

## 14. Contract Time

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### 14.1. General

Each construction contract contains a specific period of time within which the contractor must complete the project. The completion date or the time allowed for completion is determined during the design stage, based on the estimated time required for construction or the date the completed facility is needed.

The methods most frequently used to state completion time are either a fixed completion date or a set number of calendar days.

In some instances the contract may contain several completion dates, each for a different portion of the work and each containing its own liquidated damages; dates other than the contract completion date are known as intermediate (or interim) completion dates.

The effect of a delay in completing the contract within the specified time limit varies greatly from one project to another and is difficult to determine. When a contractor does not complete a contract in the allotted contract time, including authorized extensions, the contractor is assessed liquidated damages. These damages, shown in the contract, are meant to compensate the Department for its additional engineering costs owing to the delayed completion (see Section 3.3).

On a calendar day contract, the count of contract time starts on the day stated in the contract. Time is not counted during the winter period that is spelled out in the contract. The count of contract time ceases on the date stipulated in the Letter of Project Completion.

### 14.2. Temporary Suspension of Work

The Project Engineer may temporarily suspend the work at any time for reasons spelled out in the contract, and contract time will continue to be charged during those periods.

If the Project Engineer suspends work on a pay item that is a controlling factor in project progress, the

suspension may entitle the contractor to an extension of contract time. The Project Engineer will issue all temporary suspension orders and order to resume work in writing. They may use the Directive form (Section 10.2) or issue the order in the form of a letter to the contractor. Orders to resume work will state the remaining contract time.

When the temporary suspension of work changes the completion date, or adds calendar days to the contract time, a change document must be issued. Only whole days of contract time are charged, beginning and ending at midnight.

### 14.3. Seasonal Suspension of Work

On calendar day contracts, the count of contract time stops only during the calendar dates shown in the contract.

The timing of the seasonal shutdown as well as the resumption of work, is dependent on the weather, the nature of the project, the contractor's plans, and the concurrence of the Project Engineer.

Depending on the language in the contract, either the contractor or the Department may be responsible for maintenance during the seasonal suspension.

It is incumbent on the Project Engineer, the contractor, and the maintenance and operations representative to work together in advance of the shutdown to document the condition of a partially-completed facility and to assure that it is in safe maintainable condition before the contractor suspends work.

Prior to the work suspension, the Project Engineer should record the condition of the facility using a video camera (if available) or a still camera. The Project Engineer should repeat the recording following the seasonal suspension.

The Project Engineer will issue the seasonal suspension order and the resume work order in writing. Use the Directive (Form 25D-069) and Continuation Sheet (Form 25D-065), or issue orders in the form of letters to the contractor.

The order to resume work should state the remaining contract time, and should provide notice to the contractor that the Department will be terminating seasonal maintenance (if this applies).

If the Department maintained the facility during the suspension, either maintenance and operations or the contractor, under a change document, should repair any significant change/damage to the partially-completed facility resulting from seasonal maintenance.

#### **14.4. Extension of Contract Time**

The contract establishes the completion time or date based on the estimated quantities of work. If greater quantities of work or different items of work are necessary for satisfactory completion of the project, contract time may be increased based on the amount and difficulty of the additional work and/or the estimated time to complete it.

When overruns in quantities occur or new items of work are added that increase the time required for completion, or when the Project Engineer suspends work on pay items of work that are controlling factors in job progress, the Project Engineer should grant an equitable extension of contract time using a change document.

Any additional time granted to the contractor should be for reasons outlined in the contract and should be requested by the contractor in accordance with the contract. One reason for granting additional time is when the project is complete except for reaching final stabilization of grass, or plant establishment; and the weather precludes grass or plant growth.

#### **14.5. Liquidated Damages/Incentives & Disincentives**

The contractor's failure to complete the project by the completion date or within the allotted contract time, establishes the basis for the assessment of liquidated damages. Liquidated damages are intended to compensate the Department for its additional construction engineering (CE) costs resulting from the contractor's failure to complete the project on time.

When the Department must assess liquidated damages, it calculates them in accordance with the contract, using the daily charge established by the Original Contract Amount. The amount of liquidated damages changes (drops to 20%) after substantial completion, and stops at project completion.

Before assessing liquidated damages, the Project Engineer should discuss the situation with the contractor and provide both the contractor and their bonding agent with written notice.

Liquidated damages are shown as deductions on all subsequent progress payments, including the final estimate, and appear on the recapitulation sheet. Those contracts that contain intermediate completion dates may require the assessment of liquidated damages at specified rates for failure to complete by that intermediate date. These liquidated damages are shown in the same manner on the recapitulation sheet.

#### **Incentives & Disincentives**

Occasionally a contract contains a clause that provides for a daily incentive payment to the contractor for early completion of the project, or a portion of the project.

An incentive clause is normally coupled with a disincentive clause, which specifies a daily disincentive for the contractor's failure to complete by a specified date.

Incentive/disincentive clauses are used infrequently and only in situations where timely completion is of the utmost importance to the Department.