

SECTION 80 EXECUTION AND PROGRESS

80-01 SUBCONTRACTING OF CONTRACT. The Contractor shall submit a Contractor Self Certification, Form 25D-042, and, except on wholly state-funded projects, a completed Certification for Tax Delinquency and Felony Convictions, Form 25D-159, for each Subcontractor and each Lower Tier Subcontractor, before the Contractor or any subcontractor subcontracts, sells, transfers, assigns, or otherwise disposes of the Contract or any portion of the Contract. The Department has authority to review subcontracts and to deny permission to subcontract work. The Department may penalize the Contractor for false statements or omissions made in connection with Form 25D-042.

The Contractor shall perform, with the Contractor's own organization, work amounting to at least 30 percent of the difference between the original Contract price and the price of designated Specialty Items. For the purpose of this subsection, work is defined as the dollar value of the services, equipment, materials, and manufactured products furnished under the Contract. The Engineer will determine the value of the subcontracts based on Contract unit prices or upon reasonable value, if entire items are not subcontracted.

The Department's consent to the subcontracting, sale, transfer, assignment, or disposal of all or a part of the Contract shall not relieve the Contractor and the Surety of responsibility for fulfillment of the Contract or for liability under the bonds regardless of the terms of the transfer or sublet approvals.

- a. The Contractor shall ensure that for all subcontracts (agreements):
 - (1) The Department is furnished with one completed Contractor Self Certification, Form 25D-042, for each subcontract;
 - (2) The subcontractors have submitted a Bidder Registration, Form 25D-6;
 - (3) The required prompt payment provisions of AS 36.90.210 are included in all subcontracts;
 - (4) A clause is included requiring the Contractor to pay the subcontractor for satisfactory performance according to AS 36.90.210 and within eight (8) working days after receiving payment from which the subcontractor is to be paid;
 - (5) A clause is included requiring the Contractor to pay the subcontractor interest, according to AS 45.45.010(a), for the period beginning the day after the required payment date and ending on the day payment of the amount due is made;
 - (6) A clause is included requiring the Contractor to pay the subcontractor all retainage due under the subcontract, within eight (8) working days after final payment is received from the Department, or after the notice period under AS 36.25.020(b) expires, whichever is later;
 - (7) A clause is included requiring the Contractor to pay interest on retainage, according to AS 36.90.250 and AS 45.45.010(a);
 - (8) Other required items listed in Form 25D-042, including but not limited to Form 25D-55A, are included in the subcontracts;
 - (9) The subcontractors pay current prevailing rate of wages as per Subsection 70-04 and file signed and certified payrolls with the Engineer and DOLWD for all work performed on the project; and
 - (10) Upon receipt of a request for more information regarding subcontracts, the requested information is provided to the Department within 5 calendar days.
- b. The Contractor shall ensure that for all lower tier subcontracts (agreements between subcontractors and lower tier subcontractors):

- (1) The Department is furnished with one completed Contractor Self Certification, Form 25D-042, for each lower tier subcontract;
 - (2) The required prompt payment provisions of AS 36.90.210 are included in all lower tier subcontracts;
 - (3) A clause is included requiring the subcontractor to pay the lower tier subcontractor for satisfactory performance according to AS 36.90.210, and within eight (8) working days after receiving payment from which the subcontractor is to be paid;
 - (4) A clause is included requiring the subcontractor to pay the lower tier subcontractor interest, according to AS 45.45.010(a), for the period beginning the day after the required payment date and ending on the day payment of the amount due is made;
 - (5) A clause is included requiring the subcontractor to pay the lower tier subcontractor all retainage due under the subcontract, within eight (8) working days after final payment is received, or after the notice period under AS 36.25.020(b) expires, whichever is later;
 - (6) A clause is included requiring the subcontractor to pay the lower tier subcontractor interest on retainage, according to AS 36.90.250 and AS 45.45.010(a);
 - (7) Other required items listed in Form 25D-042, including but not limited to Form 25D-55A, are included in the lower tier subcontracts;
 - (8) The lower tier subcontractors pay current prevailing rate of wages as per Subsection 70-04 and file signed and certified payrolls with the Engineer and DOLWD for all work performed on the project; and
 - (9) Upon receipt of a request for more information regarding lower tier subcontracts, the requested information is provided to the Department within 5 calendar days.
- c. The following will be considered as subcontracting, unless performed by the Contractor:
- (1) Roadside Production. Roadside production of crushed stone, gravel, and other materials with portable or semi-portable crushing, screening, or washing plants set up or reopened in the vicinity of the project to supply materials for the project, including borrow pits used exclusively or nearly exclusively for the project.
 - (2) Temporary Plants. Production of aggregate mix, concrete mix, asphalt mix, other materials, or fabricated items from temporary batching plants, temporary mixing plants, or temporary factories that are set up or reopened in the vicinity of the project to supply materials exclusively or nearly exclusively for the project.
 - (3) Hauling. Hauling from the project to roadside production, temporary plants, or commercial plants, from roadside production or temporary plants to the project, from roadside production or temporary plants to commercial plants, and all other hauling not specifically excluded in this subsection.
 - (4) Other Contractors. All other contractors working on the project site under contract with the Contractor are considered subcontractors unless specifically excluded in this subsection.
- d. The following will not be considered as subcontracting, but the Contractor shall comply with the prompt payment provisions of AS 36.90:
- (1) Commercial Plants. The purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready-mixed concrete, asphalt paving mix, and any other material or fabrication produced at and furnished from established and recognized commercial plants that sell to both public and private purchasers.

Notwithstanding the Department's definitions of contracting and subcontracting, the Contractor shall be responsible for determining and complying with all federal and state laws and regulations regarding contracting, subcontracting, and payment of wages. The Contractor shall promptly pay any fines or penalties assessed for violations of those laws and regulations, and shall promptly comply with the directives of any government agency having jurisdiction over those matters.

80-02 NOTICE TO PROCEED. The Department will issue a Notice to Proceed authorizing construction to begin and indicating the date when Contract time will begin. The Contractor shall not begin construction before the effective date of the Notice to Proceed. The Notice to Proceed may include limits or restrictions on allowable activities. The Department will, in its sole discretion, refuse to pay for construction begun before the effective date of the Notice to Proceed. The Contractor shall notify the Engineer at least 48 hours before construction begins at the project site.

80-03 PROSECUTION AND PROGRESS. The Contractor shall meet with the Engineer at the regional construction office for a preconstruction conference before beginning construction. The Engineer will schedule the Preconstruction Conference no less than five days after the following have been received:

- a. A progress schedule, in a format acceptable to the Engineer, showing the order in which the Contractor proposes to carry out the work and the contemplated dates on which the Contractor and the subcontractors will start and finish each of the salient features of the work, including any scheduled periods of shutdown. The schedule shall indicate the anticipated hours of operation and any anticipated periods of multiple-shift work.
- b. A list showing anticipated dates for procurement of materials and equipment, ordering of articles of special manufacture, furnishing of plans, drawings and other data required under Subsections 50-02 and 60-08, and for other events such as inspection of structural steel fabrication
- c. A list showing all subcontractors and material suppliers
- d. A Storm Water Pollution Prevention Plan, a Hazardous Material Control Plan, and a Spill Prevention Control and Countermeasure Plan, with the line of authority and designated field representatives, as required under Item P-641 (see submittal deadlines under P-641-1.3)
- e. A letter designating the Contractor's Project Superintendent, defining that person's responsibility and authority, and providing a specimen signature
- f. A letter designating an Equal Employment Opportunity Officer and a Disadvantaged Business Enterprise Officer, and designating those person's responsibilities and authority
- g. A Quality Control Program, as required under Subsection 60-03 and Section 100
- h. An approved Safety Plan Compliance Document (SPCD), as required under Subsection 80-04
- i. A Traffic Control Plan, as required under Subsection 70-09 and Item G-710
- j. A Utility Repair Plan, as required under Subsection 50-06.e.

Provide suitable proof of filing and subsequent approval of a completed FAA Form 7460-1 Notice of Proposed Construction or Alteration, at least 45 days before the start date of work occurring on the project. Coordinate with the RASSO and Engineer when filing Form 7460-1. The Contractor is encouraged to file the form electronically. The FAA 7460-1 form and the electronic submittal instructions may be found at: <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

The Contractor shall provide adequate materials, labor and equipment to ensure the completion of the project according to the Plans and Specifications. The work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit. The Contractor shall take into consideration and make due allowances at the Contractor's expense for foreseeable delays and interruptions to the work such as unfavorable weather, frozen ground, equipment breakdowns, shipping

delays, quantity overruns, utility work, permit restrictions, and other foreseeable delays and interruptions. The Contractor shall identify these allowances on the progress schedule.

The Contractor shall adjust forces, equipment and work schedules as necessary to ensure completion of the work within the Contract time, and shall notify the Engineer at least 24 hours before resuming suspended operations. Upon a substantial change to the work schedule or when directed by the Engineer, the Contractor shall submit a revised progress schedule in the form required, including a written explanation for each revision made in the schedule or methods of operation.

The Engineer's review or approval of the documents, plans, and schedules provided by the Contractor under this section shall not change the Contract requirements, release the Contractor of the responsibility for successful completion of the work or relieve the Contractor of the duty to comply with applicable laws. The Engineer's review or approval of schedules shall not indicate agreement with any assertions of delay or claims by the Contractor.

It is the Contractor's responsibility to prepare and submit documents that satisfy all applicable contract requirements. By reviewing and approving the Contractor's documents, the Department does not warrant that following the Contractor's documents will result in successful performance of the work. The Department's failure to discover defects in the Contractor's documents, the assumptions upon which they are based or conditions that prevent the Contractor from performing the work as indicated in the documents will not entitle the Contractor to additional compensation or time. If the Contractor becomes aware of any act or occurrence that may form the basis of a claim for additional compensation or an extension of time, it must specifically advise the Engineer of these conditions according to Subsection 50-17.

80-04 LIMITATION OF OPERATIONS. The Contractor shall not open up work to the detriment of work already started. The Contractor shall minimize interference with traffic within the project. The Contractor shall not stop or otherwise impede traffic outside the project limits without the Engineer's prior written permission. The Engineer may require the Contractor to finish a section of work in progress before starting additional sections if the Engineer determines it is necessary for the convenience of the public or the Department.

The Contractor shall control its operations and the operations of its subcontractors and all suppliers, so as to provide for the least inconvenience to traffic and the free and unobstructed movement of aircraft in the Air Operations Areas of the airport, except as specifically provided in this Contract. Under all circumstances, safety shall be the most important consideration.

a. Environmental Limitations. The Contractor shall comply with all environmental commitments, permit stipulations, and construction limitations, in the Contract permits and specifications. These may include time periods in which certain construction activities are not allowed. The Contractor shall avoid disturbing wetlands unless permitted to do so. The Contractor shall avoid disturbing threatened and endangered species, historic sites, and hazardous materials sites.

b. Construction Safety.

(1) Construction Safety and Phasing Plan (CSPP). This document is included within the contract documents when attached as an appendix to this document. The CSPP specifies minimum requirements for operational safety during construction activities.

(2) Safety Plan Compliance Document (SPCD). When the contract documents include a CSPP, the Contractor shall submit to the Engineer a SPCD in accordance with the provisions set forth within the current version of AC 150/5370-2, *Operational Safety on Airports During Construction*. The SPCD shall include a general statement that the Contractor has read and will abide by the CSPP and shall include the Contractor's name, the title of the project CSPP, the approval date of the CSPP, and a reference to any supplemental information (example statement: "I, Name of Contractor, have read the Title of the Project CSPP, approved on Date, and will abide by it as written and with the following additions as noted."). The supplemental information in the SPCD should be written to match the format of the CSPP indicating each

subject by corresponding CSPP subject number and title. If no supplemental information is necessary for any specific subject, the statement, "No supplemental information," should be written after the corresponding subject title. The SPCD should not merely duplicate information in the CSPP. No deviations or modifications may be made to the approved CSPP or SPCD unless approved in writing by the Engineer.

The Contractor shall implement all necessary CSPP and SPCD measures prior to commencement of any work activity. The Contractor shall conduct daily checks of its workers, equipment, and construction methods to assure compliance with the CSPP and SPCD measures. The Contractor shall document the checks in writing and sign them. Documented checks shall be available for inspection by the Engineer.

The Contractor is responsible for the conduct of all subcontractors and suppliers it employs on the project. The Contractor shall assure that all subcontractors and suppliers are made aware of the requirements of the CSPP and SPCD, and that the subcontractors and suppliers implement and maintain all necessary safety measures.

The CSPP and SPCD will indicate areas within airport property boundaries that may be used for material stockpile, and will indicate the maximum height of stockpile allowed. The Contractor shall obtain prior approval from the Engineer before using other areas within airport property. The Engineer may limit stockpile heights or equipment heights in any area, either inside or outside of airport property, based on requirements in the ACs or other factors necessary to ensure the free and unobstructed operation of aircraft.

- c. **Security Plan.** When required by the Contract, the Contractor shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the security of the Airport. The Contractor's operations shall be conducted according to the Security Plan and the provisions set forth within the current version of DOT/FAA/AR-00/52, *Recommended Security Guidelines for Airport Planning and Construction*. No deviations or modifications may be made to the approved Security Plan unless approved in writing by the Engineer.
- d. **Notification.** When the work requires the Contractor to conduct its operations within an Air Operations Area of the airport, the work shall be coordinated in accordance with the requirements of the CSPP. The Contractor shall begin coordination through the Engineer with the Airport Manager, FAA, other project stakeholders, at least 45 days before working in the Air Operations Area. When written correspondence is approved by the Engineer the Contractor shall copy to the Engineer all correspondence with the Airport Manager, the FAA, and other project stakeholders.

The Contractor shall provide information and coordinate with the Airport Manager, through the Engineer, for all required NOTAMs. Begin coordination at least 14 days prior to the date that the NOTAM needs to be issued by. Provide final information on a form provided by the Department, and submit the form through the Engineer to the Airport Manager at least 72 hours prior to: closure or change in the Air Operations Area; or startup, resumption, cessation of, or change in construction activity that affects aircraft operations.

The Contractor shall not begin work for any Phase that requires issuance of a NOTAM until all of the following have been met:

- (1) Coordination required by the CSPP and the SPCD has been accomplished;
- (2) The NOTAM has been authorized by Airport Manager and its issuance by the FAA has been confirmed;
- (3) The necessary temporary marking and associated lighting are accepted;
- (4) The necessary NAVAIDS have been modified as specified in the CSPP, SPCD, and Subsection 70-09; and

(5) The Engineer has authorized the Contractor to begin work.

Coordinate all questions to the FAA through the Engineer.

Contact the FAA Systems Operations Control Center at least 45 days prior to:

(1) Closing a runway

(2) Re-opening a closed runway

(3) Interrupting service or removing visual or navigational aids

(4) Displacing a runway threshold

e. Work Procedures and Communications within the Airport Operations Area.

Vehicles, equipment and materials shall never be parked or left standing on runways, runways safety areas, and taxiways open to aircraft. In Air Operations Areas, all vehicles shall be equipped with a functional flashing amber hazard light and all obstructions except stakes or hazard markers shall be removed during non-working hours. The Contractor shall remove construction equipment from and otherwise clear the runway and the designated Runway Safety Areas for operation of regularly scheduled airline flights. The Contractor shall remain continuously informed regarding flight schedule times.

When the contract work requires the Contractor to work within an Air Operations Area of the airport on an intermittent basis (intermittent opening and closing of all or a portion of the Air Operations Area), the Contractor shall maintain constant communications as hereinafter specified, immediately obey all instructions to vacate the Air Operations Area, and immediately obey all instructions to resume work in such Air Operations Area. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the Air Operations Area, with no damages available from the Department, until the satisfactory conditions are provided. The Contractor shall establish and maintain communication or monitor communications with the appropriate radio facility as prescribed in the following:

(1) **Airports With Control Towers:** At those airports with control towers, the Contractor shall comply with the instructions of the airport controller. The Contractor shall continuously monitor 2-way radio communication on the appropriate ground control frequency. The Contractor shall furnish a liaison radio operator and 2-way radio communication with each work party located within the Air Operations Area

(2) **Airports Without Control Towers:** At those airports without control towers, the Contractor shall comply with the instructions of a FSS Employee, a pilot, or a pilot's representative. The Contractor shall continuously monitor by 2-way radio, the CTAF published in the current *Alaska Flight Information Supplement*. The Contractor shall furnish a liaison radio operator and 2-way radio communication with each work party located within the Air Operations Area.

80-05 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT. The Contractor shall employ sufficient labor and equipment to complete the work required under the Contract and to complete it on time.

The Contractor shall ensure that all workers on the project have the skills and experience necessary to properly perform their assigned work. Workers engaged in special work or skilled work shall have sufficient experience in that work and in the operation of the equipment required to properly perform that work.

The Contractor shall comply with any written order by the Engineer to remove workers, who, in the opinion of the Engineer, violate operational regulations, violate CSPP requirements, violate SPCD requirements, perform the work in an unskilled manner, create risk of imminent harm for the traveling public, who are intemperate or disorderly, or who fail to perform the work in accordance with the Contract and any and all

applicable federal, state, and local laws, rules, regulations, and ordinances. The Contractor shall allow removed workers to return to the project only with the Engineer's written permission. The Engineer may suspend the work if the Contractor fails to furnish suitable and sufficient personnel necessary to perform the work, or fails to remove any worker at the Engineer's order.

The Contractor shall not use prisoner labor on the project.

The Contractor shall use equipment of the appropriate size and mechanical condition to produce the specified quality and quantity of work by the means specified in the Contract, if any, and shall ensure that the equipment does not damage roadways or property.

The Contractor shall ensure all equipment, materials, and articles incorporated into the work are new and of the specified quality, unless the Contract specifically permits otherwise.

The Contractor shall provide the Engineer with a list of all powered equipment that will be used on the project, showing the make, model, year, capacity, horsepower, and related information. The Contractor shall update this list when equipment is added or removed from the work site, but need not update more frequently than weekly.

When the methods and equipment to be used by the Contractor are not prescribed by the contract, the Contractor is free to use any method, means or equipment that is satisfactory to produce the specified work in conformity with the Contract, except as provided above. At the request of the Engineer, the Contractor shall demonstrate that the method, means and equipment chosen will produce the work specified in the Contract in the time allowed under the Contract. The Contractor shall bear all costs and impacts associated with any means, methods and equipment chosen by the Contractor. No suggestion, statement or observation from the Engineer or other Department representatives shall alter this responsibility.

If the Contract specifies a particular method, means or type of equipment for performance of the work, the Contractor must use that method, means or equipment unless the Contractor first requests, in writing, permission to alter the Contract requirement and receives prior written approval from the Engineer. The written request shall include a full description of the methods and equipment proposed and 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 work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the contract items involved, nor in contract time, as a result of authorizing a change in methods or equipment under this subsection, except as specifically provided under Subsection 40-08.

80-06 CONTRACT TIME, EXTENSION OF CONTRACT TIME AND SUSPENSION OF WORK. Contract time will be specified in Calendar Days, by Completion Date, or both.

- a. **Calendar Days.** When the contract time is specified on a calendar days basis, all work under the Contract shall be completed within the number of calendar days specified. If no starting day is specified in the Contract, the count of Contract time begins on the day following receipt of the Notice to Proceed by the Contractor.

Calendar days shall continue to be counted against Contract time until and including the date of project completion. Calendar days shall not be counted during the period from November 1 through April 30, except for days that the Contractor is working on the project site.

- b. **Completion Date.** When the contract time is specified on a completion date basis, all work under the Contract shall be completed by the specified completion date.

- c. Reasons for Suspension of Work and Extension of Contract Time.** The Department may order a suspension of work for any reason listed in this subparagraph c., items (1) through (16).

The Department shall not pay additional compensation, but may extend Contract time only, if there are delays in the completion of controlling items of work from unforeseeable causes that are beyond the Contractor's control and are not the result of the Contractor's fault or negligence, including:

- (1) Acts of God;
- (2) Acts of the public enemy;
- (3) Fires;
- (4) Floods;
- (5) Epidemics;
- (6) Quarantine restrictions;
- (7) Strikes;
- (8) Freight embargoes;
- (9) Unusually severe weather;
- (10) According to Subsection 50-06.d.(4), delays by utility owners beyond completion dates specified in the Special Provisions for relocating or adjusting utilities and related facilities; or
- (11) Delays of subcontractors, suppliers and fabricators from unforeseeable causes beyond the control of the subcontractors, suppliers or fabricators and that are not the fault of the subcontractors, suppliers or fabricators, including those causes listed in this Subparagraph c, Items (1) through (10).

No additional Contract time or additional compensation will be allowed due to delays caused by or suspensions ordered due to:

- (12) Failure to correct conditions that create risk of imminent harm for the traveling public, violations of the Contract or any applicable federal, state, and local laws, rules, regulations, and ordinances;
- (13) Adverse weather that is not unusually severe;
- (14) Failure to carry out Contract provisions;
- (15) Failure to carry out orders given by the Engineer; or
- (16) Failure to timely obtain materials, equipment, or services.

The Contractor shall notify the Engineer as soon as the Contractor becomes aware of any act or occurrence that may form the basis of a request for a time extension under this section. The Contractor shall submit a request for a time extension to the Engineer within 10 days of the act or occurrence, and if an agreement is not reached, the Contractor may submit a Claim under Subsection 50-17.

The time allowed in the Contract, as awarded, is based on performing the original estimated quantities of work set out in the bid schedule. An assertion that insufficient time was originally specified shall not constitute a valid reason for extension of contract time.

If satisfactory fulfillment of the Contract requires extra work, the Department may extend Contract time according to Subsection 40-02.

- d. Suspension of Work.** The Engineer will suspend work on the project, in whole or in part, for such periods and for such reasons as the Engineer determines to be reasonable, necessary, in the public interest, or for the convenience of the Department.
- (1)** The Engineer will issue a written order to suspend, delay, or interrupt all or any part of the work. The Contractor shall not be compensated for the suspension, delay, or interruption if it is imposed for a reasonable time under the circumstances.
 - (2)** Unless another Contract section specifically provides otherwise, the Contractor will be compensated by equitable adjustment for a suspension, delay, or interruption of the work only if:
 - (a)** The period of suspension, delay, or interruption is for an unreasonable time under the circumstances and another Contract section allows compensation in the event of a suspension, delay, or interruption of the work under the circumstances that actually caused the suspension, delay, or interruption; or
 - (b)** The delay, suspension, or interruption results from the Department's failure to fulfill a contractual obligation to the Contractor within the time period specified in the Contract or, if no time period is specified, within a reasonable time.
 - (3)** No equitable adjustment will be made under this subsection for any suspension, delay, or interruption of the work if the Contractor's performance would have been suspended, delayed, or interrupted by any other cause for which:
 - (a)** The Department is not responsible under the Contract, including the Contractor's fault or negligence; or
 - (b)** An equitable adjustment is either provided for or excluded under any other section of this Contract.
 - (4)** Claims for equitable adjustments under this section shall be filed under Subsection 50-17 except that:
 - (a)** The Contractor must give written notice of intent to claim no later than 20 days after the event giving rise to the delay, suspension, or interruption;
 - (b)** The claim may not include any costs incurred more than 20 days before the Contractor files the Contractor's written notice of intent to claim;
 - (c)** The contractor must submit a written request for adjustment within 7 calendar days of receipt of the notice to resume work;
 - (d)** No profit will be allowed on an increase in cost necessarily caused by the suspension, delay, or interruption.

80-07 FAILURE TO COMPLETE ON TIME. For each calendar day that the work is not substantially complete after the expiration of the Contract time or the completion date has passed, the Engineer shall deduct the full daily charge corresponding to the original Contract amount shown in Table 80-1 from progress payments.

For each calendar day that the work is substantially complete but the project is not complete, after the expiration of the Contract time or the completion date has passed, the Engineer shall deduct 20 percent of the daily charge corresponding to the original Contract amount shown in Table 80-1 from progress payments.

If no money is due the Contractor, the Department may recover these sums from the Contractor, from the Surety, or from both. These are liquidated damages and not penalties. These charges shall reimburse the Department for its additional administrative expenses incurred due to the Contractor's failure to complete the work within the time specified.

**Table 80-1
DAILY CHARGE FOR LIQUIDATED DAMAGES
FOR EACH CALENDAR DAY OF DELAY**

Original Contract Amount		Daily Charge
From More Than	To and Including	
\$ 0	500,000	\$1,400
500,000	1,000,000	1,700
1,000,000	5,000,000	2,600
5,000,000	10,000,000	3,800
10,000,000	25,000,000	4,500
25,000,000	-----	6,600

Permitting the Contractor to continue work after the durations, dates, and times specified in the Contract have elapsed, or after the Contract time has elapsed or the completion date has passed does not waive the Department's rights to collect liquidated damages under this section.

80-08 DEFAULT OF CONTRACT. The Contracting Officer will give a written Notice of Default to the Contractor and the Surety if the Contractor:

- a. Fails to begin work under the Contract within the time specified;
- b. Fails to perform the work with sufficient workers, equipment, or materials to ensure the prompt completion of the work;
- c. Performs the work unsuitably or neglects or refuses to remove materials or to replace rejected 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 except that if the Contractor declares bankruptcy, termination shall be according to the Federal Bankruptcy Code. In the event that the Contractor declares bankruptcy, the Contractor agrees that the Contract will be assumed by the Surety in a timely manner so as to complete the Contract by the date specified in the Contract;
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 60 days;
- h. Makes an assignment for the benefit of creditors, without the consent of the Engineer;
- i. Fails to comply with applicable minimum wage or civil rights requirements;
- j. Is a party to fraud, deceit, misrepresentation, or malfeasance in connection with the Contract; or
- k. Fails to perform the work in an acceptable manner for any other cause whatsoever.

The written Notice of Default will include a notice to cure and will establish a date by which the cure must be completed. The Contracting Officer may allow more time to cure than originally stated in the Notice of Default if the Contracting Officer deems it to be in the best interests of the Department. Failure to cure the delay, neglect, or default within the time specified in the Contracting Officer's Notice of Default authorizes the Department to terminate the contract. The Department will provide the Contractor and the Contractor's Surety with a written Notice of Termination.

After the Notice of Termination is issued, the Department may take over the work without further notice; may complete it by itself, by contract or otherwise; and may take possession of and use materials, appliances, equipment, or plant on the work site necessary for completing the work.

The Department may transfer the obligation to perform the work from the Contractor to the Surety. In that event, the Surety shall submit its plan for completion of the work, including any contracts or agreements with third parties for completion, to the Department for approval before beginning work. The Surety must follow the Contract requirements for approval of subcontracts, except that the limitation on percent of work subcontracted will not apply. On receipt of the transfer notice, the Surety shall take possession of all materials, tools, equipment, and appliances at the work site, employ an appropriate work force, and complete the Contract work as specified. The Contract specifications and requirements shall remain in effect, except that the Department will make subsequent Contract payments directly to the Surety. The Contractor forfeits any right to claim for the work and is not entitled to receive any further balance of the amount to be paid under the Contract.

The Contractor and the Contractor's Surety are jointly and severally liable for any damage to the Department resulting from the Contractor's delay, neglect, or default, whether or not the Department terminates the Contractor's right to prosecute the work. The Department's damages include any increased costs incurred by the Department in completing the work or paying for the work to be completed. The Department's rights and remedies are in addition to any other rights and remedies provided by law or under the Contract.

If, after notice of termination of the Contractor's right to proceed under this clause, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be determined under Subsection 80-09, Termination for Convenience.

80-09 TERMINATION FOR CONVENIENCE.

a. Notice. The Contracting Officer may terminate the Contract in whole or in part due to:

- (1) Executive Orders of the President of the United States or the Governor of the State of Alaska with respect to the prosecution of war or the interest of national defense, or any disaster declaration.
- (2) Restraining orders or injunctions by a court of competent jurisdiction affecting prosecution of the work based on acts or omissions of persons or agencies other than the Contractor.
- (3) Any reason determined by the Contracting Officer to be in the best interest of the Department.

The Contracting Officer will issue a written Notice of Termination to the Contractor. The Notice of Termination shall state the extent to which performance of work under the Contract is terminated, the effective date of the termination, and for which of the above-listed reasons the Contract is terminated.

b. Required Actions. Unless otherwise directed by the Contracting Officer, upon receipt of a Notice of Termination the Contractor shall immediately:

- (1) Stop work as directed in the Notice.
- (2) Place no further orders or subcontracts for materials, services, or facilities except as approved to complete work not terminated.
- (3) Terminate all orders and subcontracts for the terminated work.
- (4) Accomplish either (a) or (b) below as directed by the Contracting Officer:

- (a) Assign to the Department all right, title and interest in any terminated orders or subcontracts. The Contracting Officer will settle all claims on the terminated orders or subcontracts.
 - (b) Settle any outstanding liabilities and claims arising from termination of orders and subcontracts. Settlements must be limited to costs allowed under this section.
- (5) Submit to the Contracting Officer a list, certified as to quantity and quality, of all materials acquired or produced for incorporation into the project and that are properly allocable to the terminated portion of the project, exclusive of items disposed of under Subsection 80-09.b.(6), below.
- (6) Dispose of materials in the Contractor's possession or control that were acquired or produced but not incorporated into the project as of the termination date as directed by the Contracting Officer under either (a) or (b) below:
- (a) Transfer title and deliver the materials to the Department. The Department will pay for the materials at the actual cost delivered to the project or storage site, including transportation charges, to which cost 15% will be added.
 - (b) Sell the materials. Credit will not have to be extended to prospective purchasers.

The Contractor may acquire the materials if the Contracting Officer approves the sale price and the Contractor meets any other conditions prescribed by the Contracting Officer.

At the sole discretion of the Contracting Officer, the proceeds of any sale, transfer, or disposition of materials may be:

- (c) Applied to reduce any payments to be made by the Department under the Contract;
 - (d) Credited to the cost of the work; or
 - (e) Paid in any other manner as directed.
- (7) Deliver to the Department completed or partially completed plans, drawings, information, and other property required to be furnished under the Contract.
- (8) Take all necessary actions and comply with all directives to protect contract-related property in which the Department has or may acquire an interest.
- (9) Complete work not terminated.

The Contractor shall proceed immediately with performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable cost under this clause.

c. Claim. The Contractor shall submit any termination claim to the Contracting Officer within 90 days after the effective date of termination, unless the date for submitting a claim is extended in writing by the Contracting Officer.

- (1) Without duplication of any amount paid for under Subsection 80-09.b., the claim may be for the total of:
- (a) Costs incurred in performing the terminated work from the date of Contract award to the effective date of the termination subject to the provisions of 80-09.c.(2) regarding reimbursement of equipment costs and 80-09.c.(3) regarding unallowable items.

- (2) The remainder of the total allowable claim amount due reduced by multiplying the remainder by the ratio of (a) the total contract price to (b) the remainder plus the estimated cost to complete the entire Contract; minus
 - (3) All disposals and other credits, all advance and progress payments and all other amounts previously paid under the Contract.
- e. **Deductions.** In arriving at the amount due under this subsection, the Department will deduct:
 - (1) All previous payments made before termination;
 - (2) Any claim which the Department may have against the Contractor;
 - (3) The proceeds of the sale or transfer of any materials, supplies, or other items acquired for the terminated work and not otherwise recovered by or credited to the Department;
 - (4) All partial payments made under this section; and
 - (5) Any adjustment for loss determined under Subsection 80-09.d.
- f. **Agreed Settlement.** The Contractor shall make every effort to arrive at a claim settlement with the Contracting Officer that is fair to both parties, that reflects the reasonable and allocable incurred costs allowable under Subsection 80-09.c, that includes a profit under Subsection 80-09.c.(1)(d) or, where appropriate, a loss adjustment under Subsection 80-09.d., and that takes into account the Contractor's reasonable business judgment in performing the work.

The total settlement, whether determined under this Subsection 80-09.f. or under Subsection 80-09.g., exclusive of the costs listed in Subsection 80-09.c.(1)(c), may not exceed the total contract price as reduced by previous payments made and the contract price of work not terminated.

If an agreement is reached in whole or in part, the Department will amend the contract and will pay the agreed amount.
- g. **Determined Settlement.** If the Contractor fails to submit a termination claim within the time allowed, or if an agreement is not reached on the amount due, the Contracting Officer may determine in a Contracting Officer's Decision, the amount due under Subsection 80-09 on the basis of information available to the Department.
- h. **Right of Appeal.** The Contractor may appeal a Contracting Officer's Decision within the time and in the manner specified in Subsection 50-17.
- i. **Partial Payments.** In the sole discretion of the Contracting Officer, the Department may make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract. The sum of these partial payments will not exceed the Contracting Officer's estimate of the total amount that will be due as a result of the termination. The estimate will be based on available information. The Contracting Officer may adjust the estimate as additional information becomes available. If the Contracting Officer orders an audit of the Contractor's financial or project records, the Contracting Officer may decline to make partial payments until the audit is completed.
- j. **No Waiver of Rights.** The termination of work by the Department does not affect or extinguish any of the rights of the Department against the Contractor or the Contractor's Surety then existing or which may thereafter accrue. Any retention or payment of monies by the Department due under the terms of the Contract will not release the Contractor or the Contractor's Surety from the contractual obligations or warranties made under Subsection 70-19 or elsewhere in the Contract.
- k. **Retaining Records.** The Contractor shall unless otherwise provided for in the Contract or by applicable statute, keep all books, records, documents, and other evidence bearing on the

Contractor's cost and expenses under the Contract and relating to the work terminated for a period of 3 years after final settlement under this Contract. Records must be made available to the Department at the Contractor's office and at all reasonable times.

- I. Definitions.** In this Subsection 80-09, the term "cost" and the term "expense" mean a monetary amount in U.S. Dollars actually incurred by the Contractor, actually reflected in the Contractor's contemporaneously maintained accounting or other financial records and supported by original source documentation.

- m. Cost Principles.** The Department may use the federal cost principles at 48 CFR §§ 31.201-1 to 31.205-52 (or succeeding cost principles for fixed price contracts) as guidelines in determining allowable costs under this subsection to the extent they are applicable to airport construction contracts and consistent with the specifications of this Contract. The provisions of this contract control where they are more restrictive than, or inconsistent with, these federal cost principles.