additional Costs. Within 60 days of the effective termination date, the contractor shall submit any request for additional damages or costs not covered in [Sec 108.11](#) or elsewhere in the contract. Such a request may include only such cost items as: mobilization, overhead expenses proven to be attributable to the project or the part terminated and not paid for under work not terminated, subcontractor costs not otherwise paid for, actual idle equipment and idle labor cost only for any time the work is stopped in advance of the

termination date, guaranteed payments for private land usage as part of the original contract, and any other actual cost for which the contractor feels reimbursement should be made.

108.11.2.1.1 Anticipated profits, including anticipated earnings on usage of owned equipment, and impact, delay or other direct or indirect costs resulting from this termination that are not expressly authorized, will not be compensable as part of any settlement.

108.11.2.1.2 The contractor and the engineer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The agreed amount may not exceed the total contract price as reduced by the amount of payments previously made and the contract price of work not terminated. The contract will be amended and the contractor paid the agreed amount.

108.11.2.2 Additional Cost Review. If the contractor and the engineer fail to agree on the whole amount to be paid the contractor because of the termination of work, the Commission will pay the amounts determined as follows, but without duplication of any amounts agreed upon in [Sec 108.11.2.1](#):

(a) For contract work performed before the effective date of termination, the total, without duplication of any items of:

(1) The actual cost of work performed.

(2) The cost of settling and paying termination settlements under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in [Sec 108.11.2.1](#).

(3) A sum for profit on the actual cost of work performed as determined by the engineer to be fair and reasonable. The engineer will allow no profit under this section if the contractor's costs incurred on work performed exceed the contract prices paid.

(b) The reasonable costs to settle the work terminated, including:

(1) Internal accounting and clerical expenses reasonably necessary for the preparation of termination settlement proposals and support data, including expenses for termination and settlement of subcontracts.

(2) Storage, transportation and other costs incurred, reasonably necessary for the preservation, protection or disposition of the termination inventory.

(c) For normal spoilage and to the extent that the engineer expressly accepts the risk of loss. The engineer will exclude the fair value of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the Commission or to the buyer.

108.11.2.2.1 In arriving at the amount due the contractor under this clause, there will be deducted:

(a) All advanced payments for mobilization, services or facilities, or other payments to the contractor under the terminated portion of the contract.

(b) Any claim that the Commission has against the contractor under the contract.

(c) The agreed price for or the proceeds from the sale of material, supplies or other items acquired and sold by the contractor, and not recovered by or credited to the Commission.

(d) Any costs saved as a result of the termination.

108.11.2.2.2 If the termination is partial, the contractor may file a proposal with the engineer for an equitable adjustment of the price or prices of the continued portion of the contract. The engineer will make any equitable adjustment agreed upon. Any proposal for an equitable adjustment under this clause shall be requested within 60 days from the effective date of termination unless extended in writing by the engineer.

108.11.2.2.3 The contractor shall maintain and make available all project cost records to the engineer for audit to the extent necessary to determine the validity and amount for each item requested. This will include, but is not limited to, all items described in [Sec 105.16](#). These records and documents shall be made available to the engineer at the contractor's office at all reasonable times, without any direct charge. If approved by the engineer, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

108.11.3 Effect of Termination. Termination of the contract or portion thereof will not relieve the contractor of contractual responsibilities for the work completed, nor will termination relieve the surety of the surety's obligation for and concerning that part of the contract not terminated or any just claim arising out of the work performed.

108.12 Notice to Contractor and Surety. Notice to the contractor, in case of default or termination of the contract, shall be deemed to be served when delivered to the person in charge of any office used by the contractor, the contractor's representative at or near the work or by certified mail addressed to the contractor's last known place of business. Notice to the surety shall be deemed served when mailed to the surety's address as shown in the contract by certified mail.

108.13 Termination of Contract for Misconduct. For the purposes of the following provision, "state" will include the State of Missouri and any other state, commonwealth or territory of the United States. The Commission may declare the contract to be terminated at any time after the contract is awarded and prior to final acceptance of the project, for any one or more of the acts set forth below, if the act occurred after the bid opening or within two years immediately preceding the date of the bid opening, unless the act is a basis for an adverse action under 49 CFR, Part 29 in which case the time limit will not apply, on any Commission or other federal, state or local government or privately awarded contract:

(a) Receiving or giving any currency or item of value in order to influence the competitive bidding process or the award of a competitively bid contract; bid-rigging, collusion or any similar act or communication with any person or firm in restraint of competitive bidding on a contract; or to obtain or grant an advantage in obtaining the award of such a contract.

(b) Fraud, dishonesty or a material misrepresentation or omission of fact in any request for proposal or bid submitted to a private firm or governmental agency, or in any contract documents submitted to such a firm or agency.

(c) Making or receiving kickbacks or payments of currency or any item of value in order to obtain or retain any contract or payment thereunder, or in return for an agreement to make or for the making of any false statements or material misrepresentations or omissions of fact to any federal, state or local governmental agency or private firm relevant to contract compliance.

(d) Suspension, debarment or other disqualification of the contractor, or determination that the contractor is not a responsible bidder for public contracting purposes,

by any federal, state or local governmental agency, regardless of whether the sanction is still in effect at the time of the bid or contract award by the Commission.

(e) Conviction or adjudication of guilt in any criminal proceeding in a federal or state court, regardless of whether sentence was suspended or executed, for any act an element of which is fraud, dishonesty or moral turpitude, which conduct is relevant to a determination of the responsibility of the contractor.

(f) Commission of any act or failure to act, such that the contractor is subject to the determination that the contractor is not a responsible bidder under the contract or under applicable Missouri or federal law.

108.13.1 The acts, omissions and liabilities of persons or firms affiliated with the contractor or of persons that are principals of the contractor, are those of the contractor, unless the circumstances clearly negate that conclusion. Persons or firms are "affiliates" of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Examples of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees on projects or a new business entity organized following the determination of ineligibility or non-responsibility of a person or firm which has the same or similar management, ownership or principal employees as the ineligible person. A "principal" will be defined as an officer, director, owner, partner or other natural person within a firm with primary management, supervisory or contracting responsibilities.

108.13.2 The Commission will not declare the contract terminated pursuant to this section if the contractor made a full and complete disclosure of the acts and circumstances described in [Sec 108.13](#) to the Commission in the bid or in writings submitted with the bid and the Commission did not determine the contractor to be non-responsible prior to making the award of the contract. The Commission will not be precluded from terminating the contract under this section if the information provided by the contractor did not constitute a full and complete disclosure of all facts and circumstances pertinent to the issue of the responsibility and integrity of the contractor.

108.13.3 The procedures for notice of the proposed termination of the contract and the contractor's right to be heard regarding that proposed action will be those in accordance with a proposed disqualification or suspension under the provisions of 7 CSR 10-18. After notice and an opportunity to be heard, upon a finding of the existence of a basis to terminate a contract under this section, the Commission may terminate the contract immediately or at the occurrence of some specific date or event in the future, prior to project completion, upon delivery of a written notice to the contractor by actual service or by certified mail, return receipt requested, sent to the address of record of the contractor. Effective with the contract termination date, the contractor shall discontinue further work on the project and shall instruct subcontractors and suppliers to do the same, other than to remove promptly the contractor's personnel, equipment and supplies from the project site. The contractor will be paid for all completed work to that date at the contract price. At the option of the engineer, the Commission may assume the possession and cost of any specially fabricated material or supplies for the project that have been ordered prior to notice of termination, but have not been installed on the date of termination. The contractor and surety will be liable to the Commission for all costs and expenses incurred by the Commission in completing the project, including, but not limited to, the Commission's costs to redraft and rebid the project, which costs and expenses exceed the total of the contractor's bid price plus additional expenses allowed by the engineer during the contractor's work on the project, less the amount paid to the contractor by the Commission. The Commission will not be liable for damages for breach of contract or in any other action or respect for declaring a default if one exists under this section and for terminating the contract prior to completion by the contractor.

108.13.4 The satisfactory performance of a contract, prior to the notice to the contractor of the intent to terminate the contract for misconduct, will not be a basis to determine whether the contract may be terminated for misconduct under this section.

108.13.5 The contractor shall file any claim the contractor has against the Commission within 60 days after the effective date of termination, pursuant to the procedures of [Sec 105](#). The Commission will file any claim the Commission has against the contractor or surety within 60 days of the date of final acceptance of the project, whether or not it is renumbered or redesigned, and whether completed by the surety, by a successor contractor retained by the Commission, or by the Commission itself. Any Commission claim will be filed pursuant to the procedures of [Sec 105](#).

108.14 Determination of Compensation and Contract Time Extension for Excusable, Noncompensable and Compensable Delays. An extension of the contract time may be granted under the following conditions provided documentation has been given to the engineer in accordance with [Secs 108.14.3](#) through [108.14.5](#). Strict adherence to the provisions of this section will be a condition precedent to the contractor's entitlement to an extension of contract time or compensation because of project delays.

108.14.1 Excusable or Noncompensable Delay. Contract time allowed for the performance of the work may be extended for delays caused by acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or other delays not caused by the contractor's fault or negligence.

108.14.2 Compensable Delay. Contract time allowed for performance of the work may be extended for delays caused by the Commission. The contractor may be granted an extension of time and additional compensation only as provided by [Sec 109](#).

108.14.3 Notification of Delay. Within seven days of the occurrence of a delay to the prosecution of any phase of the work, the contractor shall notify the engineer in writing of such a delay and indicate that a request for delay consideration will be filed. Delay costs incurred prior to notifying the engineer that operations have been delayed will be noncompensable.

108.14.4 Procedures Following a Delay. The contractor shall keep daily records of all non-salaried labor, material costs and equipment expenses for all operations affected by the delay.

108.14.4.1 The contractor shall maintain a daily record of each operation affected by the delay and the station location of the operations affected. Daily records of the operations and stations will also be maintained by the engineer. Each Monday, the contractor shall compare the previous week's daily records with the records kept by the engineer. The contractor shall also prepare and submit written reports to the engineer each Monday containing the following information:

- (a) Number of days behind schedule due to the delay.
- (b) A summary of all operations that have been delayed or will be delayed.
- (c) In the case of a claimed compensable delay, the contractor shall explain how the Commission's act or omission delayed each operation and estimate the amount of time required to complete the project.
- (d) An itemized list of all extra costs incurred, including:

(1) How the extra costs relate to the delay and how the costs are being calculated and measured.

(2) The identification of all non-salaried project employees for whom costs are being compiled.

(3) A summary of time charges for equipment, identified by manufacturer's year and model and the contractor's number, for which costs are being compiled.

108.14.4.2 The contractor shall provide written notice to the engineer within seven days of the results of the comparison of the detailed reports performed each Monday and shall define any disagreements between specific records.

108.14.4.3 Failure to meet to review the engineer's records or to report disagreements between the records will be considered conclusive evidence that the engineer's records are accurate.

108.14.5 Procedures Following Completion of Work Allegedly Delayed. Within the earlier of 15 days of completion of any phase of work allegedly delayed, or of project completion, the contractor shall submit a report to the engineer containing the following information:

(a) A description of the operations that were delayed and the documentation and explanation of the reason for the delay, including all reports prepared by or for the contractor.

(b) An as-built chart or other graphic depiction of how the operations were delayed based on the contractor's most recent progress schedule prior to the delay event.

(c) An item by item measurement and explanation of extra costs requested for reimbursement due to the delay.

108.14.5.1 All costs shown in the report submitted to the engineer must be directly caused by the delay event and shall reflect the actual costs incurred as shown on the contractor's project cost records kept in the ordinary course of business.

108.14.5.2 The engineer will review the contractor's submission and any reports prepared for the engineer. A written decision will be provided to the contractor within 60 days of the receipt of the complete contractor's submission. This time may be extended if the engineer requires additional information. The contractor shall state affirmatively in writing when the contractor has made a complete submission of information regarding a delay event.

108.14.5.3 In the case of compensable delays, if the engineer determines that the Commission is responsible for delays to the contractor's operations, the engineer's written decision will reflect the nature and extent of any resulting equitable adjustment to the contract in accordance with [Sec 109](#).

108.15 Suspension of Work Directed by the Engineer.

108.15.1 If the performance of all or any portion of the work is suspended or delayed by the engineer for an unreasonable period of time not originally anticipated, customary or inherent to the construction industry, and the contractor believes that additional compensation or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within seven days of receipt of the notice to resume work. The request shall set forth the reasons and support for such an adjustment. The procedures of [Secs 108.14.4](#) and [108.14.5](#) will apply to requests for additional compensation

or time claimed by the contractor as a result of a suspension of work directed by the engineer under this section.

108.15.2 Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost or time required for the performance of the contract has increased as a result of such a suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, suppliers or subcontractors, and not caused by weather, the engineer will make an adjustment, excluding profit, and modify the contract in writing accordingly. The engineer will notify the contractor of the engineer's determination whether or not an adjustment of the contract is warranted.

108.15.3 No contract adjustment will be made unless the contractor has submitted the request for adjustment within the time prescribed.

108.15.4 No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or an adjustment is provided for or excluded under any other term or condition of the contract.