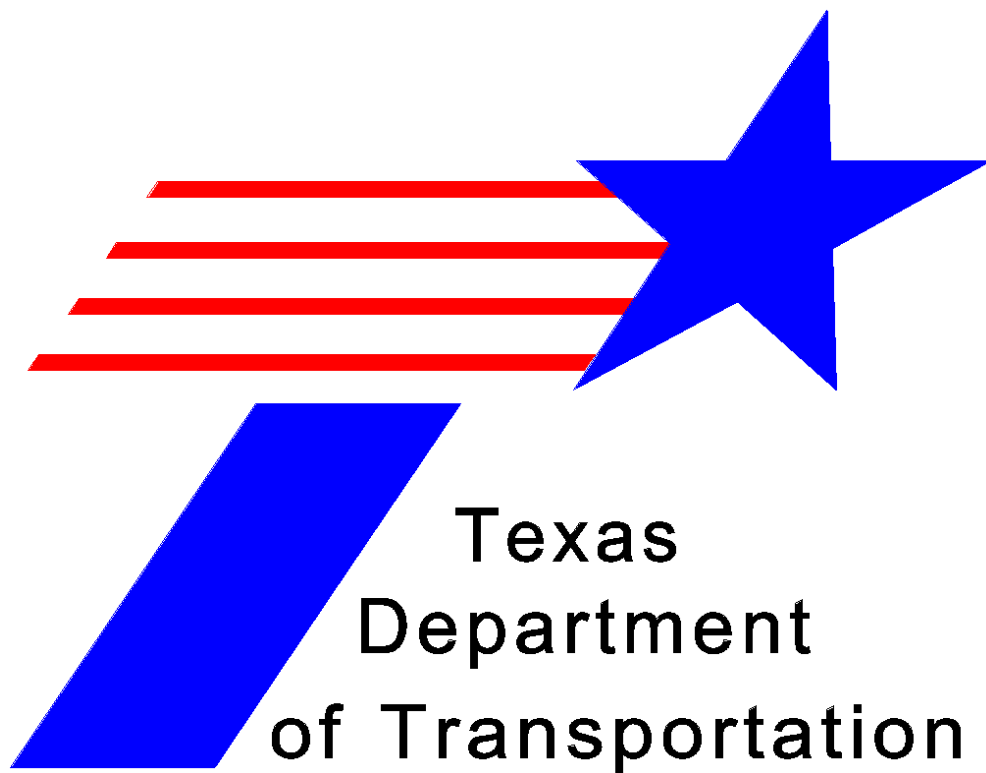


Construction Contract Administration Manual



Revised August 2015

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Manual Notice 2015-1

From: John F. Obr, P. E., Director, Construction Division

Manual: *Construction Contract Administration Manual (CCAM)*

Effective Date: August 28, 2015

Purpose

This manual notice transmits revisions to the manual and provides clarification and additional guidance for the policies and procedures of the Construction Division.

Updates correspond to recently published revisions to Form 599, "Traffic Control Devices Inspection Checklist."

Contents

Chapter 4, "Job Records"

◆ Section 3, "Traffic Control Plan"

- The Department will notify the Contractor of deficiencies at the time of inspection or by the end of the next business day.
- The Contractor will correct noted deficiencies immediately upon notification (Priority 1) or within 7 calendar days of notification (Priority 2), as designated on Form 599.

Contact

If you have questions or require assistance, please contact Roxana Garcia at 512/416-2482.

Archives

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

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Chapter 1 — Introduction

Contents:

[Section 1 — Overview](#)

[Section 2 — Manual Description](#)

Section 1 — Overview

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
- ◆ enforcing state and federal regulations
- ◆ ensuring quality control by overseeing, inspecting and reviewing sampling and testing of all materials and work
- ◆ keeping and maintaining accurate project records
- ◆ recording, verifying and preparing monthly pay estimates
- ◆ negotiating and processing of change orders, supplemental agreements and other contract modifications in a timely manner
- ◆ promoting good public relations and
- ◆ setting 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 design, location, construction and maintenance of its district transportation system. Local field offices within the district are known as area offices. The area office is managed by an area engineer (AE).

Divisions and special offices 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
- ◆ claims analysis and processing
- ◆ materials and testing specifications

- ◆ Business Opportunity Programs (BOP) administration
- ◆ subcontractor policy development and program administration and
- ◆ contractor workforce issues.

Section 2 — Manual Description

Use of this Manual

This manual, prepared by CST, provides DE's, AE's, and their various representatives, including inspectors and record keepers a guide for administering construction contracts. This manual replaces the April 2001 edition of the Contract Administration Handbook for Construction Projects. The name of this document is now changed to the Construction Contract Administration Manual. This manual is one of the components used to manage a successful construction contract. Other TxDOT resource documents include:

- ◆ Standard Specifications for Construction of Highways, Streets and Bridges
- ◆ [Test Procedures](#)
- ◆ [Material Inspection Guide](#)
- ◆ [Material Specifications](#)
- ◆ [Quality Assurance Program](#)
- ◆ [Operations Manual](#)
- ◆ [Laboratory Supervisors Handbook](#)
- ◆ [Estimates Manual](#)
- ◆ [Environmental Manual](#)

How This Manual is Organized

This manual is organized into 17 chapters, as outlined in the following table:

Manual Structure

Chapter	Description
Chapters 1 through 3	Provides a general overview and procedures related to activities before construction work begins.
Chapter 4	Provides guidance on record keeping, including project records and the requirements of the open records law.
Chapter 5	Outlines control of work. Control of work encompasses project authority, work documents, staking the project, inspections, and post construction evaluation.

Manual Structure

Chapter	Description
Chapter 6	Summarizes the control of materials covering material management, sampling and testing, required material forms, and Buy America program.
Chapter 7	Covers changes to the contract, including processing of change orders, other contract agreements, contract termination, etc.
Chapter 8	Outlines contract disputes and department claim process.
Chapter 9	Covers legal relations and responsibilities.
Chapter 10	Prosecution and progress.
Chapter 11	Summarizes the measurement and payment process.
Chapter 12	Provides insight into environmental issues such as hazardous material/waste handling, biological and water resources, and cultural resource management.
Chapter 13.	Provides information on health and safety items.
Chapter 14	Provides an overview of the Business Opportunity Program.
Chapter 15	Covers contractor workforce items such as labor laws and On-the-Job Training.
Chapter 16	Provides information regarding contracts let or administered by local government (LG) entities.
Chapter 17	Various forms, document examples and guidelines

NOTE: Forms not included in Chapter 17 may be found in other manuals, the department's [Forms Catalog](#), CST's intranet site, or the department's [internet site](#).

Manual Update

This manual will be updated to reflect new changes and will continue to be improved. Any suggestions or comments, including questions, will be greatly appreciated. Please submit them to the Construction Division, Labor & Contract Administration Branch (L&CA).

Chapter 2 — Pre-Award Activities

Contents:

[Section 1 — Showing the Project](#)

[Section 2 — Pre-Bid Conference](#)

Section 1 — Showing the Project

Purpose and Process of Showing a Project

When showing a project, provide all interested parties the opportunity to review the project and any pertinent information requested. Keep a record of all questions asked and answers provided. Ensure all interested parties are treated fairly and equitably. Any explanations, information or handouts made available to one prospective bidder must be made available to all prospective bidders. Never make statements regarding the possibility or probability of changes in plans, specifications, or quantities.

If errors are pointed out by a prospective bidder, analyze the errors to determine the overall effect on the contract. Correct major errors prior to the letting by issuing an addendum to all prospective bidders. Minor errors, including but not limited to, minor quantity errors or misspelled words do not require correction prior to letting. For contracts let at the state level, addenda for these changes are released by the Construction Division (CST), Contract Letting and Contractor Prequalification branch (CL&CP). For contracts that are let and administered by local governments, addenda for these changes may be released by the local government after Design Division (DES) approval. Errors affecting contract competitiveness or that create the potential for an unbalanced bid must be corrected (refer to August 9, 2005 memo regarding [Addenda](#)).

Bidding Proposals at the State Level

CST-CL&CP issues all bidding proposals for highway construction contracts publicly opened and read at the state level. Informational proposals are available by request from CST-CL&CP, or at the department's [website](#). Do not provide a contractor any “For Information Only” proposals distributed to a district office. Forward all requests for proposal documents to CST-CL&CP for processing.

Bidding Proposals at the District Level

Obtain administrative approval prior to scheduling a highway construction contract for letting at the district level. Only those highway construction contracts estimated to involve less than \$300,000 are eligible. Either the district or CST may issue bidding or informational proposals for highway construction contracts publicly opened and read at the district level.

Section 2 — Pre-Bid Conference

Introduction

Pre-bid conferences may be conducted 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 contractors 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 Contractor. Make reasonable consideration for individuals who arrive late due to circumstances beyond their control, such as weather related difficulties.
- ◆ Ensure the attendance list contains the contractor representative's signature, the printed name, complete firm's name and address, and telephone and fax numbers.
- ◆ Ensure that the conference is conducted at least two weeks prior to letting.
- ◆ 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 to correct a proposal as bid documents cannot be altered by a pre-bid conference.

Optional Attendance

Pre-bid conferences where attendance is optional may be conducted at the discretion of the district for contracts with special conditions or requirements. Provide notice of the date and time of the optional pre-bid conference to all contractors. Do not exclude a contractor from bidding on a contract because of failure to attend the optional pre-bid conference.

Mandatory Attendance

In accordance with guidance issued by the Attorney General's Office, do not conduct mandatory pre-bid conferences unless absolutely necessary to provide information to bidders that cannot be conveyed in writing. Mandatory pre-bid conferences are not recommended due to contractor con-

cerns 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) 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 contractors attending the mandatory pre-bid conference to CST by telephone or fax the same day of the meeting. Contractors failing to attend a mandatory pre-bid conference will not be eligible to bid.

Chapter 3 — Post-Award Activities

Contents:

[Section 1 — Press Release](#)

[Section 2 — Legislative Notification Requirements](#)

[Section 3 — Pre-Construction Conference](#)

[Section 4 — Partnering Process](#)

Section 1 — Press Release

General

Submit a news release to the newspapers, radio and television stations after the public opening of bids and the Commission's award of the contract. Ensure the release announces:

- ◆ award of the contract
- ◆ brief description of the contract
- ◆ name of the successful contractor
- ◆ the award amount
- ◆ contract highlights and
- ◆ expected duration.

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 your 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
- ◆ actual completion date
- ◆ contact person in the department.

Section 3 — Pre-Construction Conference

Purpose of Conference

At the conference, 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.

Conference Responsibilities and Make-up

Conduct a pre-construction conference with the contractor after the Texas Transportation Commission has awarded the contract and 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
- ◆ 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) and
- ◆ resource agencies ([if an invitation is required] Some projects with conditional permits require resource agency notification.)

Pre-construction Conference Agenda

Prepare a pre-construction conference agenda to discuss specific items. The following table is a sample agenda with discussion topics.

Pre-Construction Conference Agenda

Agenda Item	Topic/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 ◆ major phases of the contract ◆ detailed progress schedule — 3/4 size chart in brief outlining the manner of prosecution of work intended to complete work in 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 hrs. 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.

Pre-Construction Conference Agenda

Agenda Item	Topic/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 ◆ stump dumping, etc. <p>Special requirements — discussion of pertinent items:</p> <ul style="list-style-type: none"> ◆ 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. ◆ 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 (PSL). Refer to Project Specific Location QuickGuide 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 ◆ 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.)

Pre-Construction Conference Agenda

Agenda Item	Topic/Comments
Traffic Control *	<ul style="list-style-type: none"> ◆ review plans, standards, and specifications ◆ discuss signs, barricades and lights: inspection and reports, repair and compliance, special conditions and detours ◆ discuss speed zones ◆ discuss flagging procedures ◆ 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 department responsible person (DRP).
<p>*For more information on temporary traffic control for construction areas, go to 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.</p>	
Traffic Laws	The 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 to be used on project ◆ certification requirements ◆ testing requirements ◆ Quality Control/Quality Assurance (QC/QA) ◆ storage of materials and ◆ inspecting and testing.
Storage of Equipment and Materials	Review specifications especially the need to keep the travel way clear.
Law Enforcement	The responsibility of the area engineer (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.).
News Media	Develop a plan for educating the public about construction activities through media announcements.

Pre-Construction Conference Agenda

Agenda Item	Topic/Comments
Safety Issues* *For more information on construction safety, see Health and Safety Items, and Article 7.7, “Public Safety and Convenience,” of the Standard Specifications.	Ask the contractor to answer the following questions: <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?
Contractor Estimates	<ul style="list-style-type: none"> ◆ testing requirements ◆ partial payments, monthly estimates, closing dates, etc. and ◆ payment for material-on-hand (MOH)
Subcontracts	Letter notifying the department of proposed subcontractors to be used (refer to Article 8.8, “Subcontracting,” of the standard specifications).
Disadvantaged Business Enterprise (DBE)/ Small Business Enterprise (SBE)	<ul style="list-style-type: none"> ◆ Contractors will be advised of requirements in the DBE/SBE special provision. ◆ Contractors should also be directed to contact the area engineer's (AE) office concerning anticipated changes to their DBE/SBE commitment, any disputes, or 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.

Pre-Construction Conference Agenda

Agenda Item	Topic/Comments
EEO, Training and Labor Compliance	<p>Equal Employment Opportunities (EEO) Compliance Program requirements are contained in the following special provisions:</p> <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) <ul style="list-style-type: none"> ● including Form FHWA1391 – Certification of Nondiscrimination in Employment and Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). <p>In addition, the applicable wage determination, the DBE or SBE special provision, and the prompt payment requirement must be included in subcontract agreements.</p> <p>Form FHWA 1273 must be physically attached to all federally assisted contracts, subcontracts, and purchase orders of \$10,000.00 or more.</p> <p>On-the-Job Training:</p> <p>Special Provision 000---807 - On-the-Job Training (OJT) Program, incorporated into all federal-aid highway improvement contract, was made effective with the January 2007 state letting. TxDOT’s Office of Civil Rights - Contract Compliance Section (OCR-CCS) 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 supported. Participating contractors must enroll, train and graduate a number of trainees sufficient to meet their assigned annual trainee goal.</p> <p>Prevailing wage rate requirements:</p> <p>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> <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 federal-aid construction projects. On 100% state funded construction contracts, the contractor or subcontractor must keep the payroll records and make them available for review by the department. <p>Bulletin Board Requirements:</p> <p>The U.S. Department of Labor, Federal Highway Administration, 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> <p>EEO Meeting Requirements:</p> <p>EEO meetings with supervisory and personnel office employees must be conducted before the start of work and then at least once every six months. EEO meetings with non-supervisory employees must be conducted at least annually.</p>
Partnering	<ul style="list-style-type: none"> ◆ issue escalation and ◆ rocks in the road (review of potential problems).

Pre-Construction Conference Agenda

Agenda Item	Topic/Comments
Other Matters	◆ procedures ◆ shop drawings ◆ erection details ◆ forming details.
Comments and Adjourn	summary and follow up, etc.

Section 4 — Partnering Process

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:

- ◆ handle problems 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 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.

For additional information related to Partnering, please refer to the department's [website](#).

Procedure

Review the contract to determine the requirement for a partnering meeting. Partnering meetings may be mandatory or voluntary. Voluntary meetings are at the discretion of both the department and the contractor.

Complete the following tasks to arrange a partnering meeting:

- ◆ compile a list of the individuals and entities who should participate in the initial partnering workshop:
 - department personnel (i.e., inspectors, recordkeepers, project engineers, etc.)

-
- contractor personnel (i.e., foremen, superintendents, and project managers, etc.)
 - representatives of all interested parties (i.e., subcontractors, material suppliers, city and county officials, utility companies, etc.)
 - ◆ Select either an external facilitator from the [Partnering](#) Facilitation Services Vendor List or an internal facilitator from the approved list. The facilitator is 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
 - ◆ If using an external facilitator, obtain [written](#) evaluations from all meeting participants and forward to CST, Labor and Contract Administration Branch (L&CA). Evaluations are not required for internal facilitators.
 - ◆ forward significant concerns regarding overall facilitator performance (external or internal) to CST-L&CA.
 - ◆ If requested, reimburse the contractor for half the costs of the partnering meeting. The contractor may elect to pay the full cost.

The initial partnering meeting may last from one-half day to two calendar days and may be held prior to or in combination with the pre-construction conference.

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 — Job Records

Contents:

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

[Section 2 — Public Information Act](#)

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

[Section 4 — Project Records](#)

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;
- ◆ 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.

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 if a formal dispute or formal claim is made.

Electronic Records

Computers and automation equipment may be used for the collection, storage, and retrieval of documentation generated for a Contract. Electronic collection and retention of records 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. Records must meet the following requirements:

- ◆ include information recorded at or near the time of the events,
- ◆ include information recorded by or from a person with direct knowledge of the event,
- ◆ be kept during the course of business,
- ◆ 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,
- ◆ provide authorized users retrieval capability,
- ◆ include adequate software programs and hardware dependency documentation (e.g. Primavera, SureTrak, SiteManager),

- ◆ provide an accurate audit trail by indicating the steps followed in processing the data and the methods used to prevent loss of data, and
- ◆ be stored on appropriate media.

Correspondence

Handle all correspondence according to approved District practices.

Section 2 — Public Information Act

Overview

The Public Information Act, formerly known as the Open Records Act, is located in Chapter 552 of the Government Code and 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.

Section 3 — Traffic Control Plan (TCP)

Construction or Work Phase Requirements

Each work zone should 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)*, and the *Compliant Work Zone Traffic Control Device List*;
- ◆ ensure formal inspections are conducted using Form 599, "Traffic Control Devices Inspection Checklist";
- ◆ notify the Contractor of discrepancies at the time of inspection or by the end of the next business day;
- ◆ 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 (PI) Office with information required for implementation of PI 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.

Document these detailed inspections by photograph, video, Traffic Control Devices Inspection Checklist (Form 599), memorandum, or other media.

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.
- ◆ 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.
- ◆ Cleanliness and position of all traffic control devices must be maintained to ensure the devices perform as intended.
- ◆ Traffic markings on the pavement surface must provide adequate guidance to motorists throughout the work zone. Non-applicable markings must be removed. 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.
- ◆ Traffic control devices must convey consistent messages to motorists. For example, if the right lane is closed, the advance warning signs, striping, channelizing devices, and arrow boards must be consistent with that situation.

Deficiencies must be corrected at the time of inspection or as soon as possible.

Formal Inspection Documentation

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

All project information at the top of Form 599, including any deficiencies and recommended corrective actions, may be completed by hand or electronically at the time of inspection.

To use electronic copies of the completed Form 599 as the record copy, all fields must be completed electronically. This includes the signatures of both the Department representative and the Contractor. If an electronic version is the record copy, it must be stored in a separate file named "Project Number - Form 599."

If electronic signatures cannot be generated to "sign" Form 599 as the record copy, a printed hard copy or handwritten original must be signed and dated. Complete and file the signed and dated original following the instructions on the back of the form.

Regardless of format, 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 and time for each, and initial the verification section.

Informal Inspections and Procedures

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 copies of the form.

Immediately forward requests for copies of the form to the Office of General Counsel (OGC) 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. Failure to seek an OAG ruling may result in required disclosure of information that federal law requires the Department to protect as a condition of Federal Highway Administration (FHWA) funding.

TCP Change Documentation

With the exception of Contractor-proposed changes, the Department is responsible for the design of the TCP and approval of any modifications. 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.

Section 4 — Project Records

Notice of Beginning Work

After the pre-construction conference and prior to beginning work, the Area Engineer (AE) will send the Director of Construction (DOC) a Notice of Beginning Work. The notice, which may be sent by email or fax, includes:

- ◆ project number;
- ◆ CCSJ;
- ◆ date work will begin;
- ◆ AE's name, address, and telephone number; and
- ◆ contractor's name, address, and telephone number.

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 in 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 and contains the following:

- ◆ all planned work activities and sequences,
- ◆ note if Contract completion will occur within the number of working days specified,
- ◆ 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.

Project Diary

Maintain a project diary. A properly maintained project diary provides invaluable documentation of the prosecution of work and related events. Record working day charges and important events, activities, and discussions that occurred on the project. For projects involving multiple inspectors, the project Engineer or chief Inspector may maintain the general project diary, while all other inspectors file diary supplements to the general diary.

Maintain and update the project diary daily in such a manner that new personnel may take over the inspection work and maintenance of the diary at any time.

The SiteManager Daily Work Report (DWR) is the official project diary for construction projects. The official location to record time charges for construction projects is the SiteManager Diary.

DWR entries include:

- ◆ date;
- ◆ weather conditions;
- ◆ Contract time charged and reasons for days credited (SiteManager Diary);
- ◆ work in progress, including temporary erosion control;
- ◆ location of work (station numbers and offsets);
- ◆ approximate quantities of work;
- ◆ Contractor's and subcontractor's work force;
- ◆ arrival and departure of equipment;
- ◆ quantity and type of equipment and activity at the project site;
- ◆ important instructions to the Contractor;
- ◆ names of official visitors and a summary of any discussions with the visitors;

- ◆ unusual construction or work conditions;
- ◆ decision-making discussions with the Contractor;
- ◆ direction provided to the Contractor;
- ◆ detailed information that may have a connection with a probable dispute or claim against the Department;
- ◆ utility or other construction conflicts;
- ◆ 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 diary 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.)

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.

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, scales inspection, 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," of the *Standard Specifications*.

Document any revisions to the material testing schedules. Ensure that material 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.

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 project diary accordingly.

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 project diary.

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.

Working day charges may not be changed once entered and approved in SiteManager. All adjustments to add or reduce the number of Contract working days must be granted by change order.

Anticipated Project Completion Letter

At least 10 calendar days prior to contract completion, send an Anticipated Project Completion letter to the appropriate state senator and representative.

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.

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)

After preparation, send all COs to the Construction Division, Construction Section (CST/C), for further processing. CST/C will notify the Finance Division (FIN) and distribute copies as needed. For auditing purposes, all COs with original signatures are filed with the contract.

Supplemental Agreements (SA)

Send all SAs to the Construction Division (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;
- ◆ verify the Disadvantaged Business Enterprise/Small Business Enterprise (DBE/SBE) goal has been met [if not, obtain approval from the Office of Civil Rights (OCR) prior to processing];
- ◆ 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 FIN, Accounting Management Branch, no later than 60 calendar days after the FE

approval. The Accounting Management Branch 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

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 a project. Semi-annual reports are required for the following time periods:

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

Complete this form for each project and submit to CST/C.

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

Complete Form 2235 for all federal-aid projects administered under the State Letter of Authority (SLOA). 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.

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"

Ensure that each Contractor and subcontractor submit FHWA-1391 by August 5 for each Contract. The form should reflect all employees working during peak activity during the month of July. Subcontractors may submit this form through the prime Contractor or directly to the Department. Reports indicating no activity are required when no work is performed during the month of July. Subcontractors with Contracts of less than \$10,000 are exempt from this requirement.

Review and sign Form FHWA-1391 as the “reviewer.” Distribute one copy to the AE Contract file and one copy to the District office.

Consolidate the results of all completed forms FHWA-1391 received from Contractors within a District on Form 1392, "Summary of Employment Data." Submit Form FHWA-1392 along with all FHWA-1391 forms received to OCR by August 15.

Records Retention

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

Chapter 5 — Control of the Work

Contents:

[Section 1 — Project Authority](#)

[Section 2 — Work Documents](#)

[Section 3 — Construction Surveying](#)

[Section 4 — Inspections](#)

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 [contractor](#) may dispute the instructions through proper channels when in disagreement with the engineer’s decisions.

Usually, the methods or procedures used in doing the work are the responsibility of the contractor. If the [specifications](#) or [plans](#) specify the methods or procedures to follow in 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.

Issue written direction or approval to the contractor in a timely manner as needed and when required by the contract. Note verbal direction or approval provided to the contractor in the project diary. Subsequent to verbal direction or approval, issue a written notification to the contractor documenting the engineer’s actions.

Authority and Duties of Inspectors

Article 5.7, “Inspection,” of the [Standard Specifications](#) outlines department inspector authority and responsibilities. Inspectors are authorized to inspect all the work, materials, and equipment used on the project. 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 and contractor performance to the engineer
- ◆ 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
- ◆ documenting all matters related to the prosecution of the contract and the progress of the work as required for payment in the project diary
- ◆ following the plans and specifications and acting as the authorized department representative.

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.

Contractor's Superintendent

In accordance with Article 5.5, "Cooperation of Contractor," of the Standard Specifications, 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. Work may be suspended if a qualified superintendent is not available, however working day charges will not be suspended.

Section 2 — Work Documents

Plan Quantities

Article 5.3, “Conformity with Plans, Specifications, and Special Provisions,” of the Standard Specifications states the following regarding payment for materials:

The department will not pay for material rejected due to improper fabrication, excess quantity, or any other reasons within the Contractor’s control.

Article 9.2, “Plans Quantity Measurement,” of the Standard Specifications states the following regarding plans quantities:

Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised by the governing specifications or this Article.

Article 9.3, “Scope of Payment,” of the Standard Specifications states the following regarding payment for material:

The Department will only pay for material incorporated into the work in accordance with the Contract. Payment of progress estimates will in no way affect the Contractor’s obligation under the Contract to repair or replace any defective parts in the construction or to replace any defective materials used in the construction and to be responsible for all damages due to defects if the defects and damages are discovered on or before final inspection and acceptance of the work.

Excess materials acquired by the state are handled by using the following procedures:

- ◆ The [contractor](#) suitably stores or stockpiles materials and the materials meet specifications at the time the contractor turns them over to the state.
- ◆ A duly executed change order (CO) between the state and the contractor shall cover the acquisition.
- ◆ After completion of the CO and the work, make payment to the contractor by including the agreed compensation in the next estimate.
- ◆ If the materials are not to be used on the contract involved, then charge the cost to the district stock account.

Refer to [“Receipt from Contract”](#) from the *Materials and Supply Management System (MSMS) Users’ Manual* for more instructions on transactions involving materials that will be charged to the district stock account. Purchase excess material from the contractor due to significant quantity

errors in the plans. Reimburse the contractor at the material invoice price. An additional add-on of 5% is permissible.

NOTE: When purchased materials are not used on a federal-aid project, note the material cost as "non-participating" on the final estimate and the CO.

Traffic Control

Erect warning and regulatory signs called for in the [traffic control plan](#) (TCP) at the appropriate locations. Use signs only when necessary. Cover signs placed prior to their need and do not leave in place longer than necessary. Remove or cover signs that restrict the speed limit in a construction or maintenance work zone during any period for which restricted speed limit does not apply. Discuss the timing of sign erection and removal requirements at the pre-construction conference.

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

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

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 a reduced maximum speed limit authorized by [Commission](#) Minute Order or City/County Ordinance, reduced speed limits are in effect only within the limits between the erected speed limit signs. Regulatory speed zone signs must have an applicable Commission Minute Order or City Ordinance.

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.

For more information on construction speed zones, see [Procedures for Establishing Speed Zones](#) volume of the Traffic Operations manual collection.

Locations of speed zones signs shall be set by the engineer. Ensure speed limit signs erected on posts are properly covered at all times when the reduced speed limits are not necessary. Remove construction speed limit signs when reduced construction speed limits are not necessary for the operation in progress.

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), and the *Traffic Signals Manual* volume of the Traffic Operations manual collection.

Traffic Control Plan (TCP) Documentation

Document the TCP activities in the diaries and on [Form 599](#). If accidents occur, limit the documentation to the incident, date and time. In addition to Form 599 inspections, document compliance with contract requirements and deficiencies with the date of correction in the contract diary on a more frequent basis than that required for the 599 inspections.

Perform a detailed inspection of TCP's in the field immediately after traffic alignment changes. Documentation of these detailed inspections may be made by photograph, video, use of Form 599, memorandum or other media.

Document 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, videos and photographs of detailed inspections, accident investigations, and other specific inspection documentation separate from the project files with a folder labeled "DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 USC §409."

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

The following OGC 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 OGC to withhold these checklists, but not unless each time a request is received, OGC 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 [ADA](#) Inventory Data Entry (access rights required) on the Design Division (DES) [Intranet](#) web page is current. As construction improvements take place, it is critical that this database be updated in order to track and report department progress to the Federal Highway Administration (FHWA) on an annual basis.

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 OGC. Forward all open records requests associated with the contents of this file to OGC as soon as the request is received. OGC 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, “Plans and Working Drawings,” of the Standard Specifications. Handle the review and approval of these drawings and other required information according to instructions found in the specifications. Use the “[2004 Construction Specification Required Shop/Working Drawing Submittals](#)” for requirements associated with working drawing submittals.

Coordination of Contract Documents

Article 5.4, “Coordination of Plans, Specifications, and Special Provisions,” of the Standard Specifications states the following regarding the coordination of plans, specifications and special provisions:

The specifications, accompanying plans (including additional plans for non-site specific work), special provisions, COs, and supplemental agreements are intended to work together and be interpreted as a whole.

Numerical dimensions govern over scaled dimensions. Special provisions govern plans (including general notes), which govern over standard specifications and special specifications. Job-specific plan sheets govern over standard plan sheets.

However, in the case of conflict between plans (including general notes) and specifications regarding responsibilities for hazardous materials and traffic control in Items 1 through 9 and Item 502, “Barricades, Signs, and Traffic Handling,” special provisions govern over standard specifications and special specifications, which govern over plans.

Section 3 — Construction Surveying

Overview

Construction stakes are set to establish lines and grades for roadway work. They also establish centerlines and benchmarks for bridge layouts. Ensure that these stakes are set sufficiently in advance of the work to avoid delay of the project and in accordance with Article 5.6, “Construction Surveying,” of the Standard Specifications. Ensure that survey control documentation is verified in accordance with the revision to [“Survey Control Documentation”](#) memo dated January 12, 2006.

Use Method A unless otherwise specified in the contract. Allow the contractor to copy available earthwork cross-sections, computer printouts or data files, and other information necessary to establish and control work. Deduct the cost of work performed by the department to repair disturbed control points, stakes, marks, or right of way markers from money due to the contractor.

Measurements and surveys may be made to determine pay quantities and the accuracy of the work. These measurements and surveys do not relieve the contractor’s responsibility for accuracy of the work.

Method A

Set control points for establishing lines, slopes, grades, and centerlines and for providing both vertical and horizontal control at maximum intervals of 1,500 ft. The contractor will furnish materials, equipment, and qualified workforce necessary for the construction survey work. The contractor will also place construction points, stakes, and marks at intervals sufficient to control work to establish tolerances. Ensure that construction stakes are placed at intervals of no more than 100 ft., or as otherwise determined. Ensure that stakes and marks do not interfere with normal maintenance operations.

Method B

Set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines. The contractor will furnish additional work, stakes, materials, and templates necessary for marking and maintaining points and lines.

Method C

The contractor will set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines.

Contractor Responsibility

The contractor is responsible for:

- ◆ maintaining the integrity of control points
- ◆ preserving all control points, stakes, marks, and right of way markers
- ◆ cost and responsibility of replacing disturbed control points, stakes, marks, and right of way markers.

Section 4 — Inspections

Inspection by the Department

Inspect the work to determine if performance is according to the contract. The [contractor](#) is required to provide safe access to all parts of the work and provide information and assistance to the engineer to allow a complete and detailed inspection. The contractor is required to provide the engineer with sufficient notice in order to inspect the work. When practical, provide suitable inspection as the work is being done. Article 5.7, “Inspection,” provides that inspection or lack of inspection will not relieve the contractor from obligation to provide materials or perform the work in accordance with the contract. Article 5.7 does not justify **inadequate, unsuitable, or negligent** inspection. Document the inspection of survey work in the project diary.

Defective and Unauthorized Work

Inform the contractor of failures to meet contract requirements. Do not alter, add, or waive contract provisions, issue instructions contrary to the contract, act as foreman for the contractor, or interfere with the management of the work. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the engineer.

Inspectors may direct the contractor to remove or uncover portions of finished work for inspection purposes. Once inspected, the contractor will restore the work to contract requirements. If the uncovered work is acceptable, reimburse the contractor for the cost to uncover, remove, and replace or make good the parts removed in accordance with Article 4.2, “Changes in the Work.” If the work is unacceptable, the contractor will assume all cost associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed.

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 5.8, “Final Acceptance,” of the Standard Specifications, work completed includes work for vegetative establishment and maintenance, test, and performance periods and work to meet the requirements of Article 4.6, “Final Cleanup.” After all work is complete, the engineer in charge of the work will request a final inspection. Conduct the final inspection as soon

as possible but not later than ten calendar days following the engineer's request. Do not charge working days between the date of the request and the final inspection.

If the work is satisfactory after the final inspection, notify the contractor in writing of the [final acceptance](#) of the work. Final acceptance relieves the contractor from further contract responsibilities. If the final inspection finds any work to be unsatisfactory, provide the contractor a written list of all deficiencies in the work requiring correction. Resume working day charges if these deficiencies are not corrected within seven calendar days, unless determined otherwise. Inspect the work to verify that all deficiencies were corrected satisfactorily. Provide the contractor written notice of the final acceptance.

Exempt Federal-aid Projects

In accordance with the Federal Oversight Agreement dated October 13, 2006, the department assumed FHWA responsibilities for the program, design, and inspection of certain federal-aid projects. Each district must develop a state oversight review program to ensure that all pertinent FHWA regulations and policies are followed in the construction of a federal-aid contract under state oversight. CST is responsible for the overall state oversight program and, in conjunction with FHWA, has developed a suggested state oversight [project review plan](#). All district oversight review programs must be submitted to CST for review and approval.

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 one of the following categories:

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

*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 (see , [Section 4 — Project Records](#) for additional instructions).

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

The [Texas Architectural Barrier Act of 1991](#) (TABA) requires accessible construction in Texas. It is similar, but not identical, to the federal [Americans with Disabilities Act](#) (ADA). TABA empowers the Texas Department of Licensing and Regulation (TDLR) to develop the [Texas Accessibility Standards](#) (TAS), and to inspect for compliance with these standards. Again, the standards are similar, but not identical, to the federal ADA Accessibility Guidelines (ADAAG). Ensure the construction of pedestrian facilities complies with both the TABA and ADA which are the state and federal laws that provide access to persons with disabilities.

PS&E review will have been coordinated with TDLR to ensure compliance with the guidelines established in the TAS during the time plans are reviewed by the appropriate TxDOT division office. Project inspection by TDLR is required when the construction cost of the pedestrian elements totals more than \$50,000.00. Inspections are also required for all buildings and hike and bike paths. When a TDLR inspection is required, inform TDLR staff using the procedure below and coordinate an appropriate time for a site visit and inspection of pedestrian-related elements. TDLR inspection requirements will usually be noted on the title sheet. Schedule this inspection at least two weeks prior to completion of the work so the inspection can occur as soon as the pedestrian-related elements are complete. Submit all requests to TDLR in Austin. Do not contact a local registered accessibility specialist regarding the inspection.

NOTE: These inspections do not make TDLR a party to the contract.

Follow these steps to request a TDLR inspection:

1. Complete a [DLR Inspection Request](#) form (TDLR project number, such as EABPRJ#, may be found on the TDLR review comments transmitted from the Design Division [DES]).
2. Fax the form to TDLR.
3. Contact CST, Field Engineering Branch (FE) for assistance if arrangements for the inspection have not been made, or the inspection itself has not been conducted, within two weeks.

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.

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 can-

not 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.

Chapter 6 — Control of Materials

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Section 1 — Material

Background

Control of materials involves field, district, the Construction Division (CST), and commercial and manufacturer's laboratories. Post the District Sourcing Letter, which lists material [suppliers](#) (CIS Report [CIS36](#)), 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 material 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 (i.e., reworked, re-tested, disposed of, etc.).

Contract specifications identify which tests are used for each material. The sampling and control of materials are in the appropriate testing procedures and the [Guide Schedule of Sampling and Testing](#). 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.

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 tested and approved at a supply source or staging area may be reinspected or tested before or during incorporation into work, and rejected if it does not meet Contract requirements.

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.

Material Source Information

For all project materials, obtain accurate and complete material source information in accordance with Standard Specifications 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 material 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,” which states:

If requested, provide a complete written statement of the origin, composition and manufacture of materials.

Do not allow materials containing recycled hazardous waste. Standard Specifications Article 1.58 defines 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 material (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." Standard Specifications Article 1.83 defines NRMs as:

A material recovered or diverted from the nonhazardous waste stream for the purposes of reuse or recycling in the manufacture of products that may otherwise be produced using raw or virgin materials.

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 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 List for NRMs at <ftp://ftp.dot.state.tx.us/pub/txdot-info/cmd/mpl/nrm.pdf>, may be accepted for use without documentation of environmental suitability. However, for wholly state or locally funded projects where retainage is withheld, contractors may use the [CSTM-NRM-1](#) to document their use and qualify for reduced retainage.

Other NRMs require environmental evaluation and documentation, and must be reported on the [CSTM-NRM-2](#). Contact the Environmental Affairs Division (ENV), Hazardous Materials Management Section or the General Services Division's (GSD) Recycling Coordinator for additional information and guidance.

Local Material Sources

Local material 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 material source.

When specified in the contract as “**Required**,” the contractor must use local material sources. The department assumes full responsibility for the quantity of acceptable material 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 material from an alternate source. As appropriate, include the cost of dismantling, moving, and reassembling equipment, additional haul, and other additional costs associated with material production in the payment.

When specified in the contract as “**Listed**,” the contractor may use local material sources for which the department has secured options or easements on sources to allow access to the material 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 material at the listed sources. In lieu of using the listed source, the contractor may provide acceptable material from another source at his or her expense.

Material Certification from the Contractor

Material certifications provided by the contractor from the manufacturer may be used as a basis for accepting certain materials (i.e., 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). Assume 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 material storage facilities to determine if the materials are stored in a manner that will prevent their deterioration. 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.

Stockpiling Aggregates

The contractor is responsible for maintaining the quality of accepted stockpiled material. 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 material. If required by the [contract](#), conduct acceptance sampling from the windrow.

Purchasing Excess Materials

Excess materials may be acquired from the contractor as follows:

- ◆ Contractor suitably stores or stockpiles materials.
- ◆ Materials meet contract requirements at the time the State takes ownership.
- ◆ Change order (CO) is executed to 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 ["Receipt from Contract"](#) in the *Materials and Supply Management System (MSMS) Users' Manual* for more instructions on transactions involving materials.

NOTE: When purchased materials are not used on the federal-aid project, note the material cost as “non-participating” on the final estimate and/or the CO.

Section 2 — Material Testing

General

Provide test results in accordance with the [contract](#) and upon request in a timely manner so 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
 - acceptance
 - monitoring.
- ◆ Independent Assurance Tests.

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	Passing material is acceptable. Failing material is: ◆ rejected and replaced OR ◆ reworked and re-tested OR ◆ accepted at reduced price for specific items only.	Usually in the AE laboratory; other cases, district laboratory, CST-M&P's laboratory or outside laboratory.
Project: Monitoring	Pass or Fail	Passing material is acceptable. Failing material may be accepted; however, contractor must modify the process to bring the product into a passing condition.	Usually in the AE laboratory; in other cases, district laboratory or outside laboratory.
Independent Assurance (IA)	Meets tolerance or does not meet tolerance	Compare the Independent Assurance test to acceptable tolerances established in the Quality Assurance Program for Construction . Document results of the comparison. If the result is out of tolerance, determine the cause and takes remedial action.	Any qualified laboratory. NOTE: If IA testing is performed by a non-departmental laboratory, the laboratory must be accredited by the AASHTO Accreditation Program. The same technician must not perform both the project and IA tests.

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 the Quality Assurance Program for Construction, [Laboratory Qualification Program](#). Examples of equipment needing calibration include, but are not limited to: beam breakers, air meters, nuclear gauges, volumeters, and scales. Display the date of the last check or calibration on each piece of testing equipment. Maintain calibration documentation in accordance with the Quality Assurance Program for Construction, Laboratory Qualification Program.

Project Tests

Use either acceptance or monitoring tests to verify that the material conforms to the contract requirements.

Acceptance Tests

Use acceptance tests to determine if the quality of the materials or the quality of the construction work satisfies contract requirements. Select one of the following solutions when an acceptance test fails:

- ◆ reject and remove
- ◆ rework, then retest for acceptance or
- ◆ accept and adjust the unit price as provided by the contract.

Monitoring Tests

Use monitoring tests to determine if the contractor's operations or materials need adjustment. Instruct the contractor to adjust operations to comply with the contract. The area engineer (AE) does not reject and remove materials or products represented by a failing test unless the AE determines that it is clearly unacceptable for the purpose intended.

Independent Assurance Program

The [Independent Assurance](#) (IA) Program goals are to ensure the accuracy of the equipment and procedures and techniques used by testing personnel. The department employs the system approach to accomplish these goals.

System Approach

Compared to [Section — Project Tests](#), the system approach reduces the amount of testing required. Use the system approach and implement testing schedule for testers, laboratories, and testing equipment qualified in accordance with the Quality Assurance Program for Construction. Ensure that IA sampling and testing is conducted by split or proficiency samples and complies with the [Frequency for System Approach Independent Assurance Testing](#). Do not accept or reject material based on the results of IA testing.

Forms and Reports

Complete and send the following forms and reports to the proper division in Austin:

Forms and Reports Submitted to Austin

Form No.	Form Title	Reference Publication
168 **	Pile Record	<i>Construction Bulletin C-8 – Pile Driving Manual</i>
181 **	Test Pile Data	<i>Construction Bulletin C-8 – Pile Driving Manual</i>
1276 **	Drilled Shaft Records	<i>Construction Bulletin C-9 – Drilled Shaft Manual</i>
269 *	Monthly Record of Material Received	CST-M&P, Operations Manual
202	Identification of Material Samples	CST-M&P, Operations Manual.
517	Tag Envelope	CST-M&P, Operations Manual
*Required only if the contract is not on computer (such as emergency contracts).		
**Forms available through the TxDOT Intranet only.		

Complete the following forms or equivalent substitutions, according to instructions issued by the district engineer and maintain in the district project file:

Forms and Reports Maintained in District Files

Form No.	Form Title	Reference
187	Daily Road Report – Asphalt	Construction Records to Support Pay Quantities of Work Done on Contract Construction Projects
311 Rev.	Daily Road Report – Concrete Pavement	Construction Records to Support Pay Quantities of Work Done on Contract Construction Projects
590	Weekly Summary of Embankment Sub-base or Base Material Tests Results	May be used as construction records to support pay quantities of work done on contract construction project. No longer required.
596	Concrete Batch Tickets	Item 421

Portland Cement Concrete Plant Inspection

A department inspector must be present at the concrete batch plant when batching concrete for:

- ◆ bridge decks
- ◆ concrete with high range water reducer
- ◆ concrete for post tensioned members
- ◆ mass concrete with temperature control
- ◆ critical concrete such as latex-modified concrete
- ◆ instances when the maturity method is used for estimating concrete strength
- ◆ instances specified by the engineer.

The inspector will ensure:

- ◆ practices, such as stockpiling and loading at the plant, contribute to maximum uniformity and durability
- ◆ only materials conforming to the contract are used
- ◆ batching and mixing practices are satisfactory.

Quality Monitoring Programs (QMP)

The [QMP](#) provides the requirements and procedures for product acceptance and allows the use of materials from qualified rated sources without project testing by CST-M&P. Subject only Aggregate Quality Monitoring Program (AQMP) materials to job control tests for final acceptance. Refer to the CST-M&P [Operations Manual](#) for a list of materials covered by the QMP.

[“Tex-499-A, Aggregate Quality Monitoring Program,”](#) for example, provides continuous quality assurance of aggregate products, including:

- ◆ quality monitoring of aggregate products representing normal production at a single source
- ◆ statistical evaluation of recent aggregate quality test histories (aggregate suppliers are added to AQMP based on test history of aggregated products)
- ◆ assurance of sufficient aggregate resources by reducing project tests prior to use.

Refer to the [“Materials Directory”](#) in the *Operations Manual* to obtain detailed information and rules regarding the QMP for specific materials.

Sampling and Testing

Guide Schedule tables [1993/1995 Specifications](#) or [2004 Specifications](#)) apply to all construction 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 QC sampling and testing may be used as part of the acceptance decision. In all other cases, contractor testing is for information only and is conducted at the contractor's expense. Unless specified in the contract, do not replace department testing with contractor testing.

For non-exempt federal-aid (Federal Letter of Authority [FLOA]) projects, use the "[Letter of Certification of Materials Used](#)" to document reasons for material acceptance when a test fails. Do not include failing material which has been reworked, re-tested, and meets the specifications in the list of exceptions in the documentation.

For exempt federal-aid (State Letter of Authority [SLOA]) projects and state projects, document the justification and explanation for acceptance of materials that fail project tests in the project file.

Section 3 — Buy America

Overview

Unless otherwise specified in the contract, Standard Specifications Article 6.1.A, "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:

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

A comprehensive overview of the "Buy America" program may be found in the [Material Inspection Guide](#).

TxDOT Form 1818, "Material Statement" (with proper attachments) should be furnished for all material not inspected and test reported by CST-M&P. 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, General Services Division or CST-M&P) 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 CST-M&P Structural Branch for further handling. CST will assist in resolution and, if needed, forward recommendations to OGC for legal actions.

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 Article 6.1.B, “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:

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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. Follow the procedures outlined in the [Engineering, Architectural & Surveying Services Manual](#) when preparing COs to collect reimbursement for consultant errors and omissions.

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. Include cost breakdowns and price justifications for any added items. Unit prices that are comparable to bid prices for the same character of work are acceptable without additional justification. Obtain assistance from the Construction Division (CST), Field Engineering Branch (FE), Design Division (DES), or the district construction office, 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.

Article 4.2, "Changes in the Work," of the Standard Specifications provides that the work may proceed under Article 9.5, "Force Account," or by making an interim adjustment to the contract when an agreement cannot be reached with the contractor or the contractor refuses to sign the CO.

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, Article 1.75 of the Standard Specifications defines a major item as follows:

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 these 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
 - 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 due to consultant errors where reimbursement is received from the engineering firm as compensation for error, credit the reimbursement amount to the contract.

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 either the appropriate DES, Field Coordination Section or to the Bridge Division (BRG) for approval. Ensure that any COs meeting either of the following conditions are signed and sealed by a licensed professional engineer:

- ◆ proposing major modifications to the TCP or
- ◆ modifying structural designs.

Use a supplemental agreement for project termination.

Send an electronic copy of all COs to the Construction Division (CST).

Show all information and quantities about the proposed change on the CO. A performance bond is not required if the CO increases the contract cost above the \$100,000 threshold.

Consider using [Form 2146](#) (Change Order Checklist tab) to assist in CO preparation. For COs requiring administrative approval, include a completed copy of the checklist with the transmittal letter of the CO package forwarded to CST-L&CA to expedite the CO approval process.

If an agreement is not reached with the contractor regarding the scope of work and basis of payment for the CO, indicate on the CO form whether the work will proceed under force account or interim adjustment to the contract.

Use the following table for CO preparation:

Preparing Change Orders

Step	Action
1	Determine the most feasible solution while ensuring that PS&E parameters are satisfied. Estimate the cost of the proposed work using contract costs and information provided by the contractor.
2	Number each CO consecutively. Note: Do not reuse CO numbers.
3	Insert the contractor's name as it appears in the contract.
4	Reference the controlling control-section-job number (CCSJ) on a project containing several control-section-jobs (CSJs). <ul style="list-style-type: none"> ◆ Costs are usually prorated to all CSJs in the contract. ◆ When changes apply to a specific CSJ on the CO, mention it in the CO under the 'Explanation' field for SiteManager contract COs, or item 5, 'Describe the work being revised' field for CIS contract COs.
5	Show the limits of the proposed change in station-to-station numbers.
6	Indicate if a change is major or minor according to the definition in this manual for federal-aid (Federal Letter of Authority [FLOA]) projects.
7	For FLOA projects, indicate in the "For Department Use Only" box any federal non-participating amounts and days. A single CO cannot be set up as both federal participating and non-participating in SiteManager.
8	State the reason(s) for the CO listing the primary reason(s) if needed. Refer to Form 2146, Change Order (Code Chart tab) for CO reason codes. Use the Change Order Reason Code Guidance document to determine the proper reason code(s).
9	Describe clearly and concisely a description of and the reason for the work to be done. If a time extension (TE) is granted, state the reason for granting time.
10	Show only those bid items involved in the change, plus any force account work, items, quantities, or prices.
11	Attach a half-size copy of the applicable drawings.

Preparing Change Orders

Step	Action
12	If additional time is granted as part of the CO, number the TE consecutively and include in the appropriate blank on the CO form.
13	If the CO involves third party funding, complete the funding notification form, Form 2146, Change Order (3rd Party Funding tab). 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. Coordinate with FIN to ensure that any monies owed by the third party are collected. See ‘Advance Funding Agreements’ under “Other Factors That May Affect Change Orders” for additional requirements.
14	Sign and seal COs in accordance with the " Procedures for Sealing Engineering Documents " outlined in the Design Division (DES), Project Development Policy manual .
15	Submit electronic copy of CO to CST. NOTE: For COs requiring administrative approval, include the Change Order Approval Checklist.

Environmental Review of Change Orders

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

Change Orders Requiring CST Review

CST must review all COs requiring the Assistant Executive Director for Engineering Operations (AED, EO) or Federal Highway Administration ([FHWA](#)) approval (FLOA projects). Submit these COs to CST-L&CA with a transmittal memo and a completed Change Order Approval Checklist. Include in the transmittal memo, at minimum, the following information:

- ◆ name of the person or firm that prepared the [plans](#)
- ◆ reason for the change
- ◆ status of the work
- ◆ cost breakdown and price justification for newly added items (Price justification from a contractor or a district is not required if the price compares favorably to current district or statewide average prices for similar work. Only a statement or the transmittal memo to that effect is needed.)
- ◆ district and statewide average bid prices for newly added items
- ◆ environmental clearance
- ◆ coordination with DES for pedestrian elements that exceed the TDLR \$50,000 threshold

- ◆ district bank balance category that may be used to fund the CO.

Include, in the transmittal memorandum to CST-L&CA, a statement of justification for the cost breakdown and price for newly added items similar to the following:

Cost justification has been reviewed and supports the cost for this work on this project. The proposed unit price(s) is fair and reasonable based on a comparison to the statewide and district average unit bid price reports, or the small quantity of work involved, or the difficulty of construction conditions, or an independent cost analysis (attached).

Failure to provide the information listed above may result in the delay of AED, EO or [FHWA](#) approval. If expedited approval of the CO is needed, include a notation to that effect in the transmittal memo to CST-L&CA.

Place the CO transmittal in the appropriate mail wallet or designate in some other manner that the CO requires AED, EO approval and send to the attention of CST-L&CA.

Charges to District Bank Balance

To better manage program funding, the district bank balance may be charged for the cost of a CO requiring AED, EO approval. Decisions are made by the AED, EO on a case by case basis.

The AED, EO will notify CST, Field Engineering Branch (FE) of the decision to charge an overrun for an approved CO to the district bank balance. CST-FE will coordinate with DES for any needed program adjustments. DES will then coordinate with the affected district and TPP for any needed adjustments to the Design/Construction Information System (DCIS).

Other Factors Affecting Change Orders (COs)

Other factors affecting COs include Advance Funding Agreements and the Texas Department of Licensing and Regulation (TDLR) submissions.

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 Office of General Counsel, Contract Services Section (OGC - CSS). Refer to [Advance Funding Management](#) and [Donations](#) in the *Contract Management Manual* for detailed information about AFAs and Donation Agreements.

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 OGC-CSS to amend an AFA or Donation Agreement.

Texas Department of Licensing and Regulation (TDLR) Submissions

TDLR performs site inspections on projects submitted to them for PS&E review. Keep TDLR apprised of any changes that affect pedestrian elements on these projects. If COs on these projects affects pedestrian elements, indicate under Item 5 ("Describe the work being revised") of the [Form 2146, Change Order](#) form. A copy of the CO must be sent to the appropriate DES, Field Coordination Section. Include, in a transmittal memo to CST-L&CA, the specific reason for sending the CO to DES Field Coordination Section.

Upon receipt of the CO, DES will consult with the Traffic Operations Division (TRF) and determine whether the CO should be forwarded to TDLR for their information. If the CO causes the total contract amount for the pedestrian elements to exceed \$50,000, DES will contact the district to coordinate plans submission to TDLR.

Immediately submit a variance request to DES or TRF for any deviation from [Texas Accessibility Standards \(TAS\)](#) discovered on a project that cannot be corrected to attain compliance.

Section 2 — Change Order Approval Authority

Policy

A CO is approved only after signed with the [signature authority](#) listed in the following table 'Change Order Signature Authority' (signature authority for highway improvement [contract](#) COs detailed in the *Contract Management Manual*, "Contracting Authority").

Change Order (CO) Signature Authority

Change Order Category:	Signature Authority:
Bilateral CO less than \$50,000	Area Engineer (AE)
Bilateral CO less than \$300,000	District Engineer (DE), Deputy District Engineer, District Director of Operations, District Director of Construction, Construction Division Director, Construction Section Director
Unilateral CO less than \$300,000	DE
Interim adjustment CO less than \$300,000	DE
CO \$300,000 or greater	Assistant Executive Director (AED), Engineering Operations (EO)
Interim adjustment CO \$300,000 or greater	AED, EO
CO changing project limits, regardless of amount	AED, EO
CO that resolves termination cost to contractors	AED, EO
CO that changes limits or roadways on district-wide CSJ projects (i.e., CCSJ: 09xx-00-xxx)	AED, EO

Follow the signature authority in 'Change Order (CO) Signature Authority' for COs that settle disputes. While the signature authority listed above may not be delegated further, the district delegation allowed is at the discretion of the DE. Adhere to district policy and procedures in the review and approval of COs that may be approved at the district level.

Federal Letter of Authority (FLOA) Federal-Aid Projects

Time extensions (TEs) on FLOA projects must be approved by the Federal Highway Administration ([FHWA](#)) for the determination of federal participation. Verbal concurrence (documented) from the FHWA is satisfactory.

COs on FLOA projects are categorized as either major or minor as defined in the table below. Major COs on FLOA projects are not approved for federal participation until the CO is signed by the FHWA. Identification of the funding source is needed in order to properly request reimbursements from the FHWA.

Minor COs on FLOA projects do not require FHWA approval, either written or verbal, prior to beginning of work. However, FHWA does require approval of minor COs (i.e., signed CO) before the project is completed.

Work on all FLOA COs should be discussed 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 which would normally have required a design exception) ◆ increases the contract by 25% of the original contract or by \$300,000 whichever is less ◆ changes project limits ◆ any change in the Traffic Control Plan (TCP), which reduces the capacity as shown on the plans for the through traffic or the traffic on major cross streets ◆ settlement of a dispute* or ◆ changes the access on a controlled access highway
Minor	Everything not described above.
NOTE: *For additional information see “Disputes and Claims.”	

State Letter of Authority (SLOA) Federal-Aid Projects

Assume FHWA oversight responsibilities on State Letter of Oversight Authority (SLOA) projects. Use the [Federal-Aid Policy Guide](#) to determine federal participation for TEs and COs. CO work on SLOA projects is approved in accordance with [Section — Policy](#).

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 which 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, is covered by an approved ["Public Interest Determination"](#) and is approved in writing by FHWA prior to beginning work.

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. Except for federal participation minor deviations at the full price of materials.)
- ◆ additional time or cost caused by unacquired right-of-way 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
- ◆ contract work paid through another means, such as "Incidental Construction."

State Funded Projects

COs on state funded projects are approved in accordance with the signature authority provided under [Section — Policy](#). CO work may not begin until either written or verbal approval is obtained.

Extending or Adding Project Limits to the Contract

Districts may extend or add project limits without administrative approval only 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.

If all the above conditions are not met, a change order must be submitted for administrative approval, regardless of amount.

Use the following procedure to add CSJs to the contract through a contract change order:

How to Add CSJs to the Contract

Responsible D/D/O	Action Required
District	notifies (email is acceptable) CST, Transportation Planning and Programming Division (TPP), Design Division (DES), and Finance Division (FIN) there is a need to add a new control section job (CSJ) to a project.
TPP	<ul style="list-style-type: none"> ◆ assigns a CSJ number and ◆ updates the “Remarks” field on the P1 screen in DCIS.
CST	<ul style="list-style-type: none"> ◆ obtains ADM approval ◆ notifies the district, TPP, and DES of ADM approval and ◆ updates SiteManager/CIS.
DES	<ul style="list-style-type: none"> ◆ obligates funds with FHWA and ◆ updates “Contract CSJ” field in DCIS.
FIN	adds the CSJ to FIMS upon receipt of the change order.

Federal Participation

The Federal Highway Administration (FHWA) will participate in the following types of added limit change orders:

- ◆ emergency work and
- ◆ transition work at the end of projects requiring a change order.

State Participation

Use state funds, non-participating,

- ◆ when the conditions, referenced in ‘Federal Participation,’ are not met and
- ◆ when both of the following conditions are met:
 - imminent needs (i.e., when delaying the work would cause accelerated deterioration to the pavement or bridge, significant loss in service to the public will be seen if the work was not performed, etc.) and
 - the public will see clear savings by not reletting the project (i.e., the cost of reletting the project exceeds the cost of the change order).

Exception for Allowing Federal Participation Related to Added Limits

An exception may be made when FHWA determines the added limits change order is in the “public interest.” A public interest finding must be approved by the FHWA for all federal participants, state or federal oversight.

If an exception for allowing federal participation is sought, coordinate with the FHWA, in advance, and submit a request with justification along with the change order to the Construction Division, Construction Section, for federal approval.

Submission Requirements Related to Added Limits

The approval of added limit change orders will require:

- ◆ statement of environmental clearance status
- ◆ Notice of Intent threshold impacts
- ◆ Texas Department of Licensing and Regulation review for Texas Accessibility Standards (TAS) compliance
- ◆ explanation of the reason(s) this change order is needed
- ◆ justification, such as a description of:
 - emergency work
 - transition end work
 - explanation of cost saving over cost to reletting or
 - discussion on imminent need

- ◆ request for federal participation
 - discussion notes on change order coordination, to date, with the FHWA including the FHWA contact
 - request for public interest finding (if required)
- ◆ funding source category and
- ◆ status of verbal approval.

Section 3 — Force Account and Interim Adjustments to the Contract

Change Orders Involving Contractor Force Account Work

Include the following information on all change orders (COs) involving [force account work](#) (see [Form 2146, Change Order](#), Contract Items, page 1, page 2):

- ◆ the equipment description:
 - brand
 - year
 - model
 - serial number
 - type
 - size
 - horsepower or
 - other identification.
- ◆ equipment rates established in accordance with Article 9.5.D, “Equipment,” of the Standard Specifications
- ◆ all labor classifications with applicable wage rates (refer to [“Contractor Workforce.”](#) for more information related to labor requirements)
- ◆ material costs associated with the force account work
- ◆ contractor’s invoice and
- ◆ 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 material. Obtain cost justification as determined necessary. Complete [Form 316](#) to document the force account work payment. Ensure the CO is approved prior to beginning of work. 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 9.5, “Force Account,” of the Standard Specifications.

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.

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), Contract Letting & Contractor Prequalification Branch (CL&CP) 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 the CST-CL&CP for approval. CST will:

- ◆ prepare a supplemental agreement
- ◆ send the supplemental agreement and bond forms to the contractor for execution
- ◆ execute the supplemental agreement
- ◆ 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-CL&CP 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
- ◆ send copies to the contractor, FIN, and the district.

Section 5 — Terminations

Policy

As stated in Article 8.7, “Termination of Contract,” of the Standard Specifications, 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
- ◆ the contractor is prevented from proceeding with the work 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
- ◆ the contractor is prevented from proceeding with the work due to an order of any federal authority
- ◆ the contractor is prevented from proceeding with the work 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-FE to process contract terminations. CST-FE 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.

Obtain a final termination settlement proposal from the contractor within 60 calendar days of the date of the written termination notice. Prepare a change order (CO) reducing the affected quantities of work and add acceptable costs for termination. Do not include anticipated profits. Include reasonable and verifiable termination costs as provided in Article 8.7.B., “Settlement Provisions,” of the standard specifications.

Chapter 8 — Disputes and Claims

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[Section 1 — Disputes](#)

[Section 2 — Claims](#)

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 at the time 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.

Notify FHWA when a dispute is submitted on a FLOA project.

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.

For significant deviations from the contract, negotiate change orders (COs) in accordance with, [Section 1 — Change Orders](#).

Contact the Construction Division (CST), Field Engineering Branch (FE) for assistance in resolving disputes.

Appeals in Disputes

The contractor has the right to request an appeal of the district's final decision. Districts may send contractor appeals to the Construction Division, Claims, Disputes and Special Programs Section (CST-CDSP) for review. Districts may take the recommendations of the appeal. CST-CDSP will provide a recommendation for disposition of the matter in compliance with the contract. Notify the contractor in writing of the final decision on the appeal. Resolution of a dispute may be accomplished with either a CO or a supplemental agreement (SA). Use a SA to settle disputes not associated with the scope of work.

Section 2 — Claims

Claims

A claim is an unresolved dispute requiring formal action by the department's Contract Claim Committee. Contract claims may only be filed by the prime contractor.

If a [contractor](#) does not agree with the district's decision on the dispute, the contractor may file a detailed report and contract claim request with one of the following:

- ◆ district engineer (DE) under whose authority the contract is administered
- ◆ CST or
- ◆ Contract Claim Committee.

Submit documents filed with the DE to the Contract Claim Committee. The Committee may request CST-Claims, Disputes and Special Programs (CDSP) review the documentation. Notify FHWA when a claim is filed on a FLOA project.

CST-CDSP will consult with the district and the contractor to secure any additional information necessary to produce a report containing recommendations for the resolution of the claim. Respond in writing to CST-CDSP regarding any additional request for information associated with the claim.

Upon review of the claim, CST provides a recommendation for resolution to the Contract Claim Committee. After a claims meeting with the contractor and district, the committee makes a final determination regarding the claim.

Appeals

Claims not resolved by the Contract Claim Committee may be appealed by the contractor to the State Office of Administrative Hearings (SOAH). Hearings conducted by SOAH are legal proceedings presided over by an appointed administrative law judge. 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.

Chapter 9 — Legal Relations and Responsibilities

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[Section 1 — Introduction](#)

[Section 2 — Employee Responsibilities](#)

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

Section 1 — Introduction

Policy

In accordance with Article 7.1, "Laws to be Observed," of the [Standard Specifications](#), the [contractor](#) must comply with all federal, state, and local laws, ordinances, and regulations that affect the performance of the work. Monitor the contractor's compliance with laws and regulations that relate to the contract. Some contract requirements fall under the jurisdiction of other federal and state agencies. Cooperate and assist the regulatory agencies whenever possible. Work may be suspended or funds withheld from the contractor to assist other enforcement agencies in ensuring compliance with applicable laws, rules and regulations. Other regulatory agencies may include:

- ◆ United States Department of Transportation (USDOT):
 - Federal Aviation Administration (FAA)
 - Federal Highway Administration ([FHWA](#))
 - Federal Railroad Administration (FRA)
 - Federal Transit Authority (FTA)
- ◆ United States Department of Labor (USDOL)
 - Occupational Safety and Health Administration ([OSHA](#))
 - Office of Federal Contract Compliance Programs (OFCCP)
 - Employment Standards Administration (ESA)
- ◆ Environmental Protection Agency (EPA)
- ◆ Texas Commission on Environmental Quality (TCEQ)
- ◆ Texas Department of Licensing and Regulation (TDLR)

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 project diary.

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

Resolve differences of opinion regarding the contract promptly and fairly within the scope of the contract. If disagreements cannot be satisfactorily resolved, refer the matter to an immediate supervisor. 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 a minimum of one calendar day advance notice of the interruption to the property occupant. 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 Article 7.7, “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 as needed only
- ◆ 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
- ◆ other actions 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 as soon as possible.

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 a "[Traffic Control Devices Inspection Checklist](#)," (Form 599). The TCC should accompany each DRP on the first inspection.

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-hr. advance notice to the appropriate Road Master (defined in the 2004 Standard Specifications, Article 1.110) before performing any blasting work involving the use of electric blasting caps within 200 ft. 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 contractor 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 ft. of the centerline of any track or
- ◆ place any forms or temporary falsework within 8.5 ft. horizontally from the centerline or 22 ft. vertically above the top of rails of any track or

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 the 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 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"](#)).

Gifts, Benefits, and Favors

Do not accept or agree to accept gifts, benefits, or favors from any person, company, organization, or other entity that:

- ◆ could influence or reasonably appear to influence department personnel in performing their duties
- ◆ conducts any business with the department
- ◆ could reasonably be expected to do business with the department in the future or
- ◆ is regulated by the department in any way, including:
 - auditing
 - monitoring
 - inspecting
 - testing
 - supervising or
 - measuring.

However, employees may:

- ◆ accept ordinary business lunches
- ◆ accept token items* that do not exceed an estimated value of \$25 where the items are distributed generally as a normal means of advertising and
- ◆ visit dining or hospitality rooms or similar facilities, provided they have no restrictions on visitors, and are in conjunction with a conference, meeting, or other event approved by the department.

NOTE: Obtain prior approval of the Executive Director as requested by a DE/DD/OD through the Office of General Counsel for exceptions to this policy.

Computers and Cellular Telephones

When shown in the contract, or included by change order, contractor provided computers and cellular telephones may be used by department employees. Comply with the department computer and cell phone usage policy and requirements when using contractor provided computers and cell phones.

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

Contents:

[Section 1 — Workers and Equipment](#)

[Section 2 — Progress Schedules](#)

[Section 3 — Project Time](#)

[Section 4 — Subcontracting](#)

[Section 5 — Contractor Default](#)

Section 1 — Workers and Equipment

Policy

Ensure the [contractor](#) furnishes suitable machinery, equipment, and construction forces for the proper completion of the work. If applicable, ensure the contractor provides adequate lighting to address quality requirements and inspection of nighttime work. Notify the contractor of failure 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.

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 or
- ◆ employees or representatives are:
 - disrespectful
 - intemperate
 - disorderly
 - uncooperative or
 - otherwise objectionable.

Work may be suspended without suspending working day charges until the contractor complies with these requests.

Section 2 — Progress Schedules

Policy

Do not allow the contractor to begin work until the “Authorization to Begin Work” is sent by Construction Division (CST). Ensure the contractor begins work within 30 [calendar days](#) after the date of the authorization, unless otherwise specified in the plans.

Use project schedule obtained from the contractor to:

- ◆ ensure contract completion within the allowable number of working days
- ◆ ensure milestone completion in accordance with the [contract](#), if applicable
- ◆ assure coordination of all entities involved in the project
- ◆ monitor the progress of the work and
- ◆ administer the contract time requirements.

Schedule Types

Progress schedules may be submitted as an outline of work, bar chart, basic critical path method ([CPM](#)) schedule, or a CPM schedule developed with specified software. The following types of scheduling levels apply to construction contracts:

- ◆ bar chart
- ◆ basic CPM schedule or
- ◆ CPM schedule developed using either the Primavera Project Planner or Suretrak project management program.

The bar chart schedule type is the [default](#) for all construction contracts. When a CPM schedule using either the Primavera Project Planner or Suretrak project management program is specified in the contract, be familiar with the appropriate software program. Ensure the contractor’s duration of work activities for any type of schedule does not exceed 20 working days, unless otherwise specified in the contract.

Section 3 — Project Time

Contract Time

Unless otherwise shown in the contract time, begin [working day](#) charges 15 calendar days after the date shown in the “Authorization to Begin Work” letter. For contracts involving multiple work orders, such as a traffic signal project, begin working day charges as established for each individual work order. Charge working days in accordance with the contract as specified in Article 8.3.A., “Working Day Charges,” of the [Standard Specifications](#).

Do not suspend working day charges without suspending work. Do not suspend working day charges or grant additional contract working days for activities relating to handling hazardous material delivered by the contractor. For Five-day Workweek, Six-day Workweek, Seven-day Workweek, and Calendar-day contracts, do not consider weather conditions or material availability when suspending working day charges. Consider increasing the number of contract working days under extraordinary circumstances.

Do not allow the contractor to perform work on a national holiday or Sundays unless authorized, for all but seven day and calendar day projects. Provide written authorization to the contractor if work will be allowed on a national holiday. For a standard workweek project, allow the contractor the option of working on state holidays. See the following table for a list of national holidays.

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

Temporary Suspension of Work or Working Day Charge

When work is suspended, wholly or in part, provide written notice and reasons of [suspension](#) to the contractor. Provide written notice to the contractor to [resume](#) work. When only a portion 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. Suspend working day charges when all of the work is suspended for reasons not under the control of the contractor.

Reasons for Temporary Suspension of Work

Work may be suspended for the following reasons:

- ◆ failure to comply with the contract or [supplemental agreement](#)
- ◆ failure to keep insurance coverage in force as provided in Article 7.4, “Insurance and Bonds,” of the Standard Specifications
- ◆ failure to provide workers or equipment as provided in Article 8.9, “Workers and Equipment,” of the Standard Specifications
- ◆ abandonment of work or default of contract upon written notice as provided in Article 8.6, “Abandonment of Work or Default of Contract,” of the Standard Specifications
- ◆ unsuitable weather or soil conditions
- ◆ unusual conditions which affect the work and are not usually associated with the highway construction
- ◆ conditions which threaten the safety of the workers, public or nearby property.

Section 4 — Subcontracting

A subcontractor is defined in Article 1.128 of the [Standard Specifications](#) 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."

Ensure that the contractor performs at least 30% of the total contract amount, less any specialty items, with the contractor's organization. The contractor's organization includes:

- ◆ workers employed and paid directly by the contractor
- ◆ equipment owned by the contractor
- ◆ rented or leased equipment operated by the contractor's employees
- ◆ materials incorporated into the work if the majority of the value of work involved in incorporating each material is performed by the contractor and
- ◆ labor provided by leasing firms licensed under Chapter 91 of the *Texas Labor Code* for non-supervisory personnel if the contractor 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.

Approve all subcontractors performing work on a contract. Refer to "[Subcontracting and Payroll Requirements](#)" for additional guidance related to subcontractor determinations and payroll record requirements. Do not apply the subcontracting limitations to subcontractors. Refer to Standard Specifications Article 8.8 for further information.

Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) Prime Contractors

Ensure that SBE certified prime contractors perform at least 25% of the total contract amount, less any specialty items, with the contractor's organization. Ensure [DBE](#) certified prime contractors perform at least 30% of the total contract, less any specialty items, with the contractor's organization.

When approving subcontracts for DBEs/SBEs being used to satisfy a contract goal, ensure that the DBE/SBE performs a commercially useful function.

Subcontracts Exceeding 70% of the Total Contract Amount

Do not approve subcontracts that exceed 70% of the total contract amount after deducting the cost of specialty items. Include in the total contract amount known quantity overruns that will not require a change to the contract. Notify the district construction office of any subcontract rejections. If the reduction or elimination of work quantities that are being performed by the prime contractor's organization results in the subcontracted amount exceeding 70%, no action is needed. In such an instance the intent of Standard Specification Article 8.8 is satisfied. When overruns occur or work is reduced or eliminated, do not adjust any contract requirements that are related to the original contract amount, such as DBE goals or liquidated damage amounts.

Subcontractor Approval Procedure

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
- ◆ 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
- ◆ amount and percentage of the total contract
- ◆ DBE/[HUB](#) goal credit, when the subcontractor is classified as a DBE/HUB.

For CIS contracts, use the Subcontractor Monitoring System (SMS), E2 screen, Form [sms8901](#) to approve requests for subcontracts. Designate certified DBE or SBE subcontractor as such on Form sms8901. When approving subcontract requests, ensure compliance with the contractor approved DBE/SBE commitments. Subcontracts are considered approved once the district approval date is entered. Contact the Business Opportunity Programs Office (BOP) for more information regarding SMS. For SiteManager contracts, refer to the [SiteManager Contract Administration Manual](#).

DBE/HUB Monthly Progress Reports

For August DBE/SBE monthly reports, input reports into SMS or SiteManager no later than two [working days](#) prior to September 15th. For all other months, input DBE/HUB monthly progress reports into SMS or SiteManager no later than the 20th of the following month. Instructions for ver-

ifying and inputting DBE/HUB monthly progress reports are found in , [Section — DBE/HUB Monthly Progress Reports](#). Contact BOP for more information.

Section 5 — Contractor Default

Policy

A [contract](#) default may be declared if the [contractor](#):

- ◆ fails to begin the work within the time specified
- ◆ fails to prosecute the work to assure completion within the number of days specified
- ◆ fails to perform the work in accordance with the contract requirements
- ◆ neglects or refuses to remove and replace rejected materials or unacceptable work
- ◆ discontinues the prosecution of the work without the engineer's approval
- ◆ fails to resume work that has been discontinued within a reasonable number of days after notice to do so or
- ◆ is uncooperative, disruptive or threatening or
- ◆ fails to conduct the work in an acceptable manner.

Do not overrun the quantities on a different contract with the same contractor or allow performance of the work by changing the project limits on another contract. Refer to , [Section — Assignments](#) for procedures to allow another contractor to complete the work.

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 (CST), Contract Letting and Contractor Prequalification Branch (CL&CP) immediately when bankruptcy is legally declared by the contractor. Perform work determined necessary to maintain safety for the traveling public. Document this work in the diary and charge the work to the contract.

Do not default a contractor for insufficient insurance or Surety bond coverage. Do not allow a contractor with insufficient insurance or Surety bond coverage to perform work. Suspend all work until the contractor submits an acceptable certificate of insurance. Should a contractor's Surety bond become inadequate for any reason, suspend all work 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 company. Allow work to proceed and continue making payments to the contractor until the contractor is declared in default according to the contract.

Contract with Performance Bond

Do not re-let the project. Do not accept monetary settlement or payment of the remaining contract balance from the Surety. Prepare a Takeover Agreement with the Surety and require that the Surety completes the work as originally contracted. The Surety is responsible for any liquidated damages. Contact CST, Field Engineering Branch (FE) for assistance as needed. Submit the original Takeover Agreement to CST-CL&CP.

As soon as possible, schedule a meeting with the Surety to arrange contract completion. Ensure that CST-FE, district office and area office representatives are present at this meeting. Allow the Surety to have an attorney present at the meeting. Make all future progress payments to the Surety. Continue contract working day charges from the point where the original contractor was defaulted.

In obtaining a contractor to complete the contract, the Surety may use the original contractor or enter into an agreement with a new contractor. Do not require that the Surety comply with the department's contracting rules or use department prequalified contractors. Suspend the 70% subcontracting limitation requirement. Approve all subcontract use by the authority in accordance with [Section 4 — 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, including payment of retainage, 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 maintenance forces. Deduct the cost of this work from future estimates.

Contract without Performance Bond

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

- ◆ department maintenance forces
- ◆ 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 reference the appropriate project number. Contact the Finance Division (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 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 for default and quote directly from the contract (see [Warning](#) letter example).
2. If applicable, send the Surety a certified copy of the letter with return receipt requested. Provide a copy of the letter to the CST-FE.
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 project diary and make the default effective 10 calendar days from the date of the letter.
4. Do not default the contractor if work is resumed and 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, stop all payments to the contractor. Do not suspend working day charges. Continue working day charges until contract completion. Send the contractor a certified letter of default with return receipt requested. Do not suspend time. Time charges will continue until completion of the contract. Be specific about the reason for default and quote directly from the contract (see [Surety](#) or [No Surety](#) examples). Provide a copy of the letter to the CST-FE and FIN.
6. If applicable, send the Surety a certified copy of the letter that was originally sent to the contractor with return receipt requested.

Include the following information with all copies of default letters sent to the CST-FE:

- ◆ contractor name
- ◆ project number
- ◆ control-section-job number ([CSI](#)) number
- ◆ payee ID
- ◆ contract number
- ◆ highway and county and
- ◆ name of Surety and Surety's mailing address, 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. 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.

Contractor Appeals

Contractors may use the department’s claims process for allegations of wrongful default. Refer to [“Disputes and Claims”](#) for department procedure.

Chapter 11 — Measurement and Payment

Contents:

[Section 1 — Introduction](#)

[Section 2 — Issues Affecting Payments](#)

[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, "Plan Quantity Measurement," of the Standard Specifications. 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

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 to ensure required design plan dimensions can be made but should not be used to establish quantities on plans quantity measurement items.

Material on Hand (MOH)

Develop and administer a District procedure for the monitoring and payment of MOH in accordance with Article 9.7 of the *Standard Specifications*.

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.

Enter the anticipated maximum bonus at Contract activation.

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.

Enter the anticipated maximum bonus at Contract activation.

Force Account

Include a single line item on the monthly estimate for force account work performed. Complete [Form 316](#) to document payments for force account work.

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.

The Contractor must pay any retainage on subcontractor work within 10 calendar days after satisfactory completion of all 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.

Under certain instances, state and federal regulations do not prohibit the Contractor from withholding retainage from a subcontractor. Contact the Construction Division, Field Engineering Branch (CST/FE), for more information.

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 Material 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](#).)

If a complaint is accepted, follow the procedures outlined below.

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.¹ ◆ 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.¹
2	<ul style="list-style-type: none"> ◆ 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	<ol style="list-style-type: none"> 1. Advise the subcontractor that it may file against the payment bond surety. 2. 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. 3. Provide copies of the letter to the prime Contractor, subcontractor, and the payment bond surety.¹
4	<ol style="list-style-type: none"> 1. Forward the subcontractor's letter of complaint to the prime Contractor with a copy of the payment bond surety. 2. 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.¹ ● 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 Contractor in default for breach of Contract, or other actions deemed appropriate. 3. Set a response deadline.
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.

1. No further Department action necessary related to prompt payment.

Contractor Compliance

For federal-aid projects, obtain a completed Form [2177](#), "Prompt Payment Certification," from the Contractor. State-funded projects do not require Form 2177.

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:
 - a. Contact the prime Contractor with a reminder of its contractual obligation.
 - b. When required, escalate the issue. Escalated actions may include suspending work, withholding all or a portion of an estimate, withholding project acceptance, placing Contractor in default for breach of Contract, or other actions deemed appropriate

Chapter 12 — Environment

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Section 1 — Hazardous Materials or Waste

Policy

Known [hazardous materials](#) or waste should be removed from work locations using a state specialty contractor prior to [letting](#). 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 Article 1.58 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. 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,” of the Standard Specifications, 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 tests 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, and regulations. If deemed appropriate, suspend work during this timeframe.

Use the following options for handling contaminated materials during construction. These options may be used individually or in combination:

Options for Handling Contamination

Option:	Description:
Option 1	Obtain an emergency contract for a specialty contractor to handle contamination during construction.
Option 2	Use a purchase order for a specialty contractor or an environmental consultant to handle contamination during construction.
Option 3	If the contractor is willing and able, amend the contract to allow the contractor to handle contamination during construction. The contractor’s ability to handle contamination will be determined by the Construction Division, Construction Section (CSTC).
Option 4	Coordinate activities with the responsible party (when the responsible party does cleanup).

Evaluate the following to determine which option to use:

- ◆ scope and complexity of the contaminant related work and its impact on the construction schedule
- ◆ potential for causing additional contamination and
- ◆ expertise of the contractor to perform the contaminant related work.

Contact the Construction Division (CST), Field Engineering Branch (FE) and the Environmental Affairs Division (ENV), Pollution Prevention and Abatement Branch (PPA) for assistance in evaluating the alternative methods for completing the contaminant related work.

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.

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

1. secure the site to protect workers and the public
2. notify the proper authorities and responsible parties
3. determine the worker safety and public exposure concerns
4. characterize the contaminants
5. develop and implement hazardous materials/waste management measures.

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.

When using Option 2 in Table , “Options for Handling Contamination,” on page 2 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.

Obtain prior approval of the Assistant Executive Director, Engineering Operations (AED, EO) when using Option 3 in ‘Options for Handling Contamination.’ Amend the contract in accordance

with , [Section 4 — Supplemental Agreements](#) of this manual. 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.

Unanticipated Hazardous Materials Encountered during Construction

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

The following may indicate hazardous materials:

- ◆ rusted barrels and containers
- ◆ stained or discolored earth in contrast with adjoining soil
- ◆ fill material containing debris other than construction-related items
- ◆ household trash covered by earth or other material that appears to be interspersed with industrial debris
- ◆ gasoline smells or other odors which 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 (transite) pipe, abandoned oil and gas lines, and underground storage tanks.

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

- ◆ Suspend work 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.
- ◆ Evaluate and determine whether special action is needed.
- ◆ Secure the suspected area for worker and public safety as needed.
- ◆ Notify the district construction office (DCO).
- ◆ Identify applicable regulatory requirements with ENV/PPA assistance. If notification is required or if additional regulatory assistance is desired, contact the local office of the Texas

Commission on Environmental Quality (TCEQ). ENV/PPA is available to assist with communication and coordination with the TCEQ.

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

Follow the procedures listed in , [Section 4 — Project Records](#) 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 (for example, groundwater recovery rates; vertical and horizontal extent of contamination; and chemicals of concern, etc.)
- ◆ assessment of worker safety and public exposure concerns
- ◆ 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
- ◆ determination of the requirements necessary so that construction may continue.

Procure consultants through the statewide engineering and environmental consultant program administered by ENV/PPA. 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).

Remediation

Remediation projects for contaminants discovered during construction can be divided into small and large scale remediation efforts. Refer to Table , “Options for Handling Contamination,” on page 2 to complete remediations. Use Option 2 to complete small scale remediations. Use Options 1, 2, or 3 of the referenced table to perform small and large scale remediations. Use Option 3 only if the contractor is willing and able to perform the remediation work and is determined qualified by ENV and CST. Prepare a supplemental agreement to ensure the contractor and his or her Surety agree that the contractor can perform the work. For additional guidance, refer to ENV’s [‘Technical Guide: Response to the Discovery of Unanticipated Contamination \(Hazardous Materials\) During 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 numbering system to pay Items related to the hazardous material on site).

These records may be used for:

- ◆ consideration of federal participation by the [FHWA](#)
- ◆ claims
- ◆ litigation
- ◆ 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 time frame for the construction project.

Section 2 — Biological Resources

Endangered Species Act Requirements

Ensure the contractor is aware of state or federally listed endangered species that may occur and any endangered species coordination specific to the project. This would include avoidance, and minimization measures written in the construction plans and/or environmental permits and commitments. Ensure the contractor is aware of the steps necessary to comply with any incidental take (ESA compliance) that has been granted through consultation with the USFWS.

Ensure the contractor has the necessary information to recognize the endangered species present in the project area. This information is available from the district environmental coordinator. Immediately notify the district environmental coordinator of any observed differences in the effects of construction on listed species or incidental take that exceeds the quantity allowed in the Endangered Species Act of 1973 (ESA) Biological Consultation documentation.

U.S. Fish and Wildlife Service (USFWS) and Texas Parks and Wildlife Department Reviews (TPWD)

Ensure the contractor adheres to any USFWS or TPWD recommendations included in the contract. The recommendations would include avoidance and minimization measures stated in the plans, such as avoidance of sensitive wildlife and wildlife habitats in the project area. Ensure the contractor has the necessary information to identify and recognize sensitive wildlife and wildlife habitats. Contact the environmental coordinator for specific project information.

Ensure the contractor adheres to restrictions on impacts to any of these water features:

- ◆ stream channels in new rights-of-way ([ROW](#))
- ◆ stream channels in existing, unmaintained ROW
- ◆ new channel easements or
- ◆ new disturbance to existing channel easements.

In addition, TPWD reviews project environmental documents that meet the criteria listed in the Memorandum of Understanding between the department and TPWD. USFWS and TPWD may make recommendations for mitigation of impacts to wildlife and habitats. Ensure the contractor makes a good faith effort to implement any USFWS or TPWD recommendations included in the [contract](#).

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 became effective on March 5, 2003 and authorizes the discharge of storm water associated with construction activities that result in the disturbance of 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.

TPDES Construction General Permit (CGP)

Do the following to obtain coverage under the CGP:

- ◆ develop Storm Water Pollution Prevention Plans (SWP3) for each project requiring one
- ◆ submit a Notice of Intent (NOI) to TCEQ and post a completed Construction Site Notice (CSN), if required
- ◆ refer to the [December 23, 2004 memo](#) regarding TCEQ Storm Water Permit Notices of Intent and Fee Payment for Guidance and General Instruction for Using State of Texas Environmental Electronic Reporting System ([STEERS](#))
- ◆ implement the SWP3 prior to beginning construction activities
- ◆ provide a copy of the signed NOI, large construction activities, or CSN, small construction activities, to the operator of any municipal separate storm sewer system 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.

Certification Requirements

The table below lists the documents requiring certification and individuals authorized to authorize certification. Place a copy of the authorization memorandum dated November 14, 2003 in the project's SWP3 file.

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 (for example, 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 shall 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.		

As determined appropriate, use [Form 2118](#), "Construction Storm Water Pollution Prevention Plan Field Inspection and Maintenance Report," or an alternate form containing all required information, 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, Water Resources Management Branch, Maintenance Division (MNT), or the Construction Division (CST), Field Engineering Branch (FE) for additional information or guidance.

Storm Water Pollution Prevention Plan (SWP3) Prepare a SWP3 for projects that require one under 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 a 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, for example, off-site vehicle tracking of sediments, generation of dusts, etc.
- ◆ ensure compliance with any state and local plans
- ◆ maintain all erosion and sediment control measures and other protective measures identified in the SWP3 in an 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-storm water components of the discharge.

The above list is only a brief summary of the required contents of the SWP3. A more detailed discussion is outlined 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 a NOI at least 2 calendar days prior to commencing construction activities. Submit the NOI only after the SWP3 has been prepared. 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 a NOI and CSN. For small construction activities that do not require a NOI (that is, those involving total disturbed areas equal to or more than one acre but less than five acres), post the appropriate CSN.

Contractor Involvement

In certain situations, the [contractor](#) is responsible for SWP3 preparation and obtaining authorization under the CGP. When contractor facilities (Project Specific Locations [PSLs]) such as asphalt or concrete plants are within the ROW, the contractor is responsible for preparing an SWP3 for these operations and obtaining any CGP authorization. Refer to the [Project Specific Location Quick-Guide](#) for information regarding the contractor's responsibility to provide SWP3 information on their ROW PSLs. Obtain a sketch indicating their location, other required information and the con-

tractor CGP authorization number when issued and maintain the information with the [contract SWP3](#).

Take responsibility for designated material sources identified in the contract and included in the department's SWP3. CGP authorization obtained by the department does not cover contractor facilities off the ROW. For these off-ROW facilities, the contractor must prepare a separate SWP3 and obtain his or her own CGP authorization to construct the facility.

For any off-ROW PSLs within 1 mile of any project limit, obtain the following information from the contractor:

- ◆ the PSL's total acreage
- ◆ acreage disturbed
- ◆ location and
- ◆ description (if it is an asphalt or concrete batch plant and authorized under the CGP).

Inspections

Conduct regular inspections of the construction site at least once every 14 calendar days and within 24 hr. 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, "Temporary Erosion, Sedimentation, and Environmental Controls," of the [Standard Specifications](#). 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 (for example, site is covered with snow, ice, or frozen ground exists) or
- ◆ during seasonal arid periods in arid areas (average annual rainfall of 0 to 10 inches) and semi-arid areas (average annual rainfall of 10 to 20 inches).

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.

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

Obtain any required Section 404 permits from the U.S. Army Corps of Engineers before work begins. Ensure that the contractor adheres to all agreements, mitigation plans, and standard best management practices required by the permit.

The following general types of construction projects require a Corps permit:

- ◆ bridge crossings
- ◆ temporary fills in jurisdictional waters including streams, [wetlands](#), and some stock ponds
- ◆ dredged material that flows back into water from upland dredged material placement site
- ◆ land clearing in Corps jurisdictional waters.

Depending on the contract, either a Corps Nationwide Permit (NWP) or Individual Permit (IP) may be required. NWPs are a type of general permit issued for minor activities with minimal impacts to relieve the time consuming administrative burden for minor discharges. Procedures for an IP are very time-consuming and have extensive requirements. Ensure that all terms and conditions of the contract permit are satisfied.

Review and approve any changes in the contract that alter the Corps permit prior to work being conducted. When contractor-initiated changes in the construction method changes the impacts to water of the U.S., ensure that the contractor obtains new or revised Section 404 permits. Failure to comply with all permit conditions may result in contract work stoppages being issued by the Corps. For more information on Corps of Engineers permit requirements, contact the ENV, Water Resources Management Branch.

Work in Navigable Waters of the United States

Obtain any required Section 9 permits from the U.S. Coast Guard before work begins. Ensure that the contractor adheres to the stipulations of the permits and associated best management practices required by the permit. When contractor-initiated changes in the construction method changes the impacts to navigable water of the U.S., ensure that the contractor obtains new or revised Section 9 permits.

Work Over the Recharge or Contributing Zone of Protected Aquifers

Ensure that the contractor makes every reasonable effort to minimize the degradation of water quality resulting from impacts relating to work over the recharge or contributing zones of protected aquifers, as defined and delineated by TCEQ. Ensure the use of BMPs and performance of the work in accordance with contract requirements.

Completion of a Project and Release of a Contractor

Unless otherwise specified in the contract, release the contractor after satisfactory completion of the contract and achievement of 70% perennial vegetative cover, or equivalent natural ground cover in the area. Final acceptance of the project may be granted if measures to control erosion, sedimentation, and water pollution, have been employed. Use the following to implement SWP3:

- ◆ standard maintenance operations
- ◆ Function Code 261, State Force Account – Storm Water Pollution Prevention, (refer to Code Chart 12, Function Codes and Descriptions by FIMS Segments, in Code Chart Reference Guide 12-1-95)
- ◆ contract or
- ◆ another construction contract.

Section 4 — Cultural Resources

Texas Antiquities Code (Chapter 191 of the Texas Natural Resources Code)

Ensure compliance with any [contract](#) permits issued by 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 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's environmental coordinator.
- ◆ 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 district's environmental coordinator. 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 department's project inspector or the department's area engineer 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. If necessary, do the following as required in the contract:

- ◆ obtain THC approval to proceed to construction with the commitment to avoid construction or other transportation activities that may impact significant cultural resources until the commitment has been met, or

- ◆ ensure that no construction related activities occur in specifically designated project areas until the department's commitments to the THC have been completed. ENV will coordinate these commitments and their completion with the AE and the district's environmental coordinator.

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.

Provide written approval for all PSLs in the right of way not specifically addressed in the plans. As determined necessary, obtain documentation of contractor certification activities including environmental consultant reports, documentation on certification decisions, and contacts and correspondence with the resource agencies. Refer to [“Project Specific Location QuickGuide”](#) for department and contractor responsibilities on and off the ROW.

Chapter 13 — Health and Safety

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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

Pre-Construction Preparation

Review the OSHA regulations and be familiar with violations of safety requirements. Review the contract to identify hazardous types of work, such as trenching and underground/overhead utilities. If the contract provides for special work that presents a danger to the public or workers on the project, discuss the contractor's safety plan with the contractor at the pre-construction conference, emphasizing safety requirements. This may include a discussion of requirements for special equipment, unique procedures; and necessary permits or reports.

Pre-Construction Conference

Cover the following safety points at the pre-construction conference:

- ◆ state and federal construction safety standards requirements the contractor must meet
- ◆ discuss contractor's written Safety/Incident Prevention Plan and ensure it includes:
 - organization
 - staff
 - names of responsible individuals
 - meetings
 - training
 - reports
 - other components deemed appropriate.
- ◆ ensure that a copy of the plan is submitted to the department for review and retention in the contract file
- ◆ contractor's responsibility for subcontractor compliance with safety regulations
- ◆ the contractor's plans for meeting specific specialty job safety requirements and eliminating potentially critical hazards on the project.

Add to the contract files a written record of the safety measures reviewed at the pre-construction conference.

Construction Surveillance

Record any violations of applicable safety requirements in the contract diary. 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 pre-cast 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 safety operation of power tools are found in [29 CFR 1926.302](#).
- ◆ **Ladders.** Required characteristics:
 - must be free of defects
 - adequately supported or anchored
 - fixed ladders must have cages per the requirements of [29 CFR 1926.1053](#).
- ◆ **Scaffolds.** All scaffolding shall 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 load-

ers, 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, which 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, such as offered by Texas Engineering Extension Service (TEEX).

NOTE: Department employees, as well as contractor's employees, must continually follow safety practices. Follow all requirements for personal safety.

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 or orally 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 which 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: Incidents and near-miss events that do not involve the department operations are exempt from the FHWA reporting requirement unless:

- ◆ there are five or more deaths
- ◆ ten or more vehicles are involved in a chain collision
- ◆ there is a school bus incident resulting in one or more fatalities or disabling injuries
- ◆ there is major damage to a highway facility
- ◆ it is a commercial vehicle incident with extensive property damage
- ◆ it is an incident on a federally funded construction contract causing deaths or disabling injuries to workers or the public.

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*, ['Incident Reporting by Telephone or Fax'](#) table.

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 immediate corrective action may be taken.
2. Document all discussions and interactions.
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. Also state 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), Field Engineering Branch (FE) 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 — Business Opportunity Programs

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Section 1 — Program Overview

Policy

The Business Opportunity Programs Office (BOP) is responsible for the oversight of the department's Disadvantaged Business Enterprise ([DBE](#)), Historically Underutilized Business ([HUB](#)), and Small Business Enterprise (SBE) programs. Responsibilities associated with these programs are outlined in the 43 Texas Administrative Code, Part 1, Chapter 9, Subchapter D. Listed below is a brief description of each program. Contact BOP for additional information or guidance.

Disadvantaged Business Enterprise (DBE) Program (Federal-aid Contracts)

The [DBE Program](#) is authorized by [49 CFR, Part 26](#). The DBE Program applies only to highway improvement contracts involving federal funds. Annual and individual contract goals are established by BOP for the department's federal-aid highway construction programs.

Historically Underutilized Business (HUB) Program (State Contracts)

The HUB Program is authorized by Texas Government Code, Sections 2161.181-182 and 1 Texas Administrative Code, Section 111.11, and only applies to 100% state funded contracts. The HUB Program only applies to department professional services, building and purchases of goods and services, however, reporting of progress payments is required from contractors.

Small Business Enterprise (SBE) Program (State Contracts)

The SBE Program applies to highway improvement contracts that are 100% state-funded or that involve federal funding but do not have a DBE goal provided. Annual goals are established for the department's highway construction programs by BOP. At this time, individual contract goals are not applied. Rather, SBE participation is captured through the voluntary submittal of progress reports by [contractors](#).

Section 2 — Contract Reporting Requirements

DBE Commitment Procedures

For federally funded contracts with an assigned DBE goal, prime contractors must submit a completed DBE Commitment Agreement to BOP listing information for each DBE used for contract goal satisfaction or a good faith effort explaining why the goal could not be reached. BOP will approve the initial DBE commitment or good faith effort submitted by the prime contractor. District offices are responsible for approving any revisions to the contract DBE commitment approved by BOP.

For a prime contractor to request a revision to its approved contract DBE commitment, it must submit a TxDOT Substitution Replacement Form to the district for approval. (Contact BOP at [512] 486-5500 for more information on this form.) Upon receipt of this form, implement the following procedure:

1. Contact the DBE subcontractor being terminated or replaced to verify information provided by the prime contractor.
2. Do not consider a more advantageous subcontract with another subcontractor as a valid reason for DBE subcontractor termination or replacement.
3. Ensure the substitution procedure outlined in the contract DBE Special Provision is followed prior to approving the termination or substitution of an approved DBE subcontractor.
4. Obtain a completed [DBE Commitment Agreement](#) form from the prime contractor with original prime contractor and DBE subcontractor signatures, for any new or replacement DBE subcontractors to be added to the previously approved contract DBE commitment. Ensure the following information is included with the DBE Commitment Agreement form:
 - items and quantity of work to be performed
 - materials being supplied
 - unit measure, unit price and total cost for each item
 - total amount of DBE commitment
 - if the DBE is a material supplier, an explanation of the function performed
5. Notify the prime contractor and BOP of the approval or denial of the DBE commitment revision. Forward the TxDOT Substitution Replacement Form, the appropriate letter, and any file documentation to the prime contractor and BOP.
6. Notify BOP if the DBE commitment revision request is not approved and the prime contractor is in non-compliance with the contract DBE requirements.

DBE/HUB Subcontractor Approval Requests

“[Request for Approval of Subcontractor](#)” must identify whether the subcontractor is or is not a qualified DBE/SBE. Verify that the contractor is in compliance with the DBE/SBE commitments submitted. In addition, verify that items included in the DBE/SBE commitments are not subcontracted to other subcontractors.

Ensure that DBE/SBE subcontractors listed on a contract commitment, including all tiered subcontractors, perform at least 30% of the subcontracted work. Contact BOP for further information and guidance.

Use of Joint Checks

The use of joint checks between a prime contractor and a DBE is allowed with department approval. To obtain approval, the prime contractor must submit a completed [Form 2178](#), DBE Joint Check Approval, to the district office. For all joint check approval requests received, verify the DBE subcontractor is responsible for ordering, scheduling delivery, and issuing payment for the materials. Expedite approval or denial of the use of DBE joint check agreements to ensure timely delivery of materials. Reasons for denial include, but not limited to:

- ◆ the prime contractor’s insistence on the joint check arrangement (only the DBE or the supplier may request use of a joint check) or
- ◆ the failure of all parties to agree to the arrangement.

Obtain copies of cancelled checks as necessary to verify joint checks have passed through the DBE. Bank images are an acceptable method of review. Review the joint check agreements as necessary to ensure a three party arrangement exists.

Material cost paid by the prime contractor directly to the material supplier is not allowed for DBE goal credit and may cause the denial of DBE goal credit for all work performed by the DBE subcontractor.

Contact BOP for further information and guidance regarding the review and approval of DBE joint check arrangements.

DBE/SBE Monthly Progress Reports

Verify the DBE/SBE Monthly Reports, and input the reports into the Subcontractor Monitoring System (SMS). Refer to , [Section 4 — Subcontracting](#) for more information regarding the SMS input of DBE and SBE Monthly Progress Reports. The DBE reports will pertain to all federally-funded contracts and the SBE reports will pertain to 100% state-funded projects and federally-funded projects that do not have a DBE goal provided.

For all federally-funded highway projects ensure that the contractor's submittal of race neutral DBE progress reports are covered at the preconstruction and contract closeout meetings. Address the race neutral reporting issue in the preconstruction meetings and discuss the issue again at contract closeout to make sure all race neutral payments are recorded. In addition, there may also be suppliers certified as DBEs that have been utilized on the contract. Advise the contractor that one final progress payment report is sufficient for reporting race neutral DBE contract participation. It is important that all DBE subcontractor participation, regardless of goal, is reported on all federally-funded highway contracts.

Contact BOP for further information and guidance associated with DBE or SBE monthly progress reports.

DBE/SBE Final Reports

Review and approve contractor DBE/SBE Final Reports to ensure the contract DBE/SBE requirements have been satisfied. Contact BOP for further information and guidance associated with these reports.

Section 3 — Commercially Useful Function (CUF) Reviews

Overview

For federally funded contracts with an assigned DBE goal, prime contractors may only count toward the assigned goal expenditures to DBEs that perform a CUF in the work or purchase order. A DBE must do the following in order to perform a CUF:

- ◆ execute the subcontracted work
- ◆ perform, manage and supervise the subcontracted work
- ◆ take responsibility for the materials and supplies used in the subcontracted work, including:
 - negotiating price
 - determining quality and quantity
 - ordering the material
 - installing material (where applicable)
 - paying for the material.

Allowances for Prime Contractor Assistance to Retain CUF Standing

In all cases, the subcontract between the prime contractor and DBE must indicate the work responsibilities of the DBE. The DBE subcontract must also state if equipment will be provided by the prime contractor to the DBE for certain portions of the work.

The following discussion is provided to better clarify the assistance that a prime contractor may provide under the contract DBE requirements. These examples are intended to provide general guidance regarding the performance of a CUF; however, these examples are not all inclusive. While the DBE may be determined to perform a CUF, it is important to remember that a DBE must be an independent business and any relationship with or assistance provided by non-DBE firms, in such areas as personnel, facilities, equipment, financial or bonding assistance, and other resources must be scrutinized to verify DBE credit can be received and whether the DBE remains eligible for the program. Any assistance provided by the prime or a non-DBE subcontractor will not receive DBE payment credit.

Steel Tying Examples

Existence of subcontractors performing work outside the DBE program carries significant weight in determining whether the work is a CUF. An example is the current steel tying industry. Prime contractors currently use several non-DBE firms as steel tying subcontractors, both graduated DBEs and non-DBE firms. The department has found that steel tying has been an avenue for the development of DBEs; two former DBEs are now prime contractors for the department.

In the case of steel tying firms, standard industry practice is for the prime contractor to provide hoisting services (including those firms that are not DBEs). While the hoisting service provided by the prime contractor is not creditable toward DBE payments, it does not automatically violate the CUF requirements. The department will require the cost of the hoisting services be addressed in the subcontractor agreement and the DBE actually pays for the service to the prime contractor (or other subcontractor).

Further, when joint checks are used, credit for material (steel) may be allowed if the DBE has documented evidence that it solicited quotes from material suppliers. In accordance with contract requirements, the prime contractor may provide quotes to the DBE that it receives from the supplier when the conditions are met as outlined below.

◆ Emergency Assistance

A prime contractor may provide assistance in cases of emergencies or for immediate safety needs. Such cases would address the need to protect the traveling public and would be of a short duration. Assistance would be allowed in the same manner as with a non-DBE subcontractor.

◆ Labor Only CUF

Labor only CUF is subject to rigorous scrutiny because it brings into question a DBE subcontractor's dependence upon a prime contractor. In most cases, equipment is needed to perform work and the importance of knowledge of equipment needs, operations, and cost is a critical aspect to a legitimate business. Credit will only be given when the DBE meets all conditions for a CUF as stated in the contract. Because DBE payment credit for materials is not a component of the DBE credit for labor only work, requirements for negotiating material prices, determining quality and quantity of materials, ordering the material, and paying for the material do not apply. Credit for work will be in accordance with the responsibilities outlined in the contract.

An example of labor only as a CUF can be found in curb and gutter and sidewalk work. There are examples of curb and gutter and sidewalk contractors outside the DBE program. Its work is generally considered independent, even when the prime contractor, using its equipment and operators, performs rough grading service for the curb and gutter. In this case, the DBE or non-DBE curb and gutter subcontractor usually provides only minor equipment and pickups.

◆ Affirmative CUF Findings for Negotiating Prices for Materials

The prime contractor may share quotes received from suppliers with DBE subcontractors. DBE goal credit for the subject materials will be allowed as long as the following conditions are satisfied:

- The DBE subcontractor solicits quotes from suppliers and provides supporting documentation.
- The DBE negotiates the material agreement with the supplier.

- The DBE subcontractor is responsible for ordering and scheduling delivery of the materials, processing invoices, and making payments.

Where the prime contractor provides equipment to supplement a DBE's work, consider the following:

- ◆ Does the work or part of the work require equipment?
- ◆ Is the work provided by the DBE independent of assistance provided by the prime contractor?
- ◆ Is this an industry practice outside the DBE program?

In all cases, prime or other subcontractor assistance will not be credited toward the DBE goal and the assistance (non-emergency) is clearly delineated in the subcontract.

For all contracts with an assigned DBE goal, conduct CUF reviews on all non-supplier DBE subcontractors. BOP will conduct CUF reviews on DBE suppliers. If needed to verify a CUF, obtain a copy of the subcontract agreement for clarification regarding the DBE's contractual responsibilities. To conduct these CUF reviews, use the following procedure:

1. Complete [Form 2182](#), Commercially Useful Function (CUF) Project Site Review, as soon as possible after the start of the DBE's work. (Form available through the TxDOT Intranet only.)
2. Monitor the DBE's performance and conduct additional reviews using the checklist when the DBE's work performance brings into questions whether the DBE meets CUF requirements.
3. If the information obtained indicates possible noncompliance with CUF requirements, contact BOP for a final determination.

In order to provide consistent interpretations statewide, BOP will make final negative CUF determinations. Contact BOP for guidance and assistance related to DBE CUF issues.

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](#).

It is the policy of the department that every federal-aid [contractor](#), [subcontractor](#) or material supplier 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 has the responsibility to 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 E.O. 11246 to ensure compliance with or enforce OFCCP requirements.). A contractor's minimum equal opportunity requirements are set forth in the following contract provisions:

[FHWA Form 1273](#), **Required Contract Provisions Federal-Aid Construction Contracts**. This is a standard document containing required federal EEO contract provisions and proposal notices physically required to be 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 the Form FHWA-1273 constitutes the contractor's EEO/Affirmative Action Plan standards for that contract.

Contractor Federal EEO Requirements

The primary purpose of an Equal Opportunity Contract Compliance review is to determine whether a federal contractor is in compliance with its contractual nondiscrimination and affirmative action requirements. Compliance reviews are conducted by the Office of Civil Rights, Contract Compliance Section (OCR-CCS) to determine a contractor's compliance with the following federal EEO requirements:

Equal Employment Opportunity

The contractor will work with the department and the federal government in carrying out EEO obligations and in their review of his/her activities under the contract. The contractor will accept as his operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, religion, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.”

EEO Officer

The contractor will designate and make known to the department an EEO officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

Dissemination of EEO Policy

All members of the contractor’s staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or who are substantially involved in such action, will be made cognizant of, and will implement the contractor’s EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure the above agreement will be met, the following actions will be taken as a minimum:

- ◆ Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the contractor’s EEO policy and its implementation will be reviewed and explained. The meeting will be conducted by the EEO officer.
- ◆ All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO officer, covering all major aspects of the contractor’s EEO obligations within 30 days following their reporting for duty with the contractor.
- ◆ All personnel who are engaged in direct recruitment for the project will be instructed by the EEO officer in the contractor’s procedures for locating and hiring minority group employees.
- ◆ Notices and posters setting forth the contractor’s EEO policy will be placed in areas readily accessible to employees, applicants for employment, and potential employees.
- ◆ The contractor’s EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Recruitment

When advertising for employees, the contractor will include in all advertisements for employees the notation, “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project workforce would normally be derived.

- ◆ The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources, procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- ◆ The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions

Wages, working conditions and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- ◆ The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- ◆ The contractor will periodically evaluate the spread of wages paid within each job classification to determine any evidence of discriminatory wage practices.
- ◆ The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- ◆ The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all the avenues of appeal.

Training and Promotion

The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

Consistent with the contractor's work force requirements and as permissible under federal and state regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance.

The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

Selection of Subcontractors, Procurement of Material, and Leasing of Equipment

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors including procurement of materials and leases of equipment.

- ◆ The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- ◆ Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26, shall have the equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract.

The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from the department.

- ◆ The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

Records and Reports

The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the department and the FHWA.

The records kept by the contractor shall document the following:

- ◆ The number of minority and non-minority group members and women employed in each work classification on the project;
- ◆ The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
- ◆ The progress and efforts being made in securing and services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

The contractors will submit an annual report to the department each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. The information is to be reported on Form FHWA 1391.

Nonsegregated Facilities

The federal-aid construction contractor, subcontractor, material supplier, or vendor certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

The term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

EEO Correspondence and Reports

[Federal-Aid Highway Construction Contractors Annual EEO Report - Form 1391](#) – Each prime contractor and subcontractor with federally funded contracts of \$10,000 or more, not including material suppliers and regardless of tier, and that have workforce activity during the last full pay period in July (ending July 31st) must complete the Form 1391. The form must include the number of employees, minority, women and non-minority, engaged in each work classification required by the contract who worked all or any part of the specified time period. Contractors who do not perform any work during the last full pay period of July must submit a negative report – write “Not Applicable” across the form, sign and date and return the form.

The area engineer (AE) should distribute the Form 1391 to the contractors. Once completed the contractor must submit three copies of Form 1391 to the AE by August 12th each year. The area office must retain one copy and submit the original and one copy to the district office.

[Federal-Aid Highway Construction Summary of Employment Data](#) – The Form 1391 data is to be compiled into the Form 1392 by the district office and the originals submitted to the Office of Civil Rights, Contract Compliance Section (OCR-CSS). The Form 1392 will be due in early September as indicated in the memorandum sent to each district by the director of the Office of Civil Rights.

Section 2 — Labor Requirements

Policy

[Contractors](#) must be familiar with and comply with all laws, ordinances, and regulations regarding labor related requirements which 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 and:

- ◆ 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 hrs. 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
- ◆ 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
- ◆ 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
- ◆ 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 contractors and subcontractors 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*

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- ◆ 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, Chapter 2258 of the Texas Government Code)

[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
- ◆ requires the contractor and all subcontractors keep, or cause to be kept, copies of weekly pay-rolls 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.

Contractor Labor 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 an [“Additional Classification and Wage Rate Request”](#) form to the area engineer.
- ◆ For federally funded projects, contractors must submit weekly statements listing the wages paid to each employee. USDOL [Form WH-347](#) (or form providing same information) is to be used for this payroll submission. These weekly payroll statements 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 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 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 (that is, 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 which constitute a contribution for the purpose of providing medical or hospital care; pensions or annuities on retirement; death benefits; 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 or otherwise receive benefits (such as, 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 (such as, 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 (such as, 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 hrs. in any given work week must be paid at a rate of 1-1/2 times their regular rate for all hours worked in excess of 40 hrs. 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.' 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 an ["Additional Classification and Wage Rate Request."](#) On federally funded contracts, submit these requests to the Construction Division (CST), Labor and Contract Administration Branch (L&CA) for approval. Recommendations for additional classification requests may be included with the submittal sent to CST-L&CA. On state funded contracts, review and approve these requests. 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. Submit copies of labor classifications and rates approved at the district level to CST-L&CA.

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. 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-L&CA 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 area engineer's discretion. Verify that the payrolls submitted include the following information for each employee:

- ◆ name
- ◆ social security number
- ◆ address
- ◆ classification
- ◆ rates of pay
- ◆ daily and weekly number of hours worked
- ◆ deductions made
- ◆ actual wages paid.

NOTE: Employee's full name, social security number and address need only appear on 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 is 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 FIN to 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)

Submit Form [FHWA-1494](#), Semiannual Labor and Compliance Enforcement Report to CST-L&CA on or before **April 15th** and **October 15th** of each year. Reporting periods are October 1st through March 31st and April 1st through September 30th each year. Provide data for questions 4 through 11. CST personnel will compile district information received and report statewide information for questions 1 through 3. The completed report is provided to the Federal Highway Administration.

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-L&CA 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-L&CA.

Section 3 — On-the-Job (OJT) Training

Introduction

The Texas Department of Transportation (TxDOT) has established an On-the-Job ([OJT](#)) Program in accordance with regulations of the U.S. Department of Transportation at 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts (including Supportive Services). It is the policy of TxDOT 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.

Contract Requirements

Special Provision 000---807 - On-the-Job Training (OJT) Program, is included in all TxDOT federal-aid construction contract proposals effective with the January 2007 state letting. Selection of and notification to contractors participating in the training program for the calendar year will be made by TxDOT's Office of Civil Rights - Contract Compliance Section (OCR-CCS) in January of the applicable year. Contractors selected for participation will also be notified of their annual trainee goal at that time. The OJT program provides contractors with the flexibility to select the federal-aid projects they may place trainees on by removing project specific requirements.

Contractor Responsibilities

Contractors participating in the OJT program are responsible for the following:

- ◆ Within thirty days of the annual notification, develop an action plan to fill the assigned training slots (assigning and scheduling of trainees).
- ◆ Within sixty days of the annual notification, begin training one or more trainees on a federal-aid project.
- ◆ Advise employees and applicants for employment of available training programs and entrance requirements for each.
- ◆ Review all applications of prospective trainees to ensure that they will not be enrolled in a training program in which they have previous experience.
- ◆ Periodically review the training and promotion potential of minority group, female and disadvantaged individuals and encourage them to apply for such training and promotion.
- ◆ [Form 2201](#), Contractor OJT Enrollment Request Form, is submitted electronically to TxDOT OCR-CCS or to the program sponsor, if applicable, within seven business days of the contractor's intent to assign trainee(s) to a project and the training classification(s) to be utilized.
- ◆ Trainees will be given a copy of their completed Form 2201.

- ◆ By Wednesday of each week, submit [Form 2202](#), Contractor OJT Weekly Reporting Form, to the appropriate Area Engineer(s), to document training activity, hours trained, termination, or graduation during the training period indicated.
- ◆ Upon graduation or termination, the contractor will electronically submit Form 2202 to the Area Engineer and OCR-CCS or the program sponsor if applicable, within seven business days of the effective date of graduation or termination.
- ◆ If a trainee is transferred to another project, the contractor must notify both the Area Engineer on the previous project and the Area Engineer on the project the trainee is being transferred to.
- ◆ Trainee compensation shall be, at a minimum, 60% of the appropriate journeyman's rate as specified in the contract for the first half of the training program, 75% for the third quarter of the training program and 90% for the last quarter.
- ◆ Request for \$0.80 per training hour reimbursement by the Contractor is optional and may be made of the Department.
- ◆ Training goal credit will be allowed toward the contractor's annual goal for the year in which the trainee entered into training.
- ◆ Training goal credit will be allowed for each trainee employed on the contract and who is currently enrolled or becomes enrolled in an approved training program.
- ◆ Training goal credit will be allowed should the contractor train, certify and advance the trainee to journeyman worker status upon successful demonstration of the required proficiency standards.
- ◆ No training goal credit will be allowed for any trainee involuntarily terminated by the contractor unless the contractor can clearly justify the action. When a trainee is terminated for any reason, the contractor is required to make a good faith effort to replace the trainee within 30 days of the termination. The replacement trainee need not be in the same classification code as the terminated trainee. The contractor will utilize [Form 2201](#), Contractor OJT Enrollment Request Form to notify the OCR-CCS or the program sponsor of the replacement trainee's enrollment.
- ◆ Training goal credit is not allowed for any training program classification in which the employee/trainee has already completed the training program leading to journeyman status.
- ◆ No credit will be allowed when the contractor fails to provide the required training or evidences a lack of good faith effort in meeting the requirements of this program.
- ◆ Contractors will make available to the Department and the Federal Highway Administration (FHWA) access to all records upon request.
- ◆ Retain original training records for a period not less than three years following completion of the contract work.
- ◆ Any contractor who intends to participate in an alternate training program is required to submit to OCR-CCS a detailed request specifying the reasons for the proposed training program and a

copy of the proposed program. The proposed program must be approved by the Department of Labor.

Texas Department of Transportation Responsibilities

The Department is responsible for the following:

- ◆ By confirmation letter, OCR-CCS or any training program sponsor will notify the contractor and the appropriate Area Engineer(s) of training enrollment approval.
- ◆ The appropriate Area Office representative will verify the hours trained by the trainee and will sign [Form 2202](#), OJT Weekly Reporting Form.
- ◆ Submitted Forms [2201](#) and 2202, Contractor OJT Enrollment Request Forms and OJT Weekly Reporting Forms, will be monitored by the Department as necessary to ensure progress in meeting assigned training goals.
- ◆ Area Engineer Office personnel will conduct, on a quarterly basis, labor interviews and monitor wage rates utilizing Form 2220, Labor Standards Review form.
- ◆ The OJT database, maintained by the OCR-CCS, will be monitored to obtain information regarding the contractors' OJT program compliance status.

On-the-Job Training - Supportive Services

Through a Federal Highway Administration mandated initiative, the OCR-CCS will administer a two year pilot program for supportive services to trainees who are minority group members, women or economically disadvantaged trainees on federal-aid highway construction projects. Eligible trainees will receive services such as a stipend, career counseling, transportation assistance, and tools.

Section 4 — Workforce Project Posters

Posters and Notices

Ensure that the contractor displays the following [EEO](#) posters and required notices to be displayed on project-site bulletin boards. The government referral line for questions regarding required posters for any state is 1-800-688-9889.

NOTE: [Subcontractors](#) may use the prime contractor's project-site bulletin board to display the required EEO officer information.

Job Site Posters and Notices

Poster/Notice Name	Source
*Equal Opportunity is the Law *EEOC-P/E-1 (EEO Poster) *EEOC-P/E-S (Spanish Version) *Fed. 5 in 1 Labor Law Poster	Required by 41CFR60-1.4(b)(1) Available at Department of Labor (DOL) or call 1-800-669-3362 G. Neil Co. 1-800-999-9111
*Contractor's EEO Policy *Statement with Project EEO Officer's Name and Phone No.	Required by 41 CFR 60-741.44
*Wage Rate Information *FHWA1495 *FHWA 1495A (Spanish Version)	May be substituted for DOL-1321 per FHWA 1273, IV(1)(a) Call Thomas Molock at (301) 322-5377
Notice to Employees (Davis-Bacon Wage Rate Poster) USDOL-1321	Required by 29 CFR 5.5(a)(1) DOL or download poster
*Project Wage Rates	May be obtained from project contract
*Your Rights-Federal Minimum Wage *WH 1088 *WH 1088 SP (Spanish Version)	Needed on projects where Davis-Bacon wage rates are not established. Available at DOL website or Call (972) 850-2647
Job Safety and Health Protection OSHA-3165 OSHA-3167 (Spanish Version)	Required by 29 CFR 1903.2(a)(1) Call (202)693-1888 or download poster
Texas Payday Law Poster **T.E.C. Y-10c **T.E.C. Y-10s (Spanish Version)	Texas Workforce Commission Call (512) 463-2747
Worker's Compensation Poster Notice 6 Notice 6s (Spanish Version)	Texas Worker's Compensation Commission Call (512) 804-4333

Job Site Posters and Notices

Poster/Notice Name	Source
Family/Medical Leave Act WH-1420 WH-1420 (Spanish Version)	Required by 29 CFR 825.300(a) for employers of more than 40 people. Available at DOL . Call (202) 693-0023
Falsified Statements FHWA-1022	Notice required by 18 CFR 1020 and 23 CFR 635.119 Call (301) 322-5377 or fax: (301) 386-5394
Employee Polygraph Protection Act WH-1462 WH-1462A (Spanish Version)	Required by 29 CFR 801.6 Available at DOL Or call DOL office (202) 693-0067
Hazard Communication Program Notice	OSHA Reg. 1926.59 To be developed by contractor
Emergency Telephone Number Notification	OSHA Reg. 1926.50 To be developed by contractor
<p>*Required by FHWA for federally funded projects. **Firm name, address and account number required on this poster.</p>	

Chapter 16 — Local Government Contract Oversight

Contents:

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[Section 2 — General Requirements Checklist](#)

Section 1 — District Responsibilities

Overview

This chapter provides information related to district responsibilities associated with the administration and oversight of highway improvement contracts and related transportation projects let or administered by local government (LG) entities, including regional mobility authorities (RMAs) and local toll authorities. The responsibility for the administration of these contracts is similar to that associated with federal-aid highway improvement contracts for which a State Letter of Oversight Authority (SLOA) has been issued to the state agency.

In order to parallel the instruction provided to local governments in Module 11 of the department's Local Government Project Procedures (LGPP), this chapter is organized in the same manner. Guidance and checklists are provided for the following four contract phases included in the LGPP:

1. bid document preparation
2. letting and award
3. contract execution
4. contract administration.

The checklists provided for these contract phases are divided into two sections:

- ◆ federal requirements and
- ◆ state requirements.

Ensure that approval has been obtained from the Executive Director prior to allowing a local government to let and administer a contract. Send all submissions associated with highway improvement contracts and related transportation projects let or administered by local governments to the attention of the Design Division (DES). DES, in turn, will disseminate the information received to the appropriate offices and divisions for review and approval. Contact the appropriate division or office for additional guidance in the appropriate areas of responsibility. Division or office contacts for specific areas of responsibility are included, if applicable. In the absence of specific contact information, coordinate with DES.

Section 2 — General Requirements Checklist

Bid Document Preparation

Review the bid document package received from the local government to ensure that it is complete. Transmit complete bid document packages to the Design Division (DES) for review and approval. Facilitate communication between DES and the local government. Failure to ensure that bid document packages include all of the items listed in the following checklists will lengthen the review and approval process.

Obtain proposed procedures, policies and programs from the local government prior to the preparation of the final proposed bid package and forward to DES for review and approval. DES will, in turn, forward the proposals as appropriate to the offices of primary responsibility for review and approval. Notify the local government (LG) when DES provides approval of the proposed procedures, policies, and programs. Should additional information or revision be required, coordinate the receipt of information or revision between the local government and DES.

Federal requirements

Federal Requirement Bid Document Preparation

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Bonding and prequalification	23 CFR 635.110	Submit qualifying / licensing procedures to the department for approval. Include approved provisions in bid document.	Receive qualifying / licensing procedures and forward through DES to Construction Division (CST) for approval (specific contact: Contract Letting and Contractor Prequalification Branch [CL&CP], [512] 416-2490). Return approved qualifying and licensing procedures received from DES to the LG.	-
Buy America	23 CFR 635.410	Include provisions in bid document.	Review bid document for inclusion of the provision.	-
Change orders	23 CFR 635.120	Develop procedures outlining the conditions under which a change order is allowed and include in bid document.	Review bid document for inclusion of the provision.	-
Claims	23 CFR 635.124	Develop procedures outlining the conditions under which a claim is allowed and include in bid document.	Review bid document for inclusion of the conditions under which a claim is allowed.	-

Federal Requirement Bid Document Preparation

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Contract time	23 CFR 635.121	Provide procedures to be used.	Forward procedures received from the LG through DES to CST for review and approval.	-
Design Standards	23 CFR 625	<ul style="list-style-type: none"> ◆ Submit geometric design criteria. ◆ Ensure 12 controlling elements meet approved design standard. ◆ Formally document design exception. 	Ensure design meets minimum AASHTO requirements for the 12 controlling elements. Forward design exception(s) received from the LG to DES for review and approval.	-
Debarment certification	49 CFR 29.510	Include statement of certification in bid document.	Review bid document for inclusion of the provision.	-
Designated material sources /disposal sites	23 CFR 635.407	Develop public interest finding if specified in the bid document	Review bid document for designated material sources. If development of a public interest finding is required, ensure that the finding is approved by DES.	-
Disadvantaged Business Enterprise (DBE)	49 CFR 26	<ul style="list-style-type: none"> ◆ Develop a program (in accordance with 49 CFR 26) or adopt the department's approved DBE program ◆ establish project goals and include in bid document. ◆ include DBE provisions in bid document and ◆ use DBEs certified under the Texas Unified Certification Program. 	If the LG develops its own program, obtain copy of the DBE Program to be used by the LG and forward program through DES to the Business Opportunity Programs Office (BOP) for review and approval. Contact BOP at (512) 486-5500 for additional information and guidance.	-
Equal Employment Opportunity	23 CFR 230	Include departmental approved provisions in bid document.	Ensure EEO provisions are included in the bid document in accordance with federal requirements.	-
Equipment rental rates	FAPG NS 23 CFR 635.120	Develop procedure based on 48 CFR 31 and include in bid document.	Review bid document for inclusion of the proper payment provision for rental equipment.	-
FHWA-1273	23 CFR 230	Include language verbatim in all contracts and subcontracts.	Review bid document for inclusion of the provision.	-

Federal Requirement Bid Document Preparation

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Liquidated damages	23 CFR 630.305	<ul style="list-style-type: none"> ◆ Develop rates and include contract provisions and ◆ include contract provision for assessing damages. 	Forward liquidated damage rates proposed by the LG through DES to CST (specific contact: CST, Field Engineering Branch [FE]) for approval. Ensure that approved rates are included in bid proposal.	-
Lobbying certification	49 CFR 20	Include certification form in bid documents.	Review bid document for inclusion of the provision.	-
Local hiring preference	23 CFR 635.117	Do not include any local hiring preferences in bid documents.	Review bid document to ensure exclusion of any local hiring preference.	-
Method of construction (or method of bidding)	23 CFR 635.104	Develop a public interest finding and submit to the department for approval if not using the competitive bidding method.	Forward bidding and award procedures proposed by LG through DES to CST for review and approval (specific contact: CST-CL&CP).	-
Non collusion Provision	23 CFR 635.112	Include certification in bid document.	Review bid document for inclusion of the provision.	-
Non-responsive bid	23 CFR 635.112	<ul style="list-style-type: none"> ◆ Include definition of non-responsive bid and list of reasons for a bid being non-responsive in bid document and ◆ review bid document for inclusion of the provision. 	Ensure the bid document includes this provision. Forward bidding and award procedures, including provisions for non-responsive bids, proposed by through DES to CST for review and approval (specific contact: CST-CL&CP).	-
Non-segregated facilities	23 CFR 230.409	Include FHWA 1273 in bid documents.	Review bid document for inclusion of the provision.	-
Patented / Proprietary materials	23 CFR 635.411	Develop public interest finding (if specified in bid document).	If development of a public interest finding is required, ensure that the finding approved by DES is included in the bid document.	-
Prevailing minimum wage	23 USC 113 23 CFR 633A	Include latest Davis-Bacon wage rate in the contract. Current wage rates may be obtained at: http://www.access.gpo.gov/davisbacon .	Review bid document for inclusion of the provision. If the project is located in the border area, contact CST, Labor and Contract Administration Branch (L&CA) for the appropriate border wage rates.	-

Federal Requirement Bid Document Preparation

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Prison produced material	23 CFR 635.417	Develop contract language to prohibit the use of convict-produced materials and include in bid document.	Review bid document for inclusion of the provision.	-
Publicly-owned equipment	23 CFR 635.106	Do not allow in contract	Review bid document for inclusion of the provision.	-
Railroad insurance provision	23 CFR 646.107	Include provisions for railroad insurance in bid document when work is in the railroad right of way.	Review bid document for inclusion of the provision.	-
State or local preference	23 CFR 635.409	Do not allow in contract.	Review bid document for exclusion of state or local preferences.	-
Termination	23 CFR 635.125	Develop contract language for termination for cause, convenience, and default and include in bid document.	Review bid document for inclusion of the provision.	-
Time extensions (see Change Orders and Time Extensions)	23 CFR 635.121	Include reasons time extensions are allowed in bid document.	Review bid document for inclusion of the provision.	-
Warranty clauses	23 CFR 635.413	Provide the department with procedures to be used and include approved procedures in bid document.	Review bid document for inclusion of the provision.	-

State requirements

State Requirement Bid Document Preparation

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Child support documentation	Family Code §231.006	Include language required by state statute verbatim in bid document.	Review bid document for inclusion of the provision.	-
Small Business Enterprise (SBE)	43 Texas Administrative Code §9.55	Ensure SBE provision requirements are included in bid document.	Review bid document for inclusion of the provision. Applicable to projects that are wholly funded with state funds and federally-funded projects that do not have a DBE goal provided.	-

State Requirement Bid Document Preparation

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Prevailing minimum wage	Government Code 2258	Include appropriate wage rates in bid document in accordance with state statute.	Projects located in counties adjacent to Mexico or in counties adjacent to counties that are adjacent to Mexico are subject to state prevailing wage requirements. Contact the CST-L&CA for copies of these wage rates.	-

Bid Document Components

Obtain the following bid document components from the local government and transmit to DES for proper department coordination. Contact the division/office with primary responsibility, as listed below, for additional information or guidance.

Bid Document Components

Bid Document Component	Office of Primary Responsibility (OPR)
Bonding and prequalification	CST-Contract Letting and Contractor Prequalification (CL&CP), (512) 416-2490
Change Orders	CST-Labor and Contract Administration (L&CA), (512) 416-2532
Claims	CST-Claims, Disputes and Special Programs (CDSP), (512) 416-2510
Contract Time	DES, Landscape Design Section, (512) 416-3082
Design Exception	DES, Landscape Design Section, (512) 416-3082
Disadvantaged Business Enterprise Program	Business Opportunity Programs Office (BOP), (512) 486-5500
Equal Employment Opportunity	Office of Civil Rights (OCR), (512) 936-2741
Liquidated Damages	CST-Field Engineering (FE), (512) 416-3301
Method of Construction (or Bidding)	CST-CL&CP, (512) 416-2490
Non-responsive Bid	CST-CL&CP, (512) 416-2490
Prevailing Minimum Wage	CST-L&CA, (512) 416-2467
Warranty Clauses	CST-FE, (512) 416-3301

Letting and Award

As with the Bid Document Preparation phase, receive bid document components from the local government and transmit to DES for review and approval. Facilitate communication between the

local government and DES. There are, however, some district responsibilities during this phase included in the checklists above. The following detail is provided as guidance to be used in satisfying these responsibilities.

Advertising and Distribution of Bid Documents. Ensure that the local government’s DBE program and procedures related to bid opening and tabulation have been approved prior to any advertising of the project. Conduct periodic reviews during the advertising time period to ensure local government compliance with the advertising requirement in accordance with procedures approved by DES. At the same time, ensure that bid documents were disseminated at least three weeks prior to the date of bid opening. Notify DES immediately of any discrepancies noted.

Bid Opening. Attend bid openings and observe the letting process to ensure that approved procedures are used. Notify DES immediately of any discrepancies noted.

Lobbying and Non-collusion Certifications. Review at least three apparent lowest bidders of the bid proposals received by the local government to ensure proper contractor completion of these certifications. Notify DES immediately of any improperly completed certifications.

Federal requirements

Federal Requirement Letting and Award

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Addenda	23 CFR 635.112	Send addenda to the department for approval before release. Make approved addenda available to all bidders.	Forward proposed addenda to DES for review and approval before addenda is made available to all bidders.	-
Advertising	23 CFR 635.112	<ul style="list-style-type: none"> ◆ Obtain department approval for bid opening and tabulation before advertising ◆ obtain departmental authorization and ◆ advertise contract for a minimum three weeks in advance of bid opening. 	Forward proposed advertising requirements through DES to CST for review and approval. Perform “spot checks” of posted advertisements to ensure compliance with approved procedures. Ensure that bid opening and tabulation procedures are approved prior to advertising of the project.	-

Federal Requirement Letting and Award

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Bid analysis and contract award	23 CFR 635.114	<ul style="list-style-type: none"> ◆ Evaluate bids ◆ determine lowest responsible / responsive bidder ◆ consider alternate bid items, if used ◆ establish low bid criteria if add alternate bid items are used ◆ request concurrence in award and ◆ proceed with contract execution after notification of concurrence by the department. 	Forward concurrence package received from LG through DES to CST for review.	-
Bid opening and tabulation	23 CFR 635.113	Describe procedures to ensure bids are opened and publicly read at time and location listed in advertisement.	Forward the LG's proposed procedures through DES to CST for review and approval. Attend bid opening if locally let and ensure that approved procedures are followed.	-
Distribution of bid documents	23 CFR 635.112	Minimum three weeks prior to date of letting.	Conduct a "spot check" to ensure required procedures are followed.	-
Lobbying certification	49 CFR 20	Review certification contained in bid document. If the bidding contractor indicates that he/she has participated in lobbying, contact TxDOT for further direction.	Conduct periodic reviews of bid document lobbying certifications. If any of the certifications reviewed indicate lobbying activities were conducted, notify DES immediately.	-
Non-collusion	23 CFR 635.112	Review certification contained in bid document to ensure proper completion by contractor.	Conduct periodic reviews of bid document to ensure proper completion of the non-collusion certificate by the contractor. Notify DES of any improperly completed certifications.	-

State requirements

State Requirements Letting and Award

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Advertising	Government Code §2155.083	<ul style="list-style-type: none"> ◆ Place notice on Texas Department of Economic Development Internet site (Texas Marketplace) a minimum of 21 calendar days prior to bid opening. ◆ Advertise the place and time bids are to be opened and read. 	Conduct periodic reviews of advertising publications to ensure compliance.	-

Contract Execution

As with the Bid Document Preparation phase, receive bid document components from the local government and transmit to DES for review and approval. Facilitate communication between the local government and DES. There are, however, some district responsibilities during this phase included in the checklists above. The following detail is provided as guidance to be used in satisfying these responsibilities.

Federal requirements

Federal Requirements - Contract Execution

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Disadvantaged Business Enterprise (DBE)	49 CFR 26	<ul style="list-style-type: none"> ◆ Send the DBE goal to the department for determination that it has been approved by a US DOT agency before the project is advertised and ◆ review DBE participation to ensure contract goals are satisfied in accordance with provisions contained in the bid document prior to contract execution. 	Send the LG's DBE Program through DES to BOP for review and approval prior to advertising of the project. If the project includes a DBE goal requirement, ensure that the required DBE documentation is included in the concurrence package and forward through DES to BOP for review.	-
Railroad insurance	23 CFR 646.107 23 CFR 646.216	<ul style="list-style-type: none"> ◆ Ensure that contractor has submitted the required insurance and ◆ ensure that railroad agreement has been executed prior to contract execution. 	Conduct periodic reviews of bid documents to ensure compliance.	-

State requirements

State Requirements - Contract Execution

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Bonding	Government Code §2253.021	<ul style="list-style-type: none"> ◆ Performance bonds required if the contract is in excess of \$100,000 and ◆ payment bonds required if the contract is in excess of \$25,000. 	Ensure that the required bond information is included in the concurrence package and forward through DES to CST for review.	-
Child support documentation	Family Code §231.006	Collect names and social security numbers of all individuals owning 25% or more of the company that is awarded the contract.	Ensure that the required information is included in the concurrence package and forward through DES to CST for review.	-
Small Business Enterprise (SBE)	43 Texas Administrative Code §9.55	Review SBE participation to ensure goals are satisfied in accordance with provisions contained in the bid documents prior to contract execution.	If the project includes an SBE goal requirement, ensure that the required SBE documentation is included in the concurrence package and forward through DES to BOP for review.	-
Workers' compensation insurance	Labor Code §406.096	Ensure the contractor has filed the required certificate of insurance prior to contract execution.	Ensure that the required information is included in the concurrence package and forward through DES to CST for review.	-

Contract Administration

District responsibilities are primarily contained within this contract phase. Specifics and guidance related to each component of this phase is included in the checklist below. During this phase and unless otherwise indicated, contact the CST, Field Engineering Branch at (512) 416-2455 for additional information and guidance. Specific contact information, where applicable, is provided in the checklist.

Conduct at least two periodic reviews or project site visits during the life of the Contract once the work has started to ensure compliance with various contracting requirements as listed in the following checklists. During this phase, and unless otherwise indicated, contact CST-FE at (512) 416-2455 for additional information and guidance. Specific contact information, where applicable, is provided in the checklist.

Conduct at least two periodic reviews or project site visits during the life of the contract once the work has started. Conduct at least one site visit during peak activity. Conduct a final inspection prior to release and final approval of the project. Periodic reviews of required reports and submissions may be conducted separately by desk audit or may be conducted in conjunction with the site

visit of the project. During these periodic reviews or site visits, review all areas of the project to ensure compliance as listed below. This includes a review of invoices, copies of checks, and work reports.

Federal requirements

Federal Requirements - Contract Administration

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Americans with Disabilities Act (ADA)	49 CFR 37	Ensure all transportation facilities are in compliance. Guidance for local governments may be obtained at the <i>U. S. Department of Justice</i> and the <i>U. S. Access Board</i> .	Ensure compliance when conducting the final inspection.	-
Change orders	23 CFR 635.120	<ul style="list-style-type: none"> ◆ Develop definition of major / non-major change orders ◆ gain approval of major changes before starting work ◆ approval of non-major changes can be given later if a definition is developed and ◆ maintain documented cost analysis of negotiated prices. 	<ul style="list-style-type: none"> ◆ Review and approve the LG's definitions of major / minor change orders. ◆ Review and approve ALL change orders. ◆ Contact CST-L&CA, (512) 416-2435 for additional information and guidance. 	-
Claims	23 CFR 635.124	Develop claims procedure as required and administer in accordance with procedures developed.	Review and approve all claims, while ensuring that approved procedures are administered. Forward proposed claims procedures developed by the LG through DES to CST-CDSP, (512) 416-2510, for approval.	-
Contract time	23 CFR 635.121	Administer time in the manner approved.	Ensure that time is charged on the project in accordance with procedures approved by CST.	-
Convict labor	23 CFR 635.117	Ensure that the contractor does not use convict labor.	Conduct periodic reviews of the project to ensure compliance.	-
Differing site conditions	23 CFR 635.109	Should such a condition exist, handle in accordance with provisions contained in contract documents.	Review and approve any change orders processed by the LG regarding differing site conditions.	-

Federal Requirements - Contract Administration

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Disadvantaged Business Enterprise (DBE)	49 CFR 23	Monitor progress / good faith efforts through monthly DBE progress reports submitted by the contractor.	<ul style="list-style-type: none"> ◆ Conduct periodic reviews of the project to ensure compliance with DBE program requirements. Receive and approve any good faith efforts submitted. At final inspection, ensure that all DBE program requirements, including goal satisfaction, have been accomplished ◆ Contact BOP at (512) 486-5500 for additional information and guidance. 	-
Environmental concerns	23 CFR 450 23 CFR 771 23 CFR 777	Environmental commitments are often made during the environmental process. Carry these commitments forward in the construction plans. Contact the Environmental Affairs Division (ENV) with questions or concerns related to environmental issues.	Periodically review project records to ensure compliance with environmental requirements. Forward any environmental concerns immediately through DES to CST for proper coordination. Review and approve any change orders arising as a result of environmental concerns.	-
Equal Employment Opportunity	23 CFR 230	<ul style="list-style-type: none"> ◆ Collect contractor's and subcontractors annual FHWA 1391 reports and submit to the department's area or district office and ◆ ensure all subcontractors comply with EEO requirements 	<ul style="list-style-type: none"> ◆ Conduct periodic project inspections to ensure compliance with EEO requirements. Consolidate project information into FHWA 1392 annual report provided to OCR and ◆ contact OCR at (512) 936-2741 for additional information and guidance. 	-
Publicly owned equipment rental rates	FAPG NS 23 CFR 635.126	Ensure that contractor does not specify mark-ups.	Ensure that LG does not include markups on publicly owned equipment rental rates for change orders.	-
False statements	23 CFR 635.119	Furnish Form FHWA-1022 and ensure it is posted on the project bulletin board.	Conduct periodic project inspections to ensure compliance.	-
Final inspection and acceptance	FHWA/TxDOT Oversight Agreement (10/13/06)	<ul style="list-style-type: none"> ◆ Perform final inspection for quality of work and compliance with specifications and regulatory requirements and ◆ prepare final acceptance report. 	Conduct final inspection on all projects and transmit the report to FIN. Maintain the final inspection form in the project file.	-

Federal Requirements - Contract Administration

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Liquidated damages	23 CFR 630.305	Assess in accordance with specifications included in contract documents.	At final inspection, ensure the assessment of any liquidated damages in accordance with contract specifications.	-
Non-segregated facilities	23 CFR 230.409	<ul style="list-style-type: none"> ◆ Ensure compliance with Form FHWA-1273, Section III Non-segregated facilities) and ◆ visit site periodically to verify compliance. 	<ul style="list-style-type: none"> ◆ Conduct periodic project inspections to ensure non-segregated facilities are maintained and ◆ contact OCR at (512) 936-2741 for additional information and guidance. 	-
Payrolls	23 CFR 635.118	<ul style="list-style-type: none"> ◆ Obtain payrolls weekly for all contractors and subcontractors ◆ review for completeness and certification and ◆ retain for subsequent review by the department or the United States Department of Labor (USDOL). Payrolls must be retained for a minimum of three years following project completion and acceptance. 	<ul style="list-style-type: none"> ◆ Conduct a review of at least 1 payroll per project to ensure compliance. If any discrepancies are identified, notify CST-L&CA immediately and ◆ contact CST-L&CA at (512) 416-2467 for additional information and guidance. 	-
Prevailing minimum wage	23 USC 113 23 CFR 633 Subpart A	Ensure that the contractor is paying the minimum wages as contained in the contract through review of certified payrolls, employee interviews, etc.	See “Payrolls” above.	-
Progress payments	23 CFR 635.122	Base payments on work completed. Payments may include stockpiled material with certain restrictions.	Review at least 10% of the monthly estimates per project to ensure compliance. Notify CST-FE immediately of any discrepancies.	-
Prompt payment to subcontractors/vendors (See Disadvantaged Business Enterprises)	49 CFR 26.29	Ensure prompt payment provisions are included on all subcontracts associated with federally funded projects.	<ul style="list-style-type: none"> ◆ Work with LG to resolve complaints and ◆ contact CST-FE at (512) 416-2532 for additional information and guidance. 	-

Federal Requirements - Contract Administration

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Quality Assurance (QA) Program	23 CFR 637, Subchapter B	Adopt and implement a department approved Quality Assurance (QA) program to ensure the quality of the workmanship and materials adhere to contract requirements.	Conduct periodic inspections to ensure compliance with approved program. (LG program must be forwarded through DES to CST for approval.)	-
Records	23 CFR 635.123 49 CFR 18.42 FHWA 1273 Item V.2	Ensure that project records provide adequate assurance that the quantities of completed work are determined accurately and uniformly, and maintain them for a minimum of three years following contract completion and acceptance.	Conduct periodic reviews to ensure compliance.	-
Safety: Accident Prevention (OSHA)	23 CFR 635.108	Safety provisions are contained in the contract under FHWA-1273. Contact OSHA with any suspected contractor / subcontractor safety violations.	Conduct periodic inspections to ensure compliance.	-
Salvage credits	49 CFR 18.36	Follow Texas Building and Procurement Commission rules.	Ensure compliance with approved procedures. (Forward any proposed LG procedures related to salvage credits through DES to CST for approval.)	-
Subcontracting	23 CFR 633 23 CFR 635.116	<ul style="list-style-type: none"> ◆ Monitor 70% maximum for subcontracted work. ◆ Check debarred list for subcontractors. 	<ul style="list-style-type: none"> ◆ Conduct periodic project record reviews to ensure compliance and ◆ contact CST-FE at (512) 416-2532 for additional information and guidance. 	-
Supervision and staffing	23 CFR 635.105	Outline procedures to ensure compliance with plans and specifications. Ensure that a full time LG employee is in charge of the project (name and title).	Conduct periodic on-site inspections to ensure LG is following approved procedures (proposed LG procedures must be forwarded through DES to CST for approval).	-
Termination of contract	23 CFR 635.125	Administer contract terminations in accordance with contract provisions.	<ul style="list-style-type: none"> ◆ Forward proposed contract through DES to CST for approval and ◆ contact CST-CL&CP at (512) 416-2490 for additional information and guidance. 	-

Federal Requirements - Contract Administration

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Time extensions (see Change Orders and Time Extensions)	23 CFR 635.121	Obtain department approval prior to extending time.	Review and approve time extensions received from the LG.	-
Warranties	23 CFR 635.413	Follow procedures previously approved by the department and included in the bid document.	Conduct periodic reviews to ensure compliance.	-

State requirements

State Requirements - Contract Administration

Requirement	Reference	LG Responsibility	District Monitoring Responsibilities	÷
Progress payments	Government Code §2251.021 Texas Constitution - Art 3-Sec. 5D	<p>Ensure payment to LG contractor is issued before requesting reimbursement from TxDOT.</p> <p>Invoices to TxDOT must include sufficient details to answer who, what, when, where, and how expenses billed, including, but not limited to the following:</p> <ul style="list-style-type: none"> ◆ clear and concise description of items billed ◆ clear description of services rendered and materials purchased. <p>Example of travel/expenditure:</p> <ul style="list-style-type: none"> ◆ denote purpose and date of travel ◆ clear description or conference/seminar ◆ benefits gained by travel to conferences/seminars ◆ vendor/contractor payments for materials/service ◆ copies of invoices ◆ copies of checks ◆ For any agreement where the LG has 20% share, the invoice will clearly denote the 100% cost, and the 80% reimbursable amount. 	<p>Process monthly estimate and resolve disputes in accordance with approved procedures.</p> <p>Conduct at least two site visits for the purpose of verifying items being billed are legitimate and the items exist and are within the scope of the contract. The other visit should occur during peak activity, to ensure the local government (LG) has submitted sufficient supporting documentation for file and verify that expenses have been incurred before requesting reimbursement from TxDOT.</p>	-

Chapter 17 — Forms and Documents

Contents:

[Section 1 — Forms and Guidance Documents](#)

[Section 2 — EEO Poster/Notice Checklist](#)

[Section 3 — OFCCP District Office/County Listings](#)

Section 1 — Forms and Guidance Documents

List of Forms

This manual references the following forms and examples of forms.

Contract Administration Forms and Examples

Name of Form/Example	Link (on-line only) or Contact	No. of Pages
TxDOT Administrative documents, including Administrative Orders and Circulars	Administrative Documents Currency List **	N/A
TxDOT Form 168, Pile Record	Form168 **	1
TxDOT Form 181, Test Pile Data	Form181 **	1
TxDOT Form 599, Traffic Control Devices Inspection Checklist	Form599	2
TxDOT Form 1276, Drilled Shaft Record	Form1276 **	1
TxDOT Form 269, Monthly Record of Material Received	Form269	1
TxDOT Form 316, Daily Report of Force Account Work	Form316 (instructions included)	2
TxDOT Form 1257, Work Report	Form1257	1
TxDOT Form 1258, Summary of Work Performed	Form1258	1
TxDOT Form 202, Identification of Material Samples	Form202	2
TxDOT Form 517, Sample Tag	Contact CST-Materials & Pavements Section	1
TxDOT Form 2118, Construction Storm Water Pollution Prevention Plan Field Inspection & Maintenance Report	2118	2
*FHWA-47, Statement of Materials and Labor used by Contractors on Highway Construction involving Federal Funds http://www.fhwa.dot.gov/programadmin/contracts/fhwa47.pdf	FHWA-47 (instructions included)	4
*FHWA-1273, Required Contract Provisions Federal-aid Construction Contracts http://www.fhwa.dot.gov/programadmin/contracts/1273.htm	FHWA1273	21
*FHWA-1391, Federal-aid Highway Construction Contractors Annual EEO Report	FHWA1391	1
*FHWA-1392, Federal-aid Highway Construction	FHWA1392 (instructions included)	2
*Form 2235, Final Inspection of Federal-Aid Project (replacing Form FHWA-1446C)	Form 2235	1
*FHWA-1494, For Projects Subject to the Davis Bacon and Related Acts	FHWA1494 (instructions included)	2

Contract Administration Forms and Examples

Name of Form/Example	Link (on-line only) or Contact	No. of Pages
WH-347, Payroll (DOL)	WH-347	5
TCEQ Form 20022, Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under a TPDES Permit	NOI-TCEQ Form 20022 Electronic submittal	2
TCEQ Form 20023, Notice of Termination (NOT) of Coverage Under a TPDES General Permit for Storm Water Discharges Associated with Industrial Activity	NOT-TCEQ Form 20023 Electronic submittal	2
Temporary Suspension of Work Letter (Example)	Suspend	1
Resumption of Work Letter (Example)	Resume	1
Supplemental Agreement (SA) Form	SAForm	1
Example of Supplemental Agreement	Example	2
Change Orders: ◆ Change Order Form ◆ Tables A & B ◆ Advance Funding (Third Party)	Form 2146, Change Order Form 2146, Change Order (Contract Items pg 5, pg 6) Form 2146, Change Order (pg 7)	1 2 1
Change Order Reason(s) Code Chart	Form 2146, Change Order (Code Chart, pg 3)	1
Change Order Checklist	Form 2146, Change Order (CO Checklist, pg 2)	1
TxDOT Form 2201, Contractor OJT Enrollment Request Form	Form 2201	1
TxDOT Form 2202, OJT Weekly Reporting Form	Form 2202	1
Time Extension Letter (Example)	Time	1
Certification of Materials Used Letter (Example)	Material	1
TxDOT Form 2220, Labor Standards Review	Form 2220	1
Ten (10) Days Warning Letter (Example)	Warning	1
Surety Letter (Example)	Surety	1
No Surety Letter (Example)	NoSurety	1
Additional Classification and Wage Rate Request	Wage	1
Example of Statement of Contingencies & Force Account Items	Items	1
Final Acceptance Letter (Example)	Final	1
Public Interest Determination Letter (Example)	Public	1
Contractor's Assurance	Assure	1

Contract Administration Forms and Examples

Name of Form/Example	Link (on-line only) or Contact	No. of Pages
TDLR Request for Inspection Form	TDLR	1
FHWA & TxDOT Oversight Project Review Plan	Oversght	1
ENV – Cultural Resource Management Emergency Discovery Guidelines	EmerDisc	2
ENV – Hazardous Materials Management Technical Guidelines for Removal of UST’s Encountered During Construction	USTs	4
ENV - Environmental Commitment Checklist for Construction, Maintenance and Facilities Projects	DEQCKLST	5
Subcontracting & Payroll Requirements	SubCont	1
2004 Construction Specification Required Shop/Working Drawing Submittal (for pre-construction meeting use)	ShopDraw	2
Shop/Working Drawing Submittal Form	ShopSub	2
Shop Drawing Flow Diagrams	Flow	-
*Required by FHWA for federally funded projects.		
**Available through the TxDOT intranet only.		

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 Labor and Contract Administration Branch (L&CA) of 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.

EEO Poster/Notice Checklist

	EEO Policy Poster
	Minimum Wage Poster (English, WH 1088 – Revised October 1996)
	Minimum Wage Poster (Spanish, WH 1088 Sp – October 1996)
	Wage Rate Information Poster (English, FHWA 1495 – Sep. 1981)
	Wage Rate Information Poster (Spanish, FHWA 1495A - Mar. 1991)
	EEO Poster (English, EEOC-P/E-1, Feb. 1992) - EEO Publications Request Form
	EEO Poster (Spanish)
	Employee Polygraph Poster (English, Sep. 1988)
	Employee Polygraph Poster (Spanish, Sep. 1988)
	Falsified Statement Poster (English, FHWA 1022 - Rev. June 1990)
	* Family & Medical Leave Act (English, WH 1420 - Rev Aug. 2001)
	* Family & Medical Leave Act (Spanish, WH 1420SP - Rev Aug. 2001)
	* Notice of Workers with Disabilities Paid at Special Minimum Wages
	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)
	Job Safety and Health Poster (English, OSHA 3165 - Rev.)
	Job Safety and Health Poster (Spanish, OSHA 3167 – Rev.)
	*** Texas Payday Law Poster (TWC, English, Rev. March 2000)
	***Texas Payday Law Poster (T.E.C., Spanish, y-10s - Jan. 1995)

EEO Poster/Notice Checklist

	EEO Policy Poster
	Workers' Compensation Poster (Notice 6 - Jul. 2000)
	Emergency Telephone Number Notification (per OSHA reg. 1926.50)
	Emergency Telephone Number Notification (per OSHA reg. 1926.50)
	Hazard Communication Program Notice (per OSHA reg. 1926.59) http://www.osha.gov/Publications/fedposter.html
<p>*May be included on the EEO Poster. **May be included in the Company EEO policy statement. ***Firm name, address and account number should be listed on this poster.</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](#)), TxDOT is to provide written or verbal notice to the appropriate OFCCP district offices of scheduled pre-construction conferences on federal-aid projects. The OFCCP offices should have sufficient notification in order to participate in the conference.

NOTE: The OFCCP's Houston and San Antonio offices have requested that they only be notified of pre-construction conferences on federal-aid projects over \$10 million. The Dallas office requests to receive notification of **all** scheduled pre-construction 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

Andrews	Cottle	Hardeman	Live Oak	Robertson
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

OFCCP Dallas District Office

Anderson	Dallas	Harrison	Montague	Stephens
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 names and addresses of the OFCCP district directors.

OFCCP District Directors

	San Antonio	Dallas	Houston
Name:	Larry Garza	R. Dave Lipscomb	Lois Jimmerson
Address:	OFCCP, San Antonio 800 Dolorosa St., Rm. 200 San Antonio, TX 78207	OFCCP, Dallas A. Maceo Smith Fed. Bldg. 525 S. Griffin St., Rm. 512 Dallas, TX 75202-5007	OFCCP, Houston 2320 LaBranch, Rm. 1103 Houston, TX 77004-4499
Telephone:	(210) 472-5835	(214) 767-2911	(713) 718-3800
Fax:	(210) 472-5842	(214) 767-4239	(713) 718-3818