

Section 8 - Progress of Work

8.1 Beginning of Work.

The Contractor shall begin work within ten (10) calendar days after the notice to proceed and shall diligently prosecute the same to completion within the time limit provided in the Contract Agreement, or Special Provisions.

Should the Contractor begin work in advance of the notice to proceed, any work performed by him in advance of the said date of approval shall be, considered as having been done by him at his own risk and as a volunteer unless said contract is so approved.

8.2 Progress Schedule.

Unless otherwise specified, the Contractor shall, within five (5) calendar days after receiving the notice to proceed, submit to the Engineer a practicable schedule showing the order in which the Contractor proposes to carry out the work, the dates on which he will start the several salient features of the work (including procurement of materials, plant and equipment), and the contemplated dates for completing the said salient features. Contractor shall update schedule as required by the Engineer. The schedule shall be a bar chart or C.P.M. In addition to the schedule, the Contractor shall make other submittals as required by Section 8.2.

8.3 Temporary Suspension of Work.

In the event the Engineer shall determine that the work or any portion of the work is not proceeding in accordance with the Contract Documents or any applicable rules and regulations, the Engineer may order the cessation of further work, either in part or total, until the work proceeds in compliance with such requirements. All delays in the work occasioned by such stoppage shall not relieve the Contractor of any duty to perform the work or serve to extend the time for its completion. Any and all necessary corrective work done in order to comply with the plans and specifications shall be done at no cost to the City.

The Engineer shall also have authority to suspend the work wholly or in part for such period as he may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work. Such temporary suspension of work will be considered as justification for time extensions to the contract in an amount equal to the delay, as determined by the Engineer to the current controlling operation of work.

The Engineer may also, temporarily suspend the work upon the written request of the Contractor and upon just showing in writing by the Contractor that such request is reasonable and necessary due to delays beyond the Contractor's control and further provided that there is no resulting increased in costs to the City.

In the event that a suspension of work is ordered as provided in this section, the Contractor, at his expense, shall do all work necessary to provide a safe, smooth and

unobstructed passageway through construction for use by public, pedestrian and vehicular traffic, during the period of such suspension. Should the Contractor fail to perform the work as specified, the City may perform such work and the cost thereof will be charged against the Contractor and will be deducted from moneys due or to become due the Contractor under the contract.

The Contractor shall not be entitled to any claim for additional time or compensation for any delays due to any suspension lawfully ordered by a duly authorized State, Federal or other officer having jurisdiction of safety, health, labor or environmental statute violation.

8.4 Termination of Contract.

If at any time, in the opinion of the Engineer, the Contractor has failed to supply suitable equipment, an adequate working force, or material of proper quality, or has failed in any other respect to prosecute any work with the diligence and force specified and intended in and by the terms of the Contract, notice thereof in writing may be served upon him and his surety, and should he neglect or refuse to provide means for a satisfactory compliance with the Contract, as directed by the Engineer, within the time specified in such notice, the City in any such case shall have the power to terminate all or a portion of the Contract.

Upon receiving notice of such termination, the Contractor shall discontinue said work, or such parts of it as the City may designate. Upon such termination, the Contractor's control shall terminate and thereupon the City Council or its duly authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances, and plant, and buy such additional materials and supplies at the completion thereof; or may employ other parties to carry the contract to completion, employ the necessary workmen, substitute other machinery or materials and purchase the materials contracted for, in such manner as the City may deem proper; or the City Council, or authorized representative, may annul and cancel the contract and complete the work or any part thereof. Any excess of cost arising therefrom over and above the contract price will be charged against the Contractor and his sureties, who will be liable therefore.

In the event of such termination, all money due the Contractor or retained under the terms of his contract shall be forfeited to the City; but such forfeiture will not release the Contractor or his sureties from liability or failure to fulfill the Contract. The Contractor and his sureties will be credited with the amount of money so forfeited toward any excess of cost over and above the contract price, arising from the suspension of the operations of the contract and the completion of the work by the City as above provided, and the Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

In the determination of the question whether there has been any such noncompliance with the contract as to warrant the termination or annulment thereof, the decision of the City Council, or authorized representative, shall be binding on all parties to the contract.

8.5 Right of Way Delays.

If through the failure of the City; to-acquire or clear rights of way, except for utility delays, the Contractor sustains loss, which could not have been avoided by the judicious handling of forces, equipment, supplies and plant, the Contractor shall upon written request be entitled to an amount as the Engineer may find to be fair and reasonable compensation for such part of the Contractor' actual loss as, in the opinion of the Engineer, was unavoidable. Any such compensation will be made as provided in Section 8-1.09 "Right of Way Delays" of the State Standard Specifications and Section 9-3 "Extra Work" of these General Provisions, and as modified herein.

Actual loss shall be understood to include no items of expense other than idle time of rental equipment and the cost of extra moving of equipment, with no markup in any case for overhead or profit. Labor costs shall not exceed one day with no markup in any case for overhead or profit.

If performance of the Contractor's work on the current controlling operation is delayed as the result of the failure of the City to acquire or clear such right of way, an extension of time determined pursuant to the provisions of these specifications will be granted upon written request. The Engineer shall make the determination on the number of additional working days to be granted.

The current controlling operation or operations as used in the above paragraph is to be construed to include any feature of the work considered at the time by the Engineer, which if delayed will delay the time of completion of the contract.

8.6 Changes (Change Orders).

8.6.1 General – The City reserves the right to make such alterations, deviations, additions to or deletions from the drawings and specifications, including the right to increase or decrease the quantity of any item or portion of work or to omit any item or portion of the work, and to require such changes in the work as are determined by the Engineer to be necessary or advisable for proper completion or construction of the whole work contemplated.

8.6.2 Change Orders – Changes will be set forth in a contract change order. If the work to be done or change to be made causes an increase or decrease in the Contractor's cost of performance of the contract, an equitable adjustment may be made as determined by the Engineer. The contract change order will specify the payment to be made or credit to be taken and adjustment of the contract time, if any. Payment in accordance with the terms and conditions set forth in a contract change order shall constitute full compensation for all work included therein or required thereby.

Contractor shall proceed with the ordered work, unless another starting date is specified. If the Contractor agrees with the terms and conditions of the contract change order, he shall indicate his acceptance by signing the original copy and returning it the Engineer within 10 calendar days. If the Contractor disagrees with the terms and conditions of such contract change order, he shall proceed with the ordered work and shall submit a written protest in accordance with "8- 63 Protest Procedure."

Prior to issuing an approved contract change order, the Engineer may request that the Contractor submit a proposal covering the changes. The request of the Engineer may include a description of the work or revised drawings or specifications reflecting the changes proposed to be ordered. The Engineer may request the contractor to submit revised drawings and proposed specifications for the change order item. Within 10 calendar days after receiving the request, the Contractor shall submit his proposal to the Engineer, including any claim for extension of time and any and all compensation which may be necessary as a result of performing the changes. If the Engineer decides not to issue a contract change order after requesting a proposal from the Contractor, the Contractor will be notified of such decision in writing.

The Engineer may, in writing, order the Contractor to proceed with the work prior to receipt of an approved contract change order therefore. In such case, the Engineer will as soon as practicable issue an approved contract change order for the work and the provisions in "8-6.3 Protest Procedure" shall be fully applicable to such subsequently issued contract change order. The Contractor shall keep full and complete records of the cost of the ordered work until the method of compensation is determined and the approved change order is received, and shall permit the Engineer to have access to such records. An approved change order shall supersede any previously issued written order covering the same work.

8.6.3 Protest Procedure – Should the Contractor disagree with any terms or conditions set forth in an approved change order which he has not executed, he shall submit a written protest to the Engineer within 10 calendar days after the receipt of such approved contract change order. The protest shall state the points of disagreement, contract references, quantities, and costs involved. The Engineer shall consider and investigate such protest within a reasonable time and his decision thereon shall be conclusive and binding against both parties to the contract, except in the case of gross error. If a written protest is not submitted, adjustment of the contract time and payment will be made as set forth in the approved contract change order and shall constitute full compensation for all work included therein or required thereby. An unprotested approved change order will be considered as an executed contract change order at execution.

When the protest concerning an approved contract change order relates to compensation, the Contractor shall keep full and complete records of the cost of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work.

When the protest concerning an approved contract change order relates to the adjustment of contract time for the completion of the work, the time to be allowed therefore will be determined as provided in the change order.

8.6.4 Changes Requested by the Contractor – Changes requested in the plans and specifications shall be made in writing. Approved changes shall be made by change orders at a reduction in cost or at no additional cost to the City. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes.

8.6.5 Value Engineering Change Proposals

A. General

1. This Section applies to Contractor developed value engineering change proposals (VECPs) that:

- a. Require a change to the existing contract to implement.
- b. Reduce the contract price without impairing essential functions or characteristics.
- c. Will not have an adverse financial impact on the City when the costs of operating and maintenance through the life cycle of the item are considered.
- d. Are not based solely on changes in deliverable quantities.

2. Contractor will share in the net contract savings realized from accepted VECPs.

B. Definitions

1. Gross Savings: The difference between Contractor's estimated cost of performing the work in accordance with the existing requirements and Contractor's estimated cost of performing work in accordance with the proposed change, cost of performing work may include overhead but not profit;

2. Contractor Development and Implementation Costs: Reasonable costs incurred by the Contractor in developing, testing, preparing, and submitting the VECP and costs incurred by the Contractor to make contractual changes required by City acceptance of the VECP.

3. Net Savings: Gross savings less Contractor Development and Implementation Costs.

4. City Costs: Reasonable costs incurred by the City for evaluating and implementing the VECP, such as analyzing, testing, and redesign, where required. Does not include normal administrative costs of processing the VECP.

C. Documentation

1. As a minimum, the following information shall be submitted by the Contractor with each VECP:

- a. Description of existing contract requirements.
- b. Description of proposed change.
- c. Discussion of differences between existing requirements and proposed change. Give advantages and disadvantages of each, justify any changes to function or characteristics, and give effect of the change on performance of the item.
- d. Analysis. Identify and describe each part of the existing requirements that must be changed to implement this VECP, and recommend how to make such change.

- e. Life-Cycle Cost Effects. State the estimated effect of the proposed change on cost of operating and maintenance throughout the life cycle of the item.
- f. Time for Implementation of this VECP. State the latest time for acceptance of this VECP by the City to obtain maximum cost reduction during remainder of contract.
- g. Time of Completion. State the effect on contract completion if this VECP is accepted.
- h. Cost Analysis:
 - 1. Detailed estimate of the cost of performing the work in accordance with existing contract requirements.
 - 2. Detailed estimate of the cost of performing the work in accordance with proposed contract change.
 - 3. Gross Savings to the Contractor.
 - 4. Implementation Costs:
 - i. Detailed breakdown of Contractor Development and Implementation Costs.
 - ii. Estimated City Costs.
- i. Estimated Net Savings.

D. Contractor

1. Submit VECP in accordance with the applicable provisions of Section 8.6.

2. After Notice to Proceed, Contractor may request a preliminary determination from the City that the proposed VE change does not impair an essential function or characteristic, and that a formal VECP may be accepted. Prior to Notice to Proceed, the City will not comment on any VECP.

- a. Requests should be in writing and sufficiently detailed to enable a city determination.
- b. Requests should be submitted prior to any significant expenditure of time or effort to develop a VECP.

3. Until a VECP is accepted by the City and an implementing change order is issued- by the Engineer and executed by the Contractor, the Contractor shall perform in accordance with the existing contract.

4. The Contractor shall have the right to withdraw, in whole or in part, any VECP at any time prior to acceptance by the City.

E. City Review

1. The Engineer will evaluate the VOECP. Final determination of the effect of the proposed change on essential functions and characteristics of the effect of the proposed change on performance of the item, and of the life-cycle costs and City implementation costs will be made by the Engineer.

2. The City will not be liable for any delay in acting upon any proposal submitted.

3. The Engineer will notify the Contractor of the status of the VECP within 15 working days after receipt. If additional time is required, the Engineer will notify the Contractor within the 15-day period and provide the reason for the delay and the expected date of decision.

4. The Engineer may request additional data for clarification or for modification of the proposal.

5. If the formal VECP is not accepted, the Engineer will notify the Contractor in writing, explaining the reasons for rejection.

F. Acceptance by City

1. The City may accept or reject, in whole or in part, any VECP submitted. Acceptance will be by contract change order.

2. The decision of the Engineer to accept or reject, in whole or in part, any VECP under this contract, shall be final and shall not be subject to protest.

3. If a VECP submitted by the Contractor is accepted, the contract price will be reduced by an amount equal to 50% of Net Savings plus 50% of actual City Costs, expressed by the formula: $\text{Reduction} = 0.5 (\text{Net Savings}) + 0.5 (\text{City Costs})$

4. If a VECP submitted by the Contractor is not accepted, the Contractor will not be entitled to an extension of time or to any other compensation for the effort expended in developing and submitting the VECP.

G. Subcontracts

1. Contractor shall include VE provisions in any subcontract of \$25,000 or greater, and may include such provisions in subcontracts of lesser value. Subcontracts shall contain a provision that any benefits accruing to contractor as a result of an accepted, VECP, initiated by a subcontractor shall be shared by Contractor and subcontractor.

2. To compute adjustment of the contract price, the Contractor's cost of development and implementation of a VECP which is accepted under this contract shall include any development and implementation costs of a subcontractor.

H. Data Restriction

1. The City reserves the right to duplicate, use, and disclose any part of a VECP or any part of the supporting data submitted by the Contractor, in any manner and for any purpose whatsoever, except that the Contractor's estimated cost of performing work or of development and implementing the VECP will not be disclosed outside the City.

8.7 Emergency Work.

8.7.1 During Working Hours – In case of an emergency which threatens loss or injury of property, and/or safety of life during working hours, the Contractor shall act, without previous instructions from the City, as the situation may warrant. He shall notify the Engineer of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantial documents in regard to expense, shall be submitted to the Engineer within 5 calendar days after the emergency. Compensation, if allowed, will be paid for as extra work.

8.7.2 Outside of Working Hours – Whenever in the opinion of the City there shall arise outside of the regular working hours on the contract work an emergency involving a danger to public safety, the City's forces may handle such emergency work if the Contractor fails to immediately respond to an emergency call out from the City. If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from his payment as provided in the contract documents. The performance of emergency work by City forces will not relieve the Contractor of any of his responsibilities, obligations, of liabilities under the contract. This provision shall not relieve the Contractor from monitoring and maintaining public safety at all times.

8.8 Working Hours.

A. Except for emergency work and traffic safety work, work or activity of any kind shall be limited to the hours from 7:30 a.m. to 6:00 p.m. Monday through Friday without prior approval; of the Engineer, Attention is directed to the Albany City Code limiting work hours in residential and other areas of the City.

B. Work in excess of eight hours per day, on Saturdays, on Sundays, or on City holidays, requires prior consent of the Engineer and is subject to Cost of Overtime Construction Inspection.

C. City Holidays are:

- New Year's Day
- Martin Luther King Day (3rd Monday in January)
- Lincoln's birthday
- Washington's Birthday (3rd Monday in February)
- Memorial Day (last Monday in May)
- Independence Day
- Labor Day (first Monday in September)
- Admission Day
- Columbus Day (2nd Monday in October)
- Veteran's Day
- Thanksgiving Day and following Friday
- Christmas Day

No work shall be performed on these days without prior approval of the City.

8.9 Time of Completion.

The Contractor shall complete the work called for under the contract in all parts and requirements within the number of days set forth in the Contract Documents.

8.10 Penalty for Late Completion.

It is agreed by the parties to the Contract that time is of the essence in the completion of this work and that in case all the work called for under the Contract is not completed with before or upon the expiration of the time limit as set forth in the Contract, damage will be sustained by the City of Albany and that it is impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is, therefore, agreed that the Contractor will pay to the City of Albany the sum set forth herein or in the special provisions per day for each and every day's delay beyond the-time prescribed to complete the work; and the Contractor agrees to pay such penalty as herein provided and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the Contract

It is further agreed that in case the work called for under the Contract-is not finished and completed in all parts and requirements within the number of Contract days specified, the Engineer shall have the right to increase the number of Contract days or not, as he may deem best to serve the interests of the City, and if he decides to extend the said number of working days, he shall further have the right to charge to the work all or any part, as he may deem proper, of the actual cost of engineering, inspection, superintendence and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension.

Unless such liquidated damages are specified in the Special Provisions differently, the amount per Contract day shall be as follows:

Amount of Contract	Amount of Liquidated' Damages (Per Day)
Less than \$100,000	\$200.00
\$500,000 and less than \$500,000	\$500.00
\$500,000 and less than \$1,000.000	\$1,000.00
\$1,000,000 and over	\$1,500.00

The Contractor will be granted an extension of time and will not be assessed a penalty or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the Contract for the completion of the work caused by acts of God or of the public enemy, fire or flood not caused or preventable by the Contractor, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided that the Contractor shall notify the Engineer in writing of the causes of the delay within 15 calendar days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and his findings and action thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that he has diligently made every effort to obtain such materials from all known sources within reason and further proof in the form of supplementary progress schedules, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. Only the physical shortage of material will be 'considered under these provisions as a cause for extension of time and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Engineer that such material could have been obtained only at exorbitant prices entirely out of line with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

If the Contractor is delayed in completion of the work by reason of changes made by any act of the Engineer not contemplated by the contract, an extension of time commensurate with the delay in completion of the work thus caused will be granted and the Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by such extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 calendar days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and his findings and actions thereon shall be final and conclusive.

8.11 Completion of Work/Acceptance.

When the Engineer or his authorized representative has made the final inspection and determines that the Contract has been completed in all respects in accordance with the plans and specifications, and other Contract Documents, s/he will recommend that the City Council formally accept the work, and immediately upon and after such acceptance by the Council, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole, and he will not be required to perform any further work thereon; and the Contractor shall be relieved of his responsibility for injury to persons or property or damage to the work which occurs after the formal acceptance by the Council; except as provided pertaining to such guaranties of the work as may be required or resulting from Contractor's defects; or faulty work not discovered prior to such acceptance; or maintenance required beyond the completion of the work such as landscape maintenance.