

# Prosecution and Progress - Section 1700

## Subsection Topic

- |   |                                                      |
|---|------------------------------------------------------|
| 1 | Subcontracts                                         |
| 2 | Assignments                                          |
| 3 | Prosecution of the Work                              |
| 4 | Limitation of Operations                             |
| 5 | Character of Workers and Equipment                   |
| 6 | Suspension and Resumption of Work                    |
| 7 | Default of Contract                                  |
| 8 | Cancellation of Contract Without Fault of Contractor |
| 9 | Completion of Contract                               |

### 1 SUBCONTRACTS

- 1.1 All subcontractors shall be considered the agents of the Contractor, and the Contractor shall be responsible for all acts, defaults, neglects or delays of any subcontractor, their servants, agents and employees. The Minister may order the Contractor to dispense with the services of the subcontractor if such services are not satisfactory to the Engineer.

### 2 ASSIGNMENTS

- 2.1 The Minister will not recognize or accept an assignment by the Contractor to any bank or financial institution; however, the Minister may recognize a request by the Contractor to deposit payments to their credit in any stipulated bank or financial institution. Upon written request from the Contractor, the Minister may approve an assignment of funds to be paid directly to a third party provided that the funds to be paid are to cover costs of services, supplies or materials which are directly attributable to the Contract.

### 3 PROSECUTION OF THE WORK

- 3.1 It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that the Contractor shall be allowed to prosecute their work at such times and seasons, in such order of procedure and in such manner as shall be most conducive to economy of construction, provided however, that the time and order shall be such that the Work shall be completed in accordance with the plans and specifications and within the time of completion designated in the Contract.

#### **4 LIMITATION OF OPERATIONS**

- 4.1 The Contractor shall conduct the Work at all times in such a manner and in such sequence as will ensure the least interference with traffic. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice of work already started and the Engineer may require the Contractor to finish the section on which work is in progress before work is started on any additional section. No section of the road shall be closed to the public except after permission has been granted by the Engineer.

#### **5 CHARACTER OF WORKERS AND EQUIPMENT**

- 5.1 The Contractor shall, at all times, provide adequate supervision and sufficient labour and equipment for prosecuting the Work to full completion in the manner and within the time required by the Contract.
- 5.2 The Contractor or any subcontractor shall only employ supervisors and workers that have sufficient skill and experience to perform properly the work assigned to them. If any employee is careless, incompetent, obstructs the progress of the work, acts contrary to instructions, or conducts themselves improperly, the Contractor shall, at the written request of the Engineer, discharge or otherwise remove such employee from the Project, and shall not again employ the employee thereon without the approval of the Engineer.
- 5.3 Any equipment not producing the results required by the Contract, and so designated by the Engineer, shall be replaced with satisfactory equipment, or repaired, or adjusted to a satisfactory working condition.
- 5.4 When the Contractor is paid for furnishing, and operating equipment on an hourly or daily basis, it shall be operated as directed by the Engineer in such manner as to obtain maximum production under the prevailing conditions.
- 5.5 Should the Contractor fail to comply within reasonable time with any order of the Engineer made pursuant to this subsection, the Engineer may suspend the work until the Contractor complies with the order.

#### **6 SUSPENSION AND RESUMPTION OF WORK**

- 6.1 The Engineer may suspend the Contractor's operations wholly or in part, for such period or periods of time as the Engineer may deem necessary, for any of the following reasons:

- 6.1.1 Unsuitable weather or other conditions which is considered unfavourable for the prosecution of the Work.
- 6.1.2 Work being done under other contracts on the same section of highway is in conflict with the Contractor's operations.
- 6.1.3 The Contractor fails to correct conditions unsafe for workers or the general public.
- 6.1.4 The Contractor fails to comply with any provision of the Contract.
- 6.2 The order to suspend work will be in writing, and will state the reason for such suspension, the effective date, and the operations suspended. Any work done by the Contractor contrary to such suspension may be considered as unauthorized work and as having been done at the expense of the Contractor. The Contractor shall immediately comply with such order to suspend the work wholly or in part and shall not resume work until permitted by written order of the Engineer.
- 6.3 Work of an emergency nature ordered by the Engineer for the convenience of public traffic and minor operations not affected by or connected with the cause of suspension, if permitted by the Engineer, may be performed during the period of suspension.
- 6.4 No operations which have been suspended by written order shall be resumed until the Engineer has issued an order to resume work. The order to resume operations will be issued when, in the opinion of the Engineer, the conditions which justified the suspension no longer exist. This order shall be in writing, and will state the reasons for ordering such resumption, the effective date, and the operations to be resumed.
- 6.5 When work is resumed the Contractor shall at their expense replace or renew any work or materials lost or damaged because of temporary use of the highway under improvement; shall remove any work or materials used in the temporary maintenance thereof; and shall complete the improvement in every respect as though its prosecution had been continuous and without interference. The Contractor shall not make any claims or demand by reason of temporary suspension of work by the Engineer unless:
  - 6.5.1 The Contractor can show that the suspension was unreasonable; and
  - 6.5.2 The Contractor files with the Engineer, not later than seven days after receipt of the written order to resume work, written notice of the Contractor's intention to make a claim or demand; and

- 6.5.3 The Contractor submits in writing to the Engineer, not later than 30 days after receipt of the written order to resume work, full particulars of the nature and magnitude of the claim or demand.

## **7 DEFAULT OF CONTRACT**

- 7.1 The Minister may declare this Contract in default for any one of the following reasons:
- 7.1.1 If, in the opinion of the Minister, the rate of progress at any time is not such as to ensure the completion of the Work within the Contract time allowed or any extension thereto pursuant to the Contract.
- 7.1.2 If the Contractor neglects or refuses to comply with any provision of the Contract.
- 7.2 If this Contract is declared in default, the Minister shall have the right, without process or action at law, to take over all or any portion of the Work and complete it as deemed advisable, until the Work is finally completed and the terms and conditions of the Contract are completely performed and may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable.
- 7.3 Neither the Minister nor any member or employee thereof will be in any way liable or accountable to the Contractor or their surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid therefore. Should the cost of completing the Work be in excess of the original contract price, the Contractor and their surety shall be held responsible for such excess cost.
- 7.4 If this Contract is declared in default, the holdback pursuant to Subsection 1800.6.2 may, in addition to any other rights the Minister has, be retained by the Province to complete the Contract.

## **8 CANCELLATION OF CONTRACT WITHOUT FAULT OF CONTRACTOR**

- 8.1 The Ministry may at any time cancel the Contract in writing to the Contractor, where upon the Contractor shall be entitled to the full amount of the estimate for the Work done by the Contractor up to the date of notice of cancellation under the terms and conditions of the Contract.
- 8.2 If the Contractor incurs any expense for which this Contract does not provide payment, the Minister may, in their absolute discretion, make an *ex gratia* payment in an amount deemed appropriate to cover part or all of such expenses.

## **9 COMPLETION OF CONTRACT**

- 9.1 The Contract will be considered complete when each of the following conditions is fulfilled:
- 9.1.1 When the Work is complete.
  - 9.1.2 When the Final Completion Certificate has been issued in accordance with Subsection 1400.11.
  - 9.1.3 When all claims or accounts of indebtedness by reason of the Contract have been fully paid or satisfactorily secured.
  - 9.1.4 If stipulated, when the warranty period or if required, the warranty work is complete.
- 9.2 If outstanding minor work remains to complete the Contract at the time of final inspection and acceptance and the Contractor does not wish to complete this work, the Contractor may (subject to the sole discretion of the Engineer) be charged a fee as determined by the Engineer to compensate the Ministry for having others complete the work.
- 9.2.1 The fee will be deducted from the Contractor's final payment.