



Illinois Department of Transportation

Division of Highways / Bureau of Construction
2300 South Dirksen Parkway, Springfield, Illinois 62764

Subject: **CONSTRUCTION MEMORANDUM NO. 09-28**
Administration of Contract Time
Articles 108.03, 108.04, 108.05 **Effective: March 1, 2009**
and 108.08 **Expires: Indefinite**

This memorandum supersedes and replaces Construction Memorandums No. 08-28 Administration of Contract Time - Article 108.03, 108.04, 108.05, 108.08 and 108.09.

One of the most important and sometimes difficult parts of contract administration is the control of Contractor progress. Once a contract is awarded, the public is very anxious to be able to use the facility. The contract time limit is specified in the contract and a schedule of liquidated damages has been established to promote the timely completion of contracts. This ensures that the public will not be unduly inconvenienced and may enjoy the benefits of the new facilities.

The entire matter of contract time administration requires exceptional judgment by all parties to the contract. The Contractor should take a good look at the contract time limit when considering submitting a bid on a contract. The Contractor must realize that it is his/her responsibility to the highway user, to the State, the construction industry and oneself to complete the work within the specified time limit. The Contractor should realize that there is no excuse for an extension of time except for conditions beyond his/her control. If the Contractor thinks the time allowed is insufficient, the Contractor should not bid on the contract. It is clearly stated in the Standard Specifications that a Contractor's plea that insufficient time was specified is not a valid reason for an extension of time.

In establishing the contract time limit, the State will consider all factors, and the Contractor should recognize that the time allowed is part of the contract. The time limit as specified by the contract may be Working Days, Completion Date, Completion Date Plus Working Days, Calendar Days or Calendar Days Plus Working Days. Following is a discussion of these contract time limits:

Working Day Contract – The contract will specify a number of working days in which the work to be done shall be completed. A working day is defined as any calendar day between May 1 and November 30 inclusive; except Saturdays, Sundays and legal holidays observed by the Contractor's entire work force in Illinois; when conditions are such that the Contractor could be expected to do a full days work on the controlling item as shown on the progress schedule.

Completion Date Contract – Completion date contracts will have a date specified as to when the Contractor shall complete all the work. Workable days must be tracked to evaluate the Contractors progress. A workable day is defined as any day of the week, Sunday through Saturday, exclusive of legal holidays observed by the Contractor's entire work force in Illinois. A day should be indicated as workable when conditions are such that the Contractor could be expected to do a full days work on the controlling item as shown on the progress schedule.

Completion Date Plus Working Days Contract – Completion Date Plus Working Days Contract will have a date to complete major items of work as specified in the contract. The Contractor is given a number of working days to complete off-the-road or miscellaneous items of work defined by the contract after the completion date. The tracking of workable days and charging working days will be as discussed under Completion Date Contract and Working Day Contract.

Calendar Days Contract – Calendar Days Contracts will have a specified number of consecutive calendar days in which the Contractor shall complete all the work. Once a start date is selected, the specified number of consecutive calendar days establishes a date of project completion. Workable days must be tracked to evaluate the Contractor's progress. The definition and the tracking of a workable day will be as discussed under Completion Date Contract.

Calendar Days Plus Working Days Contract – Calendar Days Plus Working Days Contracts will have a specified number of consecutive calendar days to complete major items of work as specified in the contract. Once a start date is selected, the specified number of consecutive calendar days establishes a date of project completion for the major work items in the contract. The Contractor is given a number of working days to complete off-the-road or miscellaneous items of work defined by the contract after the calendar days. The tracking of workable days and charging working days will be as discussed under Completion Date Contract and Working Day Contract.

The charging of contract time starts when the Contractor begins actual construction work, but no later than ten (10) days after execution and approval of the contract, unless otherwise provided in the contract or directed by the Engineer. The execution of the contract is the date on which the Secretary of Transportation signs the contract and bond. Under no circumstances can work begin prior to execution of the contract. If the question arises as to the status of contract execution, the Project Management Unit of the Central Bureau of Design and Environment should be contacted. There are some instances when it would not be in the public interest to start work within ten (10) days of contract execution and the starting date is delayed. The Regional Engineer may grant a delay in starting work. Such delayed starting dates must be documented in the contract files and a specific calendar date established as the new starting time. If necessary, this date may later be modified in writing. However, no open-ended delayed starting dates will be approved. Notice of the delayed start must be distributed to the Central Bureau of Construction, the Contractor and other local agencies, if appropriate. The Federal Highway Administration shall be notified on full oversight projects only. The formalized statement granting the delay may be contained in the Preconstruction Conference Minutes with an explanation of the reasons for the delay.

The charging of time must promote Contractor progress but must also take into consideration those conditions beyond the Contractor's control which impede or halt progress. The consistent consideration of these conditions is essential for the equitable treatment of all Contractors and the Department's standing with the construction industry. The following partial list explains the Department's policy for properly charging contract time.

Legal Holidays - Holidays exempted as working/workable days are not those observed by federal, state and local governments but those observed by the Contractor's entire work force in Illinois. For the purpose of charging working days,

this is best determined by the presence of workers and the rate of pay they are receiving.

- If no forces are working, a working day should not be charged.
- If all forces are receiving premium time pay, a working day should not be charged.
- If some of the forces working are receiving straight time pay, and work on the controlling item can be performed, a working day should be charged.

On Completion Date and Calendar Days contracts, legal holidays observed by the Contractor's entire workforce should not be indicated as workable.

Partial Days - The length of the work day in hours will be determined by the Contractor's established practice but may not be less than eight hours. Partial day charges shall be based on the proportionate part of the established work day, if applicable, rather than the normal eight-hour work day. Partial day charges should be rounded down to the nearest one-quarter, one-half, or three-quarters of a working day.

Adverse Weather Conditions - When there is a potential for adverse weather conditions which would prevent work on controlling items such as P.C.C. or bituminous pavement or bridge deck pours, the Contractor must make a decision very early whether to risk the cost which would be incurred in starting a plant and mobilizing a sizable work crew which might not be able to work. If forecasts are for possible adverse weather conditions and the Contractor elects not to work, a working day shall not be charged even though the adverse weather may not develop.

When adverse weather conditions develop and cause the Contractor to prematurely halt work on the controlling item, a partial working day shall be charged. For example, a Contractor has established a practice of working 12 hours a day on a particular controlling item. If weather conditions are such that the Contractor can only work six hours on that item, then only one-half, rather than three-quarters, of a working day shall be charged.

When job conditions due to recent adverse weather prevent work on the controlling item a working day shall not be charged. In addition, when job conditions due to recent adverse weather prevent full work efficiency on the controlling item a partial working day shall be charged.

With respect to adverse weather conditions, on Completion Date and Calendar Days contracts workable days are indicated in the same manner as working days are charged on Working Day contracts.

Availability of Equipment - The Contractor is responsible for furnishing sufficient equipment and labor to prosecute the work in accordance with the approved progress schedule. If needed equipment is not available, a day normally should be charged but there are exceptions.

The Contractor may start work the day after the preconstruction conference on the controlling item of earth excavation but it may take several days to deliver and

assemble an "equipment spread" at the jobsite. If the approved progress schedule has earth excavation as the controlling item of work and shows a production rate of 2,000 cubic yards (1,500 cubic meters) per day and the Contractor is only able to accomplish 1,000 cubic yards (750 cubic meters) per day during the initial start up, then only one-half of a working day should be charged.

If the Contractor experiences a breakdown of a major item of equipment, such as a bituminous or P.C.C. plant or paver, and field repairs cannot be made, a review of day charges may be considered. A full or partial working day should be charged on the day of the breakdown based on the production attained. Working days should not be charged during the subsequent breakdown period provided the Contractor is making a good faith effort to repair or replace the broken equipment. If the Contractor experiences intermittent equipment failures and continues work, but the permanency or time required for field repairs does not permit the approved production rate to be realized, then a partial working day should be charged based on the production attained.

The breakdown of minor equipment such as a truck, roller or scraper would not qualify as an exemption of a working day charge since these items are considered to be part of the Contractor's fleet and many of these items are readily available on a rental basis.

If added work that results from differing site conditions becomes controlling and the work requires different items of equipment than currently on the jobsite, the Contractor shall be given a reasonable period of time to acquire or deliver the equipment without being charged a working day.

On Completion Date and Calendar Days contracts, equipment availability has no impact on indicating whether or not a day is workable. (I.e. even if needed equipment is unavailable, the day should be indicated as workable.)

Availability of Material - The Contractor is responsible for furnishing material and the unavailability of material does not justify an exemption of a working day charge unless it is beyond the control of the Contractor. Examples that are beyond the control of the Contractor would be area wide shortages due to reduced production or strikes, material furnished under a separate contract such as fabricated structural steel, design change or delays exceeding the times frames allowed for under Article 105.04 in approving shop drawings or material which was approved at the plant but was damaged in transit and is of a unique nature requiring considerable time for replacement.

On Completion Date and Calendar Days contracts, days should be indicated as workable unless the material delivery delay is caused by strikes, lockouts, wrecks, or freight embargoes.

Strikes – Working days shall not be charged during a labor strike, which is beyond the Contractor's control. The Contractor may not be able to resume work immediately after the strike is settled. If the Contractor must remobilize personnel and equipment or replenish depleted stockpiles, a working day shall not be charged.

On Completion Date and Calendar Days contracts, days should be indicated as workable. However, it needs to be noted if the strike (or other labor disruption) lasts more than five calendar days.

Utility Adjustments – When a utility adjustment (required through no fault of the Contractor and beyond the Contractor's control) prevents the contractor from working on the controlling item a working day shall not be charged. An example would be when the Contractor is prevented from completing an earthwork related controlling item because utility lines have not been relocated.

When a utility adjustment (required through no fault of the Contractor and beyond the Contractor's control) prevents full work efficiency on the controlling item a partial working day shall be charged. An example would be where the Contractor's progress on storm sewer is affected by required utility adjustments not shown or addressed in the contract documents.

With respect to utility adjustments, on Completion Date and Calendar Days contracts workable days are indicated in the same manner as working days are charged on Working Day contracts.

Railroad Adjustments - When a railroad adjustment beyond the Contractor's control prevents the contractor from working on the controlling item a working day shall not be charged. An example would be where all other work on the contract is nearly complete and the Contractor is unable to complete the approaches to a railroad crossing during normal construction operations because the railroad failed to complete their crossing adjustment as per the railroad-state agreement.

With respect to railroad adjustments, on Completion Date and Calendar Days contracts workable days are indicated in the same manner as working days are charged on Working Day contracts.

Special Permits – When delays occur in obtaining special permits through no fault of the Contractor, and progress on the controlling item is prevented, a working day should not be charged. The Contractor must furnish documentation showing that the permit application was submitted in a timely manner. An example would be where a ditch under the jurisdiction of a drainage district crossed State right-of-way and a permit for a temporary crossing was needed in order for the Contractor to haul material to the jobsite and the permit was applied for in a timely manner but approval was not granted in a timely manner.

With respect to special permits, on Completion Date and Calendar Days contracts workable days are indicated in the same manner as working days are charged on Working Day contracts.

Department Conduct – When conduct of the Department prevents the Contractor from working on the controlling item, and the prevention is not due to the acts or omissions of the Contractor, a working day shall not be charged. Following is a partial list of examples:

Date Restriction Department Conduct Example – Per Department policy (Article 780.05), thermoplastic pavement markings may not be placed later than November 1 or earlier than April 15. If the controlling item on November 5 is thermoplastic pavement markings a working day shall not be charged.

Archaeological Site Department Conduct Example – Per Department policy (Article 107.21), when aboriginal records or antiquities are uncovered unexpectedly the Contractor shall notify the Engineer of their presence and shall not disturb them until written permission is granted. If an unexpected archaeological site is found

and prevents the Contractor from working controlling item, no working day shall be charged until the Contractor is given written notice to proceed.

Right-of-Way Department Conduct Example – Per Department policy, the Department acquires right-of-way. If a change in design necessitates the need for additional right of way and a delay in acquiring the additional right of way prevents the Contractor from working on the controlling item no working day shall be charged.

With respect to Department conduct, on Completion Date and Calendar Days contracts workable days are indicated in the same manner as working days are charged on Working Day contracts.

Final Cleanup - The days allotted in the contract include the time required for final cleanup or “punch list” work. Final cleanup should be included as an item on the progress schedule and working days should be charged during the period when final cleanup is controlling to promote prompt contract finalization. If the final inspection was delayed and the Contractor has demobilized his/her work force, a reasonable period of time may be granted before the charging of working days is resumed.

With respect to final cleanup, on Completion Date and Calendar Days contracts workable days are indicated in the same manner as working days are charged on Working Day contracts.

Subcontracted Work - The prime Contractor is held responsible for the diligent and proper prosecution of all work even though a portion of that work is sublet. The exemption of full or partial day charges for valid reasons would apply to work being performed by a subcontractor as well as to that being performed by the prime Contractor. However, if work is not progressing because a subcontractor is not available due to work on another contract, a day should be charged.

The proper charging of contract time and the fair and prompt consideration of time extensions are some of the most important duties of the Engineer. Equally important is the review by the Contractor of the Resident’s Weekly Report and timely notification by the Contractor of objections to day charges. It is the responsibility of the Contractor to provide the documentation required to support a claim for relief of day charges.

We must recognize that there are delays beyond the control of the Contractor which may require the specified contract time to be reviewed and possibly adjusted via a time extension. In all time extension cases, there must be support to show that a delay occurred and was caused by one of conditions specified in Article 108.08 of the Standard Specifications.

On Working Day contracts there must be verification that the delay was not taken into account in the original charging of working days by the Resident. It is not intended to grant duplicate relief for the same delay. If no working day charges were originally made, no further relief can be granted. Likewise, the same delay can only be considered under one of the specified circumstances. It is the responsibility of the Contractor to provide the documentation required to support a claim for additional time.

Delays should be verified and documented in writing in a timely manner when they occur. (On Completion Date and Calendar Days contracts the Contractor must notify the Department within 21 calendar days of the commencement of each such delay.)

As an example, if a material is delayed due to supplier strikes or government priority, advise the Contractor to obtain a letter to this effect immediately.

The following conditions and examples should be used in determining whether a review and adjustment of contract time is warranted.

Working Day Contracts – Per Article 108.08 (a) if the department finds that the quantities of work done, or to be done, are in excess of the estimated quantities by an amount sufficient to warrant additional time, it may grant a time extension. The Department can also grant a time extension if the Department changes contract requirements that affect the Contractor's progress.

Common examples of added quantities that may give merit to a time extension would be earth excavation, embankment and field tile. The required adjustment to time can be calculated by dividing the added quantity by either the progress schedule rate or actual production rate. This determination is made by the District.

Another example of added quantities would be when earthwork has been completed but due to field conditions the Department determines that additional work is required. Actual production rates could vary considerably from those experienced on the initial contract work.

An example of changed contract requirements would be when work was completed at an intersection but traffic flow did not function as intended and additional work was required to improve the traffic flow through the intersection.

Another example of changed contract requirements would be opening pavement to through traffic when the contract specified that the pavement would be closed to all but local traffic. The time adjustment could be based on actual production rates versus the Contractor's progress schedule production rates.

If after final quantities have been determined and the contract cost is increased from the awarded cost, additional working days may be requested for the Contractor in the ratio of final contract cost to the awarded contract cost.

$$\left[\frac{\textit{Final Cost}}{\textit{Awarded Cost}} \times \textit{Awarded Days} \right] - \textit{Awarded Days} = \textit{Extension Days}$$

Completion Day and Calendar Days Contracts – Per Article 108.08 (b) when Completion Date and Calendar Days contracts are specified it is understood that time is of the essence. It must also be understood that the occurrence of unworkable days during contract prosecution does not automatically justify the need for a time extension. Unworkable days are anticipated when the contract time limit is specified.

An example would be four unworkable days occur in April due to rain. Multiple rain days in April would have been anticipated when establishing the contract time limit (and should have been anticipated by the Contractor). Four rain days in April would not be considered extraordinary conditions of weather. Thus, a time extension would not be justified.

On Completion Date and Calendar Days contracts a time extension may be warranted if a delay in work on the controlling item beyond the reasonable control of the Contractor results from the causes specified in Article 108.08 (b)

Working day contract time extensions may be initiated by the Department or the Contractor. Completion Date and Calendar Days contract time extensions must be initiated by the Contractor. After a request for a time extension is received, the District needs to evaluate it for completeness and relevance. After District review, the entire package with the District's recommendation should be submitted to the Central Bureau of Construction for review. The Central Bureau of Construction may accept, revise or deny the District's recommendation. The approval authority rests with the Central Bureau of Construction.

In all cases where there is a dispute with contract time, it should be carefully reviewed in accordance with the standard specifications and the guidelines outlined in this memorandum.

A handwritten signature in black ink, appearing to read 'WR Frey', with a stylized flourish at the end.

William R. Frey, P. E.
Engineer of Construction