

In addition, use dust control measures when fugitive dust creates unsafe conditions as determined by the Engineer. Perform this work without additional compensation except for Item 616.

Perform open burning according to 105.16.

107.20 Civil Rights. Comply with Federal, State, and local laws, rules, and regulations that prohibit unlawful employment practices including that of discrimination because of race, religion, color, sex, national origin, disability or age and that define actions required for Affirmative Action and Disadvantaged Business Enterprise (DBE) programs.

107.21 Prompt Payment. . In accordance with ORC 4113.61, make payment to each subcontractor and supplier within 10 Calendar Days after receipt of payment from the Department for Work performed or materials delivered or incorporated into the Project, provided that the pay estimate prepared by the Engineer includes Work performed or materials delivered or incorporated into the public improvement by the subcontractor or supplier. Promptly release any retainage held, as set forth in any subcontractor or supplier agreement, within 10 days of Department's acceptance of the work involving the subcontractor or supplier from whom retainage has been held. For the sole purpose of establishing a time frame for the release of the subcontractor or supplier retainage, acceptance of subcontractor or supplier work will occur when the subcontractor or supplier has complied with the requirements of 109.12.A, B and C.

Also require that this contractual obligation be placed in all subcontractor and supplier contracts that it enters into and further require that all subcontractor and suppliers place the same payment obligation in each of their lower tier contracts. If the Contractor, subcontractors, or supplier subject to this provision fail to comply with the 10 Calendar Day requirement, the offending party shall pay, in addition to the payment due, interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh Calendar Day following the receipt of payment from the Department and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay subcontractors and suppliers timely pursuant to this subsection will result in a finding by the Department that the Contractor is in breach of Contract and subject to all legal consequences that such a finding entails. Further, repeated failures to pay timely pursuant to this subsection will result in a lower evaluation score for the Contractor and those subcontractors who are subject to evaluation by the Department.

108 PROSECUTION AND PROGRESS

108.01 Subletting of the Contract. Perform Work amounting to not less than 50 percent of the Contract Price with its own organization, unless otherwise approved by the Director. The phrase "its own organization" includes only workers employed and paid directly, inclusive of employees who are employed by a lease agreement acceptable to the Department, and equipment owned or rented with or without operators by the Contractor. The phrase does not include employees or equipment of a subcontractor, assignee, or agent of the Contractor. Obtain the Director's written consent to subcontract, sublet, sell, transfer, assign, or otherwise

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relinquish rights, title, or interest in the Work. Provide the Director with a copy of all Disadvantaged Business Enterprise subcontracts.

The Contractor's percentage of the total Contract Price includes the cost of materials and manufactured products purchased by the Contractor, but not the cost of materials and manufactured products purchased by subcontractors.

The Director will calculate the Contractor's percentage based on the quantities shown in the Proposal and the unit prices of the contract items to be performed by the Contractor's organization. If the Contractor performs only a portion of a contract item, then the Director will determine the proportional value administratively on the same basis. The Director will follow this procedure even when the part not subcontracted consists only of the procurement of materials. However, if a firm both sells the materials to the Contractor and performs the Work of incorporating the materials into the Project, then the Department will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the Department may refuse approval. An affiliate is one who has some common ownership or other close relation to said firm.

Use actual subcontract prices for calculating compliance with any Disadvantaged Business Enterprise (DBE) percentage subcontracting obligations. If only a part of a contract item is sublet, then determine its proportional value administratively on the same basis. The Director will follow this procedure even when the part not sublet consists only of procuring materials. However, if a firm both sells the materials to the Contractor and performs the work of incorporating the materials into the Project, then the Department will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the Department may refuse approval.

108.02 Partnering. It is the intent of the Department to partner every project. The purpose of Partnering is to develop a proactive effort and spirit of trust, respect, and cooperation among all stakeholders in a project. Partnering does not affect the terms and conditions of the Contract. The Partnering process in this section is Self-facilitated Partnering performed by the Project personnel. Costs associated with the Self-facilitated Partnering process are incidental to the Contract.

A. Preconstruction Meeting. Meet with the Engineer for a Preconstruction Meeting before beginning the Work. At or before the meeting, submit the initial progress schedule to the DCA. Prepare the schedule according to 108.03.

Furnish a list of proposed subcontractors and material suppliers at or before the Preconstruction Meeting. If the Contractor fails to provide the required submissions at or before the Preconstruction Meeting, the Engineer may order the meeting suspended until they are furnished. Do not begin the Work until the meeting is reconvened and concluded or the Engineer gives specific written permission to proceed.

B. Initial Partnering Session. In conjunction with the Engineer, determine whether the Initial Partnering Session will be conducted as part of the Preconstruction Meeting or as a separate meeting. Partnering shall have its own agenda with specific time set aside to develop the necessary partnering protocols. Develop the Partnering agenda with the Engineer.

Identify and invite all stakeholders necessary to make the Project successful including utility companies, other transportation entities (i.e., railroads), community leaders, all Project participants including subcontractors.

During the Initial Partnering Session, consider developing Partnering teams consisting of Department and Contractor senior personnel and Project personnel. Consider the following items for discussion:

1. Identifying and developing a consensus on project goals consistent with the contractual obligations, including specific goals concerning safety, quality, schedule, and budget.
2. Deciding how the teams will measure progress on Project goals.
3. Identifying any potential risks to the Project's success, mitigation strategies and an implementation plan for the appropriate strategies.
4. Defining key issues, project concerns, joint expectations, roles of key partnership leaders, lines of decision making authority, and share relevant information to help determine the scope of the Partnering efforts.
5. Identifying any opportunities for project enhancement, enhancement strategies and a specific action plan for implementing strategies.
6. Developing a communication protocol to enhance communication on the Project
7. Developing an issue identification and resolution process that identifies and attempts to resolve issues at the level closest to the work. The issue identification and resolution process will develop all the necessary steps for issue elevation including Notice and Mitigation defined in 108.02.F and the Dispute Resolution and Administrative Claims Process defined in 108.02.G.

C. Progress Meetings. Hold monthly Progress Meetings unless the frequency is otherwise determined at the Preconstruction Meeting. Coordinate with the Engineer to determine agenda topics prior to each meeting. The purpose of Progress Meetings is to keep open communication between the Contractor and the Engineer. The senior personnel team is encouraged to participate in all Progress Meetings. Include Partnering as an agenda item at the Progress Meetings.

D. Post-milestone Meeting. In conjunction with the Engineer, determine whether the Post-milestone Meeting will be conducted as part of the Progress Meeting or as a separate meeting for multi-year, multi-phase, or projects with critical items of work or milestone dates. Consider discussing and updating items from the Initial Partnering Session in addition to items specific to the Project. All stakeholders should be invited to attend.

E. Partnering Monitoring. Monitor the progress of the Partnering relationship based on the goals decided during the Initial Partnering Session. On-line surveys of Project participants may be used to monitor progress on Project goals and help identify issues as they arise. The on-line surveys are consistent with the Department's Partnering Project Rating Form which is located on the Division of Construction Management's Partnering website:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx>

F. Mitigation and Notice. Mitigation of any issue, whether caused by the Department, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and substitution of materials. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

1. Contractor Initial Oral Notification. Provide immediate oral notification to the Engineer upon discovering a circumstance that may require a revision to the Contract Documents or may result in a dispute. Upon notification, the Engineer will attempt to resolve the identified issue as quickly as possible.

2. Contractor Written Early Notice. If the Engineer has not resolved the identified issue within two (2) working days after receipt of oral notification, provide written notice to the Engineer of any circumstance that may require a revision to the Contract Documents or may result in a dispute. This early notice must be given by the end of the second working day following the occurrence of the circumstance.

The Engineer and Contractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records will begin when early notice is received by the Engineer. Tracking such information is not an acknowledgement that the Department accepts responsibility for payment for this disputed work.

If an issue is not resolved through the initial mitigation efforts, either abandon or escalate to the Dispute and Administrative Claims Process defined in 108.02.G.

G. Dispute Resolution and Administrative Claims Process. Whenever an issue is elevated to a dispute, the parties shall exhaust the Department's Dispute Resolution and Administrative Claim process set forth below as a condition precedent to filing an action in the Ohio Court of Claims. The following procedures do not otherwise compromise the Contractor's right to seek relief in any Ohio Court with legal jurisdiction.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact Department personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. Department personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension will terminate further review of the dispute and serve as a waiver of the Contractor's right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against the Department but not supported by the Contractor will not be reviewed by the Department. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the Department.

Continue with all Work during the Dispute Resolution and Administrative Claims process, including that which is in dispute. The Department will continue to pay for Work.

The Department will not make the adjustments allowed by 104.02.B, 104.02.C, and 104.02.D if the Contractor did not give notice as specified in 108.02.F.1 and 108.02.F.2. This provision does not apply to adjustments provided in Table 104.02-2.

1. Step 1 (On-Site Determination). The Engineer will meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice set forth in 108.02.F.2. They will jointly review all pertinent information and contract provisions and negotiate in an effort to reach a resolution. The Engineer will issue a written Step 1 decision within fourteen (14) calendar days of the meeting. If the dispute is not resolved, either abandon or escalate the dispute to Step 2.

2. Step 2 (District Dispute Resolution Committee). Each District will establish a District Dispute Resolution Committee (DDRC) which will be responsible for hearing and deciding disputes at the Step 2 level. The DDRC will consist of the District Deputy Director, District Construction Administrator and the Planning and Engineering Administrator or designees (other than the project personnel involved in the dispute).

Within seven (7) calendar days of receipt of the Step 1 decision, either abandon the dispute or submit a written request for a Step 2 meeting to the District Construction Administrator (DCA). The DCA will assign the dispute a dispute number. Within fourteen (14) calendar days of submitting the request for a Step 2 meeting, submit three (3) complete copies of the Dispute Documentation to the DCA as follows:

a) Identify the Dispute on a cover page by county, project number, Contractor name, subcontractor or supplier if involved in the dispute, and the dispute number.

b) Clearly identify each item for which additional compensation and/or time is requested.

c) Provide a detailed narrative of the disputed work or project circumstance at issue. Include the dates of the disputed work and the date of early notice.

d) Reference the applicable provisions of the plans, specifications, proposal, or other contract documents in dispute. Include copies of the cited provisions in the Dispute Documentation.

e) Include the dollar amount of additional compensation and length of contract time extension requested.

f) Include supporting documents for the requested compensation stated above.

g) Provide a detailed schedule analysis for any dispute involving additional contract time, actual or constructive acceleration, or delay damages. At a minimum, this schedule analysis must include the Schedule Update immediately preceding the

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occurrence of the circumstance alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.

h) Include copies of relevant correspondence and other pertinent documents.

Within fourteen (14) calendar days of receipt of the Contractor's Dispute Documentation, the Engineer will provide the Contractor with all documentation it intends to rely on at the DDRC meeting to rebut the Contractor's dispute.

After allowing at least fourteen (14) calendar days for the Contractor to review the Engineer's Dispute Documentation, the DDRC will conduct the Step 2 meeting with Contractor personnel who are authorized to resolve the dispute. The DDRC will issue a written Step 2 decision to the Contractor and the Dispute Resolution Coordinator within fourteen (14) calendar days of the meeting. If the dispute is not resolved, either abandon or escalate the dispute to Step 3.

3. Step 3 (Director's Claims Board Hearing or Alternative Dispute Resolution). Submit a written Notice of Intent to File a Claim to the Dispute Resolution Coordinator in the Division of Construction Management within fourteen (14) calendar days of receipt of the Step 2 decision. The dispute becomes a claim when the Dispute Resolution Coordinator receives the Notice of Intent to File a Claim. Include the Contractor's request for either: 1) a Director's Claim Board hearing on the claim or 2) Alternative Dispute Resolution (ADR).

a) Director's Claims Board Hearing. The Director's Claims Board (the "Board") will consist of the Deputy Director of the Division of Construction Management, Deputy Director of Engineering and a District Construction Administrator from a district not involved in the claim, or their designees. A representative from the Division of Chief Legal Counsel and Equal Opportunity may be present to observe the hearing. The Director or designee will be responsible for deciding claims.

(1) Submit six (6) complete copies of the Claim Documentation to the Dispute Resolution Coordinator within thirty (30) calendar days of receipt of the Notice of Intent to File a Claim. This timeframe may be extended with approval of the Dispute Resolution Coordinator.

In addition to the documentation submitted at Step 2:

(a) Enhance the narrative to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project.

(b) Certify the claim in writing and under oath using the following certification:

"I, (Name and Title of an Officer of the Contractor) certify that this claim is made in good faith, that all supporting data is accurate and complete to the best of my knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (Contractor Company name) believes the Department is liable."

Sign and date this claim certification and have the signature notarized pursuant to the laws of the State of Ohio. The date the Dispute Resolution Coordinator receives the certified claim documentation is the date of the Department's Receipt of the Certified Claim for the purpose of the calculation of interest as defined in 108.02.G.4. The Dispute Resolution Coordinator will forward one (1) complete copy of this documentation to the District.

(2) Within thirty (30) calendar days of the District's receipt of the Contractor's Claim Documentation, the District will submit six (6) complete copies of its Claim Documentation to the Dispute Resolution Coordinator. This timeframe may be extended with approval from the Dispute Resolution Coordinator. At a minimum, the District's Claim Documentation should include:

- (a) An overview of the project
- (b) A narrative of the disputed work or project circumstance at issue with sufficient description and information to enable understanding by a third-party who has no knowledge of the dispute or familiarity with the project
- (c) The dates of the disputed work and the date of early notice
- (d) References to the applicable provisions of the plans, specifications, proposal, or other contract documents. Copies of the cited provisions shall be included in the claim document
- (e) Response to each argument set forth by the Contractor
- (f) Any counterclaims, accompanied by supporting documentation, the District wishes to assert
- (g) The status of the negotiations of the Claim that have occurred to-date, including the amount of any offers and counteroffers made by the parties
- (h) Copies of relevant correspondence and other pertinent documents

(3) Within fourteen (14) calendar days of receipt of the District's Claim Documentation, the Dispute Resolution Coordinator will forward one (1) complete copy to the Contractor and will schedule a hearing on the dispute.

Once a hearing date has been established, both the Contractor and District shall provide the Dispute Resolution Coordinator with a list of names of persons who may be presenting information at the hearing. Unless otherwise permitted by the Board, the exchange of documentation and all disclosures specified in this step of the process shall be completed at least fourteen (14) calendar days prior to the hearing.

Upon request or at the Board's discretion, the Board may delay the hearing to allow more time for preparation and review, or to fulfill requests for more documentation.

The Board will hear the entire claim on behalf of the Director. The Board may have its own technical advisors at the hearing for consultation and assistance in reviewing the claim. The Contractor and District will each be allowed adequate time to present their respective positions before the Board. The Contractor and District will also each be allowed adequate time for rebuttal, limited to the scope of the opposing party's presentation. The Board may suspend any portion of a presentation or rebuttal it deems to be argumentative, repetitive, or irrelevant to the claim. The Contractor's position will be presented by one or more of the Contractor's employees who are thoroughly knowledgeable of the claim. The Contractor may have legal counsel present during the hearing to observe or for private consultation. Similarly, the District's position will be presented by one or more District representatives who are thoroughly knowledgeable of the claim.

The Board may, on its own initiative, request information in addition to that submitted for the hearing. If the Contractor fails to reasonably comply with such request, the Board may render its decision without such information.

Upon completion of the hearing and following consideration of any additional information submitted upon request, the Board will submit a written recommendation on the disposition of the claim to the Director. The Director or designee will ratify, modify, or reject the recommendation of the Board and render a decision within sixty (60) calendar days of the hearing. Within thirty (30) calendar days of receipt of the Board's decision, either accept or reject the decision in writing. In the event the Contractor fails to do so, the Board may revoke any offers of settlement contained in the decision.

The decision of the Director is the final step of the Department's Dispute Resolution Process and may not be appealed within the Department. The Director is not bound by any offers of settlement or findings of entitlement made during Steps 1 and 2 of the Dispute Resolution Process.

b) Alternative Dispute Resolution (ADR). In lieu of the Director's Claim Board hearing, the parties may opt to proceed through an Alternative Dispute Resolution (ADR) Process. The parties will then choose either arbitration or mediation in the manner in which those methods are practiced by the Department and allowed by law.

The Dispute Resolution Coordinator will coordinate the agreement of the parties to the ADR method, and the selection of a neutral third-party or technical expert. The fees of the neutral third-party or technical expert will be shared equally between the Department and the Contractor. The Dispute Resolution Coordinator will obtain a written agreement, signed by both parties, that establishes the ADR process. The neutral third-party or technical expert will have complete control of the claim upon execution of the ADR agreement.

4. Interest on Claims. The Department will pay interest in accordance with ORC Section 5703.47 on any amount ultimately found due on a claim which is not paid within 30 days of the Dispute Resolution Coordinator's Receipt of the Certified Claim.

H. Post Construction Meeting. The District will conduct a Post Construction Meeting with the Contractor prior to the project finalization. The District will invite the design agency and any other stakeholders deem necessary including utility companies, other transportation entities (i.e. railroads), community leaders, all Project participants including subcontractors performing critical work to attend this meeting.

Consider the following items for discussion:

1. Project Safety.
2. How were the goals evaluated or measured?
3. How were foremen/ workers involved in the Partnering process?
4. How were the subcontractors involved in the Partnering process?
5. How were relationships with key stakeholders managed?
6. Teambuilding activities or unique motivational activities.

I. Partnering Close-Out Survey. Complete the final Partnering evaluation to get participants' feedback and improve the Partnering process. The Partnering Close-Out Survey is located on the Division of Construction Management's Partnering website:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx>

108.03 Prosecution and Progress. Start the Work according to 108.02. Notify the Engineer at least 24 hours before starting the Work. If the prosecution of the Work is suspended, notify the Engineer a minimum of 24 hours in advance of resuming operations.

Pursue the Work diligently and continuously as to complete the Project by the Completion Date.

A. Progress Schedule.

1. General. Furnish a bar chart progress schedule to the District Construction Engineer for review at or before the Preconstruction Meeting. The Engineer will review the schedule and within 14 calendar days of receipt, will either accept the schedule or provide the Contractor with comments. Acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within 10 days of a written request by the Engineer. The Department will withhold Estimates until the Engineer accepts the schedule. The Engineer will not measure or pay for the preparation of the schedule and schedule updates directly, but the cost of preparing and updating the schedule is incidental to all Contract Items.

a. Include the following Administrative Identifier Information:

- (1) Project Number
- (2) County
- (3) Route Number
- (4) FHWA Number
- (5) PID Number