

**GP-8**

**PROSECUTION AND PROGRESS**

## GP-8

## PROSECUTION AND PROGRESS

**GP-8.01 SUBLETTING OR ASSIGNING OF CONTRACT**

The Contractor, to whom a Contract is awarded, shall perform with his own organization and the assistance of workmen under his immediate supervision, work of a value of not less than 50% of the total value of the Contract, unless specified otherwise. The remainder may be sublet whether or not Subcontractors are named in the Proposal.

No portion of the Contract shall be sublet, assigned or otherwise disposed of except with written consent of the County and the Surety. Consent to sublet, assign or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor or Surety of any responsibility for fulfilling all the requirements of the Contract.

- 8.01.1 The Subcontractors named in the Proposal Form and approved by the County and those approved when subsequently submitted shall perform the Contract items as approved by the County. Requests for permission to sublet, assign or otherwise dispose of any portion of the Contract shall be in writing and include the portion of work or item number or numbers, and the dollar value. Each request for permission to sublet, assign or otherwise dispose of any portion of the Contract must be accompanied by written consent from the Contractor's Surety. The Contractor shall give assurance that minimum wage for labor, as required by the Contract shall apply to labor performed on all work sublet, assigned or otherwise disposed of in any way.
- 8.01.2 The County will not approve subletting portions of items except in the case of specialty items such as erection of structural steel, painting or such portions of items which are distinct and identifiable and which have been approved by the Engineer.
- 8.01.3 Once a Subcontractor has been approved by the County and Surety for performance of certain Contract items of work on the subject Contract, the County will not allow the Contractor to substitute another Subcontractor, except in the event the Contractor requests in writing that the approved Subcontractor be relieved of the necessity of performance of said work. Any change of Subcontractors must be requested in writing by the Contractor and be approved by the Contractor's Surety. Such concurrence shall not be unreasonably delayed in the judgment of the County. In the event a Subcontractor does not perform to the satisfaction of the Contractor, the Contractor may perform the work with his forces or request another named Subcontractor be substituted. When reasons submitted for substitution of the Subcontractor indicate the change will be in the best interest of the County, approval of request will be granted.
- 8.01.4 Roadside production of materials, unless performed by the Contractor, shall be considered as subcontracting. This is construed to mean the production of crushed stone, gravel and/or other materials by means of portable or semi portable crushing, screening or washing plants, established or reopened in the vicinity of the work for the purpose of supplying materials to be incorporated into the work on a designated project or projects.

The purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete and/or other materials produced at and furnished from established and recognized commercial plants, together with the delivery of such materials to the site of the work by such plants or by recognized commercial hauling companies, shall not be considered as subcontracting.

**GP-8.02 NOTICE TO PROCEED**

After the Contract has been awarded, the County will, within the time limit specified by the County elsewhere in the Contract Documents, issue to the Contractor a Notice to Proceed; and this notice will stipulate the date on or before which the Contractor is expected to begin work. The completion date of the Contract shall be as stipulated in the Notice to Proceed.

- 8.02.1 Work is not to be started before receipt of the Notice to Proceed.
- 8.02.2 If the County is unable to issue the Notice to Proceed within one hundred and thirty (130) calendar days from the bid opening, the Contractor may request the County to rescind the Contract.

**GP-8.03 PROSECUTION OF WORK**

- 8.03.1 The Contractor shall begin work promptly within the time specified by the Notice to Proceed and shall notify the Engineer at least two full working days before starting work.
- 8.03.2 After the work has been started, it shall be prosecuted continuously on all acceptable working days without stoppage until the entire Contract is completed.
- 8.03.3 Should prosecution of work for any reason be discontinued, the Contractor shall notify the Engineer of his intention to stop and also notify the Engineer at least 48 hours in advance of resuming operations. Said notification shall be confirmed in writing.

**GP-8.04 PROGRESS SCHEDULE**

- 8.04.1 Before beginning work, the Contractor shall submit for approval to the Engineer a progress schedule showing the proposed order of work, location of the work being performed during specific time periods, and the time required for completion of the work. The progress schedule shall be a bar chart type unless otherwise directed in the Special Provisions for contracts greater than \$100,000. Said progress schedule shall be used to establish major construction items and be developed to permit a check on progress of the work on a weekly basis. The Contractor shall submit revised progress schedules as directed by the Engineer.
- 8.04.2 If the Contractor fails to submit the progress schedule within the time prescribed, or the revised schedule within the requested time, the Engineer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedules.
- 8.04.3 If, in the opinion of the Engineer, the Contractor falls significantly behind the approved progress schedule, the Contractor shall take any and all steps necessary to improve his progress. The Engineer, in this instance, may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the workweek, or increase the amount of construction plant, or all of the above. The Engineer may also

- require the Contractor to submit for approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the approved schedule, all without additional cost to the County.
- 8.04.4 Failure of the Contractor to comply with the requirements of the Engineer under this provision shall be grounds for determination by the Engineer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination, the Engineer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with GP-8.09 of these General Provisions.

**GP-8.05 LIMITATIONS OF OPERATIONS**

The Contractor shall conduct the work at all times in a manner and sequence as will assure the least interference to the public.

- 8.05.1 The Contractor shall begin work at points as may be specified in the Contract and shall thereafter prosecute the work at such points and order as may be prescribed therein.
- 8.05.2 No work requiring the presence of the Engineer or an Inspector will be permitted on Sunday or on legal County holidays except in cases of emergency, and then only to such extent as is absolutely necessary and with written permission of the Engineer.
- 8.05.3 In case the Contractor desires to work upon any Sundays or legal holiday, he shall so inform the Engineer in writing at least two full work days in advance. He shall indicate the nature of the emergency, his desire to work and the location at which work will be conducted.

**GP-8.06 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT**

The Contractor shall employ sufficient labor and equipment for prosecuting the several classes of work to completion in the manner and time required by the Contract.

Workmen must have sufficient skill and experience to perform properly the work assigned to them. All workmen engaged in special work or skilled work shall have sufficient experience in such work and in operations of the equipment required to perform all work properly and satisfactorily.

Any person employed by the Contractor or by any Subcontractor who, in the opinion of the Engineer, does not perform his work in a proper manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or Subcontractor employing such foreman or workman, and the person shall not be employed again on any portion of the work without approval of the Engineer.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of work, the Engineer may withhold payments which are or may become due under the Contract until a satisfactory understanding has been reached.

Equipment used on the work shall meet the requirements of the work and produce a satisfactory quality of work. The Engineer may order removal and require 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 requirements.

When the Contract specifies the construction be performed by use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer in writing. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, he must request authority from the Engineer to do so. The request shall be in writing and include a full description of the methods and equipment proposed 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 substitute methods or equipment, the Engineer determines the work produced does not meet Contract requirements, the Contractor shall discontinue use of the substitute method or equipment and complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved nor in Contract time as the result of authorizing a change.

#### **GP-8.07 SUSPENSION OF WORK/DELAY CLAIMS**

- 8.07.1 The Engineer may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine appropriate for convenience of the County. A suspension of work, delay or interruption of all or any part of the work may also be caused by other acts or omission to act by the County.
- 8.07.2 The Contractor specifically agrees to make no claim for damages for delay in performance of this contract occasioned by such suspension of work or by any act or omission to act of the County or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor or for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- 8.07.3 No extension of time under this clause shall be allowed for delays occurring more than 20 days before the Contractor shall have notified the Engineer in writing of the act or failure to act involved (but this requirement shall not apply as to an extension of time resulting from a suspension order) and unless the request for time extension is asserted in writing as soon as practicable after termination of such suspension, delay or interruption but not later than the date of final payment under the Contract.
- 8.07.4 If it should become necessary to stop work for an indefinite period, the Contractor shall store all materials in such manner that they will not obstruct or impede the use of the site of work unnecessarily nor become damaged in any way; and he shall take every precaution to prevent damage or deterioration of the work performed, provide suitable drainage, erosion control measures, etc, and erect temporary structures where necessary. In the event the

County directs a stoppage of work for an indefinite period, an adjustment to the contract price will be negotiated, based upon direct costs only, for the additional work involved.

**GP-8.08 DETERMINATION AND EXTENSION OF CONTRACT TIME**

The Contractor shall complete the work contracted for in an acceptable manner within the number calendar days as stated in the Contract.

The Contract time and completion date shall be as specified in the "Notice to Proceed." When the conditional acceptance has been duly made by the Engineer as prescribed in GP-5.12.1 the daily time charged shall cease.

The number of days for performance allowed in the Contract as awarded is based on the amount of work indicated by the Contract Documents. If satisfactory fulfillment of the Contract with extensions and increases authorized under GP-4.07, 4.08 and 4.09 shall require the performance of work in greater quantities than those set forth in the Proposal, the Contract time allowed for performance shall be adjusted in an equitable manner based on the quantities, costs and nature of the work involved.

The Contractor under certain conditions may be granted permission or ordered to suspend operations as noted in GP-8.07.

Following the date on which all work has been completed, except those landscaping items on which work is restricted to specified seasons and when conditional inspection and acceptance is being deferred pending completion of those landscaping items on which work is not permissible at the time because such work is currently out of season, and for no other reason, no time will be charged against the Contractor until such time as it is again permissible to proceed with such work. However, time will be charged during any extensions of the specified season, which may be granted the Contractor.

The criteria of GP-8.09.4.A and 8.09.4.B shall apply to the determination of and extension of Contract time.

**GP-8.09 TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, TIME EXTENSIONS**

- 8.09.1 If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within such time, the County may, by written notice to the Contractor and Surety, terminate his right to proceed with work or part of work as to which there has been delay. In such event, the County may take over the work and prosecute to completion, by Contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his Sureties shall be liable for any damage to the County resulting from his refusal or failure to complete the work within the specified time.
- 8.09.2 When liquidated damages are provided in the Contract and if the County so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs incurred by the County in completing the work.

- 8.09.3 When liquidated damages are provided in the Contract and if the County does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.
- 8.09.4 The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:
- A. delay in completion of the work arises from unforeseeable causes above or beyond the control and without the fault or negligence of the Contractor, his Subcontractors and/or suppliers, including but not restricted to acts of God, acts of public enemy, acts of the State or Federal Government in either their sovereign capacity or the County in its contractual capacity, acts of another Contractor in the performance of a Contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; and
  - B. the Contractor, within 10 days from the beginning of any such delay (unless the Engineer grants a further period of time before the date of final payment under the Contract) notifies the Engineer in writing of the causes of delay. The Engineer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in GP-5.13 of these General Provisions.
- 8.09.5 If, after notice of termination of the Contractor's right to proceed under provisions of this clause, it is determined for any reason that the Contractor was not in default under provisions of this clause, or that the delay was excusable under provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the County, be the same as if notice of termination has been issued pursuant to such clause.
- 8.09.6 The rights and remedies of the County provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- 8.09.7 This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the contract. In order for the Contractor to obtain a time extension under this clause, the following conditions must be satisfied:
- A. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.
  - B. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.
- 8.09.8 The following schedule of monthly anticipated adverse weather delays is based on the National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute a base line for monthly weather days in all weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY IN WORK DAYS**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5	5	4	5	5	4	3	4	2	3	3	3

**GP-8.10 FAILURE TO COMPLETE ON TIME**

Time is an essential element of the Contract, and it is important that work be vigorously prosecuted until completion.

For each calendar day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount(s) provided in the Proposal; provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved Change Orders.

**GP-8.11 TERMINATION FOR CONVENIENCE OF THE COUNTY**

8.11.1 The performance of work under this Contract may be terminated by the County in accordance with this clause in whole, or from time to time in part, whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

8.11.2 After receipt of a Notice of Termination, and except as otherwise directed by the County, the Contractor shall:

- A. stop work under the Contract on the date and to the extent specified in the Notice to Termination;
- B. place no further orders or Subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- C. terminate all orders and Subcontractors to the extent they relate to performance of work terminated by the Notice of Termination;
- D. assign to the County in the manner, at times, and to the extent directed by the County, all of the right, title and interest of the Contractor under the orders and Subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of such orders and Subcontracts;
- E. settle all outstanding liabilities and claims arising out of termination of orders and Subcontracts, with the approval or ratification of the County to the extent the Engineer may require, which approval or ratification shall be final for all the purposes of this clause;
- F. transfer title and deliver to the County, in the manner, at times, and to the extent, if any, directed by the County, the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in

connection with performance of the work terminated by the Notice of Termination, and the completed or partially completed Plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the County;

- G. use his best efforts to sell, in the manner, at times, to the extent, and at the price or prices directed or authorized by the County, any property of the types referred to in F above; provided, however, that the Contractor shall not be required to extend credit to any purchaser and may acquire any property under the conditions prescribed by and at a price or prices approved by the County; and provided further that proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the County to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the County may direct;
  - H. complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
  - I. take action as may be necessary, or as the County may direct, for the protection and preservation of property related to this Contract which is in the possession of the Contractor and in which the County has or may acquire an interest.
- 8.11.3 After receipt of a Notice of Termination, the Contractor shall submit to the County his termination claim, in the form and with certification prescribed by the County. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the County as a result of an extension request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the County determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the County may determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall thereupon pay to the Contractor the amount so determined.
- 8.11.4 Subject to the provisions of GP-8.11.3, the Contractor and the County may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this section, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in GP-8.11.5 of this section, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the County to agree upon the whole amount to be paid to the Contractor by reason of termination of work pursuant to this section, shall be deemed to limit, restrict, otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.
- 8.11.5 In the event of failure of the Contractor and the County to agree as provided in GP-8.11.4 upon the whole amount to be paid to the Contractor by reason of termination of work

pursuant to this section, the County shall pay to the Contractor the amounts determined by the County as follows but without duplication of any amounts agreed upon in accordance with GP-8.11.4:

- A. with respect to all Contract work performed before the effective date of the Notice of Termination, the total (without duplication of any items) of:
1. the cost of such work;
  2. the cost of settling and paying claims arising out of termination of work under Subcontracts or orders as provided in GP-8.11.2.E, exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractors before the effective date of the Notice of Termination of Work under this Contract, which amount shall be included in the cost on account of which payment is made under 1 above; and
  3. a sum, as profit on 1 above, determined by the County, to be fair and reasonable; provided, however, that if it appears the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this section, and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss; and
- B. the reasonable cost of preservation and protection of property incurred pursuant to GP-8.11.2.I; and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to determination of the amount due to the Contractor as the result of termination of work under this Contract.

The total sum paid to the Contractor under A above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the County shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amount payable to the Contractor under A above, the fair value, as determined by the County, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the County, or to a buyer pursuant to GP-8.11.2.G.

8.11.6 The Contractor shall have the right of appeal, under GP-5.13 from any determination made by the County under GP-8.11.3 or 8.11.5, except that if the Contractor has failed to submit his claim within the time provided in GP-8.11.3 and has failed to request extension of such time, he shall have no such right of appeal. In any case where the County has made a determination of the amount due under GP-8.11.3 or 8.11.5, the County shall pay to the Contractor the following; if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the County; or if an appeal has been taken, the amount finally determined on appeal.

8.11.7 In arriving at the amount due the Contractor under this Section there shall be deducted all non-liquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract; any claim which the County may have against the Contractor in connection with this Contract; and the agreed price for, or the

proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of the section and not otherwise recovered by or credited to the County.

- 8.11.8 If the termination hereunder be partial, before settlement of the terminated portion of this Contract, the Contractor may file with the County a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination); and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- 8.11.9 The County may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever, in the opinion of the County, the aggregate of such payment shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the County upon demand together with interest computed at such rate set by the County Comptroller for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the County provided, however, that no interest shall be charged with respect to any excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later as determined by the County be reasonable under the circumstances.
- 8.11.10 Unless otherwise provided in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until expiration of three years after final settlement under this Contract, preserve and make available to the County at all reasonable times at the office of the Contractor but without direct charge to the County all his books, records, documents and other evidence bearing on costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder or, to the extent approved by the County, photographs or other authentic reproductions thereof.

**GP-8.12 SUCCESSFUL TERMINATION OF CONTRACTOR'S RESPONSIBILITY**

A Contract will be considered as successfully fulfilled when work has been completed in accordance with the terms of the Contract; when Final Acceptance as defined in GP-5.12.2 has occurred; and when all of the obligations of the Contractor and his Surety have been fulfilled.

END OF SECTION