

## ENGINEERING DIRECTIVES AND STANDARDS

Volume	Chapter	Section	Directive Number	Effective Date
III	1	1	19	10/4/2007

**SUBJECT: CHARGING AND REPORTING CONTRACT TIME, PLACING CONTRACTORS IN DEFAULT AND DISQUALIFYING CONTRACTORS**

- 1. PURPOSE:** The purpose of this directive is to describe the current procedures for charging contract time, reporting contract time, placing contractors in default and disqualifying contractors.
- 2. SCOPE:** This directive outlines the procedures that are to be followed for handling of time charges, placing a contractor in default of the contract insofar as contract time is concerned, and the disqualification of a contractor from bidding should he fail to prosecute the work in a timely manner.
- 3. PROCEDURE:** The specifications require that the contractor furnish the Project Engineer a construction progress schedule for approval. The progress schedule reflects the controlling item or items of work scheduled to be in progress at any time during the life of the contract. Should the actual progress or the scope of the work deviate from the progress schedule to such an extent as to justify revision, the contractor must submit a new schedule.

A. Charging Contract Time

The charging of a contract day will be in accordance with the specifications. Industry wide or area wide workforce strikes will be considered as conditions beyond the contractors' control and must be documented showing the beginning and ending dates and the controlling item or items of work directly affected. Strikes involving a single contractor will be considered on an individual basis and must be documented in a similar manner giving reason for the strike. Strikes involving a single local material supplier will not normally be considered justification for not charging contract time unless there are unusual circumstances involved. If such is the case, it will be handled in the same manner as strikes involving a single contractor.

Material shortages will not be accepted as a condition beyond the control of the contractor except when caused by strikes, as discussed above. This is a condition that the contractor should be cognizant of at the time bids are prepared and should bid accordingly.

If shortages occur after the contract is let which the contractor could not foresee, and when no other source is available for immediate delivery, consideration may be given due to the circumstances involved.

In the event of delays on delivery of specialty items or manufactured products that are not stock items, the Chief Engineer (or his designee) may approve granting of additional contract time provided adequate documentation is submitted at the time the delays are occurring and they affect the progress of controlling item(s) of work.

On working day projects, when the specifications require a specified waiting or curing period that affects the controlling item of work, such as waiting period for curing of concrete, and this prevents the contractor from continuing with the work, he will not be charged for this specified period. However, if this does not affect the controlling item then time charges will be made.

Delays in utility relocations that significantly affect the controlling item or items of work will be considered as a condition beyond the control of the contractor. These situations should be properly documented and may be considered as just cause for not charging contract time. (Please note - Unless the utility is significantly affecting progress of work, time charges will not be suspended.)

Contract time on a calendar day basis will be counted in accordance with the standard specifications where every day on the calendar is a contract day including Saturdays, Sundays, holidays and non- work days. The Chief Engineer (or his designee) may suspend counting time for conditions beyond the control of the contractor as previously set forth in this memorandum. When one of these conditions is encountered, the contractor should make a written request for suspension of contract time to the project engineer and this matter will be resolved at the time the condition exists.

B. Reporting Contract Time Charges

(1) Working Day Projects

ESTI tracked projects:

At the end of each estimate period, the project engineer will prepare a Form E-14, "Weather and Working Day Report", and the original and one copy will be sent by, facsimile, to the contractor for his signature. He will be advised that he has ten days in which to either sign and return the original copy, or file a written protest setting forth his objections. He will also be advised that if no protest is filed during this period, or if he fails to respond, time charges shall stand as submitted.

SITEMANAGER tracked projects:

At the end of each estimate period, the project engineer will prepare the contractors estimate using SiteManager. Once prepared and approved by the Office Manager and Project Engineer the PE office should notify the contractor by email/fax that the estimate is awaiting their approval – a copy of the 'Partial Estimate Report' and the 'Weather and Workdays Report' will be included with the email/fax if the contractor does not have access to them directly.

The contractor will review the 'Partial Estimate Report' and 'Weather and Workdays Report'. If the contractor concurs with the estimate, he will approve it online in SiteManager, If he doesn't have online access to SiteManager he will sign the 'Partial Estimate Report' and return it to the Project Engineer by email/fax so the PE Office can approved the estimate within SiteManager for the contractor. The Project Engineer should keep the signed copy of the estimate in his project files and turn them in with the final estimate. Processing of the estimate cannot continue until it has been approved by the contractor either online or by the return of the signed 'Partial Estimate Report' to the Project Engineer. For SiteManager managed contracts the contractor is no longer required to sign and return the Weather & Workdays report to the PE. By accepting and approving the partial estimate, either electronically within SiteManager or returning the signed partial estimate to the P.E. the contractor has agreed to abide by the provisions of the Standard Specifications relative to protesting time charges.

Contractor estimate approval methods will be discussed and further defined at the preconstruction meeting.

ESTI tracked projects:

When the contractor returns the signed Form E-14 without protest, or fails to respond, the project engineer is to fill in the entry for Days Disputed with zero and submit to the Construction Estimates Section. No preliminary copies of the report shall be distributed.

SITEMANAGER tracked projects:

No further action will be required by the Project Engineer unless the contractor files a written protest of the time charges for that estimate period as detail in item 'C' below.

## (2) Calendar Day Projects

### ESTI tracked projects:

At the end of each estimate period, the project engineer will prepare a Form E-14, "Weather and Working Day Report", and submit it to the Construction Estimates Section along with the partial estimate. In cases of delays or other reasons beyond the control of the contractor, contract time may be extended in accordance with the specifications.

### SITEMANAGER tracked projects:

No further action is required at partial estimate time since calendar days (contract time) is adjusted by change orders or provisions contained within the contract.

## C. Reporting Contract Time Disputes, Working Day Project

If the contractor protests the preliminary "Weather and Working Day Report" within the specified time, and if the dispute has not been resolved within the 30 day time limit described hereinafter, the project engineer is to type the words "Disputed Day" next to each of the actual days in dispute, in the column of the E-14 headed "Cause of Losing Day", and add the number of days in dispute in the entry for days disputed and submit the report to the Construction Estimates Section, with a copy of the contractor's letter disputing the time charges attached.

If the contract time dispute is resolved at the project level within twenty days after the partial estimate due date, a summary of the discussions and the results will be documented in the project diary and recorded on the E-14, in the remarks section or by attached letter. This final Form E-14, showing zero disputed days, is then submitted to the Construction Estimates Engineer along with the contractor's letter disputing the originally charged contract time.

If the contract time dispute cannot be resolved at the project level within twenty days after the partial estimate due date, the District Administrator (or his designee) will schedule a meeting with all concerned parties at the District. A recommendation shall be made to the District Administrator (or his designee), who will make a final determination and notify all concerned parties.

A final E-14 for the period will then be submitted with the contract time charges revised and the total number of days charged corrected, if necessary, to reflect the District Administrator's (or his designee's) decision. The current total number of days charged as shown in the project diary must also be revised to reflect this decision and cross-referenced to the E-14.

All contract time disputes must be resolved within sixty (60) days following the date the E-14 was furnished the contractor or the contract time will stand as recorded at the end of the sixty (60) day period.

## D. Disqualification of Contractors

The specifications state that the contractor will be disqualified if his progress on any contract is more than specified amounts behind the elapsed contract time. During the period of disqualification, the contractor will not be permitted to bid on future contracts nor will he be approved as a sub-contractor on current or future contracts. The prohibition from bidding will begin at the letting scheduled for the month following the due date of the partial estimate causing the disqualification.

The Construction Estimates Section is responsible for the evaluation of progress upon receipt of each partial estimate on each project. If a project is delinquent by more than 20%, the Construction Estimates Engineer will prepare a letter to the contractor for the DOTD Chief Construction Engineer's signature, advising the contractor that corrections/actions should be taken to correct the delinquency.

If the progress at the end of the partial estimate period is not within the limits set forth in the specifications (Subsection 108.04(b)), the Construction Estimates Engineer will prepare a letter of disqualification for the Chief Engineer's signature. The letter will advise the contractor and Surety, by facsimile and certified mail, of the disqualification from bidding.

After a contractor is disqualified, the Construction Estimates Section will continue monitoring partial estimates and if the progress becomes within the limits given in the specifications, or final acceptance has been recommended by the District, a memorandum for the Chief Engineer's signature will be prepared by the Construction Audits Engineer, addressed to the Project Control Engineer, advising that the contractor has been taken off the disqualified list for that particular project.

E. Placing the Contractor in Default for Failing to Complete within Contract Time

Note: Contract time, as used below, is the number of working days or calendar days originally allowed for completion of the project, plus authorized time extensions.

Five working days (or calendar days if a calendar day project) prior to the date when contract time will elapse, the project engineer must telephone or email the District Administrator (or his designee) before noon advising him that the contractor will have used all contract time within the next five working (calendar) days. The Project Engineer will also provide information on the percent complete for the project. The District Administrator (or his designee) shall then immediately electronically transmit this information to the Construction Estimates Engineer, who shall immediately notify the contractor. The Construction Estimates Section will log the date and time of receipt of information.

On the last contract day, the project engineer must telephone or email the Construction Estimates Engineer before noon and advise him that the contractor has used all contract time and give him the estimated percent complete. He shall then immediately call or email and advise the District Administrator (or his designee). The District Administrator (or his designee) shall immediately confirm this information to the Construction Estimates Engineer by electronic transmittal, who shall immediately advise the contractor with confirmation of delivery.

At this point, the Department will give written notice to the contractor and the contractor's surety, of the Department's determination that the contractor is in default in accordance with Subsection 108.09(b). It is important to note that the above information deals with placing a contractor in default for failure to complete the contract within the allowable contract time only. Nothing herein prohibits the Department from placing the contractor in default for any of the reasons listed in Subsection 108.09(a). The Project Engineer should notify Headquarters Construction when any of these factors are being violated. All correspondence which provides a contractor notice of default originates from DOTD Headquarters.

F. Final Adjustment and Reporting of Contract Time When Contract is Complete

After the project is complete and time charge disputes (if any) have been resolved for the last estimate period, a Form 657, "Recapitulation of Working Days Used to Complete the Project" shall be prepared and sent to the Construction Estimates Section. The form shall also show any applicable adjustments in contract time caused by adjustments for plan changes.

**4. OTHER ISSUANCES AFFECTED:** This directive supersedes EDSM No. III.1.1.19, dated February 9, 2007. All directives, memoranda or instructions issued heretofore in conflict with this directive are hereby rescinded.

**5. EFFECTIVE DATE:** This directive will become effective immediately upon receipt.