

Construction Contract Administration Manual



Revised April 2020

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Manual Notice 2020-1

From: Gina E. Gallegos, P. E., Director, Construction Division

Manual: *Construction Contract Administration Manual (CCAM)*

Effective Date: April 27, 2020

Purpose

The Construction Contract Administration Manual has been updated to comply with administrative rule changes, update business practices, and provide clarification for new and existing practices.

Contents

Chapter 1, “Introduction”

- ◆ Section 2, “Manual Description”
 - Updated the general information to say a signature from an authorized signer is required for any crucial project changes and preferred for notifications.

Chapter 2, “Pre-Award Activities”

- ◆ Section 1, “Sharing Project Information”
 - Referred to Design Division final PS&E section for guidance on early release of plans.
 - Added requirement for Form 2519 for releasing all DGNs that are given to the contractor. Only awarded Contractor may receive DGNs.
- ◆ Section 2, “Addenda”
 - Clarified considering a delay start when issuing significant addenda.
 - Fixed the Letting Manual hyperlink

Chapter 3, “Post-Award Activities”

- ◆ Section 4, “Preconstruction Conference”
 - Changed heading and all wording that says, “Preconstruction Conference” to “Preconstruction Meeting”
 - Clarified FHWA may not participate in time extensions for utility delays.
 - Added notify the contractor of the DRP under Traffic Control
 - Add statement about referring to the Work Zone Safety and Mobility Guideline, section 10 for information about temporary traffic control for construction.
 - Added use of commercial labs for material.

- Added discussion of Buy America to Materials
- Added DMS requirements for Subcontractors
- Added confirm all payment by DMS tracked subs under DBE/SBE
- Added topic of CUF requirements to preconstruction meeting.
- Added post award Good Faith Efforts are evaluated at the District level.
- Added note to discuss roadway closure procedures for seal coat preconstruction.

Chapter 4, “Project Records and Closeout”

- ◆ Section 1, “Importance of Accurate Record”
 - Added Diversity Manual System to e.g. of maintaining adequate software programs and hardware dependency documentation.
- ◆ Section 3, “Traffic Control Plan”
 - Referred to ATSSA Quality Guidelines
 - Clarified Pedestrian pathways or detours must be accessible in accordance with ADA standards and as outlined in the TMUTCD. Temporary signs and other devices should not block pathways intended for pedestrian use.
 - Added statement about Form 599 may be filled electronically and not to be saved or distribute electronic versions.
 - Removed statement regarding FHWA withholding payment for releasing form 599.
 - Clarified the Department must approve TCP changes.
 - Added new section for law enforcement usage
- ◆ Section 4, “Project Records”
 - Stated to document unauthorized Subcontractors on DWR.
 - Stated Shop-Drawings are included in final As-builts.
 - Clarified FHWA 1494 form.
- ◆ Section 5, “Project Closeout”
 - Added DBE/SBE monthly, DBE purchase orders, Goal shortfall explanations and final payment report to the project closeout checklist requirements
 - Added Construction Stage Gate Checklist and any other required environmental commitment documentation.
 - Added Statement of Cost to the checklist
 - Added Form 2235 to the checklist

Chapter 5, “Control of the Work”

- ◆ Section 2, “Work Documents”

- Added TCP guidance
- ◆ Section 4, “Prime Contractor Performance Evaluation”
 - Deleted entire information under this section and added “Refer to the Prime Contractor Performance Evaluations Manual for more information or contact Maintenance/Construction Division”.

Chapter 6, “Control of Materials”

- ◆ Section 1, “Materials”
 - Added statement about referring to the FHWA PSL quick guide for contractors responsibilities.
 - Updated all the hyperlinks
 - Added stockpiling aggregates must be environmentally cleared and store materials to prevent an impact to the environment.
 - Stated delivery fees and purchasing excess materials must be non-participating.
 - Removed requirement to have two non-participating change orders.
- ◆ Section 2, “Material Testing”
 - Clarified the sampling and testing of material procedures
 - Updated the actions and responsibilities for tests
 - Clarified: Project Acceptance test performed by contractor must still be validated by independent verification sampling and testing by TxDOT
 - Clarified to refer to section 6 and 7 of the Quality Assurance Program for Design Bid Build Projects.
 - Stated to ensure SiteManager is updated with all acceptance testing. Added material producer list (MPL) and quality monitoring program to the table and of actions and responsibility for tests.
 - Added acceptance of failing materials must be documented under exceptions under the Material Certification Letter.
 - Stated to Ensure to keep SiteManager updated with all acceptance and Sampling and Testing requirements.

Chapter 7, “Changes to the Contract”

- ◆ Section 1, “Change Orders”
 - Stated to determine the need for environmental review, re-evaluation, and approval as required.
 - Added note to contact DEQC if drainage affected conveys waters of the US
 - Added all CO's should be signed and sealed by the Area Engineer at minimum.
 - Removed settlement agreement requirement for termination

- Changed may to shall on when to use unique bid code.
- To item 10 added, “Signature must follow District, Construction Division, an Executive Director signature authority found on Contract Services webpage.”
- Added link to the Standard Operating Procedure 01-19 for Form 1295
- ◆ Section 2, “Change Order Approval Authority”
 - Added Signatures must follow Signature Authority as established by the Executive Director, Construction Division Director, and District Engineer as found on the Contract Services webpage.
 - Deleted for “State -Funded Projects Only” in Extending or Adding Limits to the Contract.
 - Added “along with necessary updates to meet environmental clearance” when adding limits.
- ◆ Section 3, “Force Account and Interim Adjustments to the Contract”
 - Clarified rates for equipment, material, and labor must be agreed upon prior to performing work.
 - Clarified work performed by subcontractors under force account.
 - Added guidance on unilateral Change Order
 - Clarified interim adjustments
- ◆ Section 4, “Supplemental Agreements”
 - Added CST will ensure proposed new contractor is prequalified and has the necessary bidding capacity to have the contract re-assigned.

Chapter 9, “Legal Relations and Responsibilities”

- ◆ Section 2, “Employees Responsibilities”
 - Added statement about coordinating with PIO to provide announcements for upcoming traffic
 - Clarified deficiencies need to be corrected in accordance with priority 1 and priority 2 deficiencies requirements.

Chapter 10, “Prosecution and Progress”

- ◆ Section 2, “Project Schedules”
 - Authorization to Begin Work replaces Notice to Proceed.
 - Included Additional Project Specific Liquidated Damages (APSLD) information.
- ◆ Section 3, “Subcontracting”
 - Added clarification on the Unified Certification Program (TUCP) print out shown, DBE or SBE certification. Clarified the date of the print out shown in the header and footer. The TUCP is a best practice for all DBEs both race conscious and race neutral.

- Added for federally funded projects in DMS, the contractor must request to add a subcontractor in DMS.
- Clarified Race conscious DBE participation (DBE on an approved commitment agreement form or utilization plan) and Race Neutral DBE participation
- Race conscious DBE subcontract work items must match the work items in the executed commitment agreements.
- Added for approved DBE, subcontractor must equal or exceed committed amounts and contain same work items.
- Clarified DBEs must self-perform 30% of the work in order to perform a CUF.
- Clarified commitment agreement form use.
- Clarified DBE requirements
- Added CIV DBE Manual Links
- Clarified the use of Form 4903 and 4902 for projects not in DMS.
- ◆ Section 8, “Default of Contract”
 - Clarified the 10-day letter should be signed by the Area Engineer at minimum.
 - Clarified when work suspension becomes excessive the contractor may be defaulted through the default process.

Chapter 11, “Measurement and Payment”

- ◆ Section 2, “Issues Affecting Payments”
 - Clarified periodic field measurements and calculations.
 - Information added for prefabricated structural materials with the test method TXTRST that are stored at approved sites run the Material Verification Report (CIS26) for verification and approval.
 - Clarified when a notice for negative payment is required.
- ◆ Section 3, “Prompt Payment Audit”
 - Added prompt pay is required for both state and federally funded projects.
 - Clarify that Form 2177 is for all projects
 - Added Area Office must review in DMS when a subcontractor indicates they are not paid promptly and address any payment discrepancies.
 - Clarified the prompt payment quarter will be based on a calendar year basis starting January 1st as per FHWA recommendation.
 - Added table whom to audit for prompt payment on different type of projects.

Chapter 12, “Environment”

- ◆ Section 1, “Hazard Materials or Waste”

- Clarified field material containing debris so that examples are found under the PSL section 5
- Stated to suspended work immediately in impacted area.
- ◆ Section 3, “Water Resources”
 - Modified Contractor involvement with Project Specific Locations.
 - Clarified measures for compliance for work performed in: Waters of the United States (Section 404); Navigable Waters of the US (Section 10); Navigable Waterways (Section 9); and Edwards Aquifer (EAPP).
 - Added measures for compliance for work in Coastal Counties.
- ◆ Section 4, “Cultural Resources”
 - Expanded on THC statement.
 - Added ensure compliance with the National Historic Preservation Act.

Chapter 13, “Health and Safety”

- ◆ Section 3, “Violations”
 - Added information on Construction Sanitation Facilities requirements per OSHA.
 - Document all discussion and interaction in DWR or a follow up email.

Chapter 14, “Business Opportunity Programs”

- ◆ Changed title to Small Business Programs
- ◆ Section 1, “Program Overview”
 - Clarified what the program is for and what the program applies to.
 - Stated District DBE Compliance and Monitoring Guide should be used.
 - Stated Prompt Payment regulations are covered through item 9 of the Standard Specification and Chapter 11 of the CCAM.

Chapter 15, “Contractor Workforce”

- ◆ Section 2, “Labor Requirements”
 - Stated quarters pertaining to labor interviews will be based on a calendar year basis starting January 1st.
 - Changed the SSN to Employee ID number.

Chapter 16, “FHWA Oversight Requirements”

- ◆ Section 2, “Change Orders”
 - Added table on Non-Participating CO Reason Codes
- ◆ Section 4, “Required Contract Provisions - Federal-Aid Construction Projects”

- Added Form FHWA 1022
- Added Project Management and Financial Plans
- ◆ Section 5, “Local Government Projects”
 - Added updated Form 2146 to include the use of the Third-Party Notification tool for local government projects

Chapter 17, “Forms and Documents”

- ◆ Section 1, “Forms and Guidance Documents”
 - Added material verification report (CIS26)
 - Added Sample prompt payment complaint acknowledgement sample letter
 - Procedure 125
 - Major Project Financial Plan Guidance

Supersedes

The 2019 Construction Contract Administration manual is superseded.

Contact

For any questions or assistance please contact 512-416-2512.

Archives

Past manual notices are available in a [PDF archive](#).

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Appendix A — Policy References

Chapter 1 — Introduction

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[Section 2 — Manual Description](#)

Section 1 — Overview

Purpose and Scope of Manual

This manual, developed for use on design-bid-build construction projects, provides policy for district staff on the elements required for successfully administering a contract.

Items 1-9 give the general requirements by which contractors must abide, and it is critical that district staff are familiar with and understand their roles in enforcing those requirements.

For maintenance contracts, see the [Maintenance Contract Manual](#) (internal access only).

Contract Administration

Contract administration is one of the most important jobs related to construction projects and involves numerous tasks occurring before and after contract execution and work order issuance. All work must be administered in accordance with the contract specifications, terms and conditions, state and federal laws and regulations, and Department policy.

Proper contract administration includes:

- ◆ developing proper and accurate bid and contract documents,
- ◆ complying with contract documents and specifications,
- ◆ ensuring compliance with state and federal regulations,
- ◆ ensuring quality control by overseeing, inspecting, and reviewing sampling and testing of all materials and work,
- ◆ creating and maintaining accurate project records,
- ◆ preparing monthly pay estimates,
- ◆ negotiating and processing change orders, supplemental agreements and other contract modifications in a timely manner,
- ◆ promoting good public relations, and
- ◆ conducting and maintaining a high professional standard.

The department conducts its primary activities in 25 geographical districts. Differing local conditions make decentralization necessary. Each district, managed by a district engineer (DE) is responsible for the planning, design, construction maintenance, and operation of the district transportation system. Local field offices within the district are known as area offices. The area office is managed by an area engineer (AE). The AE is the key individual on every construction project, and the contract's successful completion depends largely on his or her performance.

If the AE chooses to delegate parts of the day-to-day administration of the contract in accordance with the Department's Delegation of Signature Authority, the individual to whom responsibility is delegated must comply with those requirements assigned in this manual to the AE.

Divisions headquartered in Austin provide administrative and technical support to the districts. The Construction Division (CST) provides general oversight of the letting management and administration of highway construction contracts including:

- ◆ district construction management support,
- ◆ pre-qualification of construction contractors,
- ◆ construction letting management, and
- ◆ claims analysis and processing.

Section 2 — Manual Description

Use of this Manual

This manual, prepared by CST, provides District Engineers (DEs), Directors of Construction (DOCs), AEs, and their various representatives, including inspectors and record keepers, a guide for administering construction contracts. This manual is only one of the components used to manage a successful construction contract. Other TxDOT resources include the following.

- ◆ [Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges](#) (the “Spec Book”)
- ◆ [Guide Schedule of Sampling and Testing for Design-Bid-Build Projects](#)
- ◆ [Test Procedures](#)
- ◆ [Material Inspection Guide](#)
- ◆ [Material Producer Lists](#)
- ◆ [Departmental materials specifications](#)
- ◆ [Quality Assurance Program for Design-Bid-Build Projects](#)
- ◆ [Environmental Management System Manual](#) (internal access only)
- ◆ [SiteManager Contract Administration User Manual](#) (internal access only)
- ◆ [SiteManager Materials Management Manual](#) (internal access only)
- ◆ [Materials and Test Reports for Project Documents](#)
- ◆ [Local Government Projects Toolkit](#)
- ◆ [Disadvantaged Business Enterprise \(DBE\) and Airport Concessions DBE Programs](#)

How This Manual is Organized

This manual is organized into 17 chapters and one appendix, as outlined in the following table.

Manual Structure

Chapter	Description
1-3	Provides a general overview and procedures related to activities before construction work begins
4	Provides guidance on project records, traffic control plan (TCP), and FHWA requirements
5	Outlines control of work. Control of work encompasses project authority, work documents, staking the project, inspections, and construction evaluation

Manual Structure

Chapter	Description
6	Summarizes the control of materials covering material management, sampling and testing, and required materials forms
7	Covers changes to the contract, including processing of change orders, other contract agreements, contract termination, etc.
8	Outlines contract disputes and department claim process
9	Covers legal relations and responsibilities
10	Prosecution and progress
11	Summarizes the measurement and payment process
12	Provides insight into environmental issues such as hazardous material/waste handling, biological and water resources, and cultural resource management
13	Provides information on health and safety items
14	Provides an overview of the Department's Business Opportunity Programs
15	Covers contractor workforce items such as labor laws and On-the-Job Training
16	FHWA Oversight Requirements
17	Various forms, document examples, and guidelines
Appendix	Policy Memos

General Information

Unless otherwise indicated in this manual or the Standard Specifications, a signature from an authorized signer is required for any crucial project changes and preferred for notifications.

Manual Update

This manual will be updated annually to reflect new changes and will continue to be improved.

Please submit any suggestions, comments, or questions to CST.

Chapter 2 — Pre-Award Activities

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[Section 1 — Sharing Project Information](#)

[Section 2 — Addenda](#)

[Section 3 — Pre-Bid Conference](#)

Section 1 — Sharing Project Information

General

Texas Transportation Code [§223.001](#) requires competitive bids for contracts pertaining to state highway improvement and for material used in construction or maintenance on state highways. The Department's processes are developed to stimulate competition and protect against bias or favoritism near the time of the contract award decisions.

Once the project is advertised (the proposal is released), competitive bidding laws are in effect. Failure to follow protocol may compromise the integrity of the low bid, and the potential exists that all bids may be rejected and the district will have to re-let the project.

Contact Design Division's Final PS&E Section for guidance on early release of plans for comment and reviewing plans during the design phase of the project.

Once the project has been advertised, the following procedures are required when interacting with potential bidders, virtually eliminating any risk for answering project pre-bid questions.

- ◆ Accept questions via email, phone, or in person. Ensure to post via FTP sites as stated below.
- ◆ Take notes when discussing a project during the pre-bid period with a contractor, including during non-mandatory pre-bid conferences, a ride-along, or when otherwise showing or discussing a project. Ensure to post to the FTP.
- ◆ Some questions have simple, straightforward answers and may be verbally answered immediately. Examples:
 - The plan sheets show 10 culverts to be paid for by the each, however, the bid item shows 9. How many will be paid?
 - The specifications indicate the pay units of an item in the proposal is by the square feet, but the estimate and quantity (E&Q) sheets are by the cubic yard. Which is right?
- ◆ Other more complicated questions may require study and collaboration prior to responding.
 - If necessary, request the contractor provide complicated questions in writing through email, letter or other means to insure a full response is appropriately provided.
- ◆ POST ALL QUESTIONS, including simple questions that may have been verbally answered, to the FTP site the same day that it is asked as acknowledgement and for the benefit of all perspective bidders.
- ◆ POST ALL RESPONSES, including the verbal answers to simple questions, to the FTP site when the answer is provided to the originator of the question
 - Same day for simple, straightforward answers

- Within 48 hours for complicated questions (If the answer will take longer, Note the response status on the FTP site).
- ◆ Responses posted to the FTP site trump any responses given verbally should there be a conflict.
- ◆ Post additional documentation requested and not included in the plans on the FTP site.
- ◆ Keep a record of all information provided to the prospective bidders with the Project Records.
- ◆ If a potential bidder raises a question regarding an error in the plans,
 - Acknowledge that you will research the potential error,
 - Advise the contractor to bid the project as advertised,
 - DO NOT make statements to that, or any other, potential bidder that a possible or probable change to the plans, specifications, or quantities should be forthcoming,
 - Perform due diligence to determine whether the possible error is valid, if so, Ensure the error is addressed with:
 - An addendum, prior to letting,
 - A Change Order after letting and award,
 - A Postponement of letting to a later date
- ◆ Notify all prospective bidders via the FTP site, if an addendum has been posted. See section 2 for more information.
- ◆ Provide notes or minutes of all meetings-including non-mandatory pre-bid conferences and ride along (s)-to all prospective bidders via the FTP site.
- ◆ Ensure all interested parties are treated fairly and equitably.

Can Be Shared	Cannot Be Shared
Preliminary plans	Engineer's estimate for individual bid items
Cross sections (PDF or raw data)	
CPM schedule	Global stability calculations
Pothole activities ¹	
Survey in ROW ¹	Retaining wall and bridge calculations ³
Geotechnical data, reports	
DGN files ²	
1. Follow permit process. 2. Release form 2519 (found on E-Forms) is required. DGNs may only be provided to awarded bidder. 3. The Bridge Division may review the contractor's calculations	

Managing the FTP Site

- ◆ Designate two individuals, one primary and one secondary, to receive and manage questions and answers for all projects.
- ◆ Ensure the prospective bidder knows it is their responsibility to stay informed through the FTP site. The proposal must communicate to whom questions may be submitted and the FTP address where answers will be posted. The Design Division (DES) has provided standard language for inclusion in the General Notes.
- ◆ The individuals must review status of questions frequently to ensure question and answers are posted to the FTP site in a timely manner. Provide an answer within 48 hours.
- ◆ Direct prospective bidders to the FTP site for all questions and answers when asked.

Refer to CST's [Construction Support webpage](#) (internal access only) for additional information.

Prospective Bidder Site Investigations

As approved by the Area Engineer, prospective bidders may conduct site investigations of proposed projects by visiting the project, performing corings or other subsurface investigations, etc. Notify the prospective bidder of their responsibility to be aware of ROW that has not been cleared, to prevent trespassing. Have the prospective bidder use a ROW agreement for any subsurface investigations.

The use of unmanned aerial vehicles (UAVs) must follow Department guidelines. Contact Aviation Division and reference the Flight Operations Manual for more information.

Section 2 — Addenda

General

In the event that the Department modifies a proposal or the plans after the proposal release date, an addendum is sent to communicate revisions to each bidder who requested a bidding proposal.

Make an informed decision as to whether or not an addendum is needed or whether a change order is appropriate.

- ◆ Minor errors, including but not limited to minor quantity errors or misspelled words, do not require correction prior to letting.
- ◆ An addendum should only be issued for substantial changes.

Addendum Requests

Because significant work has gone into bringing a project to letting, and Prospective Bidders have expended efforts in preparing their bids, DES, CST, and CIV will make every effort to assist in issuing addenda.

All addendum requests must include the following:

- ◆ a complete explanation of what is being changed, e.g., sheets added or deleted, bid items added or removed, unit costs modified, contract days modified, change in funding from state to federal or vice versa;
- ◆ a description of how the overall project cost is being impacted;
- ◆ a statement as to why the addendum should be approved and potential impacts if it is not processed; and
- ◆ documentation of District Engineer (DE) or Deputy District Engineer (DDE) approval of the addendum.

Addenda submitted without complete documentation will not be reviewed, approved, or processed and will be returned to the district.

Reference the [Letting Manual](#), Chapter 2 and Design Division's [Addenda Processing SOP](#) for more information on processing of addenda (internal access only).

Accessing the Bidders List to Gather Contact Information for All Prospective Bidders

Access the Bidders List and gather contact information using either of the following options to ensure that every prospective bidder that has requested a proposal receives the same information.

- ◆ Option 1 - Electronic Bidding System (internal access only)
 - Access the [Electronic Bidding System](#) (EBS) via intranet access.
 - EBS will automatically populate the Network User Name and Mainframe User ID fields. (If it does not auto-populate, contact CST to request an access role in EBS.) Click Log In.
 - Click on the Addenda tab.
 - Using the drop-down list, select the project CSJ and click the button to generate the Proposal Request Report.
 - The report will include the name and email address of each prospective bidder that has requested a proposal for the specified CSJ. Copy all prospective bidders on one distribution email.
- ◆ Option 2 - TxDOT website
 - Access the Bidders List for [State-Let Construction and Maintenance](#) or [Local-Let Maintenance](#), as applicable.
 - Click on the project county, and find the project CSJ to see the list of prospective bidders who have pulled a proposal.
 - Click on the prospective bidder name to access contact information.
 - Copy all prospective bidders on one distribution email.

Section 3 — Pre-Bid Conference

Introduction

The district may conduct pre-bid conferences to provide specific project information, explain any unusual aspects of the project, and address any potential bidder questions.

Maintain minutes for all pre-bid conferences, both mandatory and optional; minutes may be written or recorded. Provide a copy of these minutes to all conference attendees and bidders. Include all pre-bid conference information (such as type, date, time, location, etc.) in the Notice to Contractors. Schedule pre-bid conferences approximately two weeks prior to letting to allow sufficient time to prepare and issue any needed addenda. Provide prospective bidders adequate notification of a scheduled pre-bid conference.

When conducting a pre-bid conference, adhere to the following requirements.

- ◆ Ensure the location and the starting time for the conference is as specified in the Notice to Contractors. Make reasonable consideration for individuals who arrive late due to circumstances beyond their control, such as weather-related difficulties.
- ◆ Ensure the attendance list contains fields for the prospective bidder firm's complete name and the representative's signature, printed name, address, email address, and telephone numbers.
- ◆ Ensure the pre-bid conference agenda covers a general review of the completed plans and specifications plus a detailed review of the contract's special requirements.
- ◆ Ensure that issues discussed during the pre-bid conference are not considered contractual.
- ◆ Issue an addendum as necessary to correct the proposal, as bid documents cannot be altered by a pre-bid conference.

Optional Attendance

At the district's discretion, pre-bid conferences where attendance is optional may be conducted for contracts with special conditions or requirements. Provide notice of the date and time of the optional pre-bid conference to all prospective bidders. Do not exclude a prospective bidder from bidding on a contract because of failure to attend the optional pre-bid conference.

Mandatory Attendance

Do not conduct mandatory pre-bid conferences unless absolutely necessary to provide information to prospective bidders that cannot be conveyed in writing. Mandatory pre-bid conferences are not recommended due to prospective bidder concerns regarding bidding confidentiality and conference scheduling difficulties. Pre-bid conference procedural errors may result in bid rejection.

Obtain written approval from the Director of the Design Division (DES) or the Director of Maintenance Division (MNT), as applicable, prior to including a mandatory pre-bid conference in the proposal. If a mandatory pre-bid conference is approved, include the requirement in the proposal and the Notice to Contractors. Conduct a second pre-bid conference at least seven calendar days prior to letting for large, complex, highly technical projects that require attendance at a mandatory pre-bid conference.

Submit the list of all prospective bidders attending the mandatory pre-bid conference to the Construction Division (CST) via email at CST_Prequalification@TxDOT.gov the same day of the meeting. Prospective bidders failing to attend a mandatory pre-bid conference will not be eligible to pull an official bidding proposal or receive authorization to bid the project.

Chapter 3 — Post-Award Activities

Contents:

[Section 1 — Press Release](#)

[Section 2 — Legislative Notification Requirements](#)

[Section 3 — Beginning of Work](#)

[Section 4 — Preconstruction Meeting](#)

[Section 5 — Preconstruction Safety Meeting](#)

[Section 6 — Partnering](#)

Section 1 — Press Release

General

Coordinate with the District Engineer (DE) and Public Information Officer (PIO) for communication to the public and public officials on project information.

Online Resources

After the public opening of bids and the Commission's award of the contract, the Construction Division (CST) posts pre- and post-letting information online at <http://www.dot.state.tx.us/business/prepostletting.htm>.

Project Tracker provides the public with 24/7-access to project information and can be found at the following website: <https://www.txdot.gov/inside-txdot/projects/project-tracker.html>.

Section 2 — Legislative Notification Requirements

Completion of Project Letter to State Legislator

In accordance with Texas Transportation Code [§201.609](#), send an inquiry to all legislators within the district asking if they would like to receive notice of completed projects. For those legislators who would like to receive notice, provide notification of work completed on highway construction contracts at least 10 days prior to the scheduled contract completion date. Ensure the letter includes, at a minimum:

- ◆ location and description of the project in non-technical terms,
- ◆ contractor,
- ◆ actual start date,
- ◆ completion date, and
- ◆ Department contact person.

The following [Reports on TxDOT Projects](#) are available on the Department's website.

- ◆ Construction, by Legislative District
- ◆ Monthly Estimate
- ◆ Completed Highway Construction Projects (Semiannual Reports)

Section 3 — Beginning of Work

CST will provide the contract documents to the contractor and the district, including the Authorization to Begin Work. Time charges begin on the date of the Authorization or as determined by Special Provision; the district may credit or charge time, depending on the contract requirements.

CST will populate the Authorization to Begin Work date in SiteManager. Refer to the *SiteManager Contract Administration User Manual* and *SiteManager Materials Management Manual* for more information regarding activation of the project in SiteManager.

Refer to Item 8 for direction on the process to begin work and direction on subcontractor approvals.

Section 4 — Preconstruction Meeting

Purpose of the Preconstruction Meeting

At the preconstruction meeting, Department personnel and contractor's staff become acquainted; establish lines of authority and communication; determine the responsibilities and duties of contractor's personnel, subcontractors, and Department personnel; clarify potential sources of misunderstanding; and work out the detailed arrangements necessary for the successful completion of the contract. Maintain a written record of the meeting (e.g., meeting minutes) in the contract file, together with any required documentation provided to resource agencies. An Engineer must run the meeting. It is best to avoid reading from a script.

Preconstruction Meeting Responsibilities and Attendees

Conduct a preconstruction meeting with the contractor after the Texas Transportation Commission has awarded the contract, the contract has been executed, a work order has been issued, and prior to commencement of construction operations.

Ensure meeting attendees include:

- ◆ appropriate representatives from the district and area offices,
- ◆ the contractor's organization,
- ◆ Contractor Responsible Person for Environmental,
- ◆ subcontractors,
- ◆ news media (as required),
- ◆ utility companies (as required),
- ◆ emergency entities such as hospitals or fire departments (as required),
- ◆ local governmental entities (as required),
- ◆ local law officers (as required),
- ◆ resource agencies (as required) [Some projects with conditional permits require resource agency notification.],
- ◆ designated Federal Highway Administration (FHWA) Area Engineer, if the project is identified as a Project of Division Interest (PoDI), and
- ◆ Designated U.S. Department of Labor representative for the region, if the project is federally funded.

Preconstruction Meeting Topics

Prepare a preconstruction meeting agenda to discuss specific items. The following table is a list of discussion topics. Tailor the agenda to the specific project to ensure important topics are discussed with appropriate detail.

Preconstruction Meeting Topics

Agenda Item	Requirements/Discussion/Comments
Introduction	<ul style="list-style-type: none"> ◆ Staff introductions ◆ Purpose of meeting ◆ Review of contract — location, type, size, special problems or designs, right of way (ROW) and utilities ◆ Number of work days ◆ Material and source approval ◆ Identify any local entity agreements and local entity's role ◆ Other topics as appropriate
Identity of Representatives	Identify the contractor's representatives, subcontractors, engineer, law enforcement agencies, utility companies, and other relevant parties giving name, address, and phone number.
Contractor's Work Plan	<ul style="list-style-type: none"> ◆ Start date ◆ Completion date ◆ Holidays, tax holidays or other days the highway may not be closed ◆ Major phases of the contract ◆ Detailed progress schedule outlining the manner of prosecution of work intended to complete work in the allotted time ◆ Revisions ◆ Work plans ◆ Criteria on working day charges and temporary suspension of work <ul style="list-style-type: none"> ● Notify the area engineer (AE) at least 24 hr. before beginning work in any new operation. ◆ Field office and/or lab ◆ Special traffic problems ◆ Present the subcontractors proposed for the project and the work they will perform (DBEs discussed below) ◆ Railroad insurance, if required in the contract

Preconstruction Meeting Topics

Agenda Item	Requirements/Discussion/Comments
Construction Requirements	<p>Usual requirements:</p> <ul style="list-style-type: none"> ◆ Water truck weight ◆ Roller qualifications ◆ Truck measurements ◆ Asphalt distributor calibration ◆ Truck weight limit ◆ Copies of papers accompanying material delivered to the project <p>Special requirements — discussion of pertinent items</p> <ul style="list-style-type: none"> ◆ Preparing ROW ◆ Staking ◆ Earthwork ◆ Base ◆ Pavement ◆ Structures ◆ Miscellaneous
Utility Adjustments	<ul style="list-style-type: none"> ◆ All utilities should be clear before the letting date; however, if plans include a date when the utilities are to be clear, adhere to that date. If utilities are not clear by the given date, it may be necessary to amend the contract to allow additional work days. FHWA may not participate in time extension. ◆ The contractor should not damage utilities located within the right of way.
Environmental	<ul style="list-style-type: none"> ◆ Inform contractor of securing proper environmental/archeological clearances pertaining to Project Specific Locations. Refer to the FHWA Project Specific Location (PSL) Quick Guide for contractor responsibilities. <ul style="list-style-type: none"> ● Transmit to the contractor information about any environmental commitments that apply to the project. ◆ Review the contractor’s implementation of the Storm Water Pollution Prevention Plan (SWP3). Pay attention to areas of earth susceptible to erosion, haul road and material pits, contamination of streams and lakes, and damage to adjacent property, etc. ◆ Review mitigation requirements for the contract. ◆ Construction Stage Gate Checklist (CSGC) joint inspection <ul style="list-style-type: none"> ● Designate TxDOT Responsible Person and Contractor Responsible Person (CRPE) responsible for conducting joint inspection and provide contact information. ● Define inspection frequency for guidance. ● Review the CSGC Instructions. ◆ Determine if there are possible conflicts between the contractor’s work schedule and the SWP3. ◆ Discuss environmentally sensitive areas (such as, wetlands, archeological finds, endangered species, etc.) ◆ The Department and the contractor are Co-Permittees for TPDES TXR150000, Construction General Permit. (Reference Special Provisions 506-004 and 007-004.)

Preconstruction Meeting Topics

Agenda Item	Requirements/Discussion/Comments
Traffic Control *	<ul style="list-style-type: none"> ◆ Review plans, standards, and specifications. ◆ Discuss signs, barricades and lights: inspection and reports (Form 599), repair and compliance, special conditions and detours. ◆ Discuss speed zones. ◆ Discuss flagging procedures. All applicable certifications must be submitted. ◆ Explain the Traffic Control Plan (TCP) and its sequence during the course of the contract. ◆ Determine the contractor's plans for implementing the TCP. ◆ Discuss any contractor proposed alternate TCP. ◆ Stress to the contractor that deficiencies noted during construction must be corrected as soon as possible. ◆ Ensure the contractor provides the scheduled sequence of work to the respective utility owners. ◆ Request a letter designating contractor's responsible person (CRP) and notify the contractor of the department responsible person (DRP).
<p>*For more information on temporary traffic control for construction areas, reference the Compliant Work Zone Traffic Control Device List. For more information on construction speed zones, refer to the Procedures for Establishing Speed Zones volume of the Traffic Operations manual collection and the Work Zone Safety and Mobility Guidelines, section 10.</p>	
Traffic Laws	Contractor and Departmental personnel must be aware of the Texas traffic laws regarding the legal limit of axle load (legal weights) for trucks hauling materials to the site. Copies of the law can be obtained from the Texas Department of Public Safety.
Materials	<ul style="list-style-type: none"> ◆ Request a letter designating sources of all materials proposed for use ◆ Certification requirements ◆ Testing requirements ◆ Quality Control/Quality Assurance (QC/QA) ◆ Storage of materials ◆ Inspecting and testing ◆ Use of Commercial Labs ◆ Buy America Requirements
Storage of Equipment and Materials	Review specifications-especially the need to keep the travel way clear.
Law Enforcement	The responsibility of the AE is to guarantee that open lines of communication have been established between contractor and law enforcement. Discuss the use of law enforcement personnel on the project, if needed. The AE should ensure that specific needs for traffic supervision will be met. The interested parties must determine exactly how they will share traffic-related information (accidents, safety hazards, etc.). If the project requires TxDOT to set up the law enforcement, use the carbon copy format Form 318.

Preconstruction Meeting Topics

Agenda Item	Requirements/Discussion/Comments
News Media	Develop a plan for educating the public about construction activities through media announcements.
Safety Issues**	<p>Ask the contractor to answer the following questions. (This may be incorporated into the preconstruction safety meeting.)</p> <ul style="list-style-type: none"> ◆ Does the contractor have a defined safety program? List the goals and people responsible, a letter designating a safety officer, minutes of the safety meeting, issue resolution, etc. ◆ How does the contractor’s management support the safety program? ◆ Does the contractor’s safety program include discussion with employees to promote safe conditions and practices in their work? ◆ How are the job-related injuries and illnesses investigated, recorded and reported by the contractor? ◆ OSHA compliance. What does the contractor do to keep informed on government safety regulations and standards?
**For more information on construction safety, see Health and Safety Items and Article 7.2.4, “Public Safety and Convenience.”	
Contractor Estimates	<ul style="list-style-type: none"> ◆ Testing requirements ◆ Partial payments, monthly estimates, closing dates, etc. ◆ Payment for material on hand (MOH)
Subcontracts	<ul style="list-style-type: none"> ◆ Letter notifying the Department of proposed subcontractors to be used. (Refer to Article 8.2, “Subcontracting.”) ◆ Address and discuss subcontractor approval process including E-Verify and DMS requirements.
Disadvantaged Business Enterprise (DBE)/ Small Business Enterprise (SBE)	<ul style="list-style-type: none"> ◆ Advise contractors of requirements in the DBE/SBE special provision. ◆ Direct contractors to contact the Area Office (AO) concerning anticipated changes to their DBE/SBE commitments, any disputes, or an inability to meet the goal. ◆ The district is responsible for approving any requests from the contractors, for DBE/SBE removals, substitutions, and Good Faith Efforts resulting from removal of a DBE/SBE. ◆ Reports of all payments made to the DBE and SBE, regardless of commitment ◆ Confirm all payment by DMS tracked subs. ◆ Requirement for performing CUFs on DBEs for goal credit. ◆ For all federally funded projects beginning with the 2/2017 letting, the contractor must request to add a subcontractor in the Diversity Management System. Refer to subcontractor approval found in Chapter 10.
Contractor Performance Evaluations	<ul style="list-style-type: none"> ◆ Discuss and answer any questions regarding the Prime Contractor Performance Evaluation (Form 2707).

Preconstruction Meeting Topics

Agenda Item	Requirements/Discussion/Comments
EEO, Training, and Labor Compliance	<p>Equal Employment Opportunities (EEO) Compliance Program</p> <ul style="list-style-type: none"> ◆ Requirements are contained in the following special provisions: <ul style="list-style-type: none"> ● Required Contract Provisions Federal-Aid Construction Contracts (Form FHWA1273) ● Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) – including Form FHWA1391 – Certification of Nondiscrimination in Employment and Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). ◆ In addition, the applicable wage determination, the DBE or SBE special provision, and the prompt payment requirement must be included in subcontract agreements. ◆ Form FHWA-1273 must be physically attached to all federally assisted contracts, subcontracts, and purchase orders of \$10,000.00 or more. <p>On-the-Job Training:</p> <ul style="list-style-type: none"> ◆ Special Provision 000-006 - On-the-Job Training (OJT) Program, incorporated into all federal-aid highway improvement contracts. ◆ TxDOT’s Civil Rights Division (CIV) will notify every contractor selected for participation in the program at the beginning of each calendar year and advise them of the number of trainees they are expected to support. Participating contractors must enroll, train and graduate a number of trainees sufficient to meet their assigned annual trainee goal. <p>Prevailing Wage Rate Requirements:</p> <ul style="list-style-type: none"> ◆ Contractors and subcontractors must pay employees, at a minimum, the classification wage rates specified in the contract. The minimum wage rates must also be conspicuously posted and accessible on the project site. <p>Payroll Records:</p> <ul style="list-style-type: none"> ◆ Payroll records certifying compliance with the contract’s minimum wage rates, overtime and payroll deduction requirements must be submitted within 7 calendar days on construction projects. <p>Bulletin Board Requirements:</p> <ul style="list-style-type: none"> ◆ The U.S. Department of Labor, FHWA, and U.S. Department of Transportation require certain posters to be posted on bulletin boards in places accessible to the employees on a job site. The bulletin board requirements only apply to federal-aid construction contracts. <p>EEO Meeting Requirements:</p> <ul style="list-style-type: none"> ◆ EEO meetings with supervisory and personnel office employees must be conducted before the start of work and then at least once every 6 months. EEO meetings with non-supervisory employees must be conducted at least annually.
Partnering	<ul style="list-style-type: none"> ◆ Develop the issue escalation ladder ◆ Review potential issues ◆ Partnering Pledge (Form 2391)

Preconstruction Meeting Topics

Agenda Item	Requirements/Discussion/Comments
Other Matters	<ul style="list-style-type: none"> ◆ Procedures ◆ Shop drawings ◆ Erection details ◆ Forming details.
Comments and Adjourn	Summary and follow up, etc.

Suggested General Preconstruction Agenda

1. Introduction, Statement of Purpose of Meeting, and Project Safety Procedures
2. Identify Role of TxDOT Project Staff and Prime Contractor Staff
 - Introduce those present and acknowledge those on the escalation ladder.
3. Purpose of Meeting
 - This meeting is in accordance with Department policy in order for personnel of the TxDOT, Contractor, Utility Companies, Law Enforcement Agencies, etc., to discuss the schedule and methods of operation, and acquaint all concerned with lines of authority and communication while promoting greater safety.
 - Encourage continued focus and to do even more than we do today to reduce/eliminate the tragic accidents that happen that have taken the lives of our transportation family members.
 - Encourage partnership on the project to ensure work zone safety is our top priority.
 - The contractual obligation of the contractor for complying with the State and Federal construction safety standards (Review Contractor's Accident Prevention Program Checklist)
4. Partnering/Project Pledge
 - Partnering pledge
 - Issue resolution process
 - Rocks in the road (review of potential problems)
5. Project Issues (use this section for project-specific discussion items)
 - Project
 - Project location, limits, and scope of work
 - Working days/months
 - Working day definition (Item 8)
 - Contract amount
 - Right of way (ROW)
 - Utilities

-
- Contractor's Work Plan
 - Estimated start date
 - Estimated completion date
 - Project schedule – contractor's project schedule to be furnished to Area Engineer
 - Acceptable schedule required before work can begin
 - Schedule updates required each month
 - Contractor cannot revise the schedule without notifying TxDOT in writing
 - Contractor responsible for initiating time impact analysis process for delays
 - Discuss other special provisions or project-specific requirements
 - Field office and/or lab
 - Milestones
 - Traffic Control Plan
 - Location, condition, and protection of barricades
 - Signs
 - Speed zoning
 - Police departments – discuss departments affected and procedures for transmission of accident information.
 - Flagging – In accordance with Section 7.2.6.2, “Flaggers,” and Special Provision [007-001](#), the contractor must submit a list of certified flaggers before work begins.
 - Barricade inspections (Form 599) will be performed and signed by TxDOT's Department Responsible Person (DRP) for Barricades. Form 599 will be considered written notification of barricade inspections and maintenance. Contractor's Responsible Person for Barricades (CRP) will also sign Form 599.
 - Traffic
 - Detours
 - Limitations on working hours
 - Discuss the procedures for transmission of information on street closures, detours, etc.
 - Road user costs and lane rentals if applicable
 - Traffic Signal Timing Changes
 - The contractor will notify the Project Engineer at least 2 weeks prior to a proposed traffic pattern change that will require a revision to traffic signals. This requirement also applies to Item 681 “Temporary Traffic Signals for Construction.”
 - The District Safety Review Team may make periodic inspections and are available for assistance.

- Contractor Records
 - Review Special Provision [000-384](#). Form 1295, “Certificate of Interested Parties,” and related information is available on the [Texas Ethics Commission website](#).
 - TxDOT requires the submission of Form 1295 prior to change order execution in SiteManager at any time an existing contract increases in value to \$1,000,000 or more due to changes in the contract at any time there is an increase of \$1,000,000 or more to an existing contract (change orders, extensions, and renewals); or at any time there is a change to the information in Form 1295, when the form was filed for an existing contract.
- Shop Drawings Guide – All shop drawings should be submitted electronically.
- Shop Drawings Contacts – List of all dedicated shop plan addresses
- Discussion of specification requirements including penalties, time requirements, availability, submissions, retention, etc.
- Review Special Provision [000-010](#) – Incident and injury reporting through the TxDOT Electronic Project Records System (EPRS)
- Material On Hand
 - Discuss the mechanics of tracking material on hand, and pay quantities, if applicable.
 - Material on Hand Deadline – TxDOT DCO will not generate a supplemental progress estimate due to the missed deadline.
- Audits – The District and AO will perform periodic audits of project paperwork and notify the contractor in writing of deficiencies.
- Contract Materials
 - Review the Material Sourcing Letter (sent by AO to contractor prior to preconstruction meeting)
 - Discuss concrete source(s) and mix designs in the project
 - Discuss concrete cylinder mold sizes that will be needed, according to the aggregate size shown in the mix designs.
 - 4 × 8-in. cylinder molds can be used for mixes with aggregates grade 4 and smaller.
 - 6 × 12-in. cylinder mods required for use with larger aggregates.
 - Discuss the notification time to TxDOT personnel for concrete pours
 - Discuss pre-placement meeting schedules for mass placement, bridge deck, concrete paving, temp walls, soil nails, and hot mix for the project
 - Per Special Provision [006-001](#) [use of Commercial Lab (CL)], the AO will provide the contractor with CL information and forms. The contractor should complete and return forms to the AO prior to work beginning.
 - If the contractor chooses to use a CL, reimbursement to the Department for the CL will be made by a deduction from the contractor’s monthly pay estimate.

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- Minimum 24-hour notification to the Engineer, District Lab, and CL by phone and email is required when using a CL for sample pickup/testing.
 - Cancellations must be made by both phone and email; a \$150 cancellation fee will be recovered for cancellations without adequate notice that resulted in the mobilization of technician and/or equipment by the CL.
 - CL turnaround times and agreements are available to the AO and contractor upon request.
 - If the contractor chooses to use a CL, a meeting will be held with the Contractor, AO, DCO, and District Lab to determine which tests and materials will be tested by the CL, to remain in force for the entire project. Costs will be reviewed at that time. (E.g., if flexible base will be tested by a CL, the CL must perform all tests required for flexible base.) The contractor will be responsible for the testing required, determined by the quantity to be placed for the selected tests.
 - Article 7.18 – Electrical Work
 - Use certified persons or licensed electricians to perform electrical work. Electrical certification or licenses for this project will be in accordance with Article 7.18 of the Standard Specifications and any special provisions to Article 7.18.
 - If the subject project contains electrical work, TxDOT’s District or Traffic Operations Division ERT (Electrical Review Team) may make periodic electrical reviews and are available for assistance.
 - Disadvantaged Business Enterprise (DBE-Federal) and Small Business Enterprise (SBE-State) Contract Requirements
 - Discuss project goal
 - Monthly progress reports are due no later than the 15th of the month following payment in DMS.
 - A copy of all DBE and one non-DBE fully executed contract/agreement must be submitted to the AO in a timely manner. Prime contractor is responsible for ensuring that all contracts physically include all applicable special provisions contained in the Contractors Assurance and [FHWA Form 1273](#).
 - Commercially Useful Function (CUF) Reviews will be conducted on all DBEs including race neutral DBEs performing work on the project.
 - Use of joint check(s) requires prior approval by the District DBE Coordinator (DDC). Contractor must complete and forward [Form 2178](#) to the AO, which will direct the form to the DDC for review and approval.
 - Any removal, termination, substitutions, or changes to the original DBE/SBE Commitment Forms must be requested through the AO and directed to the DDC at the District Construction Office.
 - Prompt Payment Certification ([Form 2177](#)), required on all projects (federal and state), must be submitted by the end of the month following each month that the

prime contractor receives payments. This is a mandatory report, and the district may withhold estimates for late reports received.

- Projects let since February 2017
 - These projects include Special Provision [000-394](#), “Disadvantaged Business Enterprise in Federal-Aid Contracts,” which includes requirements for a web-based Compliance Tracking System to be used by contractors and TxDOT ([Diversity Management System](#)).
- Projects let prior to February 2017
 - SBE (State): Use Monthly Progress Reports (Form SMS.4907) and Final Report (Form SMS.4908). Includes all payments made to race-neutral DBEs/SBEs/HUBs.
 - DBE Prime Contractors only: Use Form SMS.4902 for payments made to non-DBE(s) subcontractors for monthly and final reporting.
 - DBE (Federal): Use Monthly Progress Reports (Form SMS.4903) and Final Report (SMS.4904). Include all payments made to race-neutral DBEs.
- Post Award Good Faith Efforts are evaluated at the District Level. Consult with CIV as necessary.
- E-Verify
 - Contractors must remain active in E-Verify throughout the life of the contract.
 - Subcontractors must remain active in E-Verify until their work is completed.
- Contractor Performance Evaluations
 - Review Special Provision [000-659](#)
 - Focus on using evaluations as a tool for communication
 - The contractor can request and provide documentation to justify high ratings where applicable
- EEO Compliance Program (Federal-Aid Projects Only)
 - The contractor should designate an EEO Officer with responsibility to administer an effective EEO Program. The EEO officer’s name and phone number for prime contractor and all subcontractors must be posted on the project bulletin board.
 - The Federal Aid Construction Contractors Annual Report ([FHWA Form-1391](#)) is required from the contractor and all subcontractors with contracts totaling \$10,000 or more that perform work on the project during the last week of July. This company-wide report is required annually, and submitted electronically until project completion. Instructions are sent directly to each contractor from TxDOT Civil Rights Division (CIV) and input is monitored by DCO.
- Storm Water Pollution Prevention Plan (SW3P)

- Ensure both English and Spanish versions of the TxDOT [Road Construction Environmental Management System Policy Statement](#) are posted on the Bulletin Board; EMS Policy and Posters
- The Environmental Permits, Issues, and Commitments (EPIC) Sheet provides important information regarding environmental issues that may need to be followed during the construction of this project:
 - Cultural,
 - Hazardous Materials or Contamination Issues,
 - Endangered Species, Critical Habit, etc.
- Control measures and intent of specification to be discussed at this time. A Storm Water Pollution Plan was developed for this project (identify plan sheet number). During final and temporary stabilization, Inspection and Maintenance Reports are completed by a TxDOT representative as specified by the SW3P
- Review [Special Provisions to Item 506](#) – listing what is not paid for directly but is subsidiary to pertinent bid items.
- Soil disturbance less than 1 acre – No submittal to Texas Pollutant Discharge Elimination System (TPDES) will be required but TxDOT and contractor will follow SW3P.
- Soil disturbance of 1 acre to less than 5 acres – Small Site Notice will be posted at project site by TxDOT and contractor. TxDOT will be considered a primary operator for Operational Control over Plans and Specifications. Contractor will be considered a Primary Operator for Day-to-Day Operational Control.
- Soil disturbance of 5 acres or more – A Notice of Intent (NOI) is required and a Large Site Notice will be posted at project site by TxDOT and contractor.
- NOI will be obtained by TxDOT first, who will provide a copy to the contractor prior to the preconstruction meeting for use in completing its NOI form. NOI [Instructions Presentation](#) is available for your use.
- Both TxDOT and the contractor’s NOIs will be in the SW3P project files.
- Both TxDOT and the contractor’s Construction Site Notice will be posted on project site bulletin board.
- Disruption of soil cannot begin until both NOIs are acquired and posted.
- The contractor’s daily monitoring reports are required within 7 days to TxDOT.
- TRAINING: Identify both a responsible person and an alternate for TxDOT (DRPe) and the contractor (CRPe). TxDOT provides training, at no cost to the contractor, valid for 3 years from the date of the completion. If an employee’s certification expires during the life of the project, the contractor will have one estimate cycle to update the employee’s certification.

- Construction Stage Gate Checklist (CSGC) will be completed on construction contracts that have soil disturbing activities and/or environmental permit requirements. Types of projects include new location, existing pavement rehabilitations/widening, culvert work, bridge rehabilitation/replacement. CSGC will be completed by the District Environmental Quality Coordinator (Environmental Project Management), in coordination with project staff and the contractor.
- Frequency will be within one month of beginning initial construction activities.
- Continue once a year until project is complete.
- Completed CSGC will be discussed with the contractor's superintendent/ foreman and signed by the contractor's representative.
- TxDOT will notify the contractor, in writing, of items found to be out of compliance that need to be corrected.
- Letter to Area Engineer for approval of contractor's plan and schedules for accomplishment of temporary and permanent soil erosion control work throughout the duration of work under contract. If TPDES is required, this letter is not required.
- During final and temporary stabilization, Inspection and Maintenance Reports are completed by a TxDOT representative as specified by the SW3P.
- Water Pollution Abatement Plan (WPAP) – If the project is in an Aquifer Recharge Zone, notify the Texas Commission on Environmental Quality (TCEQ) of the preconstruction meeting. TCEQ must be notified in writing once the sediment control devices have been installed on the project by the WPAP and are available for inspection.
- For Contractor PSLs (Project Site Locations):
 - On-Site PSLs (one mile within the boundary of the permitted construction site) – a copy of the contractor's NOI and signed sketch of the SW3P measures are required.
 - Off-Site PSLs – submit letter designating the off-site location(s) and associated area calculations.
 - Non-Joint Bid Utilities are responsible for their own SW3P measures and NOIs. In addition, for Utility On-Site PSLs, a copy of the Utility Company's NOI and a signed sketch of the SW3P measures are required. For Utility Off-Site PSLs, a letter designating the Off-Site PSL location(s) and associated area calculations is required.

6. Close Meeting

- Issues specific to the project as determined by the AO
- Distribute copies of sign-in roster.

Agenda Reference Material

Prior to the meeting, provide the following reference information to all parties involved on the contract. This will provide the contractor an opportunity to review and complete in advance, allowing the meeting to focus on project issues and saving time for all parties. Utilize best judgement to ensure an effective and efficient Pre-Construction meeting. Example of materials are attached in chapter 17.

- ◆ Escalation Ladder—The Escalation Ladder clearly defines channel and timeframe to which disputes or issues are handled. Resolving issues at the lowest level of the escalation ladder is recommended when possible. Ensure all parties involved in the contract are aware how issues will be escalated and provide copy to required parties.
- ◆ Partnering/Project Pledge ([Form 2391](#))
- ◆ TxDOT Required Documentation
 - Document listing TxDOT responsible contacts including: Area Engineer, Assistant Area Engineer, Record Keeper, Inspectors, District Responsible Person (DRP) for barricades, DRP for SWP3, and third-party inspectors.
 - Other information that may be included:
 - timeframes for payment,
 - time begin date,
 - police to be contacted, and
 - reference to EPIC sheet for the Environmental Plan.
 - As part of the documentation, the AO needs to send the contractor a request for Prime Contractor's Required Documentation along with Material Sourcing Excel, and documentation if the contractor will be requesting a Commercial Lab.
- ◆ Prime Contractor's Required Documentation
 - Document listing Contractor responsible contacts including: Superintendent, Change Order Contact, Payroll Officer, Safety Officer, DBE liaison, and Contractor responsible person for Environmental and barricades along with alternate CRP.
 - Other information that may be included: Anticipated work start date and completion date.
 - Prime contractors must also submit:
 - company complete safety program,
 - subcontractor approval request,
 - certifications for flaggers, electricians, ACI shotcrete nozzleman, materials, and welders,
 - contractor's NOI per Special Provision 506-003,
 - list of contractor's employees with required training requirements,
 - complete Material Sourcing Letter,

- complete Commercial Lab Form,
- letter of compliance with TCP, and
- contractor's Escalation Ladder.

Suggested Preconstruction Seal Coat Topics

1. Schedule and Time Charges
 - Establish the start date (including latest start date) and proposed work sequence.
2. Roadway Preparation
 - Based on the sequence and schedule, review if all roads are ready to be sealed.
 - If all roads are not prepared, discuss timeline to finish prep work and adjustments to the proposed sequence.
 - If repairs require a change in sequence, discuss the time impact to the proposed schedule.
 - Go over potential impacts that roadway repairs (i.e. strips seals, crack seal, etc.) will have on asphalt rates for a section of roadway.
 - Determine a point of contact for updates on late repairs.
 - Are there areas where thermoplastic has built up and needs to be removed prior to seal coat? If so, determine means of removal.
3. Asphalt and Aggregate Rates
 - Review Aggregate plan spread rates per grade of rock.
 - Establish a plan for adjusting aggregate and asphalt rates in the field. Clarify the level of authority TxDOT field personnel have to adjust those rates before escalation.
 - Go over factors that can affect the planned asphalt rate such as traffic, time of year, temperature, type of asphalt, grade and type of aggregate, and roadway conditions.
4. Barricades and Traffic Control
 - Discuss traffic control that will be used when existing pavement markings are removed and tabs are being placed.
 - Discuss traffic control for intersections if this work is done advance of main lanes.
 - Discuss importance of covering signs when condition(s) are not present. For example, No Center Stripe, Loose Gravel should not be visible when those conditions do not exist.
 - Discuss locations and/or situations that will necessitate unique Traffic Control. This should include items such as school zones, intersections, high volume roadways, work in cities/towns, etc.
 - Clarify the process to remove barricades from a section of roadway. Items to include should be partial acceptance procedure, placement of striping, punch list work, and when all barricades can be removed.
 - Discuss roadway closure procedures.

5. Pavement Markings

- Verify the required asphalt cure time needed before placement of permanent pavement markings will be allowed.
- Discuss any proposed pavement changes (i.e., new turn lanes).
- Discuss the potential impact of weather and placement of centerline markings as it relates to the 14-day striping requirement.
- Discuss time suspension for pavement curing. In addition, establish if there is a need for additional pavement markings or changes to existing markings. Go over items that will necessitate adding time to the contract.
- Go over other items such as removal of existing stripe, the use of temporary markings, and the placement of different marking types (i.e., profile markings).

6. Payment for Asphalt and Aggregate

- On jobs where aggregate is paid by the ton, review how to pay for partial loads that are transferred from one job/reference section to another.
- Review options to measure Asphalt Distributors to confirm asphalt rates. Examples are strapping, distributor gauges, distributor computers, or a combination of these items. Documentation of distributor calibration and pray bar is also vital.
- On jobs where aggregate is paid by the CY, review items such as premeasurement of trucks, verification of aggregate placed based upon agreed measured truck volume, and the striking off of loads. These are critical items to determine before work begins.
- Discuss dry/loose unit weights of all aggregate and the anticipated conversion factor.
- Confirm aggregate Material On Hand quantities per reference section. Confirm plan rates/plan quantity of aggregate.
- Review how field adjustments in aggregate/asphalt rates or reductions in square yards impact the contractor and how the excess aggregate on hand is compensated.
- Discuss how remainder aggregate not carried forward is to be handled.
- If remainder of aggregate is to be bought by TxDOT, determine measurement of quantities.

7. Corrective Measures

- Major corrective measures should be addressed prior to leaving a roadway or reference section.
- Patching, stockpile condition acceptance and other items related to clean up should be discussed with contractor representatives prior to leaving a roadway or reference section.

8. Miscellaneous

- Discuss shared ownership of the contract (partnership) and that the outcome of the work reflects on both TxDOT and the Contractor.

- Include suppliers at the preconstruction meeting and at the job site. They have a vested interest in the performance of their product and often provide helpful insight.
- Review the Seal Coat Manual and include printed copies on the job site. This is a helpful resource to all parties involved.

Section 5 — Preconstruction Safety Meeting

Purpose of the Preconstruction Safety Meeting

The purpose of the safety pre-construction meeting is to discuss work zone safety with Department personnel, the contractor's staff, law enforcement agencies, etc. This meeting should establish lines of authority and communication; determine the responsibilities and duties of contractor's personnel, subcontractors, and Department personnel; clarify potential sources of misunderstanding; and work out the detailed arrangements necessary for the safe and successful completion of the contract. Maintain a written record of the meeting (e.g., meeting minutes) in the contract file, together with any required documentation provided to resource agencies.

Preconstruction Safety Meeting Responsibilities

Conduct a preconstruction safety meeting with the contractor after the Texas Transportation Commission has awarded the contract, the contract has been executed, a work order has been issued, and prior to commencement of construction operations.

Ensure meeting attendees include:

- ◆ appropriate representatives from the district and area offices,
- ◆ the contractor's organization,
- ◆ subcontractors (as required),
- ◆ local governmental entities (as required), and
- ◆ local law officers (as required)

Pre-construction Safety Meeting Agenda

Prepare a preconstruction safety meeting agenda to discuss specific items. The following table is a list of discussion topics. Tailor the agenda to the specific project to ensure important topics are discussed with appropriate detail.

Preconstruction Safety Meeting Topics

Agenda Item	Topic/Comments
Introduction	<ul style="list-style-type: none"> ◆ Staff introductions ◆ Purpose of meeting
Identity of Representatives	Identify the contractor's representatives, subcontractors, engineer, law enforcement agencies, and other relevant parties giving name, address, and phone number.

Preconstruction Safety Meeting Topics

Agenda Item	Topic/Comments
Project Safety	<ul style="list-style-type: none"> ◆ Encourage contractor to focus on safety <ul style="list-style-type: none"> ● Trench safety ● Fall protection ● Confined spaces ● Personal Protective Equipment (PPE) ● Overhead powerlines ◆ Discuss TxDOT best practices for safety <ul style="list-style-type: none"> ● Blind spots, parking, material storage locations, etc. ◆ Discuss work zone safety as being top priority and a partnership ◆ Determine time, location, and frequency of project Safety Meetings
Traffic Control Plan	<ul style="list-style-type: none"> ◆ Discuss each phase/milestone ◆ Discuss limitations for construction work methods ◆ Discuss the use of additional work zone safety devices ◆ Identify the Contractor Responsible Person (CRP) and alternate (Section 7.2.6.1) ◆ Discuss available and required trainings <ul style="list-style-type: none"> ● Flagger certifications, etc. ◆ Discuss Hurricane Evacuation Route, etc. (as applicable) ◆ Discuss the importance of keeping travel ways clear <ul style="list-style-type: none"> ● Where to store materials, equipment, etc. ◆ Discuss the importance of clear zones

Refer to “Requirements for a Pre-Construction Safety Meeting” policy in Appendix A.

Section 6 — Partnering

Policy

Every construction project is a joint effort between the Department and the contractor. Cooperate with contractor personnel to expedite the work without violating the terms and conditions of the contract.

Use the Department's Partnering Program to improve working relationships and reduce construction related disputes and claims. The goals of the program are to:

- ◆ handle issues fairly and honestly,
- ◆ interpret and apply the specifications in a reasonable manner (this does not relieve the contractor of their responsibility in conforming to the specifications), and
- ◆ maximize the quality and efficiency in a fair manner.

The need for partnering will be determined by the district engineer (DE) after consideration of the following factors:

- ◆ contract complexity,
- ◆ impact on traveling public,
- ◆ high profile contracts and those with potential for recognition,
- ◆ high degree of risk for citizen or partner complaints,
- ◆ required Road User Costs and/or the use of incentives/disincentives,
- ◆ contracts requiring coordination between multiple partners (including resource agencies), and
- ◆ the presence of environmentally critical areas.

Procedure

Complete the following tasks to arrange an informal partnering meeting.

- ◆ Compile a list of the individuals and entities who should participate in the initial partnering workshop, including:
 - department personnel (e.g., inspectors, record keepers, project engineers),
 - contractor personnel (e.g., foremen, superintendents, project managers), and
 - representatives of all interested parties (e.g., subcontractors, material suppliers, city and county officials, utility companies).
- ◆ Select an internal facilitator responsible for meeting planning, development, delivery, and producing and supplying participants with the final report.

- ◆ Schedule the partnering meeting.
- ◆ Provide sufficient advance notification to identified meeting participants to ensure attendance.
- ◆ Conduct the meeting—may be held prior to or in combination with the preconstruction meeting.
 - Partnering Agreement,
 - Partnering Pledge ([Form 2391](#)), and
 - Escalation Ladder.
- ◆ Reimburse the contractor for half the costs of the partnering meeting.

Partnering Performance

Either party may withdraw from an agreement reached at a partnering meeting by providing written notice to the other party. Make every reasonable effort to restore a partnering agreement prior to providing written notice of the Department's withdrawal from the agreement. The sole remedy for non-performance of a partnering agreement is termination of the agreement.

Chapter 4 — Project Records and Closeout

Contents:

[Section 1 — Importance of Accurate Records](#)

[Section 2 — Public Information Act](#)

[Section 3 — Traffic Control Plan \(TCP\)](#)

[Section 4 — Project Records](#)

[Section 5 — Project Closeout](#)

Section 1 — Importance of Accurate Records

Overview

Complete and accurate records are important for proper administration of all contracts. Document all important information related to the performance of the work. Contract records provide the following and are required for legal purposes:

- ◆ facts and details of all tests, inspections and work performed, including activities, events, critical path work performed and cancelled, visitors, directions, disputes, conflicts and resolutions, correspondence, and any issues relating to the project;
- ◆ proof of and support for decisions, actions, and fulfillment of the Department's responsibilities; and
- ◆ documentation of the contractor's compliance or noncompliance, with the contract plans and specifications.

The Daily Work Report (DWR) is the Department's official record of what occurs on a construction project. DWRs are to include anything that has occurred on the project such as discussions, decisions (including the source), work performed, disputes, escalations and resolutions, weather, and visitors. Project meetings, correspondence (letters and email), and change orders should be either documented through DWR entries or flagged (test reports, change orders, etc.) When making DWR entries, staff must also consider situations beyond the contractor's control and actions by TxDOT's project personnel that may have influenced the contractor's performance—either positively or negatively.

Maintain complete, clear, and accurate records that provide documentation of contractor delays, quantity variations, unacceptable work, quality of materials, surveying problems, and other points of contention. Complete documentation supports the Department's position in case a formal dispute or claim is made. (Reference Chapter 8 for more information regarding disputes and claims.)

Electronic Records

Electronic collection and records retention must be acceptable from an engineering, audit, and legal standpoint; therefore, any records system should allow for the reconstruction of the chain of events that occurs on a contract. Meet the following requirements relating to electronic records.

- ◆ Include information recorded at or near the time of the events, but no later than the third day after the event.
- ◆ Include information recorded by or from a person with direct knowledge of the event.
- ◆ Ensure only authorized personnel enter information.

- ◆ Provide adequate backup and recovery to protect against information loss due to either human error or system failure.
- ◆ Prevent unauthorized alteration or erasure.
- ◆ Do not maintain duplicate records.
- ◆ Provide authorized users retrieval capability.
- ◆ Maintain adequate software programs and hardware dependency documentation (e.g., Primavera, ProjectWise, LCPtracker, SiteManager, Diversity Management System).
- ◆ Provide an accurate audit trail by indicating the steps followed in processing the data and the methods used to prevent loss of data.
- ◆ Store data on appropriate media.

Correspondence

Handle all correspondence according to approved District practices.

Section 2 — Public Information Act

Overview

The [Texas Public Information Act](#), formerly known as the Open Records Act, provides a mechanism for citizens to inspect or copy government records. The Act also allows for requesting permission to withhold information contained in governmental records from the public in certain instances, such as documents related to litigation. Governmental entities must respond promptly to information requests.

Refer to the Department's [Legal Manual](#) for compliance requirements (internal access only).

Section 3 — Traffic Control Plan (TCP)

Construction or Work Phase Requirements

Each work zone must have designated contractor and Department representatives charged with the responsibility of managing work zone safety.

The **District Responsible Person** (DRP) will:

- ◆ make routine inspections to determine if project traffic control is in compliance with the plans and specifications and the [Texas Manual on Uniform Traffic Control Devices](#) (TMUTCD), *ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features*, TxDOT Standard Sheets, *AASHTO Roadside Design Guide*, and the [Compliant Work Zone Traffic Control Device List](#);
- ◆ communicate all pertinent work zone requirements to the contractor in the preconstruction meeting;
- ◆ ensure formal inspections are conducted using Form 599, “Traffic Control Devices Inspection Checklist,” following the instructions outlined on the form;
- ◆ ensure all Transportation Management Plan (TMP) strategies identified on Form 2229 are properly deployed in the work zone;
- ◆ notify the contractor of discrepancies at the time of inspection or by the end of the next business day;
- ◆ obtain the written flagger instructor's information from the contractor;
- ◆ before work begins, have on file a list of all the contractor's certified flaggers and flagger instructors;
- ◆ maintain a copy of the contractor employees' certification of completion for Department-approved traffic control training in the project files in accordance with Section 7.2.6.5, "Training";
- ◆ ensure that contractor-developed traffic control training, when used, complies with the requirements of Section 7.2.6.5 and any associated special provisions;
- ◆ have authority to halt work until applicable or remedial safety measures are taken;
- ◆ report changes needed to the Area or Project Engineer;
- ◆ document any major changes to the TCP;
- ◆ assist in work zone accident reviews; and
- ◆ coordinate with and assist the Public Information Officer (PIO) with information required for implementation of public information strategies for which the contractor is not responsible.

In accordance with the contract, the **Contractor Responsible Person (CRP)** will:

- ◆ upon notification take immediate corrective action for Priority 1 deficiencies and take corrective actions for Priority 2 deficiencies within 7 calendar days of notification;
- ◆ be accessible by phone and able to respond to emergencies 24 hours per day and have employees able to take corrective measures within 30 minutes;
- ◆ report traffic control device deficiencies to the DRP;
- ◆ assist the DRP in conducting traffic control device inspections;
- ◆ report corrections of traffic control device deficiencies to the DRP; and
- ◆ make all reasonable efforts to promptly contact the Engineer if a critical situation arises that may require a change in traffic control.

The District Traffic Control Coordinator (TCC) will:

- ◆ accompany the DRP on the initial project inspection and
- ◆ perform quarterly inspections accompanied by the DRP, if possible.

Phase Change Inspections and Documentation

The DRP will perform an inspection of traffic control in the field immediately after:

- ◆ initial traffic control installation,
- ◆ traffic alignment changes, and
- ◆ implementation of major traffic control phases.

Formal Inspections and Procedures

The DRP will perform formal inspections of all traffic control devices twice a month at approximately 2-week intervals. Conduct at least one of these inspections at night as soon as possible after the initial set-up for projects with overnight traffic control. Provide the CRP the opportunity to accompany Department staff on these inspections.

Tailor formal inspections to be in compliance with the contract documents. These inspections may include but are not limited to the following.

- ◆ Traffic control devices must be effective, clearly visible, clean, and consistent with the TCP.
- ◆ Sign placement should be placed as shown in the TCP, with minor modifications for spacing visibility, prevent sign clutter, and understanding by motorists.
- ◆ Length of tapers, spacing of channelizing devices, and type of channelizing devices must be in compliance with TCP and Barricade and Construction (BC) standard sheets.

- ◆ Reflectivity and color characteristics of all traffic control devices must be as specified. Night-time color of all signs must show the same shape and similar color both day and night. Refer to ATSSA Quality Guidelines.
- ◆ Cleanliness and position of all traffic control devices must be maintained to ensure the devices perform as intended.
- ◆ Work zone speed limits are implemented only with approval from the Commission. Work zone speed limit signs must be covered when the applicable conditions are not present in the work zone.
- ◆ All work zone devices (signs, drums with signs, barricades, etc.) must be used with approved supports and sign substrates, and installed in the correct position as shown on the BC standard sheets in order to be considered crashworthy.
- ◆ Traffic markings on the pavement surface must provide adequate guidance to motorists throughout the work zone. Non-applicable markings must be removed and replaced with temporary markings on long-term stationary operations. Obliterated pavement markings must not stand out or cause confusion to motorists.
- ◆ Work zone and existing permanent signs must be properly covered when the sign message is not currently applicable, and signs must not provide conflicting information. Signs may not be laid down. Sign spacing should follow TCP standards such that signs are not blocking each other or blocked by trees or other obstructions.
- ◆ Traffic control devices must convey consistent messages to motorists. For example, if the right lane is closed, the advance warning signs, striping, channelizing devices, temporary rumble strips, and arrow boards must be consistent with that situation.
- ◆ All contractor employees in the work zone must have proper high-visibility safety apparel.
- ◆ All flaggers must be facing forward, standing near flagging paddle, and using approved hand motions to direct vehicular traffic. Flagging stations are set up in advance of work location and with sufficient stopping sight distance on the approach for vehicular traffic.
- ◆ Temporary rumble strips are used in lane closure setups and in advance of flagging stations for short duration and short term stationary work on conventional highways.
- ◆ Arrow panels are used to denote lane closures. When space permits, arrow panels are placed on the shoulder of the road at the beginning of the merging taper.
- ◆ Truck mounted attenuators (TMAs) or trailer mounted attenuators (TAs) are used at least 30 feet in advance of the work area to protect both workers and the traveling public when barriers are not used.
- ◆ Portable changeable message signs and smart work zone setups are deployed and operated in accordance with contract plans and specifications. The BC standard sheets include a list of approved 2-phase messages.

- ◆ Pedestrian pathways or detours must be accessible in accordance with ADA standards and as outlined in the Texas Manual On Uniform Traffic Control Devices. Temporary signs and other devices should not block pathways intended for pedestrian use.
- ◆ Barriers reflectors meet the requirements of BC sheets and are properly attenuated or flared away to the edge of the clear zone.

Deficiencies must be corrected in accordance with the instructions found on Form 599.

Formal Inspection Documentation

Document compliance and deficiencies on Form 599 in accordance with the instructions on the reverse side of the form.

At the time of inspection, the Engineer will determine the priority of each deficiency. Priority 1 deficiencies are those deficiencies needing immediate corrective action due to imminent danger. For example, missing or illegible regulatory signs require immediate corrective action. Priority 2 deficiencies are deficiencies needing corrective action but pose minimal risk to the traveling public, e.g., slightly leaning or dirty traffic control devices.

In accordance with the *ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features*, up to 25% marginal devices (signs, drums, cones, etc.) would be considered Priority 2 deficiencies. Any time greater than 25% of the devices are marginal, the replacement or cleaning of devices is considered a Priority 1 deficiency. Unacceptable devices are Priority 1 deficiencies.

Verify both sides of Form 599 have been completed.

Once the inspection is complete, the CRP must sign and date Form 599. Provide a signed copy to inform the contractor of corrective action needed. As the contractor corrects deficiencies, document on the original form the completion date for each, and initial the verification section.

Form 599 may be filled out electronically. Do not maintain (save) or distribute electronic versions.

599 Disclosure

Immediately upon completion of Form 599, file the form and related documentation separate from the project files in a folder boldly labeled “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 U.S.C. 409.” Maintain separation by filing the folder at the District or the Area Office. Destroy additional copies of the form.

Immediately forward requests for copies of the form to the General Counsel Division (GCD) with copies of all completed contract forms for the affected contract(s). The Department must seek a ruling from the Office of the Attorney General (OAG) on each request for copies of Form 599.

TCP Change Documentation

The Department is responsible for the design of the TCP and approval of any modifications. The contractor may propose TCP changes by providing signed and sealed sheets, but the Department must still approve the change. The contractor is responsible for implementing and maintaining the TCP. Provide the contractor with a copy of any revisions to the TCP.

Prior to or immediately after implementation, document changes that alter the original TCP shown in the plans or the sign and traffic control design requirements. The documentation requirements generally apply to project-specific TCPs and changes to the requirements of non-project-specific TCP standards; minor adjustments to meet practical placement requirements in the field do not necessarily require documentation. Place the documented changes to the TCP with the plans or in the contract files, as appropriate, and provide copies to the Department inspector and the CRP.

Changes to TCP plans sheets, sketches, and marked up copies of plan sheets are under the direct supervision of an Engineer and require **signing, sealing, and dating**. The Engineer's written field instructions for the TCP changes require the Engineer's professional engineer (PE) designation and the date. Refer to Chapter 16, Section 2 for more information regarding change orders that include changes to the TCP.

Law Enforcement Usage

Law Enforcement is not considered a subcontractor due to providing a service. Finder and scheduling fees are covered through administrative markup provided in item 9 of the 2014 specification. For additional information on law enforcement usage refer to the [Work Zone Safety and Mobility Guidelines, section 10](#).

Highway Closures during Certain Periods (Trans Code 224.034)

If a proposed improvement of the state highway system requires the closing of a highway, the department shall, before entering into a contract for the proposed improvement, coordinate the highway closure by working with your PIO and DE to communicate in person or by telephone call, e-mail, or other direct method of communication with public officials from municipalities affected by the closure to avoid any adverse economic impact on the municipalities during:

- ◆ periods of increased travel on the state highway system, including major state and federal holidays and school holidays; and

- ◆ other periods of high commercial activity in the state, including limited periods in which certain items are exempted from the sales tax imposed by Chapter 151, Tax Code

For municipalities that:

- ◆ are located in three counties, two of which have a population of 1.8 million or more;
- ◆ primarily located in a county with a population of 1.8 million or more; and
- ◆ have within its boundaries all or part of an international airport operated jointly by two municipalities.

The Department must prohibit the contractor from temporarily closing the highway, including temporarily relocating or changing an entrance or exit ramp to or from the highway, on the date that an event is scheduled to be held in a municipality in which the improvement is being proposed if, not later than 180 days before the date the event is scheduled to be held.

The municipality notifies the department and the contractor of the date.

Plans should contain specifications, provisions, or general notes stating the days on which the highway may not be closed.

Section 4 — Project Records

Notice of Beginning Work

After the Preconstruction Meeting and prior to beginning work, the Area Engineer (AE) will send the Director of Construction (DOC) a Notice of Beginning Work. The notice, will be sent by email and include the CCSJ and the date work will begin.

Immediately after the contractor begins work, the District inputs the **Work Began** date in SiteManager's Critical Dates tab. Consult with the IT Help Desk for assistance accessing SiteManager and for local network or system problems.

When the contractor requests payment for material on hand (MOH) for projects such as seal coat or traffic signal installation before actually beginning work, the AE may issue a “Notice of Beginning Work.” The AE suspends all work and working day charges until work or working day charges begin in accordance with the contract.

The Notice of Beginning Work needs to be submitted only once for each construction contract. Individual projects within the contract and suspensions or resumptions of time during the project duration do not require additional beginning notices unless required by District procedures.

Progress Schedules

Obtain a progress schedule from the contractor prior to the beginning of work. Ensure that the progress schedule conforms to the contract requirements, specifications, and Chapter 10 of this manual, and contains the following:

- ◆ all planned work activities and sequences,
- ◆ documentation that contract completion will occur within the number of working days specified or acknowledgment that the contractor is planning on exceeding working days,
- ◆ major material procurements,
- ◆ known utility relocations,
- ◆ beginning and ending dates, and duration in number of working days for each activity,
- ◆ estimated production rate per working day for each work activity, and
- ◆ other activities that may affect completion of the contract.

Unless otherwise shown in the contract, obtain monthly updated progress schedules from the contractor. Review the schedule to ensure conformance with the contract. If the progress schedule indicates that the contract will not be completed within the number of working days specified,

obtain written clarification that states whether the contractor will revise the progress schedule to meet the number of working days specified or will exceed the number of working days specified.

Review major changes to the progress schedule that may affect compliance with the contract requirements or that change the critical path or controlling item of work. These proposed major changes may be rejected.

For multiple work order contracts, ensure that the contractor submits a progress schedule for each work order.

Daily Project Records

A properly maintained daily account of all project activities provides invaluable documentation of the prosecution of work and related events. The SiteManager Daily Work Report (DWR) is the official project record for construction projects. The official location to record time charges/credits for construction projects is the SiteManager Diary.

For projects involving multiple inspectors, the Project Engineer or Chief Inspector may maintain the general project record, while all other inspectors file supplementary daily project records. Avoid conflicting DWRs and duplication of contractor forces and equipment.

Maintain and update the daily project record in such a manner that new personnel may take over the inspection work and maintenance of the record at any time. Do not keep duplicate records.

SiteManager Daily Work Report (DWR)

DWR entries include, but are not limited to the following:

- ◆ date;
- ◆ temperature;
- ◆ weather conditions;
- ◆ contractor/subcontractor work hours;
- ◆ controlling item of work based on schedule;
- ◆ safety violations, if observed;
- ◆ visitors;
- ◆ SW3P report/issues;
- ◆ accident information;
- ◆ payroll interviews;
- ◆ utility issues;

- ◆ directions given/received;
- ◆ unauthorized subcontractors
- ◆ work performed:
 - who performed the work,
 - what was performed (inspected and not inspected),
 - where work was performed (station numbers and offsets);
- ◆ approximate quantities of work;
- ◆ arrival and departure of equipment;
- ◆ quantity and type of equipment and activity at the project site;
- ◆ details and reasons regarding time or work suspension;
- ◆ record of scheduled work cancelled, including the reason;
- ◆ unusual construction or work conditions;
- ◆ changes to the plans and any decision-making discussions with the contractor;
- ◆ detailed information that may have a connection with a probable dispute or claim against the Department;
- ◆ all traffic control changes, noting duration and phase to include description of traffic control (e.g., one lane closure, TCP #) and all applicable details such as description of location/lane, direction, and approximate period of the day, location on roadway such as distance or landmark limits;
- ◆ project completion and final inspection activities; and
- ◆ other important features of the project, such as discussions concerning Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunity (EEO) requirements, Commercially Useful Function (CUF) reviews, etc.

When working day charges are suspended due to non-acquired right of way (ROW), railroad issues, or utility relocation, list the weather conditions in the DWR with a note indicating whether a day would normally be charged in accordance with the contract. This allows for easy determination of Federal Highway Administration (FHWA) participation. Exclude working days that would not have been charged due to weather conditions when calculating FHWA non-participation; these working days are documented using [Form 2235](#), “Final Inspection of Federal-Aid Project.”

Complete at least one DWR and a project diary entry for each day from the date the contractor begins work or the date working day charges begin, whichever occurs first, to the completion of the work.

When the project is complete, combine all project records into one file (daily diaries, pay records, correspondence, etc.) Ensure that all records and documents pertaining to the Contract are main-

tained in the location specified by the District. See Section 5, “Project Closeout,” for more information.

DWR Authorization

- ◆ Ensure there is a minimum of two individuals involved in the authorization of the DWR so that the individual inputting the information in the DWR is not the same individual authorizing the DWR.
- ◆ By checking the authorized box, the checker has made a reasonable and good faith effort to ensure the information included with this DWR is complete and can be included for payment.
- ◆ Authorize DWRs in a timely manner.

Third-Party Damage Procedures

For direction on third-party damage procedures, refer to the District Damage Claim Standard Operating Procedure (SOP) available on the Maintenance Division's intranet page.

Materials Received

Maintain records for all materials received on each project. When purchasing materials by weight, develop, document and use a method to ensure that all material weights are accurate. The weight verification program includes random check weighing, observation of weighing procedures, inspection of scales, and observation of plant weighing. Determine the method for verifying weight based on available personnel, equipment, and existing conditions. Refer to Chapter 11, “Measure and Payment,” for a summary of the measurement and payment process.

When the contractor furnishes materials from within the construction project, refer to established laws; policies; procedures; and Article 6.8, “Use of Materials Found on the Right of Way”; Article 9.1, “Measurement of Quantities”; and Item 520, “Weighing and Measuring Equipment.”

Document any revisions to the materials testing schedules. Ensure that materials testing records are audited by the District Construction Auditor or Area Engineer to ensure that all materials placed on a project are received from approved suppliers and are tested in compliance with the requirements established for the contract and approved by the Project Engineer.

Ensure all materials received that are comprised predominantly of steel or iron comply with Section 6.1.1, “Buy America,” of the *Standard Specifications*.

Records on Temporary Suspension of Work or Working Day Charges

When work or working day charges are temporarily suspended, provide the contractor a written notice that includes the reasons for the action and the effective date of the suspension. Record the

suspension and reasons in the DWR accordingly. For additional information, refer to Chapter 10, Section 5, “Temporary Suspension of Work or Working Day Charges.”

Resumption of Work

When work and working day charges are resumed, notify the contractor in writing of the work resumption. Record the resumption in the daily project records.

Working Day Charges

Working day charges are kept correct and current by daily entry into the SiteManager Diary. Provide a credit reason when a working day is not charged.

When an Estimate has been processed, working day charges and credits may not be changed.

Anticipated Project Completion Letter

See Chapter 3, Section 2, "Legislative Notification Requirements," for information.

Final Plans

Upon project completion, revise the original plans to show the project as-built. Place the words “FINAL PLANS” in a conspicuous place on the title sheet with the following:

- ◆ contractor’s name,
- ◆ letting date,
- ◆ begin date of work, and
- ◆ date of completion and acceptance.

Show a summary of all change orders (COs) on the title sheet. If needed, insert a separate summary sheet immediately following the title sheet.

For projects involving bridge construction, the drilled shaft or pile foundations tip elevation must be indicated on the bridge layouts in the final (as-built) plans.

Shop drawings are to be placed in the final as-built plans.

The responsible Engineer affixes the final plans statement to the title sheet and signs, seals, and dates the final as-built plans. Follow the procedure developed by the Support Services Division (SSD) for the online submission of final projects.

Required Reports and Forms

Submit the following reports and forms. (See Chapter 17, “Forms and Documents,” for referenced forms.)

Change Order (CO)

The Construction Division (CST) will perform quarterly audits of COs. The Division will request the signed Change Order from the District along with backup documentation.

Supplemental Agreements (SA)

Send all SAs to CST for review and execution. Refer to Chapter 7, Section 4, “Supplemental Agreements,” for detailed information.

Final Estimates (FE)

Prior to approving the FE:

- ◆ obtain material and tests clearances;
- ◆ ensure all project documentation is acquired;
- ◆ verify the Disadvantaged Business Enterprise/Small Business Enterprise (DBE/SBE) goal has been met [if not, obtain approval from the Civil Rights Division (CIV) prior to processing];
- ◆ verify the District Director of Construction's final determination for DBE Clearance during the closeout period;
- ◆ obtain an On-the-Job Training (OJT) summary from the contractor, if applicable (see Chapter 15, Contractor Workforce); and
- ◆ complete and approve or deny all COs.

Submit local participation reports (if applicable), federal-aid project forms, and Statements of Cost (SOC) to the Financial Management Division (FIN), Accounting Management Section, no later than 60 calendar days after the FE approval. The Accounting Management Section will review and notify the District of concurrence or the need for a corrected SOC. Refer to the *Financial Management Policy Manual* for further information (internal access only).

Form FHWA 1494 – Semi-Annual Labor Compliance Enforcement Report

This report contains information concerning the compliance and enforcement of the Davis-Bacon and Related Acts (DBRA) for projects. Semi-annual reports requiring time periods are as follows:

- ◆ October 1 through March 31 and
- ◆ April 1 through September 30.

Each district is to complete form summarizing project compliance and enforcement of the Davis-Bacon and Related Acts (DBRA) for all active district projects during the applicable period. Submit a single completed summary to CST by email to CST Labor Compliance. For more specific information reference Chapter 1, Section 2, Labor Requirements.

Form 2235 – “Final Inspection of Federal-Aid Project Constructed Under 23 U.S.C. 117”

Complete Form 2235 for all federal-aid projects. Maintain the original completed form in the District project records and submit one copy of this form to FIN, Accounting Management Section, within 60 calendar days of the final contractor payment.

On the form, include all non-participating costs, such as any non-participating change orders and their respective amounts, any non-participating time extensions due to delay of utility adjustments or any other reason, and any other miscellaneous non-participating costs.

Retain the original Form 2235 in the District's project file. FHWA and CST do not need a copy of this form.

Refer to Chapter 16, “FHWA Oversight Requirements,” for additional information regarding Form 2235.

Letter of Certification of Materials Used

Prepare a Letter of Certification of Materials Used for non-exempt federal-aid contracts and submit to the FHWA, Texas Division office. Exempt federal-aid contracts do not require this letter.

Form FHWA-1391 - “Federal-Aid Highway Construction Contractors Annual EEO Report”

Refer to the Civil Rights Division (CIV) website for time-sensitive information and guidance regarding Forms FHWA-1391 and FHWA-1392.

Records Retention

Retain all project records in accordance with the records retention schedule.

Section 5 — Project Closeout

Overview

Project Closeout is the process of collecting all of the paperwork required to be submitted over the life of the project, to support pay quantities and to support the decisions made during the life of the project. The information contained in this documentation may be needed in the future if a claim or lawsuit is filed. This is a two-step process, beginning with project record keepers in the Area Office (AO) and finished by the District Construction Office (DCO).

The following checklist was created to assist the AOs and may not be an all-inclusive. Individual projects may include additional items. Review the available project information, including the plans, specifications, and special provisions.

Include all files, tickets, etc. in the project files; do not retain project information in the AO.

Project Closeout Checklist

1. Project Event List - A chronological list of all of the major events on the project
 - Letting
 - Award
 - Execution
 - Preconstruction Meeting
 - Preconstruction Safety Meeting
 - Work Begin
 - Time Suspensions
 - Milestone Dates
 - Substantial Completion
 - Project Acceptance
 - Final Estimate
 - Other Important Dates
2. Preconstruction Contract Correspondence
3. Contract
4. Bid Tabulation
5. Utility or ROW Conflicts
6. Railroad Right of Entry (ROE)

-
- Railroad Insurance Information
 - 7. Preconstruction Meeting Notes, Sign-In Sheets, etc.
 - 8. Partnering Meeting, Invoice, etc.
 - 9. Preconstruction Safety Meeting Notes
 - 10. DBE Subcontractors
 - Subcontract Agreements
 - Purchase Orders
 - Monthly/Final Progress report
 - Goal Shortfall explanations and analysis if applicable.
 - 11. Subcontractor Approval
 - Subcontract Agreements (If requested)
 - 12. Prompt Payment Certification
 - 13. DBE/SBE monthly payment reporting
 - 14. DBE/SBE final payouts
 - 15. Project Schedule
 - Baseline Schedule
 - Monthly Updates
 - Notice of Potential Time Impact
 - Time Impact Analysis
 - 16. Materials
 - Sources
 - Materials Lists
 - Tickets
 - Materials Test Documentation/Deficiencies
 - Product Data Sheets
 - Requests for Material on Hand (MOH)
 - Materials Invoices
 - Lab Invoices
 - Testing Employee and Lab Certifications
 - Manufacturers Literature
 - Mix Designs
 - Certified Test Reports

- Quality Control Plans
- Joint Density Test Results
- Seed Mix Certifications

17. Construction

- Bulletin Board Compliance
- Asphalt Pavement Records
 - Seal Coat Records
 - Asphalt
 - Aggregate
 - ACP records
- Ride Quality Measurement Records
- Concrete Pavement Paving and Quality Control Plan
- Flowable Fill Construction Method and Plan
- Temporary Special Shoring Details
- Pile Driving Correction Plans
- Pile Jetting Plans
- Pile Bearing Evaluation Documentation
 - Pile Driving Records
- Soil Nail Wall Construction Plans
- Drilled Shaft Installation Plan
 - Drill Shaft Records
- Freeze Protection Measures
- Plans for Falsework and Forms
- Bridge Paint Containment Plans
- Special Concrete Finish Plans
- Work Plans
- Technical Support Representatives
- Welding Procedures
- Certificate of Conformance
- Shop Drawings/Working Drawings
- Erection Drawings
- Nonconformance Reports
- Demolition Plans

-
- SW3P Training List
 - Herbicide Records
18. Equipment Verifications
 19. DWRs - Make sure all DWRs in SiteManager have been authorized.
 20. Monthly Estimates
 - Check Percentage of Work Performed by Prime and Subs
 - Check Major Items for Over/Underrun Greater than 25%
 21. Change Orders, Force Account, etc. - All Correspondence and Approved or Unapproved COs
 22. Dispute Correspondence, Requests for additional compensation, etc., Approvals, Denials
 23. Traffic Control Plans, Revisions, Contractor Proposed Changes, etc.
 - Paper copies of FORM 599, “TRAFFIC CONTROL DEVICES INSPECTION REPORT” - Barricade Folder includes all 599s required for both day and night inspections each month
 - The 599 folder is separate from the project files, labeled with “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 USC §409.” This file is considered safety information that federal law exempts from discovery, which makes them exempt from disclosure under the Public Information Act.
 24. Environmental Compliance
 - SW3P Documentation
 - BMPs
 - Construction Stage Gate Checklist
 - Other Environmental Commitment documentation as required.
 25. Buy America/Buy Texas Documentation
 26. Overweight Construction Traffic Submittals and Approvals
 27. Construction Equipment Operating on Structures or Materials Stored on Structures Plans and Approvals
 28. Employee Certifications
 - Flaggers
 - Electricians
 - Irrigators
 - Profilers
 29. Labor Compliance
 - Payroll hard copies if not submitted through EPRS or LCP Tracker
 - Labor Interviews
-

- OJT
30. Incident and Injury Reporting,
 - Check EPRS to ensure contractor has submitted incidents and injuries that have occurred on the project. These should correspond to information in the DWRs.
 31. Other Correspondence
 32. Disposal of Wells Plugging Report
 33. As Built Plans
 34. Statement of Cost (SOC's)
 35. Form 2235 - Final Inspection of Federal Aid project
 36. Final hard copy Contractor Evaluation Form 2707 and complete backup documentation saved in a folder separate from the project files, labeled "DO NOT DISCLOSE - Attorney General Opinion Required."

Chapter 5 — Control of the Work

Contents:

[Section 1 — Project Authority](#)

[Section 2 — Work Documents](#)

[Section 3 — Inspections](#)

[Section 4 — Prime Contractor Performance Evaluations](#)

Section 1 — Project Authority

Authority of the Engineer

Article 5.1, “Authority of the Engineer,” of the *Standard Specifications* outlines the Engineer’s authority to observe, test, inspect, approve, and accept the work. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, contract interpretations, and acceptable contract fulfillment. The Engineer acts as a referee in all questions arising under the terms of the contract. The Engineer’s decisions are final and binding.

The Engineer is responsible for:

- ◆ the enforcement of the project's plans, specifications and special provisions,
- ◆ making decisions about quality and acceptability of the work,
- ◆ documenting any approved changes and deviations to the project,
- ◆ ensuring proper job record documentation is drafted and obtained.

Contract remedies that the Engineer may use to bring the contract into compliance and ensure safety, timeliness, and quality throughout the project include, but are not limited to the following:

- ◆ suspending the work without suspending working day charges,
- ◆ withholding estimates,
- ◆ requiring the contractor to remove and replace defective work, or reducing payment for defective work,
- ◆ removing an individual from the project,
- ◆ assessing liquidated damages to recover the Department's administrative costs, including additional project-specific liquidated damages when specified in the contract,
- ◆ conducting interim performance evaluation(s) requiring a Project Recovery Plan, in accordance with Title 43, Texas Administrative Code (TAC) [§9.23](#),
- ◆ declaring the contractor to be in default of the contract, and
- ◆ in case of a default or contractor's failure to meet a Project Recovery Plan, referring the issue directly to the Performance Review Committee for consideration of further action against the Contractor in accordance with 43 TAC [§9.24](#).

Change in scope of work may be grounds for additional compensation to the contractor; refer to Chapter 7, "Changes to the Contract," for more information. The Engineer must use proper engineering judgement when utilizing contract remedies and consider and document events outside the contractor's control, including consideration of sufficient time.

The contractor may dispute the instructions through proper channels when in disagreement with the engineer's decisions as described in the escalation ladder discussed at the Preconstruction Meeting. Usually, the methods or procedures used in performing the work are the responsibility of the contractor. If the specifications or plans specify the methods or procedures to follow in performing doing the work, the Engineer has the authority to reject work done by other methods. The contract requirements prevail even though the contractor may claim that the other methods will result in equally good or better results. If needed, the contractor may submit a request for revisions in the contract in a timely manner.

The Engineer will issue written direction or approval to the contractor in a timely manner, as needed and when required by the contract. Document verbal direction or approval provided to the contractor in the project records. Subsequent to verbal direction or approval, issue written notification to the contractor documenting the Engineer's actions.

Authority and Duties of Inspectors

Article 5.10, "Inspection," of the *Standard Specifications* outlines Department inspector authority and responsibilities. Inspectors are authorized to safely inspect all the work, and materials furnished. An inspector must thoroughly understand the contract, the relevant plans, specifications, special provisions, and the work schedule. This enables the inspector to inspect and judge the quality and thoroughness of the contractor's work in comparison to the contract.

Inspector duties may include, but are not limited to:

- ◆ reporting the progress of the work as compared to the project schedule and contractor performance to the Engineer,
- ◆ assuring all materials used on the project are approved and listed on the appropriate Material Producer List, or have been tested as shown on the Material Verification Report prior to installation,
- ◆ notifying the Engineer and contractor when materials furnished or work performed fail to fulfill contract requirements,
- ◆ communicating to the contractor all problems in a timely manner or otherwise providing relevant information to the contractor to assist in the progress, safety (to workers and the public), and quality of the work.
- ◆ documenting all matters related to the prosecution of the contract and the progress of the work as required for payment through sufficiently detailed Daily Work Reports (DWRs),
- ◆ acting as the authorized Department representative to assure the contractor is following the project's plans, specifications, and special provisions and that any pay items are completed as detailed therein, and

- ◆ verifying that items of work needing attention by the contractor are not be paid at 100% until completed in a satisfactory manner. Deny or reduce payment for non-compliance with plans, specifications, and provisions.

When a dispute arises, the inspector may reject materials or suspend work while the Engineer makes decisions on the issue.

The inspector must not act as foreman, work for the contractor, or interfere with the management of the work. The inspector must not tell the contractor how to do the work unless specified in the contract.

Refer to Appendix A for Federal Highway Administration (FHWA) Technical Advisory 5140.28, “Construction Loads on Bridges.”

Contractor’s Superintendent

In accordance with Article 5.5, “Cooperation of Contractor,” the contractor must designate, in writing, a competent English-speaking superintendent employed by the contractor. The superintendent must be experienced with the work being performed and capable of reading and understanding the contract. The contractor must ensure that the superintendent is available at all times, and able to receive instructions and act for the contractor.

The Engineer may suspend work without suspending working day charges if a superintendent meeting the specified criteria is not available.

Upon written request, the Engineer may remove from the project any employee or representative of the contractor (or subcontractor) who, in the opinion of the Engineer, does not perform work in a proper or skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable.

Section 2 — Work Documents

Traffic Control

Standard traffic signs that are well maintained and properly used promote public safety and gain the respect of the traveling public.

Erect warning and regulatory signs called for in the traffic control plan (TCP) at the appropriate locations. Require the contractor to cover signs placed prior to their need, and do not leave in place longer than necessary. Require the contractor to remove or cover signs that restrict the speed limit in a construction or maintenance work zones during any period for which restricted speed limit does not apply. Discuss the timing of sign erection and removal requirements at the Preconstruction Meeting. Locations of speed zone signs will be set by the Engineer.

Erect regulatory speed limit signs in the construction zone designating the limits of the roadway section where speed reduction is necessary for the safe operation of traffic and protection of construction personnel. Install the signs only to the limits needed. Even though the entire length of the project may have an approved City/County Ordinance, reduced speed limits are in effect only within the limits between the erected speed limit signs.

Regulatory Construction Speed Zones must have an applicable Commission Minute Order. Use [Form 1204](#) to request a Regulatory Construction Speed Zone.

Advisory speeds are the desirable speeds for curves, intersections, or other locations where design standards or physical conditions of the roadway restrict safe operating speeds to values less than the maximum legal speeds or posted regulatory speed limit. Advisory speed signs may be erected within a regulatory speed zone to advise drivers of a safe operating speed to negotiate roadway features. A Commission Minute Order or City Ordinance is not required for advisory speed zones. Advisory speed zones are therefore more flexible as they may be changed without revising existing Commission minutes or ordinances.

Properly maintain all traffic control devices and ensure they are legible at all times, and in conformance with the contract, the *Texas Manual on Uniform Traffic Control Devices for Streets and Highways* ([TMUTCD](#)), the [Traffic Signals Manual](#) and ATSSA quality Guidelines.

For more information on temporary traffic control for construction areas, refer to the [Compliant Work Zone Traffic Control Device List](#). For information on construction speed zones, refer to the Procedures for Establishing Speed Zones.

Quarterly Traffic Control Inspections are to be completed by the district office in accordance with Section 4 of the Work Zone Safety and Mobility Guidelines.

Traffic Control Plan (TCP) Documentation

Document the TCP activities in the Daily Work Report (DWR) diaries. Report all discrepancies to the contractor immediately. Perform at a minimum two inspections per month (one during the day and one at night), and report discrepancies on [Form 599](#). Consider increasing use of the form if discrepancies are not corrected within the expected time frames for priority 1 or priority 2 corrections.

Per 43 TAC [§5.10](#), TxDOT investigates incidents involving damage to highway property to identify the responsible party. If TxDOT has a reasonable claim and if the responsible party can be identified, TxDOT will seek reimbursement from the responsible party and/or the insurance company of the responsible party. If accidents occur, limit the documentation to the incident, date and time, and police incident number, noting which police department created the report. If there is damage to State Property by a third party, report the incident to the District maintenance section. Take several pictures of the damage.

Perform a detailed inspection of TCPs in the field immediately after traffic alignment changes. Documentation of these detailed inspections will be on Form 599. DWRs will state the phase to which traffic is switched. Document in the DWR changes to the TCP shown in the plans prior to or immediately after implementing the changes. Document changes that:

- ◆ alter the original TCP or
- ◆ make changes that increase or decrease sign or design traffic control requirements.

The change in TCP documentation requirements applies generally to project-specific TCPs and changes to non-project-specific TCP standards. Minor adjustments to meet practical placement requirements in the field do not necessarily require documentation. Place the documented changes to the TCP with the plans or in the files, as appropriate, and provide copies to inspectors and the contractor.

Changes to TCP plans sheets are under the direct supervision of the Engineer and require signing, sealing, and dating. These requirements apply to sketches and marked up copies of plan sheets as well. The Engineer's written instructions to the field for the TCP changes require the Engineer's Professional Engineer (PE) designation and the date.

Open Records Requests for Form 599

File Form 599 separate from the project files in a folder labeled “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 USC §409.”

Forward all open records requests associated with barricade inspection checklists to the General Counsel Division (GCD) as soon as they are received. GCD will then facilitate communication with the Attorney General's Office (AG).

The following GCD opinion applies to open records requests that pertain to the subject form.

Barricade Inspection checklists (i.e., Form 599) fall under the category of safety information that federal law exempts from discovery, which makes them exempt from disclosure under the Public Information Act. The Attorney General’s Office routinely allows GCD to withhold these checklists, but not unless each time a request is received, GCD requests an opinion from the Attorney General’s Office within ten business days. The only time they may be given out is to the responsible contractor during routine monthly inspections.

Based on this opinion, Form 599s, for both ongoing and completed projects, are not subject to disclosure except as noted above.

Pedestrian and ADA Requirements

Pedestrian elements, including sidewalks, curb ramps and landings, pedestrian signal push buttons, crosswalks, etc., must be constructed to be accessible to all users, including disabled users. Ensure fixed objects such as sign and signal supports, controller cabinets, etc., are located where they will not obstruct the accessible path.

Ensure that information contained in the Design Division (DES) [ADA Inventory Data Entry Program](#) (access rights required) is current. As construction improvements take place, it is critical that this database be updated in order to track and report Department progress to FHWA on an annual basis.

See Section 3, “Inspection by Outside Organizations,” for more information related to accessibility requirements.

Document Disposition

File documents containing information identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings separate from the project files in a folder boldly labeled “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 USC §409.” This includes information generated as part of the project such as 599 forms. This information may only be provided to the responsible contractor during routine monthly inspections. Form 599 folders may be separated from the primary project file and maintained at the district or the area office.

Release of this file, except as noted above, must be approved by GCD. Forward all open records requests associated with the contents of this file to GCD as soon as the request is received. GCD will facilitate communication with the AG’s office. If an AG opinion is not obtained, denial of release of copies may be disallowed.

Working Drawings

The contract may require that the contractor furnish working drawings such as:

- ◆ shop drawings
- ◆ supplementary bridge plans, or erection drawings for bridge structure components
- ◆ sign supports
- ◆ illumination facilities and
- ◆ other items.

A licensed professional engineer must sign, seal, and date working drawings in accordance with Article 5.2, Table 1 “Signature and Approval Requirements for Working Drawings,” or as otherwise specified in the plans. Handle the review and approval of these drawings and other required information according to instructions found in the specifications. Refer to Item 5 and the [Department's Shop Drawings webpage](#) for requirements associated with working drawing submittals.

Section 3 — Inspections

Inspection by the Department

Inspect the work to determine if performance is according to the contract. Article 5.10 does not justify **inadequate, unsuitable, or negligent** inspection.

Defective and Unauthorized Work

It is strongly recommended that Department inspectors not allow full completion or corrections of pay items to be postponed until the end of the project, to be added to a punch list, so there is no chance it will be overlooked.

Department resources may be used for the correction of defective work, removal and replacement of defective work, or removal of unauthorized work if the contractor fails to perform the corrections in a timely manner. Deduct the cost of work performed by the Department from any money due to the contractor.

Approval may be provided to the contractor to work beyond the lines and grades given or shown on the plans, as deemed appropriate. Do not reimburse the contractor for extra work performed without written authority.

Final Acceptance

In accordance with Article 5.12, “Final Acceptance,” work completed includes work for vegetative establishment and maintenance, test and performance periods, and work to meet the requirements of Article 5.11, “Final Cleanup.” After all work is complete, the Engineer in charge of the work will request a final inspection.

Exempt Federal-Aid Projects

In accordance with the Stewardship and Oversight Agreement between FHWA and TxDOT dated May 21, 2015, the Department assumed FHWA responsibilities for the program, design, and inspection of certain federal-aid projects. Ensure projects reviews are conducted in compliance with the local, state and federal requirements.

In addition to construction projects let in Austin, state oversight duty is required on any project that includes federal funds and is exempt from FHWA oversight. These projects may fall under any of the following categories:

- ◆ emergency relief (ER),
- ◆ congestion mitigation (CM or CMAQ*), or
- ◆ state force account work.

*CM or CMAQ – [Congestion Mitigation and Air Quality Improvement Program](#).

Determine FHWA participation for change orders (COs), time suspensions, and time extensions (TE) for exempt federal-aid contracts. Complete [Form 2235](#), “Final Inspection of Federal-Aid Project,” to accept the contract for federal participation. Refer to Chapter 4, “Project Records and Closeout,” for additional instructions.

Refer to Appendix A for policies on “Contractor-Supplied Field Offices on Projects” and “Department-Provided Cell Phones, Laptops, and Virtual Private Network (VPN) for Construction Contract Inspectors.”

Inspection by Outside Organizations

When a government entity, utility, railroad company, or other entity accepts or pays a portion of the contract, that organization’s representatives may inspect the work but cannot direct the contractor. The right of inspection does not make that entity a party to the contract and does not interfere with the rights of the parties to the contract. The Engineer is responsible for inspection of a construction contract and for determining compliance with the contract provisions.

Texas Department of Licensing and Regulation (TDLR) Inspections

TxDOT projects must be constructed in compliance with various accessibility requirements. These requirements are contained in:

- ◆ [Texas Accessibility Standards](#) (TAS)
- ◆ Title 16, Texas Administrative Code, [Chapter 68](#), “Elimination of Architectural Barriers”
- ◆ Texas Government Code, [Chapter 469](#), “Elimination of Architectural Barriers,” [“Texas Architectural Barriers Act” (TABAA)]

For TxDOT projects with at least \$50,000 worth of pedestrian elements, TDLR requires submittal of building, roadway, and bridge plans and performance of final inspections to verify compliance with the accessibility requirements.

The Construction Division (CST) has contracted with a Registered Accessibility Specialist (RAS) to perform the plan reviews and the final inspections. This contract covers all fees associated with these requirements. [Detailed procedures](#) for plan reviews and project inspections are available on CST's intranet site.

If a CO increases the value of pedestrian elements in a contract so the new total is over \$50,000, submit the plans to the appropriate field section of DES. DES will coordinate with TDLR.

Refer to Appendix A for policy memoranda regarding TDLR Construction and Accessibility Requirements.

FHWA (Non-Exempt Federal-Aid Projects)

FHWA representatives periodically inspect projects financed with federal funds in accordance with the [Federal-Aid Policy Guide](#). This inspection does not make the FHWA a party to the contract.

Arrangements may be made to observe project and independent assurance sampling and testing with the FHWA representatives upon their arrival at the district office. Securing these samples cannot delay the contractor's normal operations. Maintain a complete file of the results of all tests performed and make them readily available for FHWA inspection.

When FHWA approval of a CO is required prior to performance of work, contact the appropriate [FHWA representative](#) as soon as possible. This will facilitate the CO approval process and serve to improve the Department's relationship with FHWA.

Section 4 — Prime Contractor Performance Evaluations

General

Refer to the Prime Contractor Performance Evaluations Manual for more information or contact Maintenance/Construction Division

Chapter 6 — Control of Materials

Contents:

[Section 1 — Materials](#)

[Section 2 — Materials Testing](#)

[Section 3 — Buy America](#)

[Section 4 — Buy Texas](#)

Section 1 — Materials

Background

Control of materials involves TxDOT field, district, Materials and Tests Division (MTD) central laboratories, and commercial and manufacturer's laboratories. Post the District Sourcing Letter, which lists material suppliers, as soon as possible so that proper arrangements can be made for sampling and testing of the various materials. Instruct the contractor to order materials sufficiently in advance of related work to allow time for sampling and testing. In addition, instruct the contractor to identify the project and the contract item number on all materials orders.

Accept only those materials that comply with the contract requirements. Maintain records of the test results that substantiate acceptance or rejection of the materials. Record both failing and passing tests with documentation of the disposition of the failing material (reworked, re-tested, disposed of, etc.)

Contract specifications identify which tests are used for each material. The sampling and control of materials are as outlined in the appropriate testing procedures and the [Guide Schedule of Sampling and Testing for Design-Bid Build Projects](#) (the Guide Schedule). Apply tolerances specified in the contract in determining acceptance of the work.

Sample materials for testing at the locations and frequencies shown in the Guide Schedule. The test procedures do not generally specify sampling points. Establish locations to receive the samples when there are no established sites. Notify the contractor of the sampling points as soon as possible to provide opportunity to make corrections when the materials do not meet the contract requirements. Determine if stockpiled materials are acceptable prior to payment as material on hand (MOH).

Article 6.4 of the [Standard Specifications](#) states:

All materials used are subject to inspection or testing at any time during preparation or use. Material which has been tested and approved at a supply source or staging area may be inspected or tested before or during incorporation into the work, and rejected if it does not meet Contract requirements. Copies of test results are available upon request. Do not use material that, after approval, becomes unfit for use.

Ensure that the method and location of materials sampling is consistent and uniform. Retest previously accepted materials if the material shows visible changes, does not conform to specifications, or if further testing is required by the contract or Guide Schedule. The [Material Inspection Guide](#) contains additional information on sampling and testing responsibilities.

Materials Source Information

For all project materials, obtain accurate and complete materials source information in accordance with Item 6, “Control of Materials,” before granting approval to the source supplier. Ensure that all materials are sourced to their original location.

Materials used in the project must be free of any hazardous material. If materials delivered to the project are found to be contaminated, ensure the contractor removes and disposes of the material in accordance with Article 6.10, “Hazardous Materials.” Be aware that some contaminated materials are easily identified by visual observation or smell, while others are not. In order to determine materials quality when there are potential concerns regarding contamination, obtain full disclosure of the source of supply in accordance with Article 6.4, “Sampling, Testing, and Inspections.”

Do not allow materials containing recycled hazardous waste. The *Standard Specifications* define Hazardous Materials or Waste as:

Hazardous materials or waste include but are not limited to explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable state and federal regulations.

Non-hazardous recyclable materials (NRMs) may be used if the NRM satisfies contract requirements and the environmental criteria specified in [DMS-11000](#), “Evaluating and Using Nonhazardous Recyclable Materials Guidelines.”

While NRMs are not hazardous by definition, they may be contaminated and could present a problem depending on their use. For this reason, identify such materials and ensure proper evaluation in accordance with DMS-11000. Specifically, DMS-11000 identifies the following materials with an established history of TxDOT use:

- ◆ aluminum,
- ◆ compost,
- ◆ glass traffic beads,
- ◆ ground granulated blast furnace slag,
- ◆ shredded brush,
- ◆ steel,
- ◆ tire rubber,
- ◆ ceramics, glass cullet, plastics, and crushed concrete from non-industrial sources,
- ◆ reclaimed asphalt pavement,
- ◆ fly and bottom ash from electrical utility plants, and
- ◆ Department-owned materials.

These established NRMs, as well as materials shown on the Material Producer Lists for NRMs or Recycled Asphalt Shingles, may be accepted for use without documentation of environmental suitability.

Article 6.9 of the Standard Specifications states:

The Department will not allow hazardous wastes, as defined in 30 TAC 335, proposed for recycling. Use nonhazardous recyclable materials (NRMs) only if the specification for the Item does not disallow or restrict use. Determine if NRMs are regulated under 30 TAC 312, 330, 332, 334, or 335, and comply with all general prohibitions and requirements. Use NRMs in accordance with DMS-11000, "Evaluating and Using Nonhazardous Recyclable Materials Guidelines," and furnish all documentation in the manner prescribed by the Department.

NRMs not found on the Material Producer List require environmental evaluation and documentation, and must be reported on [Form CSTM-NRM-2](#). Contact the Environmental Affairs Division's (ENV), Environmental Resources Management Section or the Support Services Division's (SSD) Recycling Coordinator for additional information and guidance.

Local Materials Sources

Local materials sources are secured for project use as either **Required** or **Listed** sources. Refer to the Right of Way Division (ROW) manuals for necessary procedures and forms to acquire an option on a materials source.

When specified in the contract as **Required**, the contractor must use local materials sources. The Department assumes full responsibility for the quantity of acceptable materials available from the required source. Provide another source if the required source cannot produce enough acceptable material.

Compensate the contractor for all additional costs to produce materials from an alternate source. As appropriate, include the cost of dismantling, moving, and reassembling equipment, additional haul, and other additional costs associated with materials production in the payment.

When specified in the contract as **Listed**, the contractor may use local materials sources for which the Department has secured options or easements on sources to allow access to the materials source for testing and removal. Make test results for all listed sources available to prospective bidders. The contractor determines and assumes all responsibility for the availability of acceptable materials at the listed sources. In lieu of using the listed source, the contractor may provide acceptable materials from another source at his or her expense.

Materials Certification from the Contractor

Materials certifications provided by the contractor from the manufacturer may be used as a basis for accepting certain materials (cement, lime, concrete admixtures, electrical cable, etc.) Detailed information must be included with this certification if required by the contract.

Royalty Payments

Process royalty payments in accordance with contract requirements. The contractor may be required to negotiate royalty payments with the owner of a listed source.

Use of Designated Materials

If specified in the contract, require that the contractor use state-owned material (i.e., material from a reclaimed asphalt pavement [RAP] stockpile). The Department assumes full responsibility for the quantity and quality of acceptable designated materials. If the designated material is unacceptable, compensate the contractor through a change order (CO) for any justifiable additional cost in securing acceptable material.

Storage of Materials

Inspect materials storage facilities to determine if the materials are stored in a manner that will prevent their deterioration and or impact the environment. Covers, wooden platforms, hard clean surfaces or any combination may be required of the contractor. Reject any material that becomes unfit for use due to improper storage. Contractors must obtain Department approval prior to storing materials on the right of way. Storage space off the right of way is at the contractor's expense. Refer to the FHWA Project Specific Location (PSL) Quick Guide for contractor responsibilities.

Stockpiling Aggregates

The contractor is responsible for maintaining the quality of accepted stockpiled material and must be environmentally cleared. Re-sample and retest stockpiled materials that have been subject to incorrect or careless handling resulting in excessive degradation, segregation, or contamination. Reject all failing materials. If required by the contract, conduct acceptance sampling from the windrow.

Purchasing Excess Materials

If the restocking fee is greater than the cost of materials to be purchased, excess materials may be acquired from the contractor as follows.

-
- ◆ The contractor suitably stores or stockpiles materials.
 - ◆ Materials meet contract requirements at the time the State takes ownership.
 - ◆ A duly executed change order (CO) between the state and the contractor shall cover the acquisition.
 - ◆ Payment is made to the contractor as stipulated in the CO with the next estimate.
 - ◆ Cost is charged to the district stock account if the materials are not used on the contract.

Accept only those materials that have potential Department use unless contractually obligated to accept the material. Refer to the [Materials Management Policy Manual](#) for more instructions on transactions involving materials (internal access only) and [SSD webpage](#) for more information.

NOTE: COs that are executed to purchase or restock excess materials and compensation for delivery fees, must be designated as “Non-Participating.”

Section 2 — Materials Testing

General

Provide test results in accordance with the contract and upon request in a timely manner so that the contractor may adjust their products and operations to continuously satisfy contract requirements.

Testing of Materials

Sampling and testing of materials may be divided into the following:

- ◆ Project Tests
 - Quality Assurance (QA)/Acceptance/Verification
 - Quality Control (QC)
- ◆ Independent Assurance Program (IAP)
- ◆ Quality Monitoring Program (QMP)
- ◆ Material Producer List (MPL)

The following table identifies actions and responsibility for the different types of tests.

Actions and Responsibility for Tests

Type of Test	Results	Action	Test Performance
Project: Acceptance	Pass or Fail	Material(s) is accepted by independent verification sampling and testing by TxDOT. Failing material is: <ul style="list-style-type: none"> ◆ rejected and replaced OR ◆ reworked and re-tested OR ◆ accepted at reduced unit price if specified in the contract and only if engineering judgement is documented in SM. 	Usually in the AE laboratory In other cases, district laboratory, MTD central laboratory, or outside laboratory
Material Producer List (MPL)	Preapproved Material or Product	Preapproved material sources must be sampled and tested in accordance with the required program interval.	MTD Central Lab or its designee
Quality Monitoring Program	Preapproved Material Sources	Preapproved material sources must be sampled and tested in accordance with the required program interval.	MTD Central Lab or its designee

Actions and Responsibility for Tests

Type of Test	Results	Action	Test Performance
Independent Assurance Program (IAP)	Meets tolerance or does not meet tolerance	Compare the Independent Assurance test to acceptable tolerances established in Appendix B of the Quality Assurance Program for Design Bid Build Projects . Document results of the comparison. If the result is out of tolerance, determine the cause and take remedial action.	

Test Methods and Testing Equipment

The contract may specify test methods and equipment that are outside the Department. Ensure that all the testing equipment is in good working order in accordance with the appropriate testing procedure. In addition, ensure that a qualified laboratory technician makes an independent check or calibration on each piece of testing equipment used on project testing at least once each year or as required by section 6 and 7 of the [Quality Assurance Program for Design Bid Build Projects](#) (the QAP). Examples of equipment needing calibration include, but are not limited to: concrete cylinder compression machine, air meters, nuclear gauges, voltmeters, and scales. Display the date of the last check or calibration on each piece of testing equipment. Maintain calibration documentation in accordance with the QAP.

Project Tests

Use acceptance testing to verify that the material conforms to the contract requirements.

Any acceptance of failing materials must be documented under exceptions under the Material Certification Letter provided at the end of the project.

Independent Assurance Program

The Independent Assurance (IA) Program goals (found in the QAP) are to ensure the accuracy of the equipment, procedures, and techniques used by testing personnel. The Department employs the system approach to accomplish these goals.

System Approach

The system approach bases frequency of IA activities on time-regardless of tests, quantities of materials, or numbers of projects tested by the individual being evaluated. Use the system approach and implement testing schedule for testers, laboratories, and testing equipment qualified in accor-

dance with the QAP. Ensure that IA sampling and testing is conducted by split or proficiency samples and complies with the QAP.

Forms, Reports, and Materials Documentation

Refer to the [Materials and Tests Reports for Project Records](#) found on the Inspector Development Program intranet page (internal access only). This document provides project requirements per Item number, to be used in conjunction with the [Guide Schedule](#) and the [Material Inspection Guide](#). Ensure to keep SiteManager updated with all acceptance and Sampling and Testing (S&T) requirements.

Material Producer List (MPL)

Individual [Departmental Materials Specifications](#) provide the requirements and procedures for pre-qualification of various materials approved for use on Department projects. Prequalified materials are published on the appropriate [Material Producer List](#).

Sampling and Testing

The DBB Guide Schedule tables apply to all design-bid-build contracts. The minimum acceptable project test frequency is shown in these tables as a guide. Perform additional testing as necessary.

Unless otherwise specified in the contract, testing is conducted by the Department or independent laboratories employed by the Department. When specified by the contract, contractor-performed quality control (QC) sampling and testing may be used as part of the acceptance decision when verified by the department. In all other cases, contractor testing is for information only and is conducted at the contractor's expense.

Commercial Labs

When the contractor selects a Commercial Lab (CL) for conducting project-level sampling and testing in accordance with Special Provision [006-001](#), the cost will be deducted from the estimate through Item Code 9606-6057 ("Force Account - Commercial Lab Use Deduction"). To help ensure consistency through the term of the contract, the contractor must specify the use of a CL from the onset of the project, preferably by the time of the Preconstruction Meeting. Contact the Professional Engineering Procurement Services Division (PEPS) for available Commercial Lab Contracts. The project manager who manages the CL Contract must complete contract management training as prescribed by PEPS.

Helpful Links for Material Testing & Inspection

[Test Procedures](#) may be used to find how to conduct testing.

[Department Material Specifications \(DMS\)](#) is used to find specifications for materials need to meet as well as possible description of the material.

[Material Inspection Guide](#) is for procedures on how pay items may be inspected.

[Material and Test Reports Documentation for Project Records](#) is a list of all paperwork and requirements per pay item.

[Material Producers List](#) is a list of pre-approved providers that may not require testing.

[Sample Size Guide](#) may be used to determine how much of quantity of an item is needed for proper testing.

Project Closeout for Materials

For state and federal projects, use the Materials Certification Letter to document reasons for material acceptance when a test fails. Do not include failing materials that have been reworked, retested, and meet the specifications in the list of exceptions in the documentation. Refer to the QAP for example certification letters.

If there are Exceptions on a project, explain all exceptions on a Test Exception Letter. The test exception letter is used when materials test results or other characteristics of the work that indicate reasonable conformance with specification requirements, but did not meet the minimum specification requirements, may be adequate for their intended use. Documentation will include the location where the material is incorporated, the specification requirement, the recorded test value, and the engineering judgment applied to allow use of that material, method, or product.

Section 3 — Buy America

Overview

Unless otherwise specified in the contract, *Standard Specifications* Section 6.1.1, “Buy America,” requires the following of the contractor:

Comply with the latest provision of Buy America as listed at [23 CFR 635.410](#). Use steel and iron materials melted and manufactured in the United States except when:

- the cost of materials, including delivery, does not exceed 0.1% of the total contract cost or \$2,500, whichever is greater,
- the contract contains an alternate bid item for a foreign source steel or iron product and the contract is awarded based on the alternate item, or
- the materials are temporarily installed.

The [Material Inspection Guide](#) provides a comprehensive overview of the Buy America program and a list defining the required documentation that must accompany [Form 1818](#) (D 9-USA-1), “Material Statement”

Form 1818-with the attached mill test reports, certifications, galvanizing reports, etc.-must be received for:

- ◆ all predominantly steel and iron items received and sampled by the Project Engineer for testing by MTD, and
- ◆ all predominantly steel and iron items received, inspected, and accepted by the Project Engineer, with the following exceptions.
 - Steel items inspected and tested by MTD - The Project Engineer receives a MTD Structural Test Report as proof of compliance.
 - Reinforcing Steel - The Project Engineer obtains only mill test reports and any applicable coating certifications for reinforcing steel furnished in accordance with Item 440.

Miscellaneous Steel

Sometimes miscellaneous steel is difficult to track due to several different parts being manufactured from a single sheet of steel. When an item is predominantly steel and a certification is required, obtain a [Certification Letter for Miscellaneous Steel](#) may be obtained from the manufacturer for certifying Buy America compliance. Items that are not predominantly steel do not need to comply with Buy America. Reference [FHWA letter dated August 31, 2018](#) for more information.

For extra guidance refer to CST Construction Support Webpage.

If credible evidence, documentation or an identified credible witness, is found that puts the domestic origin of steel or iron in question (evidence that a supplier is providing improper or falsified documentation), the Department entity responsible for acceptance of the material (division or district warehouse, project engineer, Support Services Division, or MTD) must notify the contractor/supplier (handled according to the type of contract) in writing regarding the problem and take appropriate action to resolve the issue. Do not threaten the contractor/supplier with false claim statements or legal action.

If the issue is not resolved and the credible evidence indicates a possible false claim, elevate the issue through administration at the originating division or district office to MTD's Prefabricated Structural Materials Section for further handling. MTD will assist in resolution and, if needed, forward recommendations to GCD for legal issues or Compliance Division (CMP) for ethical issues.

Section 4 — Buy Texas

Overview

Buy Texas provisions, as listed at Texas Government Code [§2155.4441](#), apply only to contracts without federal funds. Unless otherwise specified in the contract, *Standard Specifications* Section 6.1.2, “Buy Texas,” requires that the contractor buy materials produced in Texas when the materials are available at a comparable price and in a comparable period of time.

Chapter 7 — Changes to the Contract

Contents:

[Section 1 — Change Orders](#)

[Section 2 — Change Order Approval Authority](#)

[Section 3 — Force Account and Interim Adjustments to the Contract](#)

[Section 4 — Supplemental Agreements](#)

[Section 5 — Terminations](#)

Section 1 — Change Orders

Policy

Contract quantities or alterations in the work may be amended, in writing and at any time, to satisfactorily complete the project. As agreed in the original contract, the contractor will perform the work as increased, decreased, or altered. Amend the contract work by change order (CO) whenever a significant change in the character of the work occurs or a time extension is granted. Ensure that the CO is approved before beginning the changed or altered work; the Area Engineer (AE) may give verbal approval at his or her discretion prior to formal approval in SiteManager. Follow district procedures when preparing COs to collect reimbursement for consultant errors and omissions as outlined in Consultant Errors and Omissions Correction and Collection Procedures memo in Appendix A.

Prior to developing a CO, work with the contractor to define the scope of the problem that requires a change to the contract. Evaluate possible solutions with the contractor. Determine the need for environmental review, re-evaluation, and approval as required. Include cost breakdowns and price justifications for any added items. “Fair and reasonableness” price determination must accompany an independent cost analysis/cost justification by the District. Do not approve COs based solely on the contractor's submitted request and documentation. Use statewide/District average prices, comparative analysis, materials/labor, and equipment breakdowns to justify cost. Unit prices that are comparable to bid prices for the same character of work are acceptable. Obtain assistance from the Construction Division (CST), Design Division (DES), or the district construction office (DCO), as needed. Obtain contractor agreement regarding the scope of work and basis of payment for the CO. Provide the contractor the opportunity to sign the CO.

Do not use the written statement in the contractor's signature block on the CO form to deny the contractor legitimate additional compensation for work beyond the scope of the CO or for work under the CO that was not apparent or predictable at the time of CO execution.

When an agreement cannot be reached with the contractor based on cost, Article 4.4, “Changes in the Work,” of the Standard Specifications provides that the work may proceed under Article 9.7, “Payment for Extra Work and Force Account Method,” or by making an interim adjustment to the contract.

Unless otherwise specified in the contract, a significant change in character of the work occurs when:

- ◆ the character of the work for any item as altered differs materially in kind or nature from that in the contract or
- ◆ a major item of work varies more than 25% from the original contract quantity. (The 25% variance is not applicable to non-site-specific contracts.)

Unless otherwise specified in the contract, the *Standard Specifications* define a major item as:

An item of work included in the Contract that has a total cost equal to or greater than 5% of the original contract or \$100,000, whichever is less.

Note that a major item at the time of bid will remain a major item. An item that is not originally a major item does not become one through overruns, COs, etc.

COs are not required for the contract amendments listed below. Show the following amendments in the final (as-built) plans:

- ◆ Slight change, relocation, or adjustment:
 - in the flow line, grade, or the skew of a drainage pipe or culvert, (note: contact DEQC if drainage affected conveys waters of the US)
 - of a crossroad drainage facility,
 - of the road grade line,
 - to a drainage channel,
 - to a traffic sign, traffic signal pole, or illumination pole foundation, or
 - to the Traffic Control Plan
- ◆ Addition or deletion of a driveway pipe

For federal participating COs, see Chapter 16.

Change Order Preparation

Prepare COs using the guidelines in this chapter when contract revisions, additions, or deletions to the work are necessary. COs may be required due to:

- ◆ an error or omission in the contract,
- ◆ differing site conditions,
- ◆ adding a specification,
- ◆ adding new items of work
- ◆ resolving a dispute,
- ◆ changing the sequence of work, or
- ◆ other contract changes.

Submit COs requiring a design exception to the appropriate division (Design, Bridge, or Traffic Safety) for approval. Ensure that all COs are signed and sealed by the Area Engineer at minimum.

Show all information and quantities about the proposed change on the CO. A performance bond is required if the CO increases the contract cost above the \$100,000 threshold.

Use the following table and [Form 2146](#), “Change Order Checklist,” as needed to assist with CO preparation.

Step	Action
1	<p>For CO description, answer the following questions.</p> <ul style="list-style-type: none"> ◆ What is the purpose of the CO? ◆ Why is the CO needed? ◆ Where is the change occurring (alignment, station/offset, lane direction)? ◆ Are the costs verified and considered fair and reasonable? ◆ Are there added/modified plan sheets? ◆ Has environmental clearance been addressed, including TDLR requirements?
2	Determine appropriate CO reasoning code(s).
3	Determine CO function (zero dollar, overrun, time extension, etc.)
4	<p>Determine whether or not time adjustments are required. If so, provide a description, including a breakdown of the days added.</p> <p>Address time by one of the following methods.</p> <ol style="list-style-type: none"> 1. Add the time extension number and time in the box provided. 2. State in the narrative that no time is added by this CO. 3. State in the narrative that time will be addressed later in the project when the time impact of the change order is better known. <p>Methods 1 and 2 are preferred. Method 3 should not be a normal practice. If time cannot be agreed on with the contractor upon execution of a CO, method 3 is acceptable. In this case, time associated with this CO will be non-participating until the time justification is provided.</p> <p>The non-participating days and amounts are to be provided on federal-aid exempt projects.</p> <p>If the Change Order involves funding by a third party, complete the funding information on Form CO AFA.</p> <p>The dollar amount to be placed for Advance Funding Notification or Donation Agreement (third party funding) on the Form CO should be the same as the dollar amount on line 3(a) on the Form CO-AFA, which should be only the amount of contract items corresponding to the third party and without the E&C and Indirect Costs.</p> <p>In accordance with the AFA, ensure that the signature block for the third party on the Form CO-AFA is signed. The contractor is not responsible for any delays the district may have in obtaining a third party's signature.</p>
5	<p>Before adding items in SiteManager, coordinate with the DCO to determine participation. Refer to the SiteManager Contract Administration User Manual for information on creating COs in SiteManager.</p> <p>NOTE: Participating and non-participating pay items must be on separate COs.</p>
6	Unique CO items shall only be used when an appropriate bid code is not available.

Step	Action
7	Under the New Contract Item tab, add a supplemental description in the following format. "- Added by CO #X - Description of item"
8	Copy the supplemental description, navigate to the Change Order Item tab, and paste the supplemental description into the Change Order Item Description field.
9	Coordinate with DCO to determine funding category.
10	CO signatures can be either written or electronic. Signatures must follow District, Construction Division, and Executive Director signature authority found on Contract Services webpage.
11	If the CO involves third-party funding, complete the funding notification sheet (final page of Form 2146). Provide notice to the local government or other third party. Ensure that an authorized third-party representative signs the Third-Party Funding Notification Sheet, regardless of the CO amount. See “Advance Funding Agreements” under “Other Factors Affecting Change Orders” for additional requirements.
12	Determine if the CO requires Form 1295. See “Form 1295 Guidance” under “Other Factors Affecting Change Orders” for more information.

Environmental Review of Change Orders

Forward all proposed COs to the District’s Environmental Quality Coordinator (DEQC) for review. The DEQC will determine if amended or additional environmental clearance or permits or authorizations are required. Do not proceed with CO work until the DEQC indicates environmental requirements have been met.

Other Factors Affecting Change Orders (COs)

Other factors affecting COs include Advance Funding Agreements, Texas Department of Licensing and Regulation (TDLR) submissions, converting COs from participating to non-participating (and vice versa), and Texas Ethics Commission Form 1295.

Advance Funding Agreements

An Advance Funding Agreement (AFA), or Donation Agreement, is used when some, or all, of a project’s funding is from an outside source—also referred to as third party funding. If the third-party is a local government, an AFA is used. If the third party is a private entity, a Donation Agreement is used. AFAs and Donation Agreements are developed and coordinated by the Contract Services Division (CSD).

Under standard AFA, the local government (LG) is responsible for all non-federal or non-state participation costs associated with the project, including any overruns in excess of the approved local project budget. Obtain payment from the LG within 30 calendar days of the written notification

date, unless otherwise provided in the AFA. Include in the required written notice to the LG the exact language in the AFA concerning funding.

Refer to the Contract Donation Agreement to determine if the private sector donor is required to fund overruns. Follow the procedure outlined above for the AFAs if the private sector donor is responsible for funding overruns.

The AFA or Donation Agreement must be amended if the CO expands the scope of the original agreement or the third party contribution is for a fixed amount. Coordinate with CSD to amend an AFA or Donation Agreement.

Texas Department of Licensing and Regulation (TDLR) Submissions

If the CO causes the total contract amount for the pedestrian elements to exceed \$50,000, submit the CO for review to [TDLR](#) on the CST website.

Converting Change Orders from Participating to Non-Participating

In the event the District mistakenly processes a CO as federal participating (when it should have been non-participating), the District must make the correction in SiteManager. To do this, process a participating CO to subtract items that were added under the incorrect CO, then process a non-participating CO re-adding the items. This process may be completed similarly to convert non-participating CO to participating.

Texas Ethics Commission (TEC) Form 1295

Texas Government Code [§2252.908](#) stipulates that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Texas Ethics Commission Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

Beginning with contracts let after January 1, 2016, in accordance with [SP 000-384](#), CST handles receipt and acknowledgement of Form 1295 for all state-let construction and maintenance contracts prior to execution and in case of a change in interested parties, but the district must fulfil the requirements before processing:

- ◆ any CO with a value equal to or greater than \$1 million, or
- ◆ cumulative COs that increase the contract amount by \$1 million or more. (E.g., CO #1 + ... CO #9 = \$900,000. CO #10, for \$100,000, cumulatively increases the contract by \$1 million and will require a new Form 1295. Following CO #10, a new form is necessary only if additional COs (individual or cumulative) increase the contract value by \$1 million or more.)

CST Standard Operating Procedure 01-19 provides instruction for:

- ◆ contractor completion and submittal of Form 1295, and
- ◆ Area Office internal processing of CO and Form 1295, and acknowledgement of receipt in the Texas Ethics Commission's Electronic Filing Application.

Section 2 — Change Order Approval Authority

Policy

CO approval authority is based on the franchise model as outlined in the May 30, 2012 policy memo shown in Appendix A. District Engineers will delegate signature authority in accordance with policy. When signed by the designated official, the CO is approved.

Adhere to district policy and procedures in the review and approval of COs that may be approved at the district level.

Federal-Aid Projects - Projects of Division Interest (PoDI)

Refer to Chapter 16, "FHWA Oversight Requirements," for more information

State Funded Projects

COs on state funded projects are approved in accordance with the franchise model approval authority outlined in the May 30, 2012 policy memo shown in Appendix A. CO work may not begin until either written or verbal approval is obtained. Signatures must follow District, Construction Division, and Executive Director Signature authority found on Contract Services Division webpage.

Extending or Adding Project Limits to the Contract

Districts may extend or add project limits if all of the following conditions are met.

- ◆ Transition or tie-in work is less than 1,500 feet
- ◆ The work has a value of less than \$50,000
- ◆ No changes made to unit bid prices
- ◆ The scope of work remains the same
- ◆ The funding category remains the same
- ◆ No new CSJs are required
- ◆ No additional environmental clearance is necessary

If all the above conditions are not met, a CO must be submitted for DE approval, regardless of the amount. Be sure to maintain the integrity of the competitive bid process.

Use the following procedure to add CSJs to the contract through a contract CO,

How to Add CSJs to the Contract (State Funded Projects Only)

Responsible D/D	Action Required
District	<ul style="list-style-type: none"> ◆ Notifies Construction Division (CST), Design Division (DES), and Finance Division (FIN) there is a need to add a new control section job (CSJ) to a project ◆ Assigns a CSJ number ◆ Updates the “Remarks” field on the P1 screen in DCIS
CST	◆ Updates SiteManager
DES	◆ Updates “Contract CSJ” field in DCIS
FIN	Adds the CSJ to FIMS upon receipt of the CO

CO Submission Requirements Related to Added Limits

The approval of added limit COs will require the following documentation.

- ◆ Statement of environmental clearance status along with necessary updates to meet environmental requirements.
- ◆ Notice of Intent threshold impacts
- ◆ Texas Department of Licensing and Regulation (TDLR) review for Texas Accessibility Standards (TAS) compliance
- ◆ Explanation of the reason(s) the change order is needed
- ◆ Justification, such as a description of:
 - emergency work,
 - transition end work,
 - explanation of cost saving over cost to re-let, or
 - discussion regarding imminent need
- ◆ Determination that there is no change in scope
 - Have the contract work elements changed?
 - How does the additional work impact quantities and cost?
 - Does the proposed change impact the complexity of the work?
 - What is the cumulative impact on the project?
 - What is the substantial benefit to the public for not bidding out the additional work?
- ◆ Funding source category

Section 3 — Force Account and Interim Adjustments to the Contract

Change Orders Involving Contractor Force Account Work

Create unique CO items as described in Section 1 for payment of force account work. Use [Form 316](#), “Daily Report of Force Account Work,” to capture the actual equipment, labor, and materials used for the work, as described below.

- ◆ The equipment description:
 - brand,
 - year,
 - model,
 - type,
 - size,
 - horsepower, or
 - other identification.
- ◆ Equipment rates established in accordance with Article 9.7. Verify rates utilizing [Equipment Watch](#).
- ◆ All labor classifications with applicable wage rates (Refer to Chapter 15, “Contractor Workforce,” for more information.)
- ◆ Material costs associated with the force account work
- ◆ Contractor’s invoice
- ◆ Any additional information necessary to support the CO

COs for force account work less than \$10,000 may be prepared based on the contractor's estimated costs for labor, equipment, and materials. Obtain cost justification as necessary. Complete Form 316 to document the force account work payment. Subsequent to the completion of the force account work, obtain from the contractor a certified invoice listing the total cost for labor, equipment, materials, incidentals, and additional compensation provided in Article 9.7, “Payment for Extra Work and Force Account MethodForce Account.” Agree to the personal, equipment, and material rates used for the force account work prior to beginning work.

Prices submitted by subcontractors include an additional 5% markup for the prime contractors administrative cost, superintendence, and profit. Request a price breakdown of equipment, labor, and materials when a price submitted by a subcontractor is not fair and reasonable. Cost incurred by the state need to be justified.

Change Orders Involving Interim Adjustments

If an agreement cannot be reached with the contractor regarding the basis of payment for the CO, work may proceed by making an interim adjustment to the contract. Subsequent to performance of the work, consider modifying compensation to the contractor based on actual work performed.

Interim adjustment is an adjustment made in the contract that has not been finalized by a Change Order.

Unilateral Change Orders

Do not use a unilateral change order for work that is outside the scope of the project or for dispute resolution. Work outside the limits, excluding end of project transition areas or added work outside the original intent of the project, should not be forced on a contractor through the use of a unilateral change order. Should a unilateral change order be needed coordinate with Construction Support. The District Engineer will approve and sign all unilateral change orders.

Section 4 — Supplemental Agreements

Policy

A supplemental agreement (SA) is a formal agreement between the contracting parties amending the contract.

Use a SA to:

- ◆ assign the contract changes from one entity to another
- ◆ change the legal name of the contractor, or
- ◆ settle disputes involving a Surety.

Send SAs with original signatures to the Construction Division (CST) for further handling.

Assignments

Do not allow the contractor to assign, sell, transfer, or otherwise dispose of the contract or any portion rights, title or interest (including claims) without the approval of the Commission or designated representative.

Submit assignment requests received from the contractor to CST for approval. CST will:

- ◆ ensure the new contractor is prequalified and has the necessary bidding capacity,
- ◆ prepare a supplemental agreement,
- ◆ send the supplemental agreement and bond forms to the contractor for execution,
- ◆ execute the supplemental agreement, and
- ◆ notify the contractor, Finance Division (FIN), and the District.

Ensure the new contractor provides the standard project information and forms (payroll clerk, etc.). Do not alter any other terms and conditions of the contract or suspend time during the assignment process.

Change the Legal Name of the Contractor

When a contractor changes its legal name they must advise the Department so that any incomplete contract may be modified to reflect the new legal name. A supplemental agreement is used to accomplish the modification of the contract.

Submit name change requests received from the contractor to CST for approval. CST will:

- ◆ verify the legal filing of the name change,
- ◆ obtain administrative approval,
- ◆ prepare the supplemental agreement,
- ◆ obtain the executed agreement, insurance, and applicable bonds in the new name of the contractor for construction contracts, and
- ◆ send copies to the contractor, FIN, and the District.

Section 5 — Terminations

Policy

As stated in Article 8.8, “Termination of Contract,” contracts may be terminated whenever:

- ◆ the contractor is prevented from proceeding with the work:
 - as a direct result of an executive order of the President of the United States or the Governor of the State,
 - due to a national emergency, or when the work to be performed under the contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment, or labor as the result of an order or a proclamation of the President of the United States,
 - due to an order of any federal authority, or
 - by reason of a preliminary, special, or permanent restraining court order where the issuance of the restraining order is primarily caused by acts or omissions of persons or agencies other than the contractor; or
- ◆ the Department determines that termination of the contract is in the best interest of the State or the public. This includes but is not limited to the discovery of significant hazardous material problems, right of way acquisition problems, or utility conflicts that would cause substantial delays or expense to the contract.

Procedures

Coordinate with CST to process contract terminations. CST will provide written notice of termination to the contractor specifying the extent and effective date of the termination. The notice will include specific instructions to the contractor regarding the scope of termination and continued work performance associated with the contract. Ensure that the contractor complies with the specific instructions contained in the written notice.

The contractor will submit a final termination settlement proposal within 60 calendar days of the date of the written termination notice. The District will prepare a CO reducing the affected quantities of work and adding acceptable costs for termination. Do not include anticipated profits. Include reasonable and verifiable termination costs as provided in Article 8.8.

Chapter 8 — Disputes and Claims

Contents:

[Section 1 — Disputes](#)

[Section 2 — Claims](#)

[Section 3 — Payment](#)

Section 1 — Disputes

Policy

A dispute is a disagreement between the Department and contractor on a contract issue. Disputes may only be submitted by the prime contractor. Make every effort, within the provisions of the contract, to resolve disputes at the lowest level possible. Resolution of problems as they occur generally provides the lowest cost and least time-consuming solution.

Administer highway construction contracts equitably. Promote a cooperative attitude consistent with ethical standards for contractual relationships; however, do not yield to requests from contractors solely to avoid claims.

In administering the contract, do not:

- ◆ require the contractor to perform work outside the scope of the contract or
- ◆ impose additional risks or costs to the contractor.

Partnering and Issue Escalation

Analyze issues or situations carefully and in a timely manner to determine if they are within the scope of the contract, or require more or less work than called for in the contract.

Resolution of a dispute may be accomplished through a change order (CO) or a supplemental agreement (SA). For significant deviations from the contract, negotiate COs in accordance with Chapter 7, Section 1. Use a SA to settle disputes not associated with the scope of work, in accordance with Chapter 7, Section 4. Claims may be settled as a dispute up until the time of the Contract Claims Committee meeting, as described in the following Section.

Follow the escalation ladder established at the preconstruction meeting when escalating and resolving disputes. At the District's request, the Construction Division (CST) will provide a recommendation for resolution of the matter in compliance with the contract, but the course of action is at the District's discretion. Disputes end with the District Engineer. Notify the contractor in writing of the final decision.

Appeal of Disputes

The contractor may not request an appeal of the District's final decision but may file a claim as described in the next section.

Section 2 — Claims

Policy

A claim is an unresolved dispute requiring formal action by the Department's Contract Claim Committee (CCC). All procedures for contract claims resolution are established in accordance with Title 43, Texas Administrative Code [§9.2](#), “Contract Claim Procedure.”

Contract claims may only be filed by the prime contractor. A prime contractor may make a claim on behalf of a subcontractor.

If a contractor does not agree with the District’s decision on the dispute, the contractor may file a detailed report complete with a certification statement and contract claim request with:

- ◆ District Engineer (DE) under whose administration the contract work was or is being performed,
- ◆ CST, or
- ◆ the CCC.

If District staff is unsure whether documents received from the contractor constitute a formal claim, forward the documents as received to CST for a determination.

The District must forward all claims to the CCC or CST within 5 business days, in the original condition as received. The CCC will provide the District and the contractor a letter of acknowledgement of acceptance or denial of the claim. CST will provide the District with a copy of the claim, and, if the claim is accepted, the CCC will request that the District submit a detailed report and recommendation within 2 months.

CST will review the claim, consulting with the District and the contractor as necessary to secure any additional information. Responses to CST requests for information associated with the review of the claim must be in writing.

Upon completion of its review, CST will provide a report to the contractor, the District, and the CCC Chairperson containing recommendation(s) for resolution of the claim. The CCC Chairperson will schedule a meeting between the prime contractor and the District in order to afford both sides an opportunity to present their respective stances for the consideration of the Committee.

Until the time of the CCC meeting, the contractor and the District may still pursue the option to settle the claim as a dispute at the District level. In accordance with Article 4.7, notify the CCC through CST in writing of the intent to resume negotiations at the District level and request review of the claim be suspended by the CCC pending the outcome of the negotiations.

Contract Claim Committee Meeting

The CCC Chairperson will select Committee members at the time the meeting is scheduled, including Division Directors and one or more District Engineers (DEs), with a preference, if possible, for those whose Districts do not have a current contractual relationship with the prime contractor involved in a contract claim.

The informal meeting conducted before the CCC allows both the District and the contractor to discuss the claim without legal counsel. The meeting will be conducted in a cordial, professional, and orderly manner. As dispute negotiation discussions have not resolved the claim, any comments or presentations are to be directed to the CCC. Additional concerns may be brought before the CCC by a contractor, but additional claim issues not submitted in the initial claim or any claim amendments may not be considered for compensation.

After the meeting, the CCC Chairperson will send the contractor written notice of the Committee's proposed disposition of the claim. The contractor must advise the CCC Chairperson in writing within 20 days whether the disposition is acceptable.

Appeal of Claims

A contractor dissatisfied with the CCC's proposed disposition of the claim may petition the Department's Executive Director for a contested case hearing before the State Office of Administrative Hearings (SOAH). Hearings conducted by SOAH are legal proceedings presided over by an appointed administrative law judge. Coordinate with the General Counsel Division (GCD) to work with the Attorney General's office in preparation for a scheduled SOAH hearing. The administrative law judge's final decision regarding the claim is forwarded to the department's Executive Director for consideration.

Section 3 — Payment

In accordance with best practices involving good partnering and dispute resolution concepts, the CCC encourages Districts to work with the Contractor to resolve a dispute or claim at the District level during the course of the contract. In this case, the District processes payment for resolution through SiteManager following the established change order (CO) process.

Districts may resolve a claim up to the date and time of the CCC meeting. If the CSJ has not been closed, the District can process payment by CO. If the CSJ has been closed, the District must submit [Form 2557](#), “Billing Worksheet,” to the Financial Management Division (FIN).

Once the Department and the contractor enter into a CCC meeting, the District can no longer negotiate, resolve, or process payment for the claim. The CCC will make the necessary arrangements with FIN for payment of claims resolved by a CCC meeting. Districts have no further procedural responsibility regarding resolution of claims heard by the CCC; however, any funds disbursed will come from the District's budget allocation.

Chapter 9 — Legal Relations and Responsibilities

Contents:

[Section 1 — Introduction](#)

[Section 2 — Employee Responsibilities](#)

[Section 3 — Conflicts of Interest and Ethics](#)

Section 1 — Introduction

Ethics Policy

The Department's ethics policy is detailed in the following references.

- ◆ Article 7.1, “Ethics,” of the *Standard Specifications*
- ◆ Title 43, Texas Administrative Code, [Chapter 10](#), “Ethical Conduct by Entities Doing Business with the Department”
- ◆ *Human Resources Policy Manual*, [Chapter 8](#), “Conduct and Problem Resolution” (internal access only)

Section 2 — Employee Responsibilities

Cooperation with the Contractor

Work with the contractor in a congenial and professional manner. Provide clear, precise, and concise instructions to authorized personnel with no trace of malice, unfriendliness, or anger. Limit instructions to the contractor to those within the scope of the contract. Ask the contractor if there are questions about any instructions. Resolve misunderstandings with the contractor promptly.

Provide instructions on major issues to the contractor in writing and maintain the written instructions in the project records. Record verbal instructions on minor and major issues in the DWR.

Discuss minor irregularities with individual contractor employees only if authorized to do so by the contractor.

Resolve differences of opinion in accordance with the escalation ladder established at the preconstruction meeting. Contact the Construction Division (CST), Field Engineering Branch (FE) for assistance in resolving disputes.

Contact with the Public

Department personnel are public employees. The public will judge the Department by its work and by the actions and attitudes of each employee. Take responsibility to create good will for the Department and earn the respect and confidence of the public.

Extend courtesy and patience to the public. Take precautions in those instances where it is necessary to inconvenience the public due to construction operations. Ensure adequate warning signs, barricades, directional signs, flaggers, access to property, etc., are provided to move traffic quickly and safely through the work area. Make every effort to maintain access to private property at all times during operations. When access to any property is temporarily interrupted, provide adequate notice of the interruption to the property occupant in person, by phone call, or by certified letter. Include with the notice a courteous explanation of the reasons for the interruption. Provide courteous and prompt responses to questions received.

Sanitary Accommodations

Ensure that the contractor provides and maintains adequate, neat, and sanitary accommodations for all project personnel, including State employees, in compliance with the requirements and regulations of the Texas Department of Health or other authorities having jurisdiction.

Public Safety and Convenience

Ensure that the contractor satisfies the requirements of Section 7.2.4, “Public Safety and Convenience,” of the *Standard Specifications* in accordance with the contract. Take any corrective action deemed necessary to ensure safety and convenience facilities of the public. Deduct the cost of any corrective action work from money due or to become due to the contractor.

Complete the following to provide safety and convenience to the traveling public.

- ◆ Have the contractor maintain the road in a good and passable condition.
- ◆ Coordinate the placement of regulatory speed zone signs with the contractor.
- ◆ Use regulatory speed limits only as needed.
- ◆ Coordinate with area law enforcement to ensure the posted regulatory speed limits are enforced.
- ◆ Check the project site for flaggers' compliance with contract requirements.
- ◆ Make careful effort to reduce damage caused by loose gravel.
- ◆ Use appropriate work zone signing to warn the public of driving and traffic handling precautions.
- ◆ Ensure contractors, utility companies, and others are aware of the requirements for use of high visibility safety apparel on the project, and take appropriate enforcement actions, when necessary, in accordance BC (1) - 14.
- ◆ Coordinate with the Public Information Officer to provide announcements of upcoming traffic impacts as necessary.
- ◆ Perform other actions as deemed necessary.

Barricades, Warning and Detour Signs, and Traffic Handling

The contractor is responsible for providing, installing, moving, replacing, maintaining, cleaning, and removing all traffic control devices in accordance with the contract. Take any corrective action deemed necessary to ensure requirements are met. Deduct the cost of any corrective action work from money due or to become due to the contractor.

Obtain from the contractor the name and contact information for the contractor responsible person (CRP). The CRP is responsible for taking or directing corrective measures of noted deficiencies associated with the traffic control plan (TCP). Correct all noted deficiencies in accordance with priority 1 and priority 2 deficiency requirements.

Ensure the Department responsible person (DRP) observes the implementation of the TCP on each project. The District Safety Review Team and the District Traffic Control Coordinator (TCC) will periodically review the project for contract compliance. The TCC, accompanied by the DRP (if

possible), performs quarterly barricade inspections and completes [Form 599](#), “Traffic Control Devices Inspection Checklist.” The TCC should accompany each DRP on the first inspection.

Refer to the Traffic Safety Division's [Work Zone Safety and Mobility Guidelines](#) for more information.

Protection of Adjoining Property

Ensure the contractor protects adjacent property from damage and takes corrective action to restore damaged property to a condition similar or equal to that existing before the damage occurred. Do not reimburse the contractor for corrective action to restore damaged property. If the contractor fails or refuses to restore damaged property, notify the contractor of such damages in writing and request corrective action.

Using Explosives

Obtain a written blasting plan from the contractor when required by the contract or as deemed appropriate. Observe and monitor the contractor's operations to ensure compliance with the federal, state, and applicable local laws, ordinances, and regulations pertaining to the storage and use of explosives. Ensure the contractor provides at least a 48-hour advance notice to the appropriate Road Master (as defined in the *Standard Specifications*, Section 1.3.115) before performing any blasting work involving the use of electric blasting caps within 200 feet of any railroad track.

Contractor's Responsibility for Work

Open any roadway or portion of the roadway to traffic if deemed in suitable condition for travel. Ensure the contractor repairs damage until final acceptance. If deemed appropriate, relieve the contractor from maintenance for isolated work locations, vegetative establishment, and maintenance periods or work suspensions.

Electrical Work

If required by the contract, obtain from the contractor the name and contact information for the certified person or licensed electrician. Ensure that all electrical work is completed as required by Article 7.15, “Electrical Requirements,” of the standard specifications.

Work near Railroads

Ensure the contractor complies with railroad company requirements for work within the railroad right of way. Do not reimburse the contractor for any costs associated with railroad company requirements. If work near a railroad will require railroad company flaggers, reimburse the contrac-

tor for use of the railroad company flaggers. Do not reimburse the contractor for costs associated with temporary railroad crossings.

Unless otherwise shown in the contract, do not allow the contractor to:

- ◆ store material or equipment in the railroad’s right of way within 15 feet of the centerline of any track, or
- ◆ place any forms or temporary falsework within 15 feet horizontally from the centerline or 23 feet vertically above the top of rails of any track.

Refer to specific requirements in the plans and railroad agreement.

Noise Abatement

Ensure the contractor minimizes noise throughout all phases of the contract. Do not allow contractor placement of mobile or stationary equipment that will disrupt normal adjacent activities. For equipment in use on the project, ensure that the contractor does not remove or make ineffectual manufacturer-installed noise attenuation devices such as mufflers, engine covers, insulation, etc.

Complaints from the public on any issue are addressed by the Public Information Office (PIO) or the District PIO.

Section 3 — Conflicts of Interest and Ethics

Overview

Avoid the appearance of unprofessional behavior. Treat other employees, contractor employees and representatives, other project related personnel and the general public with respect and fairness. Maintain a courteous demeanor and employ restraint at all times when representing the Department.

Do not participate in any activity that could be considered a possible conflict of interest. Refer to “Conflict of Interest” of the *Human Resources Policy Manual* for more information. In addition to the Human Resources Manual, be familiar with the requirements of the Texas Penal Code which covers gifts to public servants (Section 36.08 of the Texas Penal Code titled “Gift to Public Servant by Person Subject to His Jurisdiction” and Section 36.09 titled “Offering Gift to Public Servant”).

Refer to "Engineer Recommendations" in Appendix A

Gifts, Benefits, and Favors

Refer to Ethics section in the HRD manual.

Non-TxDOT Internet Access

From the **Information Security Manual**, Chapter 11, Section 4, “Internet Access”:

“TxDOT employees who are provided access to non-TxDOT owned and/or provided equipment, computers, and/or services (information resources) for Internet use must at all times adhere to the same policies and procedures governing TxDOT owned and/or provided equipment, computers, and services for Internet access, as described in this manual. This policy applies to all TxDOT regular/full-time, part-time and temporary employees, contractors and consultants, students, interns and volunteers.

For example: A situation may occur in the field in which a TxDOT employee is given access to a contractor’s laptop and Internet service to use in the performance of their job duties. This access is to be used only for TxDOT, work-related functions.

Violation of these requirements and policies may lead to loss of Internet access privileges, disciplinary action, including termination of employment, and legal action including, civil, and criminal prosecution.”

Chapter 10 — Prosecution and Progress

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[Section 1 — Workers and Equipment](#)

[Section 2 — Project Schedules](#)

[Section 3 — Subcontracting](#)

[Section 4 — Contract Time](#)

[Section 5 — Temporary Suspension of Work or Work Day Charges](#)

[Section 6 — Construction Project Timeliness](#)

[Section 7 — Best Practices for Holiday Periods](#)

[Section 8 — Default of Contract](#)

Section 1 — Workers and Equipment

General

In accordance with Article 5.5, "Cooperation of Contractor", the contractor must furnish suitable machinery, equipment, and construction forces for the proper prosecution and completion of the work.

Superintendent

Ensure that the contractor staffs every project under contract with TxDOT with a Superintendent who is available at all times during the course of the project. The project Superintendent should be named in writing and documented within the project files by the contractor. In accordance with Article 5.5, the Engineer may suspend work without suspending working day charges for any of the following reasons.

- ◆ The Superintendent is inexperienced with the work being performed and not capable of reading and understanding the contract.
- ◆ There is an absence of the named project Superintendent during the prosecution of project work.
- ◆ The Superintendent is unable to receive instructions from the Engineer and to act for the contractor.

Construction Workers

Only by written request of the Engineer, contractor employees or representatives may be removed from the work locations when the following conditions are determined to exist.

- ◆ Work is not performed in a proper and skillful manner.
- ◆ Employees or representatives are:
 - disrespectful,
 - intemperate,
 - disorderly,
 - uncooperative, or
 - otherwise objectionable.

Nighttime Work

When work is performed at night, the contractor must provide adequate lighting so that:

- ◆ the work can be performed safely,
- ◆ the work can be adequately inspected, and
- ◆ traffic can move safely around the work

OSHA Standard 1926.56 has the minimum lighting standards for workers safety. If deemed necessary, TxDOT has the right to request additional lighting above the minimum in order to facilitate adequate inspection and safe operations of the work. Notify the contractor of failure(s) to comply with these requirements. If the contractor does not correct the identified deficiencies, suspend the work without suspending the working day charges and withhold all future estimates until the contractor complies.

Refer to the Traffic Safety Division's [Work Zone Safety and Mobility Guidelines](#) for more information.

Section 2 — Project Schedules

General

Do not allow the contractor to begin work until the Construction Division (CST) sends the “Authorization to Begin Work.” In accordance with Article 3.8, “Beginning of Work,” the contractor is not to begin work until authorized in writing by the Engineer.

Unless otherwise specified in the contract, the contractor is required to begin work within 30 calendar days of the Authorization to Begin Work in accordance with Article 8.1, “Prosecution of Work.” Verify in the contract whether a special provision allows for a later start.

In contracts with callout work and work orders, the contractor is required to begin work in accordance with the contract or as specified in each work order.

Use project schedules obtained from the contractor to:

- ◆ understand the contractor's plan to deliver the project within the time allowed,
- ◆ plan for TxDOT's work force and other resource requirements (such as materials to be supplied or installed by TxDOT),
- ◆ administer contract sequencing requirements,
- ◆ monitor coordination of all entities involved in the project,
- ◆ monitor milestone completion in accordance with the contract, if applicable,
- ◆ monitor the progress of the work and evaluate proposed changes to the contract,
- ◆ advise the public and any others of major milestone accomplishments, the status of the project and/or the anticipated project completion date, and
- ◆ actively manage impacts to the project and administer contract time in accordance with the contract.

Submitted contract schedules should:

- ◆ include an indication of the contractor's planned completion date within the number of working days specified in the contract,
- ◆ include all planned work activities necessary for the successful completion of the project based on the sequence of work and traffic control plan shown in the contract,
- ◆ include a beginning date, ending date, and duration in working days for each activity,
- ◆ include any major materials procurements and known utility relocations,
- ◆ include other activities that may affect the completion date of the contract, such as activities performed by the Department or third parties such as ROW or utilities,

- ◆ include interim milestones or specific scheduled activities in the contract where completion of specific portions of the work may be required at specific times and may include incentive and disincentives, and
- ◆ not include activities exceeding 20 working days unless agreed upon with the Engineer.

Schedule Types

In accordance with Article 8.5 “Project Schedules,” project schedules will be designated in the plans as:

- ◆ bar chart, or
- ◆ Critical Path Method (CPM).

The Bar Chart schedule type is the default for all construction contracts. If a CPM schedule is required by the contract using a specified project management software program, be familiar with the appropriate software program. The General Notes to Item 8 must include the District's scheduling software preference, when applicable.

Unless otherwise shown in the contract, obtain monthly updated progress schedules from the contractor and document the received date for each. Review the schedule to ensure conformance with the contract. If the progress schedule indicates that the contract will not be completed within the number of working days specified, obtain written clarification that states whether the contractor will revise the progress schedule to meet the number of working days specified or will exceed the number of working days specified and why.

Review major changes to the progress schedule that may affect compliance with the contract requirements or changes the critical path or controlling item of work. These proposed major changes may be rejected. If changes are shown, a narrative explanation must also be provided.

For multiple work order contracts, ensure that the contractor submits a progress schedule for each work order.

Acceptance of Baseline Schedules

The Engineer's review and acceptance of the project schedule is for conformance to the requirements of the contract documents only and does not relieve the contractor of any responsibility for meeting the interim milestone dates (if specified). Review and acceptance does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the project schedule.

Contract Time vs. Planned Finish Date

Contract time will be determined by the contract as bid or the work orders as provided. If a contractor provides a baseline schedule proposing completion of the work prior to the end of contract time, do not reduce the contract time. Do not begin liquidated damages until contract time has expired, regardless of the contractor's planned completion date per the baseline schedule.

A contractor has the right to finish early. If a contractor plans to finish early per the baseline schedule, and the schedule appears to be reasonable, yet finishes later than they had planned, the contractor can still claim delays and/or overhead costs even if contract time has not yet expired. Such a claim will require a Time Impact Analysis to determine the cause of the delays and which party (TxDOT or the contractor) is responsible for the delay. Only then, if it is determined that TxDOT is responsible for a delay to the contractor's progress, TxDOT may owe time and compensation. A contractor's planned completion date and the end of contract time are not synonymous and must not be treated as such.

Failure to Complete Work on Time

As stipulated under Article 8.6 “Failure to Complete Work on Time”, the time established for completion of the work is an essential element of the contract. If a Contractor does not complete the work within the contractual number of working days, continue charging working days. For each day over the contracted time, damages will need to be assessed in accordance with the contract.

Liquidated damages are calculated costs based upon the Department’s contract administration expenses for managing a contract beyond the calculated contract time. Liquidated damages are not a penalty, but a method for recovering TxDOT’s costs and damages due to the additional time needed to complete the project. These costs are re-evaluated periodically to stay current. The rate of liquidated damages has typically been included in 2014 contracts by Special Provision 000-001. As stated in this Special Provision, the rate of liquidated damages to be used in a given contract is based upon the original bid value of the contract; if the value of the contract changes, the value of the liquidated damages does not.

Additional Project Specific Liquidated Damages (APSLD), when applicable, are typically identified within a contract's General Notes, by using the RUC Excel Calculator and may be associated with the timely completion of project milestones, or may be applied at the end of a project determined to have a significant impact on the traveling public as an additional disincentive to help ensure timely completion. Each year, TxDOT issues updated road user costs for use in A+B bid contracts, incentives/disincentives for milestones and project substantial completion, and projects with lane rental provisions.

Section 3 — Subcontracting

The *Standard Specifications* define a subcontractor as “an individual, partnership, limited liability company, corporation or any combination thereof that the contractor sublets, or proposes to sublet, any portion of a contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, truck owner-operator, wholly owned subsidiary, or specialty-type businesses such as security companies and rental companies.”

Subcontractor Approval Procedure

In accordance with Article 8.2, “Subcontracting,” all subcontractors (regardless of the tier) require the Engineer's written approval prior to performing work on a contract.

Obtain a written subcontract request from the prime contractor for each subcontractor. Ensure the request contains the following information.

- ◆ Description of work to be sublet, including the relevant work items
- ◆ Amount and percentage of the total contract
- ◆ Geographic area in which the subcontracted work is to be done
- ◆ Subcontractor’s name, address, and telephone number
- ◆ Subcontractor’s federal identification tax number
- ◆ Estimated start and completion dates
- ◆ Disadvantaged Business Enterprise/Small Business Enterprise/Historically Underutilized Business (DBE/SBE/HUB) goal credit must be captured, when the subcontractor is classified as a DBE/SBE/HUB. Reference the following:
 - District Disadvantaged Business Enterprise Coordinator Compliance and Monitoring Guide (for projects let prior to Feb. 2017)
 - District Disadvantaged Business Enterprise Coordinator Compliance Monitoring Guide (for projects let Feb. 2017 and thereafter)
 - District Small Business Enterprise Coordinator Standard Operating Procedures
- ◆ For federally funded projects in DMS, the contractor must request to add a subcontractor in DMS.
- ◆ As a Best Practice - A Texas Unified Certification Program (TUCP) print out to show, DBE or SBE certification. Ensure date

is current in header and footer. The TUCP must be verified for all DBEs both race conscious and race neutral.

Confirm the following information prior to subcontractor approval:

- ◆ Total value of all subcontracted work does not exceed 70% of the original contract value.
- ◆ Race conscious DBE participation (DBE on an approved commitment agreement form or utilization plan) and race neutral DBE participation. Note: this form is used for project executed prior to February 2017. For projects executed after February 2017, the form is used to document DBE substitutions.
- ◆ DBEs/Small Business Enterprises (SBEs) will perform a commercially useful function.
- ◆ Race conscious DBE subcontract work item must match the work items in the executed commitment agreements.
- ◆ The subcontractor is not on the TxDOT or federal list of [Debarred/Sanctioned Contractors](#).
- ◆ The subcontractor has submitted documents for E-Verification.
- ◆ On federal-aid projects, the subcontract contains FHWA Form-1273. Ensure required Special Provisions are included in the subcontract. For an approved DBE or approved substitute DBE used to meet the goal, the subcontractor approval must equal or exceed the committed amounts and contain the same items of work approved on the commitment/utilization plan.

Subcontracts are considered approved once the District approval date is entered into SiteManager. (Refer to the [SiteManager Contract Administration Manual](#).) Notify the contractor of such approval by letter or by email in a timely fashion, so as not to create delay impacts to the project.

Subcontracting Limit

Per Article 8.2.1, “Construction Contracts and Federally Funded Maintenance Contracts,” ensure that the contractor, including DBE-certified prime contractor, performs at least 30% of the total original contract amount (25% if the Contractor is a Small Business Enterprise on a wholly State- or local-funded Contract), less any specialty items, with the contractor's own organization. The percentage of work subcontracted is calculated for first-tier subcontractors only; do not apply the subcontracting limitations to second or third tier subcontractors. All DBEs must self-perform 30% of the work in order to perform a CUF.

The contractor's own organization only includes:

- ◆ workers employed and paid directly by the contractor or wholly owned subsidiary,
- ◆ equipment owned by the contractor or wholly owned subsidiary,

- ◆ rented or leased equipment operated by the contractor's employees or wholly owned subsidiary employees,
- ◆ materials incorporated into the work if the majority of the value of work involved in incorporating the material is performed by the contractor's own organization, including a wholly owned subsidiary's organization; and
- ◆ labor provided by leasing firms licensed under Chapter 91 of the *Texas Labor Code* for non-supervisory personnel if the contractor or wholly owned subsidiary maintains direct control over the activities of the leased employees and includes them in the weekly payrolls (Payrolls may be submitted by either the contractor or the licensed staff leasing firm.)

Allow the contractor to subcontract any specialty items contained in the contract. Specialty items are work items not commonly found in contracts for similar work and may include:

- ◆ removing an underground storage tank on a widening project,
- ◆ plumbing on a widening project,
- ◆ electronic work on a typical road construction project, or
- ◆ work designated as specialty work in the contract.

Non-DBEs

For non-DBEs, when assuring compliance with the 30% contract provision, the Department can perform its monitoring and approve the subcontract based on the total amount of the subcontract with a list of bid items where the subcontractor will perform work. Accuracy of the subcontracted amount for non-DBEs reported by SiteManager for individual items is not of primary interest. At the District's option, approximating unit prices based on quantities or a price entry of \$0.01 are acceptable methods to associate work items to subcontractors in the SiteManager subcontracts screen. In either case, make a notation that the prices are not accurate in the remarks field. If using a \$0.01 unit price, monitoring of the 30% requirement must be performed using manual methods. If a question arises regarding the prime contractor performing 30% of the work with their own forces, require additional details from the contractor, including actual unit prices, to verify contract compliance.

Subcontracts Exceeding 70% of the Total Contract Amount

Do not approve subcontracts, or cumulative subcontracts, that exceed 70% of the total contract amount after deducting the cost of specialty items. Notify the District Construction Office of any subcontract rejections. If the reduction or elimination of work quantities being performed by the prime contractor's organization results in the subcontracted amount exceeding 70%, no action is needed. If the overrun, increase, or addition of work quantities being performed by a subcontractor's organization results in the subcontracted amount exceeding 70%, no action is needed. In either

instance, the intent of Standard Specification Article 8.2.1 is satisfied. Do not adjust any contract requirements that are related to the original contract amount, such as DBE goals.

Disadvantaged Business Enterprise Requirements

In accordance with Article 8.2, “Subcontracting”, the Department requires submission of an executed subcontract agreement for all DBE subcontracts, including all tiered DBE subcontracts, with unit prices. Verify that the unit prices are commensurate with the work. The unit prices, however, do not have to be based on bid item units.

For an approved, or an approved substitute, DBE used to meet the goal the subcontract agreement must equal or exceed the commitment/Utilization Plan total dollar amount and the items of work must match.

DBE/SBE Monthly Progress Reports

Refer to the following Civil Rights Division (CIV) Standard Operating Procedures (SOPs) for instructions on processing monthly progress reports (internal access only).

- ◆ [District Disadvantaged Business Enterprise Coordinator Compliance and Monitoring Guide \(for projects let prior to Feb. 2017\)](#)
- ◆ [District Disadvantaged Business Enterprise Coordinator Compliance Monitoring Guide \(for projects let Feb. 2017 and thereafter\)](#)
- ◆ [District Small Business Enterprise Coordinator Standard Operating Procedures](#)

For projects not in the Diversity Management System (DMS), complete and file [Form 4903](#) or Form 4902 DBE Prime Contractor payments to non-DBE subcontractor, “DBE Monthly Progress Report.”

Sanctioned/Debarred Contractors

Verify the subcontractor is not on the [TxDOT list](#) or [federal list](#) of Debarred/Sanctioned Contractors. Any project where the subcontractor was approved prior to the date of debarment is not affected.

E-Verify

Subcontractors must maintain active in the Department of Homeland Security's (DHS) E Verify program until their work is completed. Check TxDOT's [list of contractors](#) for whom CST has confirmed participation in E-Verify.

- ◆ If a subcontractor does not appear on the TxDOT list, the district must require that the subcontractor submit the appropriate documentation to CST_verify@txdot.gov prior to allowing the subcontractor to begin work.
- ◆ If a subcontractor appears on the TxDOT list, verify continued participation in E-Verify using the DHS [E-Verify Employers Search Tool](#).

Section 4 — Contract Time

Beginning Working Day Charges

Unless otherwise shown in the contract, the contractor has the option to begin work any time within the 30 calendar days after the authorization to begin work. Begin working day charges when the work begins or 30 calendar days after the authorization to begin work, whichever is earlier.

In some cases, the contract will include a provision to allow for extending the beginning of time charges on the contract beyond the standard 30 calendar days. When the contract includes a delayed start time provision, act in accordance with the contract provisions.

For contracts with work orders, such as a traffic signal project, begin working day charges as established for each individual work order.

Computation of Contract Time for Completion

In accordance with Section 8.3.1, “Working Day Charges,” of the Standard Specifications, assume time is to be charged based upon the standard workweek method unless otherwise specified in the contract (General Notes, Item 8). Other possible methods include the following.

- ◆ Five-day workweek
- ◆ Six-day workweek
- ◆ Seven-day workweek
- ◆ Calendar day
- ◆ Other (working days to be charged as shown in the plans)

Do not suspend working day charges without suspending work, wholly or in part.

For five-, six- or, seven-day workweek and calendar-day contracts, do not consider weather conditions or materials availability when suspending working day charges.

Do not suspend working day charges or grant additional contract working days for activities relating to handling hazardous material delivered by the contractor.

Consider increasing the number of contract working days by change order under extraordinary circumstances.

Work on Sundays must be requested for all projects except calendar-day and seven-day workweek projects.

For a standard workweek project, allow the contractor the option of working on state holidays.

For five-, six- or, seven-day workweek contracts, do not allow the contractor to perform work on national holidays unless requested in writing for all project workweeks. Provide written authorization to the contractor if work will be allowed on a national holiday. See the following table for a list of national holidays, as defined in Item 1.

Holiday	Date
New Year's Day	January 1
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Christmas Eve	December 24
Christmas Day	December 25

Section 5 — Temporary Suspension of Work or Work Day Charges

In accordance with Article 8.4, whenever work is suspended, wholly or in part, provide the contractor with written notice stating the reason(s) for the suspension. Prior to time charges resuming, provide the contractor with written notice directing the resumption of work by a specified date. Non-critical work may continue during suspension as determined by the Engineer.

Any request from the contractor to suspend time and working day charges, must be in writing. Email is acceptable.

Reasons for Temporary Suspension of Work

Work may be suspended for the following reasons:

- ◆ failure to comply with the contract,
- ◆ failure to keep insurance coverage in force as provided in Section 3.4.3, “Insurance,” of the Standard Specifications,
- ◆ failure to provide workers or equipment as provided in Article 4.1, “Contract Intent,”
- ◆ failure to provide a contract Superintendent on the project, or failure to provide a Superintendent that meets the criteria set forth under Article 5.5, “Cooperation of Contractor,”
- ◆ prior to default, for investigation of apparent fraud or other unfixable conduct, as provided in Article 8.7, “Default of Contract,”
- ◆ unsuitable weather or soil conditions,
- ◆ unusual conditions that affect the work and are not usually associated with highway construction,
- ◆ conditions that threaten the safety of the workers, public, or nearby property, or
- ◆ at the Area Engineer’s discretion, for flexible start dates for projects.

Reasons for Temporary Suspension of Working Day Charges

Suspend working day charges when all of the work is suspended for reasons not under the control of the contractor. When part of the work is suspended, working day charges may be suspended only when conditions not under the control of the contractor prohibit the performance of critical activities.

Section 6 — Construction Project Timeliness

There is significant interest regarding the “on-time” status of construction projects. It is simple to compare the percent of project time used and the percent of the contract value that has been paid, but because a project’s payout curve is not always linear and parallel with the progress of time, this calculation doesn’t always give a clear picture of the status of a project’s timeliness.

Project Managers (PM) must determine the estimated completion date and an estimate of the project’s percent complete status on a monthly basis. The PM has the discretion to assign a percent complete value that is different than the percent of time used on the project.

- ◆ If the project has a CPM schedule, the PM should be able to assess if the contractor has deviated from the schedule and assign the estimated percent complete based on this observation.
- ◆ If the project does not have a CPM schedule, the PM will estimate the percent complete based on their judgement of the contractor’s prosecution of the work.

PMs must report the “Estimated Completion Date – PM Estimated” and the “PM’s Estimated Percent Complete” in SiteManager monthly.

Refer to the [SiteManager Contract Administration Manual](#), for instruction on inputting and maintaining “Key Dates” and “Checklist Event Dates.”

Section 7 — Best Practices for Holiday Periods

NOTE: Items listed below may not apply to every project. Engineering judgement and experience will be required to provide the appropriate applications based on project location.

There should not be any planned lane closures during the holiday travel period, except in unique situations with the District's prior approval. As related to closures, the term "holiday" includes:

- ◆ periods of increased travel on the state highway system, including major state and federal holidays and school holidays, and
- ◆ other periods of high commercial activity in the state, including limited periods in which certain items are exempted from the sales tax ("sales tax holidays").

These dates will be included in the contract in accordance with Texas Transportation Code [§224.034](#) and as otherwise directed.

Two Weeks Out

Communicate the dates that the Department will NOT be allowing lane closures, to allow the contractor to plan work appropriately.

Obtain contractor call-out contact information for the holiday period. (Ask if the contractor will be patrolling the work zone corridor during the holiday period.)

Identify District personnel on call for incident response and other crew members available for call out during the holiday period.

Determine the appropriate contact information to provide to maintenance supervisors for construction projects or incidents during the holiday period.

Assign and schedule crews for final drive-through of major projects and corridors for issues that need to be addressed prior to the holiday period.

Check construction detours for pavements in need of repair.

One Week Out

Check roadways—particularly work zones—for debris, including shredded tires.

Verify that work zone signing and pavement markings are in place and clean. Any signing, markings, barricades, and drums that are damaged or no longer reflective should be removed and replaced, if needed.

Drive through detours for inspection of pavements, barriers, attenuators, and traffic control devices.

Prepare equipment for incident response and have staged and fueled in appropriate yard.

During the Period

Notify the Communications Division and appropriate administration if any emergency closures take place during the holiday period.

Park equipment in a safe, secure location and, where feasible, take into reasonable account the potential of errant vehicles that may leave the travel way.

Section 8 — Default of Contract

Declaration of Default

Section 8.7.1, “Declaration of Default,” of the *Standard Specifications* provides a list of reasons a contractor may be declared in default of the contract. If any of these conditions arise on the project, consider a 10-day cure notice to inform the contractor and surety of the potential for default. It is important to follow the procedures for initiating and processing contractor defaults as outlined below. The 10 day letter must be signed by the Area Engineer at minimum.

Do not default a contractor if they have filed for bankruptcy protection. Permission must be obtained from the bankruptcy court to default a contractor that has filed for bankruptcy protection. Contact the Construction Division/Construction & Maintenance Contract Letting Section (CST/CMCL) immediately when bankruptcy is legally declared by the contractor. If necessary, perform work using TxDOT resources in order to maintain safety for the traveling public. It is important to track the costs of performing this work so that the documented expenses can be properly charged to the surety. Establish a state force account to track costs associated with this work.

Do not default a contractor for insufficient insurance or allow them to perform any work on the project should their insurance lapse. Suspend all work until the contractor submits an acceptable certificate of insurance and continue contract time charges on the project. If, the work suspension period becomes excessive, the contractor may be defaulted.

Do not default a contractor for insufficient surety bond coverage or allow them to perform any work on the project should their bonds lapse. Should a contractor's surety bond become inadequate for any reason, suspend all work and working day changes for 15 calendar days or until an acceptable surety bond is provided, whichever is less. If an acceptable surety bond is not provided at the end of the 15 calendar days, the contractor may be defaulted for inability to perform the work.

Do not default a contractor at the request of the surety. Allow work to proceed and continue making payments to the contractor until the contractor is otherwise declared in default according to the contract.

If a Contractor gives written notice of voluntary default on the contract, TxDOT may forego the 10-day cure notice and immediately provide the contractor and surety a written notice of default. When a contractor is declared in default, update SiteManager critical dates with the date of the default. In addition, log each issuance of a 10 day letter in SiteManager key dates.

Contract with Performance Bond

Do not re-let the project. Continue contract working day charges from the date the original contractor was defaulted. The surety is responsible for any liquidated damages.

Coordinate with CST/Construction Support (CST/CS) to develop a Takeover Agreement with the surety and require that the surety completes the work as originally contracted. Submit the original Takeover Agreement to CST/CMCL, and provide a copy to CST/Construction & Materials Information Systems Development (CMISD), Financial Management Division (FIN), and the managing office over the project.

If a project status meeting between the District and the surety is needed to discuss contract completion, ensure that district office and area office representatives are present. CST/CS may attend at the District's request. The surety may have an attorney present at the meeting. Do not accept monetary settlement or payment of the remaining contract balance from the surety.

In obtaining a completion contractor for completing the remainder of the contract, the surety may use the original contractor, if approved by the District, or enter into an agreement with a new completion contractor. The completion contractor will be considered a subcontractor on the contract. Do not require that the surety comply with the Department's contracting rules or use Department prequalified contractors. Suspend the 70% subcontracting limitation requirement. Follow the subcontractor approval procedure in accordance with Section 3, "Subcontracting," of this chapter.

Ensure that the original DBE/SBE goals are satisfied in accordance with the contract. Require that the surety use the original DBE/SBE subcontractors, or approve substitutions in accordance with the contract.

Do not make any payments to the defaulted contractor, even if the payment is for work performed prior to the default. Make all payments to the surety subsequent to the contract default. In rare instances, usually when contract default occurs near the end of a contract, work may be completed with Department resources. It is important to track the costs of performing this work so that the documented expenses can be properly charged to the surety. Establish a state force account to track costs associated with this work.

Contract without Performance Bond

For a contract without performance bond, work may be completed by:

- ◆ Department resources,
- ◆ re-letting the contract, or
- ◆ an emergency contract.

At the time of default, if the contract has a negative balance, send a letter to the contractor outlining the charges and requesting payment. Require that the payment submitted references the appropriate project number. Contact FIN as soon as possible if the contractor does not make payment. FIN will coordinate with the Attorney General for collection.

Procedures

Use the following procedures in initiating and processing contractor defaults.

1. Except when default is at the request of the contractor, send the contractor a 10-day cure notice (by certified letter with return receipt requested) explaining the performance deficiencies and reason for potential default. State in the letter that the contractor must correct the deficiencies and resume work within 10 calendar days. Be specific about the reason(s) for potential default and quote directly from the contract. If the Contractor submits a voluntary default, skip to Step 5 of this procedure.
2. Coordinate the letter with CST/CS. If applicable, send the surety a certified copy of the letter with return receipt requested. Make sure the 10 day letter is signed by the Area Engineer.
3. Begin the 10-calendar-day time period on the date the contractor signs the receipt. If the certified letter to the contractor is returned or the return receipt is not received, note this information in the DWR and make the time period effective 10 calendar days from the date of the letter.
4. Do not default the contractor if work is resumed and a concerted attempt is made to correct the problem within 10 calendar days.
5. If the contractor does not resolve the problem in 10 calendar days or default is at the request of the contractor, send the contractor a certified letter of default with return receipt requested. Provide a copy of the letter to the CST/CS and FIN. If applicable, send the surety a certified copy of the letter with return receipt requested. Be specific about the reason for default and quote directly from the 10-day cure notice. The default is effective per the date of the certified letter of default unless otherwise specified. Stop all payments to the contractor. Do not suspend working day charges; continue working day charges until contract completion.

Include the following information with all copies of default letters sent to CST/CS.

- ◆ Contractor name
- ◆ Project number
- ◆ Control-section-job (CSJ) number
- ◆ Contract number
- ◆ Highway and county
- ◆ Name and mailing address of surety, if applicable.

If determined necessary, perform work to ensure the safety of the traveling public between the time of default and the time that work resumes. It is important to track the costs in performing this work so that the documented expenses can be properly charged to the surety. Establish a state force account to track costs associated with this work. If applicable, charge the surety for these costs. Continue working day charges until the project is completed.

Chapter 11 — Measurement and Payment

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[Section 3 — Prompt Payment](#)

Section 1 — Introduction

Overview

This chapter provides an overview of the measurement and payment process.

Policy

Measure quantities in accordance with the contract as specified in Article 9.1, “Measurement of Quantities,” and Article 9.2, “Plans Quantity Measurements.” Pay contractors according to the amount of work performed. Maintain sufficient documentation to support all quantities of work performed and payments made to the contractor. Ensure the documentation maintained supports:

- ◆ contractor satisfaction of contract requirements,
- ◆ prompt and fair payment to the contractor, and
- ◆ current, orderly, and accurate records.

Ensure that the contractor completes work as provided in the contract before making payment.

Section 2 — Issues Affecting Payments

Measuring Items

Describe which items require drawings, if they cannot be described in SiteManager. Provide calculations in payments.

EXAMPLE: A section of riprap measures 100 ft. by 3 ft. and is 5 in. thick. Calculate the area and volume of the riprap.

$$\text{Area} = \text{Length} \times \text{Width} = 100 \text{ ft.} \times 3 \text{ ft.} = 300 \text{ sq. ft.}$$

$$\text{Area in Sq. Yd.} = 300 \text{ sq. ft.} \div 9 = 33.33 \text{ sq. yd.}$$

$$\text{Volume} = \text{Length} \times \text{Width} \times \text{Depth} = 100 \text{ ft.} \times 3 \text{ ft.} \times 0.42 \text{ ft.} = 126 \text{ cu. ft.} \quad (5 \text{ in.} \div 12 \text{ in.} = 0.42 \text{ ft.})$$

$$\text{Volume in Cu. Yd.} = 126 \text{ cu. ft.} \div 27 = 4.67 \text{ cu. yd.}$$

EXAMPLE: A one-mile highway was striped with 4-in. white broken stripe. Calculate the quantity placed.

$$1 \text{ mile} = 5,280 \text{ ft.}$$

$$1 \text{ broken stripe} = 10 \text{ ft.}$$

$$\text{Space between broken stripes} = 30 \text{ ft.}$$

$$5,280 \text{ ft.} \div (10 \text{ ft.} + 30 \text{ ft.}) = 132 \text{ number of striping}$$

$$132 \text{ ft.} \times 10 \text{ ft.} = 1320 \text{ LF of stripes}$$

Partial payments to an item of work can be made when agreed upon. Items such as embankment cannot truly be measured; therefore, payment can be made by percentage. Cast-in-place inlets are completed in multiple stages, so partial payments in the form of percentages can be made.

When measurements cannot be described as shown above, computer measurements for irregular areas will be acceptable provided that a drawing is provided as an attachment.

Plans Quantity Measurement

Measurement of actual quantities is not required if a pay item under “Measurement” states in part, “This is a plans quantity measurement Item.” The intent of plans quantity measurement items is to relieve Department personnel from performing quantity field measurements. Monthly estimates for

plans quantity measurement items can be established by the quantities shown in the plans or with an established and agreed on payment formula such as a percentage of the total plan quantity installed.

Periodic field measurements and calculations can be performed to verify the required design plan dimensions, but should not be used to establish quantities on plans quantity measurement items. Changes to plan quantity items is addressed in Article 9.2 of the Spec Book.

Payments not to Exceed 10% of the Original Contract Amount

According to the standard specifications, total payment of the items listed below is not to exceed 10% of the original contract amount:

- ◆ 0100 Preparing Right of Way
- ◆ 0502 Barricades, Signs, and Traffic Handling

Material on Hand (MOH)

Overview

The Department offers payment for material on hand (MOH) to help offset large capital outlays in assembling and stockpiling material to be used in the contract. Contractors should request MOH payments for those materials that have an invoice cost of at least \$1,000.00. Do not make MOH payments for incidentals such as nuts, bolts, washers, etc.

To request payment for MOH, the contractor must submit [Form 1914](#), “Request for Material on Hand Summary Sheet,” and [Form 1915](#), “Request for Payment of Material on Hand,” by the last working day of the month or earlier, as agreed by the Engineer and the contractor at the pre-construction meeting. These forms may be reproduced by the contractor provided that they are in the same format and contain all the required information and certifications.

Once a contractor elects to request MOH payments, they must continue to submit Forms 1914 and 1915 on a monthly basis until a zero balance is reached—even if there are no changes from the previous month’s submitted forms.

Eligible Items

Only nonperishable items are eligible for MOH payments. Nonperishable items are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. The following are examples of nonperishable items eligible for MOH payment.

- ◆ Concrete traffic barrier
- ◆ Precast concrete box culverts

- ◆ Concrete piling
- ◆ Reinforced concrete pipe
- ◆ Illumination poles
- ◆ Base materials or aggregates stockpiled onsite, or produced and stockpiled specifically for the contract at a non-commercial source in the vicinity of the work locations. (If more than one contract is being supplied, ensure that separate stockpiles are maintained for each contract. For the purpose of MOH payment for the base materials and stockpiled aggregates, a commercial source is defined as any source that supplies base, aggregates, hot-mix asphalt (HMA), or concrete to the general public, while a non-commercial source is defined as a source that does not supply to the general public.)

Transportation costs are eligible for MOH reimbursement when the materials are delivered to the project. Transportation costs may be eligible when contractors receive the materials at a remote contractor-owned yard where the Department can monitor the materials. If materials are delivered to a remote contractor-owned yard, the transportation cost cannot exceed the cost for a direct delivery to the project.

Other materials determined to be nonperishable and approved as such may be considered for MOH payment.

As determined beneficial, separate identifiable stockpiles located at a commercial source may be eligible for MOH payment. In addition, any item considered unique in nature and fabricated specifically for a contract may be considered for MOH payment. Verify that all materials meet contract requirements.

Acceptable Storage

Ensure that material is accessible and properly stored (e.g., reinforcing steel on wood blocks off the ground.) MOH payments may be made for some products (e.g., precast concrete and steel girders) when stored at the fabrication plant, if the material has been sampled, tested, approved, or certified, and is ready for incorporation into the work.

Ensure that hot-mix and concrete aggregates stored at the contractor's plant are not contaminated or comingled with other materials. Unless the Engineer approves an exception, do not make MOH payments for materials stockpiled at a commercial plant that sells or supplies to numerous customers.

The contractor must physically check quantities shown on the request for payment each month to ensure the materials are located in the stockpile. Inspect and measure the material stockpiled and included in the request for payment as determined necessary. Resolve any quantity discrepancies prior to including the payment for MOH on the monthly estimate.

Testing and Approval

Ensure that materials are approved and properly tagged or marked. Verify test reports for approved materials, including those stored at approved sites. For prefabricated structural materials with the test method TXTRST that are stored at approved sites run the Material Verification Report (CIS26) for verification. This is found on the SiteManager - Report Server (Production). QM materials are not on the CIS26 report, nor are other materials tested in the labs. If a discrepancy exists between a requested quantity and an approved quantity, email MTD_StructuralDeficiencies@txdot.gov for assistance.

Do not make MOH payments for perishable materials. Perishable materials are materials that have a shelf life or whose characteristics materially change when exposed to the elements.

The following are examples of perishable materials.

- ◆ Anti-striping agents
- ◆ Asphalt and other petroleum products
- ◆ Cement
- ◆ Concrete admixtures
- ◆ Concrete curing compound
- ◆ Concrete surface finish
- ◆ Concrete surface treatment
- ◆ Epoxy
- ◆ Fly ash
- ◆ Hay
- ◆ Herbicide
- ◆ Hot-mix asphalt concrete (HMAC) mixtures
- ◆ Joint sealing materials
- ◆ Lime
- ◆ Paint (open market and warehouse stock)
- ◆ Plants
- ◆ Rapid setting mortar
- ◆ Waterproofing materials
- ◆ Water top materials

Records and Reports

The contractor is responsible for maintaining all documentation supporting MOH payments and retaining the documentation until final acceptance of the contract. Contractor documentation must include paid invoices for all MOH within 60 days of receiving MOH payment. The contractor's paid invoices must contain:

- ◆ the manufacturer,
- ◆ the unit price,
- ◆ the item supplied, and
- ◆ a statement signed by the contractor indicating that payment for the material shown on the invoice has been made.

Spot check contractor MOH payment documentation as determined necessary. Future MOH payments may be excluded if the contractor is found in violation of MOH contract requirements.

The Department may conduct audits and examine the contractor's recordkeeping system to ensure that accurate records are maintained for the payments requested.

Contractor's Responsibility for MOH

To request payment for MOH, the contractor must submit Forms 1914 and 1915. Do not accept these forms from subcontractors. With their submittal, the contractor must:

- ◆ determine what items are eligible for MOH payment and only request payment for eligible materials (the unit price requested by the contractor will not exceed the actual cost of the material as established by invoice, or the total costs for the associated item less reasonable placement costs, whichever is less);
- ◆ establish a procedure to ensure that plan quantity less placed quantity is not exceeded on the request;
- ◆ include a procedure to determine the quantity "used this period" as requested on Form 1915; and
- ◆ retain paid invoices for all materials included in any request for MOH payment within 60 days (two estimate cycles).

Approval for Early Estimates

The use of early cut-off dates for monthly estimates and MOH is a project management practice to manage workload at the Area Office level. Approval for using early cut-off dates is at the District's discretion. A best practice is to cut-off estimates on the 25th of the month, with MOH submitted no later than 2 days before the estimate cut-off date. As deemed appropriate, consider eligible items for MOH payment. Deduct from the estimate previous MOH payments if the material for which payment was made becomes unusable or is no longer intended for incorporation into the work, or is sold to the general public.

Area Office Responsibility for MOH

Contract MOH payments are monitored or audited as follows:

- ◆ cursory reviews,
- ◆ annual and monthly spot checks,
- ◆ process reviews, and
- ◆ contractor record audits.

The contractor must allow Department personnel immediate access to MOH records for all spot checks and process reviews.

Cursory Reviews. Review MOH payment requests received from the contractor to ensure that materials are eligible for MOH payment. Request an explanation from the contractor for any apparent discrepancies, such as quantity or price irregularities. The monthly MOH payment request must be reviewed and initialed by the Project Manager, Project Engineer, Assistant Area Engineer, or Area Engineer.

Monthly Spot Checks. At least once a month, conduct a random review of at least one item per project until all items are checked, material on hand is zero, or the project is complete. On the monthly MOH payment request, indicate which item was checked and initial the document to show that the monthly spot check was completed and document the reviewer. In addition to these random spot checks, conduct spot checks for cause or as directed by authorized personnel.

If a spot check indicates the need for corrective action, the affected contractor request for MOH payment may be corrected. Notify the contractor in writing of any corrections made.

If a spot check indicates that the Department overpaid the contractor for MOH, correct the overpayment with a supplemental progress estimate or with the next monthly estimate. Make this correction before making any additional payments to the contractor.

Use the guidelines listed in the following table to conduct spot checks.

Monitoring Guidelines for MOH

Step	Action
1	The Engineer or their representative performs spot check at the contractor's office.
2	Check eligibility of requested material: <ul style="list-style-type: none"> ◆ nonperishable ◆ test report issued when required.
3	Review invoices to verify quantity and unit price requested.
4	Review contractor's procedure for determining plan quantity for material requested.
5	Review contractor's procedure for determining how much material was used each month.
6	Verify contractor has paid invoices (for all material requested for payment) dated within 60 days of receiving MOH payment.

Monitoring Guidelines for MOH

Step	Action
7	Verify materials are properly stored in approved stockpiles.

Process Reviews. Conduct process reviews to ensure that the contractor’s internal process satisfies contract MOH requirements (e.g., record-keeping system, site reviews, or measuring procedures.) The contractor must have sufficient checks and balances in place to ensure the accuracy of requests for MOH payment. These reviews may be initiated at any time by any appropriate Department personnel, the FHWA, or any other party with a vested interest in the Department’s financial dealings.

If a process review indicates the need for corrective action, notify the contractor in writing of corrective actions needed. Consider conducting a complete audit of the contractor’s records and record-keeping system if the process review indicates serious concerns or possible noncompliance with contract MOH requirements. (Refer to “Contractor Record Audits” for additional information.)

Contractor Record Audits. Normally, the Department audits contractor records for cause only; however, the Department retains the right to audit contractor records at any time to ensure contract compliance. The following table lists examples of possible causes for initiating an audit of the Contractor’s records.

Possible Causes for Auditing a Contractor’s Records

◆ The contractor is suspected of submitting erroneous, inflated, deceptive, or fraudulent requests for MOH payment.
◆ A spot check of contractor’s MOH quantities indicates the possibility of a large-scale error.
◆ A process review indicates a major flaw in the contractor’s record-keeping system.
◆ The contractor is suspected of willfully neglecting to comply with any of the requirements of the MOH contract requirements.
◆ The contractor has indicated, or it is suspected, that the contractor will file a claim for additional compensation and use MOH records to support the claim.
◆ Material supplier, subcontractor, or any other creditor complains to the Department that the contractor has not paid for materials.

Consult with the District office prior to notifying the contractor of an impending audit. Once approved, send a written notice via email or certified mail advising the contractor of the impending audit. Specify in the notice that the contractor must allow the Department access to conduct the audit within 7 days of receipt of the notice.

The District office will coordinate the audit with all parties involved. Parties involved may include other Department personnel, the FHWA, or any other party with a vested interest in the Department’s financial dealings.

Ensure that all parties involved in the audit are provided with copies of the audit findings. The District office is responsible for ensuring that any corrective actions identified are implemented.

Payment of Items with Overweight Loads

Before paying for quantities over the legal weight limit, request copies of overweight permits from the contractor. Overweight quantities may be paid if the permits are provided. Overweight quantities **cannot** be paid if the load was transported on the designated Interstate system.

QC/QA Hot Mix Payments

Use the standard item and description codes to track the payment for QC/QA Hot Mix. Refer to the [SiteManager Contract Administration User Manual](#) for instructions to add these standard items to the construction estimate.

Road User Costs Incentives and Disincentives

If not using the SiteManager milestone function, use the standard item and description codes to track the payment of incentives and disincentives on contracts with road user costs (RUC). Refer to the *SiteManager Contract Administration User Manual* for instructions to add these standard items to the construction estimate.

Force Account

Ensure [Form 316](#), “Daily Report of Force Account Work,” is completed on a daily basis and signed by the contractor. Collect the necessary documentation supporting the information on the form. Payment for force account work will be made on a created line item for that work.

Collection on Negative Estimates

Do not let a negative estimate exceed the amount of money left on the project. When money is owed to the Department and exceeds the amount of money left on the project, follow the below process.

1. Send a letter notifying the Contractor to pay the balance owed to the Department within 30 days.
2. Submit Form 1234 to FIN/Revenue Management.
3. After 30 days have elapsed from the date of the initial notification, send a demand letter instructing the contractor to make payment within 30 days.
4. After 30 days have elapsed from the date of the first demand letter, send a second demand letter instructing the contractor to make payment within 10 days.
5. In the event the contractor is nonresponsive to the second demand letter, contact FIN/Revenue Management for collection.

Send all letters via certified mail requesting address correction, and verify that the correct address is on record with CST-CMCL. Carbon copy FIN/Revenue Management and CST/Construction Support on each letter sent. FIN/Revenue Management has template letters available upon request.

Estimates

Start generating monthly progress estimates when time charges on the project begin, and continue to generate estimates monthly until the project records are delivered to the District Construction Office.

Section 3 — Prompt Payment

Policy

Pay the Contractor no earlier than 10 calendar days or no later than 30 calendar days following the month in which work was completed and accepted.

Prompt Pay is required for both state and federally funded projects.

As per item 9 in the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges the contractor must pay subcontractor's within 10 days. The contractor may hold retainage if stated in their subcontract agreement.

The Contractor must pay any retainage on subcontractor work within 10 calendar days after satisfactory completion of all of the subcontractor's work. Satisfactory completion is accomplished when:

- ◆ the subcontractor has fulfilled the contract requirements of both the Department and the subcontract for the subcontracted work, including the submission of all information required by the specifications and the Department and
- ◆ the Department has inspected and approved the subcontractor's work, and the final quantities of the subcontractor's work hours have been determined and agreed upon.

Contractor Complaints

Determine if payment has been made for the work in question. If payment has been made, notify the contractor. Ensure that the contractor receives the notice prior to the 20th calendar day from the date of the contractor's written notice.

If payment has not been made and there is no dispute concerning the work involved, pay the contractor as soon as possible but no later than the 20th calendar day from the date of the prime contractor's written notice.

If payment has not been made due to a dispute of the work, notify the prime contractor that a bona fide dispute exists and include the specific reasons for nonpayment. Ensure that the contractor receives the notice prior to the 20th calendar day from the date of the contractor's written notice. Provide the contractor with a reasonable opportunity to cure areas of noncompliance or offer reasonable compensation for areas where noncompliance cannot be achieved in accordance with the contract. Do not waive the contractor's responsibility to comply with the contract.

Subcontractor and Materials Supplier Complaints

Ensure subcontractors submit all complaints in writing. The complaint should identify specifics regarding the subcontract language, items of work in question, and the subcontractor's attempts to obtain payment from the prime contractor. Notify the subcontractor that the complaint will not be accepted until the subcontractor provides satisfactory written evidence they have contacted the prime contractor and its payment bond surety in an attempt to resolve the issue. (See sample letter in chapter 17.)

If a complaint is accepted, follow the procedures outlined below. Also refer to the Prompt payment Flow Chart provided in Chapter 17.

Handling Complaints from Subcontractors and Material Suppliers

Step	Action
1	Verify the Department has approved the work in question. <ul style="list-style-type: none"> ◆ If the Department has not approved the work materials in question, notify the prime contractor and subcontractor that no prompt payment issue exists. * ◆ If the Department has approved the work, determine if the Department made payment. If not, make payment to the prime contractor and notify the parties involved of the resolution. *
2	If the Department paid for work or materials, determine if a dispute exists by referring to prompt payment certifications and other supporting information. NOTE: Supporting information aids in the determination of a dispute or resolution to a dispute that may include a subcontractor. Examples: subcontractor agreements (includes quantities and unit prices) or supplier agreements, invoices, subcontract or supplier revisions (change orders), canceled checks, identification of billing errors, etc. <ul style="list-style-type: none"> ◆ If YES, a dispute is determined to exist, go to step 3. ◆ If NO, a dispute is determined not to exist, go to step 4.
3	<ul style="list-style-type: none"> ◆ Advise the subcontractor that it may file against the payment bond surety. ◆ Forward the subcontractor's letter of complaint to the prime contractor advising it of its responsibility to work with the subcontractor to resolve the dispute. ◆ Provide copies of the letter to the prime contractor, subcontractor, and the payment bond surety. *
4	<ul style="list-style-type: none"> ◆ Forward the subcontractor's letter of complaint to the prime contractor with a copy of the payment bond surety. ◆ Request payment or justification for non-payment. <ul style="list-style-type: none"> ● If the prime contractor makes payment or provides documentation that substantiates the dispute, forward the response to the subcontractor and advise that payment was made or a dispute exists. Send a copy of the subcontractor notice to the payment bond surety. In instances of a dispute, advise the parties it is the responsibility of the parties involved to resolve the issue. * ● If the prime contractor has not made payment and does not provide notification of a dispute within the timeframe specified, initiate the appropriate administrative action. Possible administrative actions include suspending work, withholding all or a portion of an estimate, withholding project acceptance, placing the prime contractor in default for breach of contract, or other actions deemed appropriate. ◆ Set a response deadline.

Handling Complaints from Subcontractors and Material Suppliers

Step	Action
5	Second-tier subcontractor complaints should be forwarded to and addressed by the prime contractor, with a copy of the prime contractor's notice sent to the payment bond surety.
6	Ensure the prime contractor and subcontractor receive the notices associated with prompt payment prior to the 20th calendar day from the date of the subcontractor's written notice of complaint.

* No further Department action necessary related to prompt payment.

Contractor Compliance

Obtain a completed [Form 2177](#), “Prompt Payment Certification,” from the contractor for all projects.

The prime contractor must submit a certification form monthly during the course of the project and the month following final acceptance. Initiate the following actions for receipt and review of the required certification form.

1. Verify the form is received by the due date and any payments withheld are based on a dispute.
2. If payment is withheld without a stated dispute or the prime contractor fails to provide the monthly or final certifications:
 - contact the prime contractor with a reminder of its contractual obligation, and
 - when required, escalate the issue. Escalated actions may include suspending work, withholding all or a portion of an estimate, withholding project acceptance, placing the prime contractor in default for breach of contract, or other actions deemed appropriate.

When determining if a legitimate dispute exists, the following situations are not considered valid reasons as per USDOT. All subcontracts on federal-aid projects must contain [FHWA Form 1273](#).

1. A prime contractor may not withhold payment to a subcontractor due to the prime not being paid the final estimate on the project. A subcontractor is entitled to payment when the Department makes payment for the work and the subcontractor meets the requirements of the subcontract.
2. A prime contractor may not withhold payment to a subcontractor on Project A for delinquencies or issues with the subcontractor on other projects, such as Project B or C.

Area Office must review in DMS when a subcontractor indicates they are not paid promptly and address any payment discrepancies.

Prompt Payment Audit

The Department must provide appropriate means to enforce the requirements of prompt pay ([49 CFR 26.29](#)) and take affirmative steps to monitor and enforce prompt payment. To ensure compliance, the Department will conduct a minimum of one audit per quarter per project. The quarter will be based on a calendar year basis starting January 1st as per FHWA recommendation.

Prompt Payment Audit Process

Step	Action
1	TxDOT receives Form 2177 from prime contractor. <ul style="list-style-type: none"> ◆ Form must be received by TxDOT prior to the end of the month following each month payment was received and the month following the month when final acceptance occurred.
2	Select a subcontractor or a supplier on the contract to verify full payment was received and on time. <ul style="list-style-type: none"> ◆ If project is in the Diversity Management System (DMS), select a non-DBE subcontractor or supplier. ◆ If project is not in DMS and contains a DBE goal, select a DBE. ◆ If project is containing no DBE goal, select any subcontractor/supplier.
3	Contact the subcontractor or supplier, and request the following. <ul style="list-style-type: none"> ◆ “Was your firm paid in full and on time for the work performed during this reporting period? (Yes or No) If so, provide proof of payment in your response. If not, provide an explanation.” ◆ Example proof of payment includes: canceled checks, bank statements, etc.
4	Store proof of payment in project records.
5	Enter the date the audit was completed in the SiteManager Checklist of Events.

Prompt Payment Audit Selection

Project Type	Whom to Audit
Federal Projects with DBE goal NOT in DMS	DBE
Federal Project with DBE goal in DMS	Non-DBE
State Funded	Anyone
Federal Project with 0% DBE goal	Non-DBE

Chapter 12 — Environment

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Section 1 — Hazardous Materials or Waste

Policy

It is the Department's goal to remove the hazardous materials within the right of way prior to letting a project. Ensure that the contractor uses materials that are free from hazardous materials. Unless otherwise specified in the contract, hazardous materials or waste are defined in Section 1.3.60 of the *Standard Specifications*. Take responsibility for testing and removing, or disposing of hazardous material not introduced by the contractor on sites owned or controlled by the Department, unless the contractor is found to be willing and able as described below. Ensure that the contractor takes responsibility for testing and removing, or disposing of hazardous material introduced by the contractor onto the work locations.

Implement any preventative action plans developed during the design stage for contamination anticipated during construction. Develop and implement procedures to handle or manage unanticipated contamination that may be encountered during construction. Document all actions taken regarding hazardous materials or waste from the time of discovery through closure with regulatory agencies.

Procedure

In accordance with Article 6.10, "Hazardous Materials," the contractor must provide notice when a visual observation or odor indicates that materials in required material sources or on sites owned or controlled by the Department may contain hazardous materials. When notified, and if test results indicate that the materials are hazardous, remove the materials from the site of work in accordance with all applicable federal, state, and local laws, ordinances, specifications, and regulations. If deemed appropriate, suspend work during this timeframe.

There are three methods for mitigating hazardous materials.

1. **Hazardous materials identified prior to letting a project**-Perform mitigation by a specialty contractor prior to beginning work on a project. The Environmental Affairs Division (ENV) retains specialty contractors to perform this work.
2. **Hazardous materials identified prior to letting a project, where the project work activities are so intrinsic with the mitigation or abatement operations that the work cannot be separated**-Mitigation may be set up in the plans to be performed by the prime or a specialty sub-contractor. Obtain Administration (ADM) approval prior to including this work in a project that is to be let.
3. **Hazardous materials discovered during a project**
 - Work with ENV to identify a specialty contractor to perform the mitigation, or

- allow the prime contractor to handle, if they are willing and able. "Able" means the prime contractor has the expertise, licenses, and insurance to perform the mitigation. Coordinate with Construction Division (CST) and ENV for verification of qualifications, and CST for filing of insurance certificates.

Contact CST and ENV for assistance with evaluating the alternative methods for completing the contaminant-related work.

Hazardous Materials Anticipated during Construction

This section covers hazardous materials identified during the project development process where preventive action has been incorporated into the contract.

Ensure that activities are coordinated between the contractor, specialty contractors, consultants, and subcontractors. Consider phasing of the work, conducting a pre-bid conference, and partnering to facilitate this coordination and minimize scheduling conflicts.

Hazardous material mitigation should be performed in a separate project when possible. ENV retains specialty contractors to remove or abate hazardous materials.

When paint is determined to contain hazardous materials and Item 446, "Cleaning and Painting Steel," will be used, the project should be let separately. Contact MTD_Paint@txdot.gov for assistance.

If work to mitigate any hazardous material is not let as a separate project, mitigation may be set up in the plans to be performed by the prime or a specialty subcontractor. For this situation, coordinate with CST and ENV to obtain prior approval from ADM. Allow the contractor to obtain their own environmental or safety consultant to assist them in performing the work. Consider special bid and pay Items for work involving the hazardous materials or waste. Ensure compliance with contract requirements for worker and public safety, participation of consultants, specialty quality control contractors, or environmental agencies, and the handling and disposing of hazardous materials or waste. Make the contractor aware of these requirements prior to beginning work on the contract. Document any preventative actions taken.

Responsibilities for anticipated hazardous materials include:

- ◆ coordination between the prime construction contractor, specialty contractors, consultants, and other subcontractors;
- ◆ implementation of provisions for worker and public safety as well as the appropriate handling and disposal of hazardous materials or waste;
- ◆ implementation of oversight provisions for preventive action aspects of the contract; and
- ◆ documentation of the actions taken for the preventive action.

Unanticipated Hazardous Materials Encountered during Construction

This section covers unanticipated hazardous materials that may be encountered during construction after the contract is awarded.

Handle through a specialty contractor acquired through ENV or allow the prime or their specialty subcontractor perform the work.

The following may indicate hazardous materials.

- ◆ Rusted barrels and containers
- ◆ Stained or discolored earth in contrast with adjoining soil
- ◆ Fill material containing debris
- ◆ Household trash covered by earth or other material that appears to be interspersed with industrial debris
- ◆ Gasoline smells or other odors that emanate when the earth is disturbed
- ◆ Oily residue intermixed with earth
- ◆ Sheen on groundwater
- ◆ Cinders and other combustion products like ash
- ◆ Structures such as asbestos cement (transit) pipe, abandoned oil and gas lines, and underground storage tanks

Complete the following measures when notified by the contractor of the possible existence of hazardous materials or waste.

- ◆ Secure the suspected area for worker and public safety as needed.
- ◆ Suspend work immediately in the impacted area and consider granting a time extension.
- ◆ If possible, relocate the contractor on the construction project to avoid or minimize construction downtime.
- ◆ Contact the District Environmental Coordinator to evaluate and determine whether special action is needed.
- ◆ Secure the suspected area for worker and public safety as needed.
- ◆ Notify the Area Engineer (AE) and District Construction Office (DCO).
- ◆ Identify applicable regulatory requirements with ENV assistance. If notification is required or if additional regulatory assistance is desired, the DCO or District Environmental Coordinator will contact the local office of the Texas Commission on Environmental Quality (TCEQ). ENV is available to assist with communication and coordination with TCEQ.

- ◆ If possible or practical, identify and notify responsible parties to arrange for preventative action or cost recovery.

At a minimum, take the following steps for unanticipated hazardous materials or waste encountered during construction.

- ◆ Secure the site to protect workers and the public.
- ◆ Notify the proper authorities and responsible parties.
- ◆ Determine worker safety and public exposure concerns.
- ◆ Characterize the contaminants.
- ◆ Develop and implement hazardous materials/waste management measures.

Follow the procedures listed in Chapter 10 when suspending and resuming work.

Use of Consultants

If determined necessary, obtain a consultant to identify and characterize the contamination through sampling and analytical testing. The objectives of the consultant's investigation include:

- ◆ determination of the soil, groundwater, and vapor characteristics (e.g., groundwater recovery rates, vertical and horizontal extent of contamination, and chemicals of concern);
- ◆ assessment of worker safety and public exposure concerns related to the contamination;
- ◆ determination of the handling or disposal requirements for any contaminated media unearthed during construction;
- ◆ recommendation of a preventive action plan to ensure the problem is not aggravated and to avoid or minimize Department liability; and
- ◆ determination of the requirements necessary so that construction may continue.

ENV maintains environmental consulting contracts to assist with assessing hazardous materials and developing management plans to deal with hazardous materials before, and if necessary, during construction. Districts have the option of acquiring their own environmental service contracts through the statewide engineering and environmental consultant program to perform these tasks. Allow consultants to develop special specifications (such as groundwater treatment or filtration systems, ventilation systems, ongoing site monitoring, contaminated material disposal or reuse options, and permitting).

Reference ENV's [Hazardous Materials in Project Development: Environmental Documentation](#), available as part of the [Hazardous Materials Toolkit](#), for additional information regarding Department procedures for handling hazardous materials during advanced planning, right-of-way acquisition, design, and construction.

Cost Recovery and Accounting

Maintain detailed records of all circumstances and actions taken for unanticipated contamination discovered during construction. At a minimum, include the following information in these records:

- ◆ coordination with regulatory authorities,
- ◆ worker/public safety plan actions,
- ◆ step-by-step preventive action measures, and
- ◆ costs attributable to hazardous material issues on sites, (Consider assigning a unique pay Items related to the hazardous material on site.)

These records may be used for:

- ◆ consideration of federal participation by Federal Highway Administration (FHWA),
- ◆ claims,
- ◆ litigation, and
- ◆ recovery of costs from responsible parties.

Responsible Parties

If possible or practical, contact identified responsible parties before costs are incurred. Allow responsible parties the opportunity to participate in developing preventive action measures. If the responsible party is undergoing other corrective action, they may have the resources to handle the contamination in an acceptable timeframe for the construction project.

Section 2 — Biological Resources

Protected Species Requirements

Protected species include state or federally listed endangered species, migratory birds, sensitive wildlife, and wildlife habitats that may occur within the project at any time. Do the following to meet protected species requirements.

- ◆ Become aware of the commitments pertaining to any species in the environmental permits, issues, and commitments (EPICs) section in the PS&E.
- ◆ Review species coordination specific to the project, including avoidance and minimization measures in the construction plans.
- ◆ Ensure the contractor makes a good faith effort to implement any avoidance and minimization measures in the construction plans and recommendations included in the contract.
- ◆ Ensure the contractor has the necessary information to recognize protected species or habitat in the project area. This information is available from the District Environmental Coordinator (DEC).
- ◆ Inform the contractor to notify the DEC immediately if any protected species or new habitat is found in the project area.
- ◆ Ensure that ENV is given an opportunity to review project activities resulting from change orders that extend project impacts into new right of way (ROW) or easements that were not included in the original PS&E. ENV will coordinate the review with the appropriate agencies. ENV will coordinate the results of the review with the AE and the DEC, who will notify the contractor when work may resume.

For more information on protected species, contact ENV's Natural Resources Management Section.

Section 3 — Water Resources

Storm Water Discharges

Ensure compliance with the Construction General Permit (CGP) issued by the Texas Commission on Environmental Quality (TCEQ) under its Texas Pollutant Discharge Elimination System (TPDES) permitting program for construction activities.

The CGP authorizes the discharge of storm water associated with construction activities that disturb one acre or more of total land area, including areas that are part of a larger common plan of development. Apply the CGP requirements only during site construction. The requirements of the CGP are complete once the earth-disturbing activities are completed, the area is finally stabilized, and a Notice of Termination (NOT), if required, is submitted to TCEQ.

Both the Department and the contractor are considered Primary Operators under the TPDES TX150000 Construction General Permit Part III, Section B.

- ◆ The Department is the primary operator with operational control over plans and specifications and is responsible for the development of the Storm water Pollution Prevention Plan (SWP3).
- ◆ The contractor is the primary operator with day-to-day operational control and is responsible for compliance with the SWP3 and permit conditions.

TPDES Construction General Permit (CGP)

Do the following to obtain permit coverage under the CGP.

- ◆ Develop the SWP3 prior to construction for each project of one acre or more of disturbance.
- ◆ Both the Department and the contractor must post a completed Construction Site Notice (CSN).
- ◆ Submit a Notice of Intent (NOI) to TCEQ if disturbance is five acres or more. Both the Department and the contractor, as Primary Operators, are required to submit an NOI to TCEQ, if applicable, at least 7 days prior to the commencement of construction activities.
 - Submit the Department's NOI to TCEQ using the State of Texas Environmental Electronic Reporting System ([STEERS](#)) available on the TCEQ website, and provide a copy of the completed and signed NOI for the contractor's use in completing the contractor's NOI application/permit.
 - The Contractor should use the information within TxDOT's NOI, and the road construction plans and specifications to complete their NOI application as appropriate.
- ◆ Implement the SWP3 prior to beginning construction activities.

- ◆ Both the Department and the contractor must provide a copy of the signed NOI (for large construction activities) or CSN (for small construction activities) to the operator of any municipal separate storm sewer system (MS4) receiving the discharge, at least two calendar days prior to commencing construction activities.
- ◆ Perform scheduled inspections, together with maintenance and improvement actions, consisting of best management practices (BMPs) to prevent the discharge of pollutants.
- ◆ Submit a Notice of Termination (NOT), if required, after completion of all required activities and final stabilization.

Refer to "TCEQ Storm Water Permit Notices of Intent and fee Payment" in Appendix A.

Certification Requirements

The table below lists the documents requiring certification and individuals authorized to authorize certification.

Documents Required to be Certified by TCEQ's CGP

Document	Authorized Individual or Position (For Projects Managed)	Legal Basis
Notice of Intent (NOI)	District engineer or division director or his or her immediate staff (e.g., director of operations); or area engineer. No further delegation allowed.	30 TAC §305.44, "Signatories to Applications," requires principal executive officer having responsibility of overall operations over a geographic unit.
Notice of Termination (NOT)		
Notice of Change (NOC)		
Low Rainfall Erosivity Waiver Application		
Construction Site Notice (CSN)		
Inspection report certifications	Above and delegated to assistant area engineer, maintenance supervisor, project architects or engineers, or project inspectors with overall responsibility for the project. Personnel performing the inspections must be trained in the CGP regulations.	30 TAC §305.128, "Signatories to Reports," requires position having responsibility for the overall operation of the facility activity, or environmental matters.
All other reports and information requested by the TCEQ executive director.		

Use [Form 2118](#), "Construction Storm water Pollution Prevention Plan Field Inspection and Maintenance Report," to satisfy the CGP reporting requirements. Complete the inspection report summary form after all corrective actions have been identified on the inspection form. Include in the inspection report summary items that have been corrected with the date completed and items requiring additional time to complete. Document completion of items listed in the inspection report summary requiring additional time to complete and place in the SWP3 contract file. Contact ENV Operations Compliance Branch, the Maintenance Division (MNT), or the Construction Division's Construction Section (CST/C) for additional information or guidance.

Storm Water Pollution Prevention Plan (SWP3)

Prepare a SWP3 for projects as required by the CGP. The intent of the SWP3 is to reduce pollutants in storm water discharges from the project site. Ensure the SWP3 includes and addresses the following to the detail specified in the CGP.

- ◆ Detailed site or project description including areas that are the responsibility of the contractor either within the ROW or within 1 mile of the ROW
- ◆ Description of best management practices that will be used to minimize pollution in runoff
- ◆ Description of any structural control practices used to divert flows away from exposed soils or to lessen the off-site transport of eroded soils
- ◆ Description of any measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed
- ◆ Description of other controls, e.g., off-site vehicle tracking of sediments, generation of dusts
- ◆ Ensure compliance with any state and local plans.
- ◆ Maintain all erosion and sediment control measures and other protective measures identified in the SWP3 in effective operating condition.
- ◆ Inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, and structural controls for evidence of, or the potential for, pollutants entering the drainage system.
- ◆ Identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge.

The above list is only a brief summary of the required contents of the SWP3. A more detailed discussion is in the CGP.

Review the SWP3 regularly and keep current by noting any changes in the plan. If any BMP does not function adequately, modify the SWP3 to correct the problem. Repair, replace, or modify all failing BMPs according to the revised SWP3. Obtain the approval of the project engineer for any changes to the SWP3. Maintain the SWP3, together with any revisions, in the contract files at a specified location.

Notice of Intent (NOI) and Construction Site Notice (CSN)

To receive coverage under the CGP, submit an NOI at least 7 days prior to commencing construction activities. Ensure that the NOI is signed by an authorized Department representative and contains the certification shown on the TCEQ NOI form. Prior to any construction activities, post the CSN.

Contractor Involvement

In certain situations, the contractor is responsible for SWP3 preparation and obtaining authorization under the CGP. CGP authorization obtained by the Department does not cover contractor designated facilities off the ROW. When operations at a contractor Project Specific Location (PSL) trigger CGP requirements, the contractor is responsible for obtaining any CGP authorization.

For any contractor PSLs within 1 mile of any project limit, obtain at a minimum the following information from the contractor and maintain the information with the contract SWP3:

- ◆ the PSL's total acreage,
- ◆ acreage disturbed,
- ◆ location
- ◆ description, and
- ◆ applicable CGP authorization.

Inspections

Conduct regular inspections of the construction site at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, or once every 7 calendar days regardless of rainfall. Verify that the erosion control measures and devices are working in accordance with Item 506. Summarize the results of the inspection in a manner similar to that shown in the [Form 2118](#), "Construction Storm Water Pollution Prevention Plan Field Inspection and Maintenance Report."

Include the following project areas in the inspection.

- ◆ Disturbed areas of the construction site that have not been finally stabilized
- ◆ Areas used for storage of materials that are exposed to precipitation
- ◆ Structural control for evidence of, or the potential for, pollutants entering the drainage system
- ◆ Sediment and erosion control measures identified in the SWP3 to ensure correct operation
- ◆ Locations of site vehicle entrance or exit for evidence of off-site sediment tracking

Conduct inspections at least once every month:

- ◆ where sites have been finally or temporarily stabilized,
- ◆ where runoff is unlikely due to winter conditions (e.g., site is covered with snow or ice, or frozen ground exists), or

- ◆ during seasonal arid periods in arid areas (average annual rainfall of 0-10 in.) and semi-arid areas (average annual rainfall of 10-20 in.).

Modify the SWP3 based on the results of the inspection as necessary to include additional or modified BMPs designed to correct problems identified. For example, show additional controls on the site map; revise description of controls.

Complete revisions to the SWP3 within 7 calendar days following inspection. If existing BMPs need to be modified or if additional BMPs are necessary, complete implementation before the next anticipated storm event or as soon as practicable. Indicate modifications and added BMPs on the SWP3.

Refer to “Statewide Implementation of the Environmental Management System (EMS)” in Appendix A.

Refer to “Locating Temporary Material Supply Plants on the Right of Way” in Appendix A.

Refer to “Air Permits for Concrete Batch Plants” in Appendix A.

TPDES Construction General Permit Notice of Termination (NOT)

Ensure that the NOT is signed by an authorized Department representative and submit to TCEQ after completion of the project and final stabilization of all disturbed areas.

Work in Waters of the United States

Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the U.S. to restore and maintain the chemical, physical, and biological integrity of these waters. Waters of the U.S. may include streams, wetlands, some open water, and stock ponds. The following common construction activities typically require a permit from the U.S. Army Corps of Engineers (USACE):

- ◆ land clearing in waters of the U.S.,
- ◆ permanent or temporary fills into waters of the U.S.,
- ◆ bridge or culvert replacements, and
- ◆ dredged material that flows back into water from upland dredged material placement site.

To comply with Section 404, do the following.

- ◆ TxDOT must obtain any required USACE permit for proposed work before work begins in TxDOT ROW. Contractors are responsible for obtaining any off site permits, including PSLs.

- ◆ Review the commitments pertaining to the USACE permit in the environmental permits, issues, and commitments (EPICs) section in the PS&E.
- ◆ Ensure that the contractor is aware of any waters of the U.S. in the area where work will occur, and make sure these are delineated prior to construction.
- ◆ Ensure that the contractor is familiar with the work and associated impacts that have been authorized by the Section 404 permit.
- ◆ Ensure that the contractor adheres to all agreements, mitigation plans, and BMPs required by the permit.
- ◆ Review and approve any changes in the contract that may alter the USACE permit prior to work being conducted. When contractor-initiated changes to the issued Section 404 permit are desired, it is the contractor's responsibility to obtain a new or revised Section 404 permit from the USACE at the cost of the contractor. This may result in lengthy delays and no delay claims are allowed in this regard.
- ◆ Understand that failure to comply with all permit conditions may result in contract work stoppages being issued by the USACE.

For more information on Section 404 permit requirements, refer to the [Environmental Handbook for Water Resources](#), or contact ENV's Natural Resources Management Section.

Work in Navigable Waters of the U.S.

Section 10 of the Rivers and Harbors Act requires that a project have authorization from the USACE if the project involves structures or work in or over any navigable water, and/or any obstruction or alteration of these waters. Section 10 permits are primarily intended to preserve the course, location, condition, or capacity of navigable waters. Structures (such as piers, wharfs, breakwaters, bulkheads, jetties, weirs, transmission lines, etc.) and work (such as dredging or disposal of dredged material, excavation, filling, or other modifications) in navigable waters require Section 10 permits.

To comply with Section 10, do the following.

- ◆ TxDOT must obtain any required Section 10 USACE permit for proposed work before work begins in TxDOT ROW. Contractors are responsible for obtaining any off site permits, including PSLs.
- ◆ Review the commitments pertaining to the USACE permit in the EPICs section in the PS&E.
- ◆ Ensure that the contractor is familiar with the work and associated impacts that have been authorized in the Section 10 permit.
- ◆ Ensure that the contractor adheres to all agreements, mitigation plans, and BMPs required by the permit.

- ◆ Review and approve any changes in the contract that may alter the USACE permit prior to work being conducted. When contractor-initiated changes to the issued Section 10 permit are desired, it is the contractor's responsibility to obtain a new or revised Section 10 permit from the USACE at the cost of the contractor. This may result in lengthy delays and no delay clams are allowed in this regard.
- ◆ Understand that failure to comply with all permit conditions may result in contract work stoppages being issued by the USACE.

For more information on Section 10 permit requirements, refer to the [Environmental Handbook for Water Resources](#), or contact ENV's Natural Resources Management Section.

Work in Section 9 Navigable Waterways

The U.S. Coast Guard (USCG) regulates bridges and causeways over navigable waters under the General Bridge Act and Section 9 of the Rivers and Harbors Act. Any project that will construct a new bridge or causeway, or reconstruct, or modify an existing bridge or causeway across a Section 9 navigable water will require a USCG bridge permit, bridge permit exception request, and/or a bridge lighting authorization.

To comply with Section 9, do the following.

- ◆ TxDOT must obtain any required Section 9 permits from the USCG for proposed work before work begins in TxDOT ROW.
- ◆ Review the commitments pertaining to the USCG permit in the EPICs section in the PS&E.
- ◆ Ensure that the contractor adheres to the stipulations of the authorization/permit and associated best management practices.
- ◆ Review and approve any changes in the contract that may alter the USCG permit prior to work being conducted. When contractor-initiated changes to the issued USCG permit are desired, it is the contractor's responsibility to obtain a new or revised USCG permit at the cost of the contractor. This may result in lengthy delays and no delay clams are allowed in this regard.

For more information on Section 9 permit requirements, refer to the [Environmental Handbook for Water Resources](#), or contact ENV's Natural Resources Management Section.

Work Over the Edwards Aquifer

The TCEQ administers the Edwards Aquifer Protection Program (EAPP) to prevent pollution of the Edwards Aquifer to protect groundwater use and maintain Texas surface water quality standards. If work involves soil disturbing construction activities in areas identified as the Edwards

Aquifer Recharge Zone, Edwards Aquifer Contributing Zone, and Edwards Aquifer Transition Zone in the following eight counties, EAPP compliance may apply: Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson.

To comply with the EAPP, do the following:

- ◆ TxDOT must obtain any required EAPP authorization via required submittals such as a Water Pollution Abatement Plan (WPAP) or Contributing Zone Plan (CZP) from the TCEQ before work begins.
- ◆ Review the commitments made in the WPAP, CZP or other EAPP permit in the EPICs section in the PS&E.
- ◆ Ensure that the contractor adheres to the stipulations of the EAPP authorization including associated BMPs and performance of the work in accordance with contract requirements.
- ◆ Ensure that the contractor has the necessary information to recognize subsurface voids in bedrock. This information is available from the District Environmental Coordinator (DEC). If a subsurface void is encountered, the contractor must notify the DEC. The void must be protected until an evaluation is completed and the contractor is cleared to continue work near the void.
- ◆ When contractor-initiated changes in the construction methodology affect the previously compliant impacts to the Edwards Aquifer, including encountering subsurface voids, immediately notify the district environmental coordinator and EAPP engineer, who may need to notify the TCEQ and/or assist in obtaining a revised EAPP permit or void closure authorization.

For more information on EAPP permit requirements, refer to the [Environmental Handbook for Water Resources](#), or contact ENV's Natural Resources Management Section.

Work in Coastal Counties

Work in coastal counties including Orange, Jefferson, Chambers, Harris, Galveston, Brazoria, Matagorda, Jackson, Calhoun, Victoria, Refugio, Aransas, San Patricio, Nueces, Kleberg, Kenedy, Willacy, and Cameron counties, may trigger Coastal Zone Management Act (CZMA) compliance requirements under the Texas Coastal Management Program (TCMP).

To comply with CZMA and the TCMP, do the following.

- ◆ TxDOT self-certifies its transportation projects as consistent with the goals and policies of the TCMP by avoiding impacts or appropriate permitting. TxDOT must obtain any required permits for consistency with the TCMP for proposed work before work begins in TxDOT ROW. Contractors are responsible for obtaining any off-site permits, including PSLs.
- ◆ Review any commitments pertaining to the TCMP and/or USACE permit in the EPICs section in the PS&E.

- ◆ Ensure that the contractor adheres to the stipulations of the authorization/permit and associated best management practices.
- ◆ Review and approve any changes in the contract that may alter the TCMP commitment and/or USACE permit prior to work being conducted. When contractor-initiated changes that alter the TCMP consistency or any USACE are desired, it is the contractor's responsibility to obtain a new or revised permit from the USACE at the cost of the contractor. This may result in lengthy delays and no delay claims are allowed in this regard.

For more information on CZMA and TCMP requirements, refer to the Environmental Handbook for Water Resources, or contact ENV's Natural Resources Management Section.

Section 4 — Cultural Resources

Texas Antiquities Code (Texas Natural Resources Code, Chapter 191)

Ensure compliance with commitments required to satisfy agreements with the Texas Historical Commission (THC). If necessary, do the following as required in the contract:

- ◆ Become aware of the commitments pertaining to cultural resources in the environmental permits, issues, and commitments (EPICs) section in the PS&E.
- ◆ Ensure the barriers or other obstacles required by commitments are installed to prevent accidental impacts to protected resources.
- ◆ Ensure no construction-related activities occur in specifically designated project avoidance areas until the Department's commitments to the Texas Historical Commission (THC) have been completed. ENV will coordinate these commitments and their completion with the area engineer (AE) and the District Environmental Coordinator (DEC).
- ◆ Ensure that ENV is given an opportunity to review project activities resulting from change orders that extend project impacts into new ROW or easements that were not included in the original PS&E. ENV will coordinate the review with the THC. ENV will coordinate the results of the review with the AE and the DEC. Notify the contractor when work may resume.

If archeological materials or human remains are identified within the ROW, or a Department-designated material source, cease all construction-related activities and report the find to the AE and DEC in accordance with the contract and the Department's Emergency Discovery Guidelines. Notify the contractor when work may resume.

If archeological materials or human remains are introduced into the ROW or easements in materials obtained from a material source under option to the contractor, cease all use of materials from this source and report the find to ENV in accordance with the contract and the Department's Emergency Discovery Guidelines. Notify the contractor when work may resume.

National Historic Preservation Act as Amended (16 U.S.C. §470 and 36 CFR Part 800)

Ensure compliance with any contract permits issued by a federal agency, such as the Corps of Engineers, and ensure compliance with any other agreements made in accordance with the National Historic Preservation Act. If necessary, do the following as required in the contract.

- ◆ Obtain THC, federally recognized tribal governments throughout the United States and other appropriate parties, or
- ◆ Ensure that no construction-related activities occur in specifically designated project areas until the Department's commitments to the THC, federally recognized tribal

governments throughout the United States and other appropriate parties have been completed. ENV will coordinate these commitments and their completion with the AE and the DEC.

Ensure that properties outside the ROW are not impacted. If archeological materials or human remains are identified within the ROW, or material source under option to the Department, cease all construction-related activities and report the find to ENV in accordance with the contract and the Department's Emergency Discovery Guidelines. Notify the contractor when work may resume.

Section 5 — Project-Specific Locations

Policy

For all project-specific locations (PSLs) (material sources, waste sites, parking areas, storage areas, field offices, staging areas, haul roads, etc.), signing of the contract certifies contractor and subcontractor compliance with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment as issued by the following or other agencies,

- ◆ Occupational Safety and Health Administration
- ◆ Texas Commission on Environmental Quality
- ◆ Texas Department of Transportation
- ◆ Texas Historical Commission
- ◆ Texas Parks and Wildlife Department
- ◆ Texas Railroad Commission
- ◆ U.S. Army Corps of Engineers
- ◆ U.S. Department of Energy
- ◆ U.S. Department of Transportation
- ◆ U.S. Environmental Protection Agency
- ◆ U.S. Federal Emergency Management Agency
- ◆ U.S. Fish and Wildlife Service

The contractor must maintain documentation of contractor certification activities including environmental consultant reports, contractor documentation on certification decisions, and contacts and correspondence with the resource agencies. The contractor must provide documentation to the Engineer upon request.

The contractor must:

- ◆ obtain written approval from the Engineer for all PSLs in the ROW not specifically addressed on the plans;
- ◆ prepare an SWP3 for all contractor facilities, such as asphalt or concrete plants located within Department right of way, and comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, asphalt plants, etc.;
- ◆ address all environmental issues, such as Section 404 permits, wetland delineation, endangered species consultation requirements, or archeological and historic site impacts; and

- ◆ obtain all permits and clearances in advance.

Section 6 — Surplus Materials

The contractor will take ownership of surplus materials unless otherwise shown on the plans or directed. Remove, transport, and dispose of materials in accordance with federal, state, and local environmental regulations. If requested by the Engineer, the contractor must provide an appropriate level of documentation to verify proper transport and disposal.

Chapter 13 — Health and Safety

Contents:

[Section 1 — Federal Safety and Health Laws](#)

[Section 2 — Contract Requirements](#)

[Section 3 — Violations](#)

Section 1 — Federal Safety and Health Laws

Policy

Review the project site to ensure the contractor provides for the safety of their employees, Department personnel, and the traveling public on the construction site. Refer to OSHA Regulations published at Title 29 of the *Code of Federal Regulations*, [Part 1926](#), “Safety and Health Regulations for Construction,” and [Part 1910](#), “Occupational Safety and Health Standards,” for more information.

Contractor Performance

The contractor must protect the safety of the public and the life and health of project personnel. This chapter describes the necessary the steps to take before work begins and during the operation. Construction safety regulations and standards published by OSHA contain detailed requirements. Exact information is located in Title 29, *Code of Federal Regulations*, Part 1926 and 1910. Additional information on safety is contained in the American Association of State Highway Transportation Officials (AASHTO) publication, *Informational Guide on Occupational Safety on Highway Construction Projects*.

Section 2 — Contract Requirements

Construction Surveillance

Record any violations of applicable safety requirements in the Daily Work Report (DWR). The following brief discussion is based on the [29 CFR 1926](#) construction safety standards and lists some of the principal safety requirements of specific OSHA safety standards.

- ◆ **First aid and medical services.** The contractor must provide readily accessible first aid kits and conspicuously post telephone numbers of doctors, hospitals, and ambulances, per [29 CFR 1926.23](#) & [.50](#).
- ◆ **Housekeeping.** Clear scrap and used materials from work areas (scattered debris and combustible scrap) that would constitute hazards to workers, per [29 CFR 1926.25](#).
- ◆ **Noise exposure.** If the contractor cannot provide means to lower noise level exposures to permissible levels, personal protective equipment must be provided, per [29 CFR 1926.52](#).
- ◆ **Head protection.** Employees must wear protective helmets to avoid injuries, per the requirements of [29 CFR 1926.100](#).
- ◆ **Eye and face protection.** Eye and face protection must be provided to protect against eye or face injury, per [29 CFR 1926.102](#).
- ◆ **Safety nets.** Safety nets are used as protection for unprotected sides, leading edges, working on the face of formwork or reinforcing steel, overhead or below surface bricklaying, work on roofs, and precast concrete work. For further information about “Fall Protection,” see [29 CFR 1926, Subpart M](#).
- ◆ **Power-operated hand tools.** Only employees trained in operating power tools are permitted to use them. Certain hand-held powered tools must be equipped with a constant pressure switch that will shut off the power when the pressure is released. These include circular saws, chain saws, and percussion tools without positive accessory holding means. Electrically powered hand tools must be of the double-insulated type or grounded. Pneumatic power tools must be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected. Additional requirements for the safe operation of power tools are found in [29 CFR 1926.302](#).
- ◆ **Ladders.** Required characteristics:
 - must be free of defects,
 - adequately supported or anchored, and
 - fixed ladders must have cages per the requirements of [29 CFR 1926.1053](#).
- ◆ **Scaffolds.** All scaffolding will be erected in accordance with the requirements for the specific scaffold type as provided in [29 CFR 1926 Subpart L](#).

- ◆ **Cranes and derricks.** Operations must comply with the requirements of [29 CFR 1926.550](#). Other material handling requiring the use of overhead lift equipment must comply with applicable standards of [Subpart N](#). Rated load capacities must be posted on the equipment. A trained person must make frequent inspections of the equipment and a thorough annual inspection of the hoisting machinery. Electrical distribution lines near operating equipment must be de-energized and grounded, or insulating barriers erected to prevent contact with the lines. Otherwise operation must allow at least ten feet clearance from live electrical power lines.
- ◆ **Earth moving equipment.** Equipment must have brakes capable of stopping and holding the equipment when fully loaded. All bi-directional machines (rollers, compactors, front-end loaders, bulldozers, and similar equipment) must have an operable horn. Audible back up warning devices must be in place and in good operating condition on equipment, that has an obstructed view to the rear. Other applicable specific requirements as found in [29 CFR 1926 Subpart O](#), .600 through .605 must be followed.
- ◆ **Excavation.** Existing trees, boulders, and other surface obstructions creating a hazard to employees working on or near excavations must be removed or made safe before excavation is begun. All excavation operations must be done in accordance with the requirements of [29 CFR 1926 Subpart P](#), .650 through .652 and all appropriate/applicable appendices.

NOTE: There may be special contract requirements beyond the minimum requirements stated above.

- ◆ **Concrete forms.** Concrete forms must be erected and braced to withstand all vertical and horizontal loads that may be imposed on them during concrete placement. Concrete forms must be removed and stockpiled promptly after stripping. Protruding nails, wire ties, etc., must be removed to eliminate a hazardous condition. Other requirements per [29 CFR 1926.700](#) through [.706](#) must be followed as applicable.
- ◆ **Structural steel assembly.** During structural steel erection, the hoisting line must be retained on the members until there are two bolts at each connection or two erection clamps wrenched tight at each welded connection. The safety standards in [Subpart R of 29 CFR 1926](#) provide the complete requirements for structural steel erection and must be followed as applicable.
- ◆ **Cofferdam.** If high water overtopping of the cofferdam is possible, a methodology must be provided for controlled flooding. At least two means of rapid egress from the work area must be provided, per the requirements of [29 CFR 1926.802](#).
- ◆ **Explosives.** Cigarettes, firearms, and matches are prohibited while handling, transporting or using explosives. All other requirements for the handling of explosives are found in [29 CFR 1926 Subpart U](#).
- ◆ **Handling traffic through and around construction.** Temporary roadways and detours must be properly maintained. Use the Traffic Control Plan and *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* to check signs, barricades, and flaggers. Flaggers must be trained using a [recognized training course](#).

NOTE: Department employees, as well as contractor's employees, must continually follow safety practices. Follow all requirements for personal safety. The Occupational Safety Division's [*Handbook of Safe Practices*](#) (internal access only) outlines a number of safety topics, including requirements for high-visibility safety apparel.

Section 3 — Violations

Policy

Violations of safety and health regulations may be minor in nature, or they may be a serious threat to human life. Inform the contractor by written notice and indicate the severity of the failure to fulfill the specific safety regulation.

Definitions

Incidents are those events involving Department personnel, equipment, or operations that result in personal injury or property damage.

Equipment (for incident reporting purposes) includes any vehicle, road building/maintenance equipment, boat, air compressor, or other machine or device powered by an internal combustion engine.

Near-Miss Events are unplanned events involving Department personnel, equipment, or operations that clearly demonstrate the potential for injury or property damage but that do not produce these results.

Third-Party Incidents are those incidents involving someone in addition to Department personnel and equipment.

Report all incidents resulting in any property damage or injury that involve Department personnel, equipment, or operations to the Occupational Safety Division (OCC) and Federal Highway Administration (FHWA).

NOTE: Reference the [Occupational Safety Manual](#) for information regarding FHWA reporting requirements.

Report incidents involving only Department equipment—regardless of the extent of damage—unless the damage is appearance damage that can be classified as normal wear and tear.

All near-miss events are those incidents in which equipment failures or deficiencies are known, or suspected cause factors exist. Report all incidents to OCC. Reporting other types of near-miss events to OCC is encouraged but not mandatory.

Report to OCC those incidents and near-miss events listed in the *Occupational Safety Manual*, [Section 2](#) (internal link only).

Construction Sanitation Facilities per OSHA and as defined by 29 CFR 1926.51 -Toilets at construction jobsites, states the prime shall provide sanitation facilities as per the table below:

Required Sanitation Facilities

Number of employees	Minimum number of facilities
20 or less	1.
20 or more	1 toilet seat and 1 urinal per 40 workers.
200 or more	1 toilet seat and 1 urinal per 50 workers.

Table above not applicable to mobile crews having transportation readily available to nearby toilet facilities.

Sanitary provisions are responsibility of the Prime contractor unless responsibility is delegated to the subcontractor through the subcontract.

Incident Reporting Requirements

Rather than attempting to tell the contractor how to correct the deficiency, take the following steps when an apparent violation is noted.

1. Inform the superintendent at once so that immediate corrective action may be taken.
2. Document all discussions and interactions in DWR or a follow up email.
3. For immediate hazardous condition, work may be suspended in the area of the hazard. If work is suspended, provide notice to the contractor as required in the contract.
4. After determining that adequate corrective measures have been taken, work may resume.
5. If corrective action is not taken, send a written notice to the contractor requesting immediate correction, include notification that without correction, the U. S. Department of Labor (USDOL) will be notified.

Provide OCC with a copy of all written notices sent to the contractor. OCC will notify any other agencies as required. Contact OCC for guidance or additional information as needed.

Notify the Construction Division (CST), Construction Section (CS) of all work suspensions due to serious violations, or if a contractor refuses to take corrective action. Either event may require a request for a review by OSHA. Provide notification to OSHA if determined necessary. Contact OCC for guidance or additional information as needed.

Investigations by Other Agencies

Cooperate with the FHWA, United States Department of Labor (USDOL), and other agencies during inspections or services.

Chapter 14 — Small Business Programs

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[Section 1 — Program Overview](#)

Section 1 — Program Overview

General

The Civil Rights Division (CIV) is responsible for the oversight of the Department's Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) programs. These programs have been developed to: expand diversity in the industry; to ensure nondiscrimination in the award and administration of DOT-assisted contracts; to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; and to promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

Responsibilities associated with these programs are outlined in Title 43, Texas Administrative Code (TAC) [Chapter 9](#), Subchapters J-L.

Contact CIV at (512) 416-4700 for more information regarding these programs.

Disadvantaged Business Enterprise (DBE) Program

The DBE Program [as authorized by Title 49, Code of Federal Regulations (CFR), [Part 26](#)] ensures nondiscrimination in the award and administration of United States Department of Transportation (USDOT) contracts. The Disadvantage Business Enterprise (DBE) Program is a legislatively mandated USDOT program that applies to Federal-aid highway dollars expended on federally-assisted contracts. The USDOT must approve the Department's DBE Program and its annual goals to ensure compliance with all Program requirements.

Small Business Enterprise (SBE) Program

The Department's SBE Program (as authorized by 43 TAC [§9.300](#)) offers small businesses another avenue to maximize their opportunities of doing business with TxDOT. The Program applies to highway improvement contracts that are funded entirely using state or local funds.

Resources

Prime Contractors' Compliance Guide and DBE Contractors' Compliance Guide

DBE Program Compliance Guides are available to assist contractors in complying with the DBE special provisions.

- ◆ [Prime Contractors' Compliance Guide](#)

- ◆ [DBE Contractors' Compliance Guide](#)

District DBE Compliance and Monitoring Guide

District DBE Compliance and Monitoring Guide should be used by district construction staff that have oversight responsibilities specific to the DBE program as outlined in 49 CFR, Part 26. The guides contain procedures related to monitoring and enforcement to verify that the work committed to DBEs is actually performed by DBEs and that their payments are consistent with their approved contracts.

- ◆ [District DBE Compliance and Monitoring Guide](#) (for projects let prior to February 2017)
- ◆ [District DBE Compliance and Monitoring Guide](#) (for projects let February 2017 and thereafter)

Rules and Regulations

The following is a list of the DBE contract regulations and provisions with which contractors must comply.

- ◆ [FHWA DBE Regulations 49 CFR, Part 26](#)
- ◆ [Special Provision 000-007](#), “Disadvantaged Business Enterprise in Federal-Aid Contracts” (for projects let prior to February 2017)
- ◆ [Special Provision 000-394](#), “Disadvantaged Business Enterprise in Federal-Aid Contracts” (for projects let February 2017 and thereafter)
- ◆ Prompt Payment is included in the contract through item 9 of the Standard Specification and covered in Chapter 11 - Section 3 of the CCAM for further guidance.

Chapter 15 — Contractor Workforce

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Section 1 — EEO Requirements

Policy

The Department imposes specific nondiscrimination and affirmative action obligations on federal-aid highway contractors relating to their employment practices under the authority of [23 CFR Part 230, Subpart D](#).

Every federal-aid contractor, subcontractor, and material supplier must perform all employment-related activities in full accord with applicable equal employment opportunity (EEO) statutes, executive orders, regulations, and policies enunciated thereunder, to assure equal employment opportunity and the treatment of employees without regard to race, color, sex, age, disability, religion, or national origin.

Contract Provisions

As a recipient of federal funds, the Department must ensure that Federal Highway Administration (FHWA)-required equal opportunity requirements are included in direct federal and federal-aid contracts and that contractors are in compliance with those requirements under the Department's authority. (The Department has no authority under [Executive Order 11246](#) to ensure compliance with or enforce Office of Federal Contract Compliance requirements.)

A contractor's minimum equal opportunity requirements are set forth in [FHWA Form 1273](#), "Required Contract Provisions, Federal-Aid Construction Contracts." This is a standard document containing required federal EEO contract provisions and proposal notices required to be physically incorporated in each direct federal and federal-aid highway construction contract and subcontract (at any tier) of \$10,000 or more. When a contractor signs a direct federal or federal-aid contract of \$10,000 or more, the non-discrimination provisions in Form FHWA-1273 constitutes the contractor's EEO/Affirmative Action Plan standards for that contract.

General

Reference the Civil Rights Division (CIV) [Technical Assistance Guide for Federal Construction Contractors](#) or contact CIV at (512) 416-4700 for more information regarding contractor federal EEO requirements.

Section 2 — Labor Requirements

Policy

Contractors must be familiar with and comply with all laws, ordinances, and regulations regarding labor-related requirements that affect the contract. Monitor the contractor and subcontractor to ensure compliance with contract labor provisions.

Labor Laws

Following are applicable labor-related laws and descriptions of each.

Contract Work Hours and Safety Standards Act (29 CFR Part 5)

The Contract Work Hours and Safety Standards Act is a federal law that:

- ◆ applies to all construction contracts;
- ◆ provides that any laborer, worker, mechanic, watchman or guard must be paid on the basis of a forty-hour workweek. Overtime must be paid at 1-1/2 times the regular rate for every hour worked more than 40 hr. per week. Overtime payments are based on time actually worked (including break periods but not lunch) and cannot include holiday, vacation, or other time paid but not worked; and
- ◆ gives the Department the primary responsibility for ensuring compliance with the requirements of this Act.

The Contract Work Hours and Safety Standards Act does **not** apply to:

- ◆ contractor's supervisory and office employees;
- ◆ contracts or subcontractors furnishing supplies and equipment when such operations are located off-site of the project;
- ◆ contracts with a political subdivision; and
- ◆ contracts or work agreements for construction work or services with railroads or public utilities when the work or services is done by their employees.

Copeland Anti-Kickback Act (29 CFR Part 3)

The Copeland Anti-Kickback Act, a federal law, provides regulations concerning the construction and repair of public works contracts and subcontracts exceeding \$2,000 and financed in whole or in part by federal funds. A portion of the Act concerns the payment of wages to the contractor and subcontractor employees. The Act authorizes the U.S. Department of Labor (USDOL) to develop regulations, including payroll records and submission requirements.

The Copeland Anti-Kickback Act permits certain payroll deductions, such as:

- ◆ bona fide fringe benefits;
- ◆ any deduction made in compliance with the requirements of federal, state, or local law, such as income and social security taxes;
- ◆ any deduction required by court process, such as child support; and
- ◆ any deduction for the cost of safety equipment for the employee's own protection such as safety glasses provided the cost is nominal and the employer is not otherwise required to furnish the equipment pursuant to law.

The Act also permits certain payroll deductions from the wages of laborers and mechanics when the employee's written consent is provided, such as life insurance, hospitalization and medical insurance, retirement plan, vacation plan, safety shoes, and safety hats. Other deductions require a written application and approval of the USDOL. For example, gasoline and uniforms that are required by the employer as a condition of employment.

No monitoring responsibilities are required for certain types of personnel, contracts, and employers, such as:

- ◆ supervisory and office employees;
- ◆ contracts or subcontractors furnishing supplies and equipment when such operations are located off-site of the project;
- ◆ contracts with a political subdivision; or
- ◆ contracts or work agreements for construction work or services with railroads or public utilities when the work or services is done by their employees.

Davis-Bacon and Related Acts (29 CFR Parts 1, 3, 5, 6, and 7)

These federal Acts apply to all federally funded construction contracts, except for projects with functional class code 6 (rural minor collector) or 7 (local road or street). The Davis-Bacon Act:

- ◆ sets a prevailing minimum wage rate for various labor classifications predetermined by the U. S. Secretary of Labor to be paid to laborers and mechanics;
- ◆ requires the laborers and mechanics be paid weekly at prescribed rates for all hours worked;
- ◆ provides that fringe benefits, or wage equivalent, are to be paid laborers and mechanics when included in the U. S. Secretary of Labor's prevailing minimum wage rate decision; and
- ◆ requires that the contractor post the prevailing minimum wage rates at the job site.

The Davis-Bacon Act does **not** apply to:

- contractor's supervisory and office employees;
- contractors or subcontractors or suppliers furnishing supplies and equipment when such operations are located off-site of the project;

- contracts with a political subdivision; or
- contracts or work agreements for construction work or services with railroads or public utilities when the work or services is done by their employees.

Fair Labor Standards Act (29 CFR Chapter V)

The Fair Labor Standards Act (FLSA), a federal Act, applies to all contracts and requires contractor and subcontractor compliance with USDOL regulations.

Many of the requirements contained in this Act mirror those in the previous laws described. FLSA does, however, provide additional requirements regarding child labor, as follows.

- ◆ Children of any age are generally permitted to work for businesses entirely owned by their parents, **EXCEPT** those under 16 years of age may not be employed in mining or manufacturing, and **NO ONE** under 18 years of age may be employed in any occupation determined to be hazardous by the U. S. Secretary of Labor.
- ◆ Children under 14 years of age may not be employed on Department contracts.
- ◆ Young persons 14 and 15 years of age may be employed in non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.
- ◆ Young persons 16 and 17 years of age may work an unlimited number of hours in any occupation other than those determined by the U. S. Secretary of Labor to be hazardous in nature.
- ◆ Individuals 18 years of age and older are no longer subject to the Child Labor Provisions of the FLSA.

The FLSA establishes an 18-year minimum age for all nonagricultural occupations determined to be hazardous in nature by the U. S. Secretary of Labor. The following are considered hazardous occupations.

- ◆ Manufacturing or storing explosives
- ◆ Driving a motor vehicle or work as an outside helper on motor vehicles
- ◆ Mining
- ◆ Logging and sawmilling
- ◆ Power-driven woodworking machines*
- ◆ Exposure to radioactive substances and ionizing radiation
- ◆ Power-driven hoisting apparatus
- ◆ Power-driven metal-forming, punching and shearing machines*
- ◆ Power-driven meat-processing machines, slaughtering and meat packing plants*
- ◆ Power-driven bakery machines

- ◆ Power-driven paper-products machines*
- ◆ Manufacturing of brick, tile, and related products
- ◆ Power-driven circular saws, band saws, and guillotine shears*
- ◆ Wrecking, demolition, and ship-breaking operations
- ◆ Roofing operations*
- ◆ Trenching and excavation operations*

*Limited exemption is provided for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.

Additional detailed information may be obtained from the USDOL website regarding FLSA Child Labor Provisions.

Prevailing Wage Rates (Title 10, Texas Government Code, Chapter 2258)

[Title 10, Chapter 2258](#) of the Texas Government Code requires payment of prevailing wage rates for each craft needed to execute a public works contract on behalf of the State of Texas. This statute mirrors the federal Davis-Bacon Act and may be referred to as a state-mandated “little Davis-Bacon Act.” This statute:

- ◆ sets a prevailing minimum wage rate for various labor classifications predetermined by the Secretary of Labor to be paid to laborers and mechanics, and
- ◆ requires the contractor and all subcontractors keep, or cause to be kept, copies of weekly payrolls for review for a period of 3 years from the date of the completion of the contract.

Contract Labor Requirements

At the preconstruction meeting, advise the contractor of their contract labor requirements and obligations.

- ◆ All mechanics and laborers working on a TxDOT construction project must be paid at least once a week.
- ◆ Mechanics and laborers must be paid at least the minimum prevailing wage as shown in the contract for the work classifications being performed (Mechanics and laborers performing in more than one classification must be paid at the rate specified for each classification for the time actually worked in each.)
- ◆ The prevailing wage rates applicable to the contract must be posted at the project site where they can easily be seen by all employees.
- ◆ If an employee is performing in a work classification that does not appear in the prevailing wage rate, the contractor must submit [Form CST-C-1](#), “Additional Classification and Wage Rate Request,” to the Area Engineer.

- ◆ Contractors must submit weekly certified payrolls listing the wages paid to each employee. Effective with projects let August 2017, contractors must use LCPTracker, the Department's certified payroll system. The weekly certified payrolls must be submitted to the appropriate Area Engineer's office within 7 calendar days after the end of the payroll period. The chart "Subcontracting and Payroll Requirements" illustrates when payroll records are required and when a firm must be approved as subcontractor.
- ◆ All weekly certified payroll records must be retained for a period of 3 years from the contract completion date. These payroll records must be made available at all times for inspection by the Department, any authorized state governmental investigating or state auditing agency, and authorized representatives of the USDOL.
- ◆ Only the following payroll deductions are permissible without prior approval from the USDOL (For more detailed information, please refer to [29 CFR Part 3.5.](#))
 - Deductions made in compliance with federal, state or local law (i.e., federal or state withholding income taxes, and federal social security taxes)
 - Deductions of sums previously paid an employee (prepayment of wages), but only if such deduction is made without discount or interest
 - Deductions of amounts required by court order
 - Deductions authorized by the employee that constitute a contribution for the purpose of providing medical or hospital care; pensions or annuities on retirement; death benefits; or compensation for injuries, illness, accidents, sickness, or disability (or similar payments) for the benefit of the employee. These deductions are permissible provided they are not otherwise prohibited by law and are included in a bona fide collective bargaining agreement between the contractor and subcontractor and its employees or are pre-approved by the employee and serve the convenience or interest of the employee. In addition, the contractor and subcontractor may not profit from or otherwise receive benefits (e.g., commissions and dividends) for any employee payroll deductions.
 - Deductions contributing toward the purchase of U.S. Defense Stamps and Bonds when voluntarily authorized by the employee
 - Deductions requested by the employee to enable repayment of loans or to purchase shares in credit unions
 - Deductions voluntarily authorized by the employee for contributions to governmental or quasi-governmental agencies (e.g., American Red Cross)
 - Deductions voluntarily authorized by the employee for contributions to Community Chests, United Givers funds, and similar charitable organizations
 - Any deductions to pay regular union initiation fees and membership dues, provided that a collective bargaining agreement exists between the contractor and subcontractor and its employees, and the deductions are not otherwise prohibited by law
 - Deduction for the "reasonable cost" of reimbursement for board, lodging, or other facilities meeting the requirements of the FLSA (See [29 CFR Part 531.](#))

- Deduction for the cost of nominal value safety equipment (e.g., hard hats, safety shoes, safety glasses, and safety gloves), provided that such equipment is purchased by the employee as their own property for personal protection in work. This deduction is permissible provided the deduction is only for the actual cost of the safety equipment, and such deduction is provided for in a bona fide collective bargaining agreement between the contractor and subcontractor and its employees or voluntarily consented to by the employee in writing.
- ◆ All payment of wages must be made by cash or negotiable instruments payable on demand.
- ◆ Payments of fringe benefits are limited to those benefits as stated in the contract wage determination. Fringe benefits not included in the contract wage determination must be paid as an hourly cash equivalent.
- ◆ Employees who work in excess of 40 hr. in any given workweek must be paid at a rate of 1-1/2 times their regular rate for all hours worked in excess of 40 hr. Such work hours are exclusive of payments made for non-work hours (such as vacation, holiday, or illness). For more complete information regarding the payment of overtime wages, please refer to [29 CFR, Part 778](#).

District Monitoring for Federally Funded Projects

Conduct periodic site inspections of the work to ensure contractor and subcontractor labor requirements as listed in “Contractor Labor Responsibilities,” above. Ensure that the contract prevailing wage rates are posted on the work site in an area accessible to all contractor and subcontractor employees.

The names of truck owner-operators are to appear on the contractor’s weekly payroll under the heading, “Truck Owner-Operator.” No other information is required.

Recommend the use of the standard job classifications contained in the booklet [Standard Job Classifications and Descriptions for Highway, Heavy, Utilities and Industrial Construction in Texas](#) for the contractor’s and subcontractor’s payrolls. The contractor may use other code numbers or abbreviations on the payroll forms, provided the contractor attaches a list of the code numbers or abbreviations with the corresponding title classification to each payroll.

When no work is performed, obtain from the contractor a statement of compliance with the statement “No work done this week.” When no work is performed for long periods of time, the statement “No work until further notice” should be shown, and weekly statements are not required.

Additional Labor Classifications

When the contract wage schedule does not include a job classification used on the contract, the contractor must submit [Form CST-C-1](#), “Additional Classification and Wage Rate Request,” to the Area Office for review and signature by the Area Engineer (AE). Upon signing, forward to the District Construction Office (DCO) for review and signature by the Director of Construction or

Representative. Ensure that recommended wage rates are proportionate to similar wage rates contained in the contract wage decision and conform to like wage rates in surrounding areas. The DCO will submit these requests to the Construction Division (CST) for approval by emailing CST.LaborCompliance@txdot.gov.

Labor Interviews

For federally funded projects, conduct at least three employee labor interviews for each project per quarter to determine if the contractor and subcontractors are in compliance with labor laws. The quarter will be based on a calendar year starting January 1st as per the recommendation of FHWA. Randomly select employees to be interviewed. Inform the contractor when payroll errors are found. Refer to the following table for guidance in resolving payroll errors.

Payroll Errors Problems and Resolution

If	Then
payrolls do not match interview information	notify the contractor to correct the problem
the contractor does not correct the problem	notify the district office

Contact CST for additional guidance in conducting wage dispute investigations.

Payroll Review

For federally funded projects, review at least 10% of all payrolls for each contract. Use discretion in determining the composition of this 10% is left to the AE's discretion. Verify that the payrolls submitted include the following information for each employee.

- ◆ Name
- ◆ Unique Employee ID (Individual Identity number)
- ◆ Address
- ◆ Classification
- ◆ Rates of pay
- ◆ Daily and weekly number of hours worked
- ◆ Deductions made
- ◆ Actual wages paid

NOTE: Employee's full name, Unique Employee Identification Number, and address need only appear on the first payroll in which the employee's name appears.

Ensure that legal holiday work is paid at the regular prevailing per diem wage rate, and overtime pay for actual hours worked in excess of 40 hr. per workweek is compensated at a rate not less than 1-1/2 times the basic rate of pay.

Review selected payrolls to ensure that employees are compensated at least the appropriate prevailing minimum wage for the actual work performed. Document in the project file the review results, review date and reviewer name. Bring any discrepancies or questionable wage rates to the attention of the contractor for explanation or correction. Bring any contractor failures to correct or adequately address deficiencies and requests for information by the contractor to the attention of the district office. If the contractor still does not address identified issues, request that the Financial Management Division (FIN) withhold the monthly estimates. Once the problem is corrected, provide notification to FIN to resume monthly estimates.

Semiannual Labor Compliance Enforcement Report (federally funded projects only)

Twice annually, CST will send a request and instructions for completing [Form FHWA 1494](#), “Semiannual Labor Compliance Enforcement Report,” to the districts. Submit completed forms via email to CST_LaborCompliance@txdot.gov on or before **April 15** and **October 15** of each year. Reporting periods are October 1-March 31 and April 1-September 30 each year. Provide data for questions 4-11. CST personnel will compile district information received to report statewide information for questions 1-3 and will provide the completed report to USDOL and FHWA.

Wage Rate Survey

Wage rate surveys are conducted periodically as mandated by the USDOL and State statutes. These surveys determine applicable prevailing wage rates for highway construction in Texas. Extract wage information from contractor and subcontractor payrolls as requested by CST and enter this information into the automated Wage Rate Survey system. The frequency of the surveys depends on the Department’s survey plan for a given year. Forward questions regarding wage rate surveys to CST_LaborCompliance@txdot.gov or call the Construction Division at 512-416-2428.

Section 3 — On-the-Job Training

General

Reference the Civil Rights Division (CIV) [OJT Program webpage](#) or contact CIV at (512) 416-4700 for more information regarding the OJT Program.

Policy

The Department has established an On-the-Job Training (OJT) Program in accordance with [23 CFR Part 230, Subpart A](#). It is TxDOT's policy to require full utilization of all available training and skill improvement opportunities to assure the increased participation of minority group, female, and disadvantaged individuals in all phases of the highway construction industry.

Under 23 CFR 230 and [23 USC 140](#), the Department has the authority to conduct contractor compliance reviews of contractors to ensure compliance with the equal employment opportunity (EEO) contract provisions and the implementation of special requirements for the provision of OJT training (23 CFR 230.111). A Contractor's failure to comply with the requirements of OJT special provisions will constitute a material breach of the contract.

Contract Provisions

Special Provision [000-006](#) “On-the-Job Training Program,” is included in all TxDOT federal-aid construction contract proposals effective with the January 2014 state letting.

Chapter 16 — FHWA Oversight Requirements

Contents:

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[Section 5 — Local Government Projects](#)

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Section 1 — Background

On May 21, 2015, the U.S. Department of Transportation – Federal Highway Administration (FHWA) and the Texas Department of Transportation (TxDOT) signed the [Stewardship and Oversight Agreement on Project Assumption and Program Oversight \(S&O Agreement\)](#). The intent and purpose of this agreement is to document the roles and responsibilities of the FHWA’s Texas Division Office (FHWA or Division) and the Texas Department of Transportation (the Department) with respect to project approvals and related responsibilities, and to document the methods of oversight that will be used to efficiently and effectively deliver the Federal-Aid Highway Program (FAHP). The agreement includes program and project responsibilities, governing Code of Federal Regulations (CFR) and United States Code (USC) titles, and funding and monitoring requirements detailing the delegation and acceptance of oversight responsibilities that will meet or exceed Federal regulations on all Federal-Aid projects. (See S&O Agreement, Attachments A and B.)

The Department assumes full responsibility for all Title 23 approval actions for project levels from design through construction on all federal-aid projects except as modified by FHWA’s risk-based assessment for projects in any given FHWA performance year (PY). A performance year is defined as beginning in June of a current year through May of the subsequent year. The [Federal-Aid Policy Guide](#) (23 CFR, listed as Title 23) is available on the FHWA website. The State’s compliance agreement is specified in detail in the Department’s manuals. The applicable Agreements, Policies, Manuals, and Reports for each Program Area are listed in S&O Agreement, Attachment C.

One of the main components of the Risk-Based Project Stewardship and Oversight are projects classified as Projects of Division Interest (PoDI). In short, PoDIs have an elevated risk in one or more core functions (as defined in S&O Agreement, Attachment D), and FHWA has made a risk-based decision to retain project approval actions or conduct S & O activities for the project as provided for in [23 USC 106](#). FHWA develops a PoDI Plan for each project based on the perceived risks and conducts oversight activities. In addition to PoDIs, FHWA also administers the Compliance Assessment Program (CAP) through reviews to evaluate joint risk assessments for various project functions. These are usually desk reviews wherein FHWA will request copies of various project record documents. FHWA representatives may also request an on-site project visit as part of a CAP review. The FHWA representatives will review the requested project record documents for compliance with regulations and policies and issue a report of findings. All federal-aid projects are subject to CAP reviews, including local government projects that have federal funding.

Basic Federal–Aid Project Checklist (Construction and Civil Rights Core Functions) *

Core Function	Requirement Description
Final Environmental Clearance	Required for all federal-aid projects. Work closely with District environmental staff, Environmental Affairs Division (ENV), and the District Environmental Quality (DEQC) Coordinator for total compliance with federal regulations.
Materials Deficiencies Clearance	Required for all federal-aid projects. Work closely with Area Office (AO) Record Keeper, the materials lab, and the District Construction Office (DCO) Auditor for total compliance with federal regulations.
MAT Certification	Required for all federal-aid projects. The Area Engineer (AE) or Director of Construction (DOC) must submit a “Materials Certification Letter” at final acceptance of the project. Any material represented by an acceptance test that does not meet the criteria contained in the plans and specifications is considered an exception. Exceptions must be listed in the materials certification letter. For projects with federal-aid funding, submit the materials certification letter (Quality Assurance Program for Design-Bid -Build Projects , Appendix D) to the FHWA division administrator, with a copy to the Materials and Tests Division (MTD). <i>Ref: Guide Schedule and QAP/DBB, Section 4.1</i>
Final Labor Issues Clearance	Required for all projects. Work closely with the contractor, AO Record Keeper, and the District DBE/HUB coordinator for total compliance of federal labor- related issues.
Final CIV Clearance	Required for all projects if there is a DBE goal.
Final Auditor Clearance	Required for all projects. Work closely with the DCO Auditor for total compliance of federal requirements.
Interim Project Reviews	Required for all federal-aid projects. Consist of informal field inspections and audits (– coordinate with applicable DCO Auditor) that assist the Area Office with interim evaluations of project compliance with all federal regulations and cover an array of requirements. (See S&O Agreement, Attachment A).
Final Project Review	Required for all federal-aid projects. Consists of formal field inspection that covers an array of requirements. (See S&O Agreement, Attachment B.)
Change Orders	FHWA requires all change orders to be reviewed and approved for federal participation.
Buy America	Ensure all predominantly steel or iron products delivered to federal-aid projects comply with Buy America requirements described in 23 CFR 635.410 and FHWA Buy America Policy Response dated December 22, 1997.
Final Inspection Form 2235	The Finance Division (FIN) requires this form for all federal-aid projects. This is sent to FIN and documents whether any non-participating items exist.

*Refer to the FHWA [Contract Administration Core Curriculum Manual](#) for additional detail regarding federal requirements

Section 2 — Change Orders

Change orders (COs) must be reviewed for all federal-aid projects. The District Construction Office (DCO) assists the Area Office (AO) with the CO description and reason coding, if necessary, and coordinates with the District or Construction Division (CST) FHWA Liaison, and/or the FHWA Area Engineer (AE) as required, to confirm federal participation. The AE and /or DCO also coordinates with the District TP&D Financial Manager to procure funding for COs.

PoDI Federal-Aid Projects

Time Extensions (TEs) and major CO work on PoDIs require, at a minimum, verbal or email concurrence from FHWA prior to work beginning. The FHWA AE signature is required on all PoDI project COs, with a copy filed in the project records.

COs on PoDIs are categorized as either major or minor, as defined in the table below. Major COs on PoDIs are not approved for federal participation until the CO is signed by the FHWA.

Minor COs on PoDIs may be approved retroactively; however, FHWA does require written approval of minor COs (i.e., FHWA AE signature on CO) before the project is completed.

Discuss work on all PoDI COs with the appropriate FHWA Area Engineer prior to approval.

Use the following table to determine if the CO is major or minor.

Major/Minor Change Orders for FHWA Oversight Projects

Type of Change	Scope of Change
Major	<ul style="list-style-type: none"> ◆ Reduces the geometric design or structural capacity below project design criteria (any reduction in geometric design that would normally have required a design exception) ◆ Increases the cost of the contract by 25% of the original cost or by \$300,000, whichever is less ◆ Changes project limits ◆ Any change in the Traffic Control Plan that reduces the capacity as shown on the plans for the through traffic or the traffic on major cross streets ◆ Settlement of a dispute¹ ◆ Changes the access on a controlled access highway ◆ Waives or modifies contract specification requirements
Minor	Everything not described above
1. For additional information, see Chapter 8, “Claims and Disputes”	

Non-PoDI Federal-Aid Projects

Assume FHWA oversight responsibilities on all projects that are not PoDIs. Use the [Federal-Aid Policy Guide](#) to determine federal participation for TEs and COs. Approve CO work on non-PoDIs in accordance with the Change Order Approval Policy given in Chapter 7.

Federal Participation

The Federal Project Authorization and Agreement (FPAA) must reflect accurate project limits. For COs that change project limits, include detailed drawings showing the new project limits.

Federal-aid funds may be used to participate in COs that are:

- ◆ in conformance with federal and state laws **and**
- ◆ allowed by the *Federal-Aid Policy Guide* (CFR 23) **or**
- ◆ in compliance with an FHWA policy or procedure.

Federal-aid participation may be granted if:

- ◆ the work on the CO did not adversely affect the public **and**
- ◆ the Department acted in good faith and did not willfully violate a federal requirement **and**
- ◆ the work was performed in full compliance with federal and state laws **and**
- ◆ the federal participation does not exceed the cost that would have been incurred had full compliance been achieved **and**
- ◆ the work was performed according to the contract.

Federal Non-Participation

Examples of COs not eligible for federal participation are:

- ◆ work performed prior to the “effective date” provided in the Federal Letter of Authorization;
- ◆ work performed outside the project limits, unless the additional work is an emergency, is to provide a transition at the existing project limits, and is covered by a CST-reviewed and concurrence provided Public Interest Determination;
- ◆ routine maintenance items that are the responsibility of either the contractor or the Department. Examples: graffiti removal, culvert cleaning, worksite maintenance, etc.

Examples of individual contract items not eligible for federal participation are:

- ◆ work performed by state forces or other “non-competitively bid” work, unless covered under an approved Public Interest Determination;
- ◆ completed work that is determined not to be in substantial compliance with the contract;

- ◆ materials that do not meet specifications (Federal participation may be allowed for the reduced price of materials determined to serve the intended purpose of the contract. Accept for federal participation minor deviations at the full price of materials.);
- ◆ additional time or cost caused by un-acquired ROW or incomplete utility adjustments;
- ◆ purchase of unused contractor materials placed in state stock (If the material is subsequently used on another federal-aid project, charge the material cost to that project.);
- ◆ negotiated prices that are determined to be unjustified;
- ◆ work done for the convenience of the contractor;
- ◆ unaudited claim settlements, unless the audit requirement is waived in writing; and
- ◆ contract work paid through another means, such as Incidental Construction.

Mandatory Non-Participating CO Reason Codes

Category	Reason Code	Description
1. Design Error or Omission	1D	Design error or omission that resulted in delay, rework or inefficiencies (TxDOT Design)
	1E	Design error or omission that resulted in delay, rework or inefficiencies (Consultant Design)
2. Differing Site Conditions (Unforeseeable)	2G	Unadjusted utility (unforeseeable). Used when unknown utilities impact the project. Participation can depend on circumstances and needs to be analyzed on a case-by-case basis.
3. TxDOT Convenience	3A	Dispute resolution. Occurs at the district level and involves delays, inefficiencies; etc.
	3K	Addition of stock account. Buying material purchased by the contractor and not incorporated into the project.
4. Third Party Accommodation	4A-D	These are very case dependent and need to be carefully reviewed to determine participation.
6. Untimely ROW/Utilities	6A-D	ROW/Utilities not clear. Used for contractor impacts.

Extending or Adding Project Limits to the Contract

Forward for CST review any CO for extending or adding project limits that do not meet the criteria given in Chapter 7. Once reviewed, the District will complete the CO Approval Process.

Communicate with FHWA regarding the proposed changes.

Federal Participation

FHWA will participate in the following types of added limit COs:

- ◆ emergency work and
- ◆ transition work at the end of projects requiring a CO.

Exception for Allowing Federal Participation Related to Added Limits

An exception may be made when CST determines the added limits CO is in the public interest. To seek the exception, coordinate with CST and the applicable FHWA AE, in advance, and submit a request with justification along with the CO to CST's Construction Section (CST/C).

To seek an exception for allowing federal participation for a PoDI, coordinate with the FHWA, in advance, and submit a request with justification along with the change order to CST/C for federal approval.

Submission Requirements Related to Added Limits

Approval of added limit change orders requires the following.

- ◆ Statement of environmental clearance status;
- ◆ Notice of Intent threshold impacts,
- ◆ Texas Department of Licensing and Regulation (TDLR) review for Texas Accessibility Standards (TAS) compliance;
- ◆ Explanation of the reason(s) the CO is needed;
- ◆ Justification, such as a description of:
 - emergency work,
 - transition end work,
 - explanation of cost saving over cost to re-let, or
 - discussion of imminent need;
- ◆ Request for federal participation:
 - discussion notes on change order coordination, to date, with FHWA and CST, including the FHWA and CST contacts, and
 - request for Public Interest Finding (if required);
- ◆ Funding source category; and
- ◆ Status of FHWA verbal approval.

Section 3 — Final Inspection of Federal-Aid Projects

Complete [Form 2235](#), “Final Inspection of Federal-Aid Project,” and submit to the Financial Management Division (FIN) for all federal-aid projects, including PoDI and Design-Build (Public Private Partnership) projects. In particular, note nonparticipating costs, such as delays due to utility adjustments or non-participation change orders, on the form. Not completing the form within 60 days of the final contractor payment jeopardizes federal funds on the project. Below are the processing procedures for the Form 2235.

Form 2235

Step	Action
1	DCO receives the Advance Completion Notice from the AO.
2	DCO schedules a final project inspection with the AO and Engineer of Record (EOR).
3	Perform the project inspection. Place inspection report/memo in FHWA file folder.
4	Once the construction project files are received from the AO and the final audit has been completed by DCO, route the close-out folder to the designated person in the DCO. DCO completes Form 2235 for signature by the Director of Construction or designee and submits to FIN.
5	If the project is not federally funded, Form 2235 is not needed.

Section 4 — Required Contract Provisions – Federal-Aid Construction Projects

[Form FHWA-1273](#), “Required Contract Provisions – Federal-Aid Construction Contracts,” must be physically incorporated in each construction contract, all subcontracts, and lower-tier subcontracts compensated with federal-aid funds.

Form FHWA 1022:

Notice to All Personnel Engaged on Federal-Aid Highway Projects [from FHWA 1273; Section VIII False Statements Concerning Highway Projects]

18 USC 1020 reads as follows.

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

Project Management and Financial Plans:

The district typically begins preparation of a project management plan (PMP) and initial finance plan (IFP) for projects that receive federal financial assistance and are designated as Federal Highway Administration (FHWA) "Major Projects" (\geq \$500M). Other Federal-Aid projects at \$100M to \$500M may also require PMPs and IFPs as well as TIFIA projects and Operationally Independent and Non-Concurrent construction projects. The Department's procurement team may also prepare the PMP and IFP if it has not been prepared by the district.

Once a PMP and IFP have been prepared and have received FHWA approval, comply with PMP and IFP guidelines and review and perform Financial Plan Annual Updates (FPAUs) and updates to the PMP as needed.

PMP and IFP requirements for FHWA Major Projects can be found on the FHWA website under "Innovative Program Delivery." Verify that the PMP includes all contract and DB contractor proposal commitments and expectations to assist with oversight and auditing. Ref the Design-Build Contract Administration Manual; Procedure 125. See Chapter 17 for a copy of Procedure 125 and FHWA's "Major Project Financial Plan Guidance".

Section 5 — Local Government Projects

The Local Government Projects Program provides guidance and training for local governments, including municipalities, counties, or regional mobility authorities in the development of transportation projects with Department oversight. The program addresses both federal and state requirements but does not address public transportation, aviation, or turnpike projects.

Local governments (LGs) are responsible to ensure all project requirements are met and, if federal funding is involved, are in compliance with advance funding agreement provisions. These projects allow LGs to administer a project and minimize the use of TxDOT resources.

For LG projects with federal-aid funding, the Department provides oversight to comply with federal requirements. The LG Projects Section maintains oversight guidance documents and checklists on the [LG Projects webpage](#).

Training

All local entities are required to have an individual qualified by the Department in Local Government Project Procedures assigned to each project being performed through an Advanced Funding Agreement (AFA). Through its Local Government Project Procedures (LGPP) Qualification Program, the Department offers a course that trains and qualifies individuals to work on these projects. Anyone working directly on or overseeing local government projects (including senior managers, project managers, consultants, and local government employees) is encouraged to complete this training. The Department requires all “qualified” persons to successfully complete the LGPP qualification course at least once every three years.

The class takes a total of 12 hours and covers the following topics.

- ◆ Introduction to the qualification program
- ◆ Applicable federal and state laws and regulations
- ◆ Typical TxDOT/local government contract terms
- ◆ The project development process (contract execution through project close-out)
- ◆ Available tools and resources

More information on the training requirements, qualified individuals, training calendar, and training registration form are available on the [LG Project Procedures Training and Qualification webpage](#).

Resources

- ◆ [Local Government Projects Policy Manual](#)

- ◆ [Local Government Projects Toolkit](#) – provides organized access to rules, regulations and procedures for projects managed by local governments that include federal or state funding provided by the Department. Does not address public transportation, aviation or concessionaire projects.

Section 6 — Interim Project Review Guide – State and Federal-Aid Projects

Item	Standard
Contractor bulletin board	<ul style="list-style-type: none"> ◆ Accessible, readable, postings in accordance with current federal requirements
Traffic Control Plan	<ul style="list-style-type: none"> ◆ Set up according to project TCP, BC, and WZ standard sheets ◆ Signs & barricades in compliance with current CWZTCD list ◆ Clean, plumb, no to slight damage, good reflectivity, command attention
Construction Items	<ul style="list-style-type: none"> ◆ Contractor’s work is in general compliance with plans and specifications and of good quality
Inspection	<ul style="list-style-type: none"> ◆ Quantity of inspection staff is adequate for work underway ◆ Inspectors are knowledgeable of the applicable plans and specification requirements for the work being observed. ◆ Testing equipment and inspection staff certifications and testing proficiencies are up to date ◆ Adequate testing is occurring to ensure compliance with the <i>QAP</i> and <i>Guide Schedule</i> requirements and quality of the work
Materials	<ul style="list-style-type: none"> ◆ All materials incorporated into the project are from qualified manufacturers/producers listed on the appropriate MPL ◆ Inspectors ensure materials delivered to the project are manufactured according to the relevant plans and specifications requirements and are free of defects and damage ◆ Adequate supporting documentation is available to provide assurance of Buy America compliance for all predominantly steel or iron products
Progress	<ul style="list-style-type: none"> ◆ Monthly schedule updates are being sent by the contractor. ◆ Work activities observed are according to current 2–3 week look-ahead schedule ◆ Overall progress is on or ahead of the approved project schedule ◆ If work is behind schedule, the AO has requested the contractor submit a make-up schedule that shows how the contractor will complete the work within the contract time
SW3P (coordinate with DEQC)	<ul style="list-style-type: none"> ◆ Copies of required certifications and letters are in the project files ◆ NOI, if required, is posted along with the appropriate construction site notice ◆ Stage-Gate Checklist is completed and deficiencies corrected ◆ SW3P log is up to date ◆ Reports are complete. ◆ Noted deficiencies show correction date ◆ No missing reports ◆ Installed BMPs are emplaced correctly and noted on SW3P sheets with installation / removal dates
DBE (coordinate with district DBE coordinator)	<ul style="list-style-type: none"> ◆ Required DBE reports and Prompt Payment Reports are up to date ◆ Labor Interviews completed and payrolls are reviewed ◆ CUFs are performed
AO and DCO audits	<ul style="list-style-type: none"> ◆ Ensure applicable audit documentation is in the project files ◆ Coordinate with AO record keeper and DCO auditors

Section 7 — Final Federal Program Inspection Guide – TxDOT Federal Program Projects

Schedule the final inspection with the AO project engineer and/or the assigned inspector. Additionally, invite the EOR and other designers (TxDOT or consultant) to attend the final inspection to hear and discuss design issues encountered by the AO project management staff to improve future designs.

Once the field review is complete, prepare a final inspection report memo listing the design issues and the construction observations. Send the report memo to the AE, with a copy to the DCE/DOC and District Design Engineer or District Design Support Engineer (consultant designs). The EOR and associated designers are copied along with the AO project engineer or project manager. Record the date of the final inspection on Form 2235 in block 15.

Item	Standard
Overall Quality	◆ Appearance of pavement, striping, concrete work, etc.
Construction Items	◆ Constructed in general compliance with plans and specifications ◆ Drainage structures clean and undamaged
Roadside Safety	◆ MBGF, terminal connections, CCAs, permanent concrete barriers, bridge railing, S.E.T.s., etc. are constructed and installed according to the plans and specifications and manufacturers' recommendations
Erosion Control / Vegetation Establishment	◆ SRBs, seeding, sod, armoring – concrete riprap, loose rock riprap, gabion baskets and mattresses are all installed according to the plans and specifications ◆ All disturbed areas are stabilized ◆ BMP removal – coordinate with DEQC
Site Clean	◆ All construction debris removed ◆ RFD wire and rock removed to not damage future mowers ◆ Erosion control log netting removed ◆ Contractor's equipment and material storage yard clean and stabilized

Chapter 17 — Forms and Documents

Contents:

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[Section 3 — OFCCP District Office/County Listings](#)

Section 1 — Forms and Guidance Documents

List of Forms

This manual references the following forms. Most TxDOT forms can be found through the E-Forms link on Crossroads.

Contract Administration Forms and Description

Description of Form	Form Name/Number	Location
Bridge – Piling Report (used for production piles)	TxPIng.xlsm	SiteManager Forms
Test Pile Data (used for Test Piles)	Form 181	BRG - Field Operations (internal access only)
Traffic Control Devices Inspection Checklist	Form 599	E-Forms
BRG – Drill Shaft Report	TxDrlShft.xlsm	SiteManager Forms
Daily Report of Force Account Work	Form 316	Construction Forms
Daily Report of Law Enforcement Force Account Work (Original Form is kept by TxDOT)	Form 318	Construction Forms
Identification of Material Samples	Form 202	www.txdot.gov
Construction Storm Water Pollution Prevention Plan Field Inspection & Maintenance Report	Form 2118	E-Forms
Environmental Management System Policy Memo	EMS Policy Statement	EMS SharePoint page (internal access only)
* Required Contract Provisions Federal-aid Construction Contracts (Also required on all Subcontracts)	FHWA 1273 (Federal Highway Administration)	FHWA Website
* Contractors Annual EEO Report	FHWA 1391 (Federal Highway Administration)	Diversity Management System
* Federal-aid Highway Construction Contracts Annual EEO Report	FHWA 1392 (Federal Highway Administration)	Diversity Management System
Final Inspection of Federal-Aid	Form 2235	E-Forms
* Semiannual Labor Compliance Enforcement Report (Sent out every six months by CST)	FHWA 1494 (Federal Highway Administration)	Issued by CST

Contract Administration Forms and Description

Description of Form	Form Name/Number	Location
Payroll	WH-347 (Department of Labor)	EPRS/ LCP Tracker
Request for Payment of Materials on Hand Summary Page	Form 1914	E-Forms
Request for Payment of Material on Hand	Form 1915	E-Forms
Prompt Payment Certification/Audit Form	Form 2177	E-Forms
Prompt Payment Acknowledgment Sample Letter	Prompt Payment Acknowledgment Sample Letter	CST - Website
Storm Water Discharges Associated with Industrial Activity Under a TPDES General Permit (TXR150000) Permit (NOI, NOC, NOT, CSN)	STEERS (Texas Commission On Environmental Quality)	TCEQ Website
Supplemental Agreement (SA) Form	For alternations to the contract not covered by Change Order	Contact CST-Construction Support
Example of Supplemental Agreement	Prime Contractor is bought out by another contractor; Change in Surety; etc.	
Change Orders: ◆ Change Order Form ◆ Tables A & B ◆ Advance Funding (Third Party Participating CO) ◆ Change Order Reason Code Chart ◆ Change Order Checklist	Form 2146	E-Forms
Federal On-The-Job (OTJ) Training Program Enrollment Form-Civil Rights Division sends form directly to Contractor, Form is available for districts on E-Forms	Form 2201	E-Forms
Federal On-The-Job (OTJ) Training Program Monthly Reporting Form-Civil Rights Division sends form directly to Contractor, Form is available for districts on E-Forms	Form 2202	E-Forms
Summary Materials Received and Used; may be used to Aid MOH	Form 1259	E-Forms
Material Verification Report - (CIS 26) used for verifying Prefabricated Structural items.	Material Verification Report - (CIS 26)	SiteManager - Production Server
Labor Standards Review	Form 2220	E-Forms

Contract Administration Forms and Description

Description of Form	Form Name/Number	Location
Intent to Default	https://crossroads.dot.state.tx.us/cst/Pages/construction-support.aspx	CST-Website
Default Letter		
Voluntary Default Letter		
Termination		
Takeover Agreements		
Additional Classification and Wage Rate Request	Form CST-C-1	E-Forms
Final Acceptance Memo	Form 2323	E-Forms
Materials Certification Letters; Final certification of testing sent to FHWA and MTD	Materials Certification Letter	Appendix E & D - QADBB
Public Interest Finding Request- For proprietary items	Form 2325	E-Forms
Public Interest Finding Request- For Extending Project Limits or Change in Scope Request	Contact CST-Construction Section	CST-Construction Section
TDLR Request for Inspection Form	https://crossroads.dot.state.tx.us/cst/Documents/Construction%20Contracting/RAS%20Program.pdf	CST-Homepage
FHWA & TxDOT Oversight Project Review Plan	http://gsd-ultraseek/txdotmanuals/cah/Oversght.pdf	
ENV – Removal of USTs Encountered During Construction	Removal of USTs Encountered During Construction	
EPIC (Environmental, Permits, Issues, and Commitment)	Project Plans	
Construction Stage Gate Checklist	Form 2448	E-Forms
Flow chart Aid for Subcontractor Approval	Subcontracting & Payroll Requirements	CST-Construction Support Website
2014 Construction Specification Required Shop/Working Drawing Submittal	http://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/electronic_submission.pdf	Txdot.gov
PreCon Agenda Example	https://crossroads.dot.state.tx.us/cst/Pages/construction-support.aspx	CST Website
Voluntary Default		
Shop Drawing Process	https://www.txdot.gov/business/resources/specifications/shop-drawings.html	Txdot.gov

Contract Administration Forms and Description

Description of Form	Form Name/Number	Location
Procedure 125	https://portal.txspd.com/spdrecordscenter/SitePages/Procedures.aspx	PFD Website
Major Project Financial Plan Guidance	https://www.fhwa.dot.gov/majorprojects/financial_plans/guidancel4.cfm	FHWA Website
*Required by FHWA for federally funded projects.		

Section 2 — EEO Poster/Notice Checklist

Overview

This is a checklist of the most current EEO posters and/or required notices that should be posted on project site bulletin boards in order to meet minimum EEO compliance standards. Although there may be additional poster requirements from other federal and state agencies, the Construction Division (CST) will primarily focus on these posters and notices listed below. For any additional information concerning other federal or state agency posters or notice requirements, please contact the federal or state agency responsible for its issuance for guidance. Reference [FHWA's Job Site Posters](#) for up-to-date information.

EEO Poster/Notice Checklist

	Poster/Notice
	Federal Minimum Wage Poster (English; WH 1088; July 2016)
	Federal Minimum Wage Poster (Spanish; WH 1088 SPA; July 2016)
	EEO Policy Poster (English; EEOC-P/E-1; November 2009)
	EEO Policy Poster (Spanish; EEOC-P/E-1; November 2009)
	EEO Policy Poster (Chinese; EEOC-P/E-1; November 2009)
	EEO Mandatory Poster Supplement (English; Mandatory Supplement to EEOC P/E-1; November 2015)
	EEO Mandatory Poster Supplement (Spanish; Mandatory Supplement to EEOC P/E-1; November 2015)
	Pay Transparency Nondiscrimination Provision (English; Pay Transparency Nondiscrimination Provision; December 2016)
	Pay Transparency Nondiscrimination Provision (Spanish; Pay Transparency Nondiscrimination Provision; December 2016)
	Employee Polygraph Protection Act (English; WH 1462; July 2016)
	Employee Polygraph Protection Act (Spanish; WH 1462; July 2016)
	Falsified Statements (English; FHWA 1022; May 2015)
	Falsified Statements (Spanish; FHWA 1022; May 2015)
	*Family & Medical Leave Act (English; WHD 1420; April 2016)
	*Family & Medical Leave Act (Spanish; WHD 1420SPA; April 2016)
	Job Safety and Health Protection (English; OSHA 3165-04R; April 2015)
	Job Safety and Health Protection (Spanish; OSHA 3167-04R; April 2015)
	David Bacon Wage Rate Poster (English; WH 1321; April 2009)

EEO Poster/Notice Checklist

	Poster/Notice
	David Bacon Wage Rate Poster (Spanish; WH 1321 SPA; April 2009)
	Your Rights Under USERRA (English; USERRA Poster; April 2017)
	*Notice of Workers with Disabilities Paid at Special Minimum Wages (English; WH 1284; July 2009)
	*Notice of Workers with Disabilities Paid at Special Minimum Wages (Spanish; WH 1284; July 2009)
	Company EEO policy statement (includes designation of the company EEO officer, minority referral statement, and company training program policy)
	**Name and phone number of EEO Officer
	Project Wage Rates (must be obtained from the project contract)
	Texas Payday Law Poster (English; LL-10; July 2009)
	Texas Payday Law Poster (Spanish; LL-10S; July 2009)
	Workers' Compensation in Texas (English; Notice 6; January 2013)
	Workers' Compensation in Texas (Spanish; Notice 6S; January 2013)
	Emergency Telephone Number Notification (English; OSHA reg. 1926.50)
	Hazard Communication Program Notice (English; OSHA reg. 1926.59; March 2014)
	Employee Rights on Government Contracts (English; WHD 1313; April 2009)
<p>*May be included on the EEO Poster. **May be included in the Company EEO policy statement.</p>	

Section 3 — OFCCP District Office/County Listings

Overview

As part of the Memorandum of Understanding between the Office of Federal Contract Compliance Programs (OFCCP) and the Federal Highway Administration (FHWA), the Department must provide written or verbal notice to the appropriate OFCCP district offices of scheduled preconstruction meetings on federal-aid projects. The OFCCP offices should have sufficient notification in order to participate in the meeting.

NOTE: The OFCCP's Houston and San Antonio offices have requested that they only be notified of preconstruction meetings on federal-aid projects over \$10 million. The Dallas office requests to receive notification of **all** scheduled preconstruction conferences.

OFCCP District Office/County Listings

San Antonio

OFCCP San Antonio District Office

Andrews	Cottle	Hardeman	Live Oak	Robertson
Aransas	Crane	Hartley	Llano	Runnels
Armstrong	Crockett	Haskell	Loving	San Patricio
Atascosa	Crosby	Hays	Lubbock	San Saba
Bailey	Culberson	Hemphill	Lynn	Schleicher
Bandera	Dallam	Hidalgo	Martin	Scurry
Bastrop	Dawson	Hockley	Mason	Shackelford
Bee	Deaf Smith	Howard	Maverick	Sherman
Bell	DeWitt	Hudspeth	McMullen	Starr
Bexar	Dickens	Hutchinson	McCullough	Sterling
Blanco	Dimmitt	Irion	McLennan	Stonewall
Borden	Donley	Jackson	Medina	Sutton
Brazos	Duval	Jeff Davis	Menard	Swisher
Brewster	Ector	Jim Hogg	Midland	Taylor
Briscoe	Edwards	Jim Wells	Milam	Terrell
Brooks	El Paso	Jones	Mills	Terry
Brown	Falls	Karnes	Mitchell	Tom Green

OFCCP San Antonio District Office

Burleson	Fayette	Kendall	Moore	Travis
Burnet	Fisher	Kenedy	Motley	Upton
Caldwell	Floyd	Kent	Nolan	Uvalde
Calhoun	Foard	Kerr	Nueces	Val Verde
Callahan	Frio	Kimble	Ochiltree	Victoria
Cameron	Gaines	King	Oldham	Ward
Carson	Garza	Kinney	Parmer	Webb
Castro	Gillespie	Kleberg	Pecos	Wheeler
Childress	Glasscock	Knox	Potter	Willacy
Cochran	Goliad	Lamb	Presidio	Williamson
Coke	Gonzales	Lampasas	Randall	Wilson
Coleman	Gray	LaSalle	Reagan	Winkler
Collingsworth	Guadalupe	Lavaca	Real	Yoakum
Comal	Hale	Lee	Reeves	Zapata
Concho	Hall	Limestone	Refugio	Zavala
Coryell	Hansford	Lipscomb	Roberts	

Dallas**OFCCP Dallas District Office**

Anderson	Dallas	Harrison	Montague	Stephens
Archer	Delta	Henderson	Morris	Tarrant
Baylor	Denton	Hill	Navarro	Throckmorton
Bosque	Eastland	Hood	Palo Pinto	Titus
Bowie	Ellis	Hopkins	Panola	Upshur
Camp	Erath	Hunt	Parker	Van Zandt
Cass	Fannin	Jack	Rains	Wichita
Cherokee	Franklin	Johnson	Red River	Wilbarger
Clay	Freestone	Kaufman	Rockwall	Wise
Collin	Grayson	Lamar	Rusk	Wood
Comanche	Gregg	Leon	Smith	Young
Cooke	Hamilton	Marion	Somervell	

Houston

OFCCP Houston District Office

Angelina	Grimes	Madison	Sabine	Waller
Austin	Hardin	Matagorda	San Augustine	Washington
Brazoria	Harris	Montgomery	San Jacinto	Wharton
Chambers	Houston	Nacogdoches	Shelby	
Colorado	Jasper	Newton	Trinity	
Fort Bend	Jefferson	Orange	Tyler	
Galveston	Liberty	Polk	Walker	

OFCCP District Directors

The following table lists the OFCCP district office contact information.

OFCCP District Directors

	San Antonio	Dallas	Houston
Address:	U.S. Dept. of Labor - OFCCP 615 E. Houston St., Rm. 340 San Antonio, TX 78205	U.S. Dept. of Labor - OFCCP 525 S. Griffin St., Rm. 512 Dallas, TX 75202-5007	U.S. Dept. of Labor - OFCCP 2320 La Branch, Rm. 1103 Houston, TX 77004-4499
Telephone:	(210) 472-5835	(972) 850-2650	(713) 718-3800
Fax:	(210) 472-5842	(972) 850-2651	(713) 718-3818

Appendix A — Policy References

Policy	Date	Link	Chapter
Air Permits for Concrete Batch Plants	3-Apr-06	airpermits_concblpnt_saenz_040306.pdf	12
Consultant Errors and Omissions Correction and Collection Procedures	Mar-08	Consultant E and O Procedures 032008.pdf	4
EMS Policy Statement	24-Jul-14	EMS POLICY MEMO 20140722.pdf	12,17
Guidelines for Traffic Safety in Work Zones	13-Jul-07	Guidelines Traffic Safety in Work Zones.pdf	5,4,9,10
Legacy Systems and Third Party Submission Requirements	15-May-07	Legacy Systems and 3rd Party Reqs.pdf	4,5,7,16
Changes to Project Inspections By TDLR	3-May-13	Memo - ChangesToProjectInspectionsByTDLR.pdf	5
DBE Monitoring Requirements Applicable to Federal-aid Construction Contracts	8-Mar-06	Memo - DBEMonitoring.pdf	4,14
Franchise Model – Contract Change Orders	30-May-12	Memo - FranchiseModelContractChangeOrders.pdf	7,17
Preparing Engineer's Estimates	14-Aug-09	Memo - Prepare Engr Est.pdf	
Subcontractor Approval Requests	3-Sep-08	Memo - SubcontrApprovalReq.pdf	10
Contractor Supplied Field Offices on Projects	26-Feb-10	Field Offices	4,5
Cost Control Ideas Update	12-Feb-09	Barton Memo - Cost Control Ideas Update	
Department Provided Cell Phones, Laptops, and Virtual Private Network (VPN)	20-Jun-08	Memo - DeptProvidedCellPhones.pdf	5
Statewide Implementation of the Environmental Management System (EMS)	16-Mar-12	Memo - EMSStatewideImplementation.pdf	4,12
Engineer Recommendations	15-Mar-11	Memo - EngineerRecomendations.pdf	9
Guidelines for Provisions and Agreements for Including Utility Adjustments in Construction Projects	16-Dec-05	Memo - utilityadj.pdf	4,7
Worker Visibility	9-Dec-08	Memo - WorkerVisibility.pdf	9,13
TDLR Construction Accessibility Requirements	18-Oct-17	RAS Program.pdf	5
Locating Temporary Material Supply Plants on Right of Way	15-Apr-02	tempsupplnt_row_saenz_041502.pdf	12
Construction Loads on Bridges	8-Aug-07	usdota5140.pdf	5,15