

# Construction Contract Administration Manual



Revised December 2023

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## Manual Notice 2024-1

**From:** Duane S. Milligan, P. E., Director, Construction Division

**Manual:** *Construction Contract Administration Manual*

**Effective Date:** December 05, 2023

### Purpose

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

### Contents

#### General

- ◆ Removed all tables within this manual and replaced with bullet format.

#### Chapter 1, “Introduction”

- ◆ Section 1, “Introduction”
  - Clarified verbiage to Chapter 12 description.
- ◆ Section 2, “Manual Description”
  - Manual list was separated into external and internal access list.
  - Removed “General Information” subsection from Chapter 3 Section 4.

#### Chapter 2, “Pre-Award Activities”

- ◆ Section 1, “Overview”
  - Moved Subsection “General” under the overview description.
  - Updated the information on the FTP site to include the new Pre-Bid Q&A process.
  - Removed Form 2519, “Intellectual Property License Request” and replaced with “IP License Request” and included link.
  - Clarified that IP License are not necessary once contractor has executed contract.
  - Updated UAVs (Unmanned Aircraft Systems) to UASs (Unmanned Aircraft Systems).
  - Included clarification to expediate answers during the week of letting.
- ◆ Section 4, “References”
  - Added reference for the Memo from the Chief Engineer dated 2/13/2019.

### **Chapter 3, “Post-Award Activities”**

- ◆ Section 1, “Press Release”
  - Updated links for letting information and project tracker.
- ◆ Section 2, “Legislative Notification Requirements”
  - Clarified verbiage on the template letters.
- ◆ Section 3, “Beginning of Work”
  - Clarified time charges begin date.
- ◆ Section 4, “Preconstruction Conference”
  - Added District DBE Coordinator to the attendees list.
  - Added list of personal to contractor's organization.
  - Added material suppliers to attendee list.
  - Included U.S Department of Labor from Chapter 17 to attendee list.
  - Added “Extended Buy America Requirements”.
  - Added subsection for “Change Orders”.
  - Clarified delegation of signature of authority for Change Orders.
  - Combined DBE and CUF in listing.
  - Clarified Form 1391 is entered into DMS.
  - Added subsection “General Information” from Chapter 1.
  - Clarified “requirements to secure”.
- ◆ Section 5, “Preconstruction Conference”
  - Removed reference to the table.
- ◆ Section 6, “Partnering”
  - Added “Schedule the partnering meeting,” to the procedures.

### **Chapter 4, “Project Records and Closeout”**

- ◆ Section 1, “Importance of Accurate Records”
  - Removed two bullets from “Electronic Records” and included in the “Overview” subsection.
  - Added clarification on templates under “Correspondence”.
  - Clarified verbiage in the “Project Record Review” subsection.
  - Added reference guidance for “Electronic Records”.
  - Added “Records Retention” guidance from end of Chapter 4 Section 4.

- ◆ Section 3, “Traffic Control Plan”
  - Clarified verbiage for “Law Enforcement Usage” subsection.
  - Added links for the Transportation Code 224.034.
  - Revised the “Section” number in the last sentence.
- ◆ Section 4, “Project Records”
  - Clarified guidance on Work Begin Date.
  - Removed the listing of DWR entries of items.
  - Added links to the DWR Guidance documents.
  - Added link for the Maintenance Division page.
  - Removed subsection “Required Reports and Forms”.
  - Added subsection “Bulletin Board Checklist” from Chapter 17.
  - Removed “Change Order” subsection and moved to Chapter 7.
  - Corrected date under FHWA Form 1494.
  - Removed the second paragraph under FHWA Form 1494.
  - Removed “Records Retention” sentence and moved to end of Section 1.
  - Clarified the new Buy America requirements.
- ◆ Section 5, “Project Closeout”
  - Added SBE with listing #10
  - Added “Payouts” and “Completed” to listing sub bullet #10.
  - Removed “Subcontractor Approval”.
  - Added Final to listing #12
  - Added Form 2177A, “Prompt Pay Audit” to the list.
  - Added Material Certification Letter (MCL) to the list.
  - Added Test Exception Letter (TEL) to the list.
  - Added Form WH-347 link to listing #28.
  - Added Form 2803 “Project Evaluation” (Design) to the list.

## **Chapter 5, “Control of the Work”**

- ◆ Section 1, “Project Authority”
  - Revised the word “Meeting” to “Conference”.
  - Added subsection “Work near Railroads” from Chapter 9 Section 2.
  - Listed the subsections in order of the specifications.
- ◆ Section 2, “Work Documents”
  - Removed subsection “Document Disposition”.

- ◆ Section 4, “Evaluations”
  - Revised the subtitle from “Prime Contractor Performance Evaluations” to “Evaluations”.
  - Clarified verbiage to Prime Contractor Performance Evaluations subsection.
  - Added subsection “Project Evaluations”.

## **Chapter 6, “Control of Materials”**

- ◆ Section 1, “Materials”
  - Added clarification on “multiple sources for the same material”.
- ◆ Section 2, “Materials Testing”
  - Combined bullets for MPL and QMP.
  - Added SiteManager Testing Forms link.
  - Added Form 202 “Identification of Material Samples” from Chapter 17.
- ◆ Section 3, “Buy America”
  - Clarified verbiage to include “Extended Buy America Certification” and included link.
  - Added subsection title “Iron and Steel”.
  - Added subsection for “Extended Buy America Requirements (BABA)”.
  - Added subsection for “Buy America Exceptions”.
- ◆ Section 5, “References”
  - Added reference for 2 CFR 184, “Extended Buy America”.

## **Chapter 7, “Changes to the Contract”**

- ◆ Section 1, “Change Orders”
  - Added subsection “Additional Time Guidance”.
  - Moved AFA subsection to align with the sequence of order.
- ◆ Section 3, “Force Account and Interim Adjustments”
  - Removed “Complete Form 316” from second paragraph.
- ◆ Section 6, “References”
  - Added a link for, “Technical Advisory”.

## **Chapter 8, “Disputes and Claims”**

- ◆ Section 1, “Disputes”
  - Clarified that last sentence of the first paragraph.
- ◆ Section 2, “Claims”
  - Clarified sentences throughout the section.

- ◆ Section 3, “Payment in Settlements of Disputes and Claims”
  - Clarified sentences throughout the section.

## **Chapter 9, “Legal Relations and Responsibilities”**

- ◆ Section 2, “Employee Responsibilities”
  - Listed the subsections in order of the specifications.
  - Revised “Electrical Work” to “Electrical Requirements”.
  - Revised Article 7.15 to 7.18.
  - Removed “Work near Railroads” and added to Chapter 5 Section 1.
  - Revised “Noise Abatement” to “Abatement and Mitigation of Excessive or Unnecessary Noise”.
- ◆ Section 3, “Conflicts of Interest and Ethics”
  - Reworded subsection “Non-TxDOT Internet Access” to “Information Security Policy”.
  - Clarified the verbiage on the policy.

## **Chapter 10, “Prosecution and Progress”**

- ◆ Section 3, “Subcontracting”
  - Removed the first six bullets.
  - Clarified the requirements for federally funded projects.
  - Added “including substitutions” in the bullet.
  - Added a note for non-DBEs.
  - Added link for the Flow Chart Aid from Chapter 17.
  - Added “Certification Monitoring Plan” to the subsection title “Subcontractor Audit.”
  - Added verbiage for requesting non-DBE contracts at 30, 60 and 90% project reviews.
  - Revised the link from Federal list to SAM.gov website.
  - Added instructions and clarified verbiage for the E-Verify subsection.
  - Revised the link for the Form 2802.
- ◆ Section 4, “Contract Time”
  - Clarified Time charges begin within 30 calendar days after the Authorization to Begin Work.
  - Clarified standard workweek verbiage.
  - Added listing of State Holidays for standard workweek.
  - Added “email is acceptable”.
- ◆ Section 5, “Temporary Suspension of Work or Work Day Charges”
  - Changed section title “Work” to “Working”.

- Clarified Article 8.4 per the specification.
- Added clarification that “time charges may still apply”
- ◆ Section 7, “Best Practices for Holiday Periods”
  - Added “Ensure Contractor” to the first part of the paragraph.
- ◆ Section 8, “Default of Contract”
  - Changed “Section” to “Article”.
  - Added link for “Template Letters”.

## **Chapter 11, “Issues Affecting Payment”**

- ◆ Section 1, “Estimates and Issues Affecting Payment”
  - Replaced “Introduction” with “Estimates and Issues Affecting Payment”.
  - Added a subsection “Overview”.
  - Added Estimates in chronological order.
  - Clarified verbiage for “Monthly Progress Estimates”.
  - Added subsection for “Supplemental Progress Estimates”.
  - Added subsection for “Supplemental Estimates”.
  - Renamed subsection “Measuring Items” to “Measurement of Quantities”.
  - Clarified verbiage in “Overview”.
  - Subsections were put in chronological order.
  - Clarified verbiage for payment not to exceed 10% of the original contract amount.
  - Removed “Material on Hand” to Section 2.
- ◆ Section 2, “Material on Hand (MOH)”
  - Added “Overview”.
  - Added clarification for violation of MOH.
  - Added link for Form 1259 “Summary Materials Received and Used” from Chapter 17.
- ◆ Section 3, “Prompt Payment”
  - Clarified the verbiage in the third paragraph.
  - Renamed subsection from “Subcontractor and Materials Supplier Complaints” to “Subcontractor and Materials Supplier Non-Payment Notices”.
  - Clarified first sentence under “Contractor Compliance”.
  - Added listing #3 all subcontracts on federal-aid projects must contain FHWA Form 1273.
  - Clarified verbiage for “Prompt Pay Audit” subsection.
  - Removed the process for Prompt Pay Audit.
  - Added the use of Form 2177A “Prompt Pay Audit”.

## **Chapter 12, “Environment”**

- ◆ Section 1, “Introduction”
  - Renamed “Hazardous Materials or Waste” to “Introduction”.
  - Clarified verbiage in this subsection.
- ◆ Section 2, “Stormwater Requirements”
  - Renamed “Biological Resources” to “Stormwater Requirements”.
  - This section as a whole was rewritten to reflect links to guidance.
- ◆ Section 3, “Water Resources”
  - Added example bullets of “Work in Waters of the United States” section.
  - Reworded parts of the first paragraph.
  - Added a new paragraph before the first subsection.
  - Renamed subsection “Complying with US Army Corps of Engineers Requirements”.
  - Included check and verbiage for permitting.
  - Added “Complying with US Coast Guard” requirements.
  - Clarified verbiage in bullets.
  - Added “Complying with TCEQ” requirements.
  - Added “Complying with General Land Office (GLO) and other entities” requirements.
  - Added two bullets.
  - Included a link for the PSLs.
- ◆ Section 4, “Cultural Resources”
  - Clarified verbiage in the opening paragraph.
  - Added a new bullet to include resource surveys are completed prior to construction.
  - Added subsection “Documenting Compliance with Cultural Resources Plan Notes”.
- ◆ Section 5, “Vegetation Resources”
  - Renamed “Project-Specific Locations” to “Vegetation Resources”.
  - Added all new content for this subsection.
- ◆ Section 6, “Protected Species Requirements”
  - Renamed “Surplus Materials” to “Project-Specific Locations”.
  - Removed “Protected Species Requirements” from a subsection to its own section.
  - Clarified verbiage throughout entire section.
  - Added National Marine Fisheries Service (NMFS).
- ◆ Section 7, “Hazardous Material or Waste”
  - Renamed “References” to “Hazardous Material or Waste”.



- Removed “Hazardous Material or Waste” from a subsection to its own section.
- Added verbiage to subsection “Responsible Parties”.
- Clarified verbiage to the first paragraph.
- ◆ Section 8, “Noise/Sound Walls”
  - Added subsection “Noise/Sound Walls”.
- ◆ Section 9, “Project-Specific Locations (PSL)”
  - Added subsection “Project-Specific Locations (PSL) from Subsection 6”.
  - Included list of documentation.
  - Added a new paragraph.
  - Added a new link for PSLs.
  - Revised the Article number.
- ◆ Section 10, “Construction Stage Gate Checklist (CSGC Form 2448 Inspections)”
  - Added subsection “Construction Stage Gate Checklist (CSGC Form 2448 Inspections)”.
  - Added all new content for this subsection.
- ◆ Section 11, “Regulatory Agency Investigations”
  - Added subsection “Regulatory Agency Investigations”.
  - Added all new content for this subsection.
  - Section for “References” was removed.

### **Chapter 13, “Health and Safety”**

- ◆ Section 2, “Contract Requirements”
  - Removed OSHA Standard and replaced with 29 CFR 1926.1408.

### **Chapter 15, “Contractor Workforce”**

- ◆ Section 1, “EEO Requirements”
  - Reworded the last sentence in paragraph one under “Contract Provisions”.
- ◆ Section 2, “Labor Requirements”
  - Removed “Area Engineer” and replaced with “Construction Division”.
  - Removed wording in the paragraph under “Additional Labor Classifications”.
  - Clarified verbiage in the “Wage Rate Survey” subsection.
- ◆ Section 3, “On-the-Job Training”
  - Clarified verbiage under “Procedure”.

## **Chapter 16, “FHWA Oversight Requirements”**

- ◆ Section 1, “Background”
  - Clarified that the fiscal year is from October 1 to September 30.
  - Clarified wording for “Buy America”.
  - Included reference for “Extended Buy America”.
- ◆ Section 4, “Change Orders”
  - Clarified guidance regarding TxDIPs Steward and Oversight plans.
  - Reworded guidance to clarify project oversight responsibilities for Federal-Funded projects.
  - Clarified guidance for PIF’s and District Seal Coat projects.
- ◆ Section 6, “Final Inspection of Federal-Aid Projects”
  - This section removed all information pertaining to Form 2235 which is no longer used.
  - Added guidance for final documents and reconciling project closeout.
  - Reworded for the Material Certification Letter and included link.

## **Chapter 17, “Forms and Documents”**

- ◆ Removed the entire chapter. All the forms and document references are included within the manual.

### **Supersedes**

This publication supersedes prior versions of the manual.

### **Contact**

For any questions or assistance please contact Construction Division’s Construction Director, Carlos J. Rodriguez, P.E., at (512) 416-2512.

### **Archives**

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

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# Chapter 1 — Introduction

## Contents:

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## Section 1 — Overview

### Purpose and Scope of Manual

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

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

For design-build contracts, see the [Design-Build Contract Administration Manual](#) (internal access only).

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

### Contract Administration

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

Proper contract administration includes:

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

The department conducts its primary activities in 25 geographical districts. Differing local conditions make decentralization necessary. Each district, managed by a District Engineer (DE) is

responsible for the planning, design, construction maintenance, and operation of the district transportation system. Local field offices within the district are known as area offices. The area office is managed by an Area Engineer (AE). The AE is the key individual on every construction project, and the contract's successful completion depends largely on his or her performance.

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

Divisions headquartered in Austin provide administrative and technical support to the districts. The Construction Division (CST) provides general oversight of the letting management and administration of highway construction contracts including district construction management support, pre-qualification of construction contractors, construction letting management and claims analysis and processing.



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## Section 2 — Manual Description

### Use of this Manual

This manual, prepared by CST, provides DEs, Directors of Construction (DOCs), AEs, and their various representatives, including inspectors and record keepers, a representation of policies for administering construction contracts. This manual is only one of the components used to manage a successful construction contract. Other TxDOT resources include but are not limited to the following:

- ◆ [\*Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges\*](#) (the “Spec Book”)
- ◆ [\*Guide Schedule of Sampling and Testing for Design-Bid-Build Projects\*](#)
- ◆ [\*Test Procedures\*](#)
- ◆ [\*Material Inspection Guide\*](#) (MIG)
- ◆ [\*Material Producer Lists\*](#) (MPLs)
- ◆ [\*Departmental Materials Specifications\*](#)
- ◆ [\*Quality Assurance Program \(QAP\) for Design-Bid-Build Projects\*](#)
- ◆ [\*Project Records Checklist\*](#)
- ◆ [\*Local Government Projects Toolkit\*](#)
- ◆ [\*Disadvantaged Business Enterprise \(DBE\) and Airport Concessions DBE Programs\*](#)

Items listed below are internal access only:

- ◆ [\*Environmental Management System Manual\*](#)
- ◆ [\*SiteManager Contract Administration User Manual\*](#)
- ◆ [\*SiteManager Materials Management Manual\*](#)
- ◆ [\*Prime Contractor Performance Evaluations \(PCPE\) Manual\*](#)
- ◆ [\*Letting Manual\*](#)

### How this Manual is Organized

This manual is organized into 16 chapters, as outlined in the following:

- ◆ Chapter 1 - “Introduction” Provides a general overview of the purpose and scope of the manual.

- ◆ Chapter 2 - “Pre-Award Activities” Provides guidance on pre-award activities such as competitive bid requirements, Pre-Bid Q&A, addenda, and pre-bid conference.
- ◆ Chapter 3 - “Post-Award Activities” Outlines press release information, legislative notification requirements, beginning of work, partnering, preconstruction and safety meeting.
- ◆ Chapter 4 - “Project Records and Closeout” Summarizes the importance of accurate project records, Traffic Control Plan (TCP) and project closeout.
- ◆ Chapter 5 - “Control of the Work” Covers project authority, work documents, staking the project, inspections, prime contractor performance evaluations and project evaluation.
- ◆ Chapter 6 - “Control of Materials” Summarizes the control of materials covering material management, sampling and testing, and required forms.
- ◆ Chapter 7 - “Changes to the Contract” Covers changes to the contract, including processing of change orders, other contract agreements, contract termination, etc.
- ◆ Chapter 8 - “Disputes and Claims” Outlines contract disputes and department claim process.
- ◆ Chapter 9 - “Legal Relations and Responsibilities” Covers legal relations and responsibilities.
- ◆ Chapter 10 - “Prosecution and Progress” Outlines project schedules, subcontracting, contract time, workday charges and time suspension, project timeliness, and default of contract.
- ◆ Chapter 11 - “Measurement and Payment” Summarizes the measurement and payment process and outlines the importance of prompt pay.
- ◆ Chapter 12 - “Environment” Provides insight into environmental permits, issues and commitments including other requirements. These topics include hazardous material/waste handling, biological and water resources, cultural resource management, noise/barriers, project-specific locations, and handling surplus materials.
- ◆ Chapter 13 - “Health and Safety” Provides information on health and safety laws and contract requirements.
- ◆ Chapter 14 - “Small Business Program” Provides an overview of the Department's Business Opportunity Programs.
- ◆ Chapter 15 - “Contractor Workforce” Covers items such as labor laws and On-the-Job Training (OJT).
- ◆ Chapter 16 - “FHWA Oversight Requirements” Outlines requirements including final inspection of federal-aid projects.

## Manual Update

This manual will be updated annually to reflect new changes and will continue to be improved. Please submit any suggestions, comments, or questions to CST.

## Chapter 2 — Pre-Award Activities

### Contents:

[Section 1 — Overview](#)

[Section 2 — Addenda](#)

[Section 3 — Pre-Bid Conference](#)

[Section 4 — References](#)

## Section 1 — Overview

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

Refer to the Design Division's for the Final PS&E Processing Section (DES-FPP) (internal access only) for guidance on [early release of plans](#) for comment and reviewing plans during the design phase of the project.

In February 2023, all district FTP sites for pre-bid questions and answers were replaced with a Pre-Bid Q&A function within TxDOTConnect. Once the project is advertised, competitive bidding laws are in effect. Failure to comply with the requirements may compromise the integrity of the competitive bidding procedures, which could require all bids be rejected and the project be re-let.

### General

The following procedures are required when interacting with potential bidders, virtually eliminating any risk for answering project pre-bid questions.

- ◆ Accept all simple or complicated questions via email, phone or in person and post in the web-based application the same day for the benefit of all perspective bidders.
- ◆ Post all responses, including the verbal answers to simple questions, to the [web-based application](#) (examples can be found on the CST Support page):
  - Same day for simple, straightforward answers
  - Most questions should have detailed responses within 48 hours
  - Acknowledge complicated questions that may require study and collaboration prior to responding, and these questions should be followed up in a timely manner.
  - Avoid responses stating nothing more than, "Bid as Shown," "Bid per plans," or "Bid as advertised."
  - Special effort should be made to expedite answers during the week of letting, including the weekend prior to letting.
- ◆ If a potential bidder raises a question regarding an error in the plans:

- Acknowledge that you will research the potential error
- DO NOT make statements to that bidder, or any other potential bidder, that a possible or probable change to the plans, specifications, or quantities should be forthcoming
- Perform due diligence to determine whether the possible error is valid, and if so, ensure the error is addressed with:
  - An addendum, prior to letting (refer to Section 2, "Addenda," for requesting a form and its corresponding SOP later in this chapter)
  - A Change Order after letting and award
  - A Postponement of letting to a later date.
- ◆ Responses posted to the web-based application trump any responses given verbally should there be a conflict.
- ◆ Take notes when discussing a project with a Contractor during the pre-bid period, including during non-mandatory pre-bid conferences, a ride-along, or when otherwise showing or discussing a project. Ensure to post all notes or meeting minutes to the web-based application for all prospective bidders.
- ◆ Post additional documentation requested that was not included in the plans.

Documents that **can be shared** are:

- Preliminary plans
- Cross Sections (PDF)
- CPM schedule
- Pothole activities (follow permit process)
- Survey in ROW (follow permit process)
- Geotechnical data/reports
- DGN files (may only be provided to the awarded bidder. They can request it by completing the [IP License](#) found on GCD site, internal access only). The IP License Request is not necessary once the contractor has an executed contract.
- As-Built Plans (As-built bridge plans may be posted for informational purpose only. The only exception to this would be in the case when the plans requested are for Critical/Safety Sensitive structure. Refer to the Bridge Division website for the [Open Records Request Guidance for Bridge Information](#).)

Documents that **cannot be shared** are:

- Engineer's estimate for individual bid items
- Global stability calculations
- Retaining wall and bridge calculations (The Bridge Division may review the Contractor's calculations)

- ◆ Notify all prospective bidders if an addendum has been posted.
- ◆ Ensure all interested parties are treated fairly and equitably.
- ◆ Keep a record of all information provided to the prospective bidders with the project files (electronically or hard copy). Instructions for printing, entering questions, uploading documents or answers on the web-based application can be found: [Pre-Bid Q&A Job Aid](#) – TxDOT/Bidder Version. For questions regarding TxDOTCONNECT Pre-Bid Q&A, email: [TxDOTCONNECT.Helpdesk@txdot.gov](mailto:TxDOTCONNECT.Helpdesk@txdot.gov).

### Managing the Pre-Bid Q&A Site

- ◆ Designate two individuals, one primary and one secondary, to receive and manage questions and answers for all projects.
- ◆ Ensure the prospective bidder knows it is their responsibility to stay informed through the web-based application. The proposal must communicate to whom questions may be submitted and the web-based application address where answers will be posted. DES has provided standard language for inclusion in the General Notes.
- ◆ The individuals must review status of questions frequently to ensure questions and answers are posted in a timely manner. Provide a detailed response within 48 hrs.
- ◆ The stages for responses approval are:
  - Pending – Question has been acknowledged but has not been addressed.
  - Interim Approved – Pre-Bid contract has given a response, but the response has not been approved by final approver.
  - Final Approved – Responses has been approved and posted to TxDOTCONNECT.
- ◆ Ensure that questions asked in person, through email or via phone are posted and do not include a person or contractor's name
- ◆ Direct prospective bidders to the web-based application for all questions and answers when asked.

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

### Prospective Bidder Site Investigations

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

[Form 2900](#), “Agreement for Access to Texas Department of Transportation Highway Right of Way”.

The use of Unmanned Aircraft System (UAS) must follow Department guidelines. Contact Aviation Division (AVN) and reference the [Flight Operations User Manual](#) for more information.

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## Section 2 — Addenda

### General

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

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

- ◆ Minor errors, including but not limited to minor quantity errors or misspelled words, do not require correction prior to letting. A minor quantity error is an error that does not create significant change. The price also does not change, so it should not affect the bid.
- ◆ Major errors cause substantial changes that affect the bidding process.

### Addendum Requests

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

All addendum requests must include the following:

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

Refer to the Design Division (DES) website, [Addendum Request Form](#) (internal access only). Addenda submitted without complete documentation will not be reviewed, approved, or processed and will be returned to the district.

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



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

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

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

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## Section 3 — Pre-Bid Conference

### Introduction

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

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

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

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

### Optional Attendance

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

### Mandatory Attendance

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

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scheduling difficulties. Also, procedural errors may occur, which can result in bid rejections and re-letting the project, such as:

- ◆ District releases conflicting information about the time/location and/or requirement (mandatory vs optional) of the conference.
- ◆ District did not manage or validate the attendance list and a contractor name was provided on the attendance list that could not be validated against; therefore, it was not possible to determine who the proposal should be released to.

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

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

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## Section 4 — References

### Section 1 – Sharing Project Information

- ◆ Transportation Code
  - [§223.001](#), “Contract Requiring Competitive Bids”
- ◆ Code of Federal Regulations
  - [23 CFR §635.114](#), “Award of contract and concurrence in award”
- ◆ Chief Engineer Memo dated February 13, 2019
  - [Memo](#)

### Section 2 – Addenda

- ◆ Transportation Code
  - [§223.003](#), “Notice of Proposed Contracts”
  - [§223.013](#), “Electronic Bidding System”
- ◆ Code of Federal Regulations
  - [23 CFR §635.112](#), “Advertising for Bids and proposals”

## Chapter 3 — Post-Award Activities

### Contents:

[Section 1 — Press Release](#)

[Section 2 — Legislative Notification Requirements](#)

[Section 3 — Beginning of Work](#)

[Section 4 — Preconstruction Conference](#)

[Section 5 — Preconstruction Safety Meeting](#)

[Section 6 — Partnering](#)

[Section 7 — References](#)

## Section 1 — Press Release

### General

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

### Online Resources

After the public opening of bids and the Texas Transportation Commission's award of the contract. The Construction Division (CST) posts [pre-letting and post-letting](#) information online.

[Project Tracker](#) provides the public with 24/7-access to project information.

## Section 2 — Legislative Notification Requirements

### Project Letter to State Legislator

In accordance with [Texas Transportation Code §201.609](#), the Department shall ask each legislator if they would like to receive notification of work completed on the proposed project. Prior to work beginning or after award, send the required **Legislator Project Notification Request** template letter that is available on the Construction Division webpage [Construction Support/Letter Templates quick link](#) (internal access only).

For those legislators who would like to receive notice of the completed project, send the **Legislator Project Completion Notification** template letter. The letter should be sent at least 10 days prior to the scheduled contract completion. The letter that is available on the Construction Division webpage [Construction Support/Letter Templates quick link](#) (internal access only).

The following Reports on TxDOT Projects are available on the Department's website:

- ◆ [Construction, by Legislative District](#)
- ◆ [Reporting on Completed Highway Construction Projects](#) (Semiannual Reports)

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## Section 3 — Beginning of Work

CST’s Construction and Maintenance Contract Letting Section (CMCL) is responsible for executing the contract after award. CMCL will collect all bonds, insurances, and clearances prior to issuing the Authorization to Begin Work. CMCL will collect certificate of insurance [Form 1560](#), “Certificate of Insurance” annually. CMCL will provide the contract documents to the contractor and the district.

In Accordance with Standard Specification Article 8.1, “Prosecution of Work,” Begin work within 30 calendar days (7 calendar days for routine maintenance contracts) after the authorization date to begin work. Time charges begin within 30 days of the Authorization unless otherwise specified in the contract requirements or other circumstances. Time charges may begin prior to work begin. When work begins, the Area Office (AO) will notify the District Construction Office (DCO).

When CST executes the contract, the Authorization to Begin Work date is automatically written into SiteManager. Refer to the [SiteManager Contract Administration User Manual](#) and [SiteManager Materials Management Manual](#) (internal access only) for more information regarding activation of the project in SiteManager.

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

In contracts with callout work and work orders, the contractor is required to begin work in accordance with the contract or as specified in each work order. Verify in the contract whether a special provision allows for a later start.



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## Section 4 — Preconstruction Conference

### Purpose of the Preconstruction Meeting

Before starting work, the Contractor must schedule and attend a preconstruction conference (meeting) with the Engineer. The Area Office should provide the Prime Contractor with the TxDOT Required Project Documentation to complete prior to the preconstruction conference (See Prime Contractor's Required Documentation List on Form 2796, "Pre-Construction Conference – Agenda"). At the preconstruction conference, Department personnel and contractor's staff become acquainted; establish lines of authority and communication; determine the responsibilities and duties for 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. The Area Engineer (AE) must run the meeting. It is best to avoid reading from a script.

The District will contact the Contractor if the Contractor fails to schedule the meeting. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working day charges.

### Preconstruction Conference Responsibilities and Attendees

Conduct a preconstruction conference with the contractor after the contract has been awarded and executed, but prior to commencement of construction operations.

Ensure meeting attendees include:

- ◆ appropriate representatives from the district and area offices and the District DBE Coordinator (DDC)
- ◆ contractor's organization (including office staff of records such as recordkeeping payrolls and DBE coordinators)
- ◆ Contractor Responsible Person for Environmental (CRPe)
- ◆ subcontractors and material suppliers
- ◆ news media (as required)
- ◆ utility companies (as required)
- ◆ emergency entities such as hospitals or fire departments (as required)
- ◆ local governmental entities (as required)
- ◆ local law officers (as required)

- ◆ resource agencies (as required) (Some projects with conditional permits require resource agency notification).
- ◆ designated Federal Highway Administration (FHWA) AE, if the project is identified as a Texas Division Involved Project (TxDIP)
- ◆ for all federally funded projects email the [U.S. Department of Labor](mailto:OFCCP-SW-ConstructionAward@dol.gov) (USDOL) at [OFCCP-SW-ConstructionAward@dol.gov](mailto:OFCCP-SW-ConstructionAward@dol.gov) as part of the Memorandum of Understanding between the Office of Federal Contract Compliance Programs (OFCCP) and the Federal Highway Administration (FHWA), the Department must provide written notice of the preconstruction conference meeting.

### Form 2796, “Pre-Construction Conference – Agenda”

[Form 2796](#) will be used for all projects starting with May 2020 letting.

The agenda is as follows:

1. Welcome, introduction of all present and identify project (location, limits, etc.)
  - Identify the contractor’s representatives, subcontractors, engineer, law enforcement agencies, utility companies, and other relevant parties giving name, address, and phone number.
  - Identify Project, Review of contract – location, type, size
  - Contract Time - Working day definition (Item 8)
  - Contract Amount
2. Escalation Ladder - Identify role of TxDOT Project Staff and Prime Contractor Staff
  - [Form 2390](#), “Escalation Ladder,” should be filled out prior to the preconstruction meeting. The escalation ladder clearly defines TxDOT and Contractor levels of authority for handling disputes or other issues.
  - The District may establish the number of days at each level in accordance with their policy. They may input the timeframe for each level prior to the meeting and complete the form during the meeting by inserting the appropriate name for each level.
  - Ensure all parties involved in the contract are aware how issues will be escalated and provide copy to attending parties.
3. Purpose of Meeting - This meeting is in accordance with department policy.
  - Partnership on the project is encouraged to ensure work zone safety is TxDOT’s top priority.
  - Inform the contractor of their contractual obligations with State and Federal construction safety standards.

- Discuss the contractor’s signature authority for the “Prime Contractor Performance Evaluation,” Review [Special Provision 000-659](#)
4. Partnering/Project Pledge
    - As per Item 4, Article 3 in the 2014 Standard Specifications, partnering is required.
    - Form 2391, “TxDOT – Contractor Project Pledge,” may be read during the meeting and signatures are required.
    - More information on partnering can be found in CCAM Chapter 3, Section 6, “Partnering”.
  5. Project Issues
    - Discuss project specific items.

### **Suggested Preconstruction Meeting Topics**

#### **General**

- ◆ Review of contract, special problems, or designs, right of way (ROW)
- ◆ Contacts – List of all dedicated shop plan addresses
- ◆ Erection details
- ◆ Forming details
- ◆ Audits – The District and AO will perform periodic audits of project paperwork and notify the contractor in writing of deficiencies.
- ◆ Contractor must remain active in E-verify throughout the life of the contract.
- ◆ Other topics as appropriate

#### **Contractor’s Work Plan**

- ◆ Start date
- ◆ Completion date
- ◆ Holidays, tax holidays or other days the highway may not be closed.
- ◆ Major phases of the contract and Milestones.
- ◆ Contractor's project schedule is to be furnished to the AE.
- ◆ Acceptable preliminary schedules required before work can begin.
- ◆ Detailed progress schedule outlining the manner of prosecution of work intended to complete work in the allotted time. Schedule updates required each month
- ◆ Revisions – Contractor can't revise schedule without notifying TxDOT.
- ◆ Contractor is responsible for initiating time impact analysis process for delays.

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- ◆ Work plans
  - ◆ Criteria on working day charges and temporary suspension of work.
  - ◆ Notify the area engineer (AE) at least 24 hr. before beginning work in any new operation.
  - ◆ Field office and/or lab
  - ◆ Special traffic problems
  - ◆ Present the subcontractors proposed for the project and the work they will perform (DBEs discussed below).
  - ◆ Railroad insurance, if required in the contract
  - ◆ Discussion of specification requirements including penalties, time requirements, availability, submission, retention, etc.

### **Construction Requirements**

#### *Usual requirements*

- ◆ Water truck weight
- ◆ Roller qualifications
- ◆ Truck measurements
- ◆ Asphalt distributor calibration
- ◆ Truck weight limit
- ◆ Copies of papers accompanying material delivered to the project

#### *Special requirements* – discussion of pertinent items

- ◆ Preparing ROW
- ◆ Staking
- ◆ Earthwork
- ◆ Base
- ◆ Pavement
- ◆ Structures
- ◆ Miscellaneous
- ◆ Electrical Work (Article 7.18),
  - Use certified persons or licensed electricians to perform electrical work. Electrical certification or licenses for this project will be in accordance with Article 7.18 of the Standard Specifications and any special provision.

- If the subject project contains electrical work, TxDOT’s District or Traffic Operations Division Electrical Review Team (ERT) may make periodic electrical reviews and are available for assistance.

### Utility Adjustments

- ◆ 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 workdays. FHWA may not participate in time extension.
- ◆ The Contractor should not damage utilities located within the right of way.

### Environmental

- ◆ Inform contractor of requirements to secure proper environmental/archaeological clearances pertaining to Project Specific Locations (PSLs). Refer to the [FHWA Project Specific Location \(PSL\) Quick Guide](#) for contractor responsibilities.
  - For on-Site PSLs (one mile within the boundary of permitted construction site), a copy of the contractor's NOI and signed sketch of the SWP3 measures are required.
  - The contractor must post both English and Spanish versions of the TxDOT [Road Construction Environmental Management System Policy Statement](#) on the bulletin board. (EMS Policy and Posters).
- ◆ Review the contractor's implementation of the SWP3. Pay attention to areas of earth susceptible to erosion, haul road and material pits, contamination of streams and lakes, damage to adjacent property, etc.
  - During final and temporary stabilization, [Form 2118](#), “Inspection and Maintenance Reports,” are completed by a TxDOT representative as specified by SWP3.
- ◆ Review mitigation requirements for the contract
- ◆ Construction Stage Gate Checklist (CSGC) joint inspection
  - Designate TxDOT Responsible Person, CRPe, and alternate CRPe responsible for conducting joint inspection and provide contact information.
  - Define inspection frequency for guidance: Start within one month of initial construction activities and once a year until project is completed.
  - Review the CSGC Instructions
  - CSGC will be completed by District Environmental Quality Coordinator in coordination with project staff and the CRPe.
  - Completed CSGC will be discussed with contractor's superintendent/foreman and signed by the contractor's representative.
- ◆ Determine if there are possible conflicts between the contractor's work schedule and the SWP3.

- ◆ Discuss environmentally sensitive areas (such as, wetlands, archeological finds, endangered species, etc.).
- ◆ The Department and the contractor are Co-Permittees for TPDES TXR150000, Construction General Permit. (Reference Special Provisions [506-005](#) and [007-004](#)).
  - Review what is not paid directly but is subsidiary to pertinent bid items.
- ◆ The EPIC sheet provides information regarding environmental issues that may need to be followed during the construction of this project.
  - Cultural, Hazardous Materials or Contamination Issues, Endangered Species, Critical Habit, etc.
- ◆ The contractor's daily monitoring reports are to be kept on file by the contractor at an agreed upon location.
- ◆ TxDOT will notify the contractor, in writing, of items found to be out of compliance that need to be corrected.
- ◆ Water Pollution Abatement Plan (WPAP) – If the project is in an Aquifer Recharge Zone, notify the Texas Commission on Environmental Quality (TCEQ) of the preconstruction meeting. TCEQ must be notified in writing once the sediment control devices have been installed on the project by WPAP and are available for inspection.
- ◆ Non-Join Bid Utilities are responsible for their own SWP3 measures and NOIs. In addition, for Utility On-Site PSLs, a copy of the Utility Company's NOI and a signed sketch of the SWP3 measures are required. For Utility Off-Site PSL(s), a letter designating the Off-Site PSL(s) and associated area calculations is required.
- ◆ Letter to AE for approval of contractor's plan and schedules for accomplishment of temporary and permanent soil erosion control work throughout the duration of work under contract. If Texas Pollutant Discharge Elimination System (TPDES) is required, this letter is not required.

### **Soil Disturbances**

- ◆ Soil disturbance less than 1 acre – No submittals will be required, but TxDOT and contractor will follow SWP3.
- ◆ Soil disturbance of 1 acre to less than 5 acres – Small Site Notice will be posted at project site by TxDOT and contractor. TxDOT will be considered a primary operator for Operational Control over Plans and Specifications. Contractor will be considered a Primary Operator for Day-to-Day Operational Control.
- ◆ Soil disturbance of 5 acres or more – A NOI is required and a Large Site Notice will be posted at project site by TxDOT and contractor.
  - The NOI will be obtained by TxDOT first, who will provide a copy to the contractor prior to the preconstruction meeting for use in completing their NOI form.
- ◆ Copies of the contractor's and TxDOT's NOI should be placed in the SWP3 project files.

- ◆ Soil disturbances cannot begin until both NOIs have been submitted and posted.

### **Bulletin Board**

- ◆ The contractor's and TxDOT's Construction Site Notice (CSN) should be posted on the bulletin board or separately within project limits.
- ◆ The contractor must post both English and Spanish versions of the TxDOT [Road Construction Environmental Management System](#) Policy Statement on the bulletin board. (EMS Policy and Posters).
- ◆ For on-Site PSLs (one mile within the boundary of permitted construction site), a copy of the contractor's NOI and signed sketch of the SWP3 measures are required.
- ◆ The contractor must post both English and Spanish versions of the TxDOT Road Construction Environmental Management System Policy Statement on the bulletin board. (EMS Policy and Posters).

### **Training**

- ◆ Personnel involved in soil disturbing or SWP3 activities must complete the training listed in SP [506-005](#).
  - By signing Form 2795, the contractor certifies that all required training has been completed by their personnel. The certificates must be made available upon request.
  - The Contractor will maintain a list of all applicable employees who have completed the training. The list must be made available upon request. Include: employee's name, training course name, and date that the employee completed the training.
- ◆ If an employee's certification expires during the life of the project, the contractor will have one estimate cycle to update the employee's certification.

### **Traffic Control**

- ◆ Review plans, standards, and specifications
- ◆ Discuss the timing of sign erection and removal requirements
- ◆ Discuss signs, barricades and lights: inspection and reports (Form 599), repair and compliance, special conditions and detours.
  - Barricade inspections (Form 599) will be performed and signed by TxDOT DRP for barricades. It will be considered written notification of barricade inspections and maintenance. CRP for barricades will also sign Form 599.
- ◆ Discuss flagging procedures. All applicable certifications must be made available upon request. A list of certified flaggers should be kept and must be made available upon request.
- ◆ 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.
  - Contractor will notify Project Engineer at least 2 weeks before a proposed traffic pattern change that will require a revision to traffic signals.
- ◆ 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.
- ◆ Review the designated CRP and alternate CRP listed in Form 2795 and present the DRP.
- ◆ Discuss limitations on working hours, road user costs, and lane rentals (if applicable).
- ◆ Detours - Discuss procedures for transmission of information on street closures, detours, etc.

For more information on temporary traffic control for construction areas, reference the [Traffic Safety Divisions](#) site for the [Compliant Work Zone Traffic Control Device List](#). For more information on construction speed zones, refer to the Procedures for Establishing Speed Zones volume of the [Traffic Operations manual](#) collection and the [Work Zone Safety and Mobility Guidelines](#), Section 10 (internal access only).

### **Traffic Laws**

Contractor and Departmental personnel must be aware of the Texas traffic laws regarding the legal limit of axle load (legal weights) for trucks hauling materials to the site. Copies of the law can be obtained from the Texas Department of Public Safety.

### **Materials**

- ◆ Review the Material Sourcing letter
- ◆ Testing requirements
- ◆ Quality Control/Quality Assurance (QC/QA)
- ◆ Storage of materials
- ◆ Inspecting and testing
- ◆ Use of Commercial Labs (CL):
  - Per SP [006-001](#), the AO will provide the contractor with CL information and forms. The contractor should complete and return forms to the AO prior to beginning work.
  - If the contractor uses a CL, reimbursement to the Department for the CL will be made by a deduction from the contractor's monthly pay estimate.
  - Minimum 24-hr notification to the Engineer, District Lab, and CL by phone and email is required when using a CL for sample pickup/testing.



- Cancellations must be made by both phone and email; a \$150 cancellation fee will be recovered for cancellations without adequate notice that resulted in the mobilization of technician and/or equipment by the CL.
  - CL turnaround times and agreements are available to the AO and contractor upon request.
  - If the contractor chooses to use a CL, a meeting will be held with the Contractor, AO, District Construction Office (DCO), and District Lab to determine which tests and materials will be tested by the CL, to remain in force for the entire project. Costs will be reviewed at that time. (e.g., if flexible base will be tested by a CL, the CL must perform all tests required for flexible base.) The contractor will be responsible for the testing required, determined by the quantity to be placed for the selected tests.
- ◆ Buy America Requirements
  - ◆ Extended Buy America Requirements (effective November 2022) added by Special Provision.
  - ◆ MOH - Discuss mechanics of tracking MOH and pay quantities, if applicable.
  - ◆ Discuss concrete sources(s) and mix designs in the project.
  - ◆ Discuss concrete cylinder mold sizes that will be needed, according to the aggregate size shown in the mix designs.
    - 4 × 8 in. cylinder molds can be used for mixes with aggregates grade 4 and smaller.
    - 6 × 12 in. cylinder molds required for use with larger aggregates.
  - ◆ Discuss notification time to TxDOT personnel for concrete pours.
  - ◆ Discuss pre-placement meeting schedules for mass placement, bridge deck, concrete paving, temp walls, soil nails, and hot mix for the project.
  - ◆ Discuss any local or designated source material locations used on the project.

### **Storage of Equipment and Materials**

- ◆ Review specifications-especially the need to keep the travel way clear.

### **Law Enforcement**

- ◆ The responsibility of the AE is to guarantee that open lines of communication have been established between contractor and law enforcement. Discuss the use of law enforcement personnel on the project, if needed. The AE should ensure that specific needs for traffic supervision will be met. The interested parties must determine exactly how they will share traffic-related information (accidents, safety hazards, etc.). If the project requires TxDOT to set up the law enforcement, use the [Form 318](#). Law enforcement personnel need training for any work zone traffic services they provide. It is the contractor's responsibility to provide certification when requested. Form 318 contains a box certifying training is on file.

### News Media

- ◆ Develop a plan for educating the public about construction activities through media announcements.

### Contractor Estimates

- ◆ Testing requirements
- ◆ Partial payments, monthly estimates, closing dates, etc.
- ◆ Payment for material on hand (MOH)
  - TxDOT DCO will not generate a supplemental progress estimate due to a missed deadline.

### Change Orders (CO)

- ◆ Review the Special Provision corresponding to the contract ([000-384](#), [000-954](#) or [000-1019](#)). Form 1295, "Certificate of Interested Parties," and related information is available on the [Texas Ethics Commission Website](#).
- ◆ An individual with full signature authority may delegate signature authority to another, but the delegation must be project specific and in writing.

### Subcontracts

- ◆ Review [Form\(s\) 2802](#) of proposed subcontractors to be used.
- ◆ Address and discuss subcontractor approval process including E-Verify and Diversity Management System (DMS) requirements.
  - Subcontractors must remain active in E-Verify until their work is completed.
- ◆ Prime is responsible for ensuring that all contracts physically include all applicable special provisions.

### Disadvantage Business Enterprise (DBE)/Small Business Enterprise (SBE)

- ◆ Discuss the project goal
- ◆ Advise contractors of requirements in the DBE/SBE special provision.
- ◆ Direct contractors to contact the Area Office (AO) concerning anticipated changes to their DBE/SBE commitments, any disputes, or an inability to meet the goal.
- ◆ The district is responsible for approving any requests from the contractors, for DBE/SBE removals, substitutions, and Good Faith Efforts resulting from removal of a DBE/SBE. Consult with Civil Rights Division (CIV) as necessary.
- ◆ Report all payments made to the DBE and SBE, regardless of commitment.

- ◆ For federally funded projects with or without a DBE goal, a Commercially Useful Functions (CUF) is required on all DBEs (race conscious or race neutral).
- ◆ For all federally funded projects beginning with the 2/2017 letting, the contractor must request to add a subcontractor in the Diversity Management System. Refer to subcontractor approval found in Chapter 10.
- ◆ A copy of all DBE fully executed contract/agreement must be submitted to the AO in a timely manner.
- ◆ Use of joint check(s) requires prior approval by the District DBE Coordinator (DDC). Contractor must complete and forward [Form 2804](#) “Request to Use Joint Checks,” to the AO, which will direct the form to the DDC for review and approval.
- ◆ Any removal, termination, substitutions, or changes to the original Utilization plan must be requested through the AO and directed to the DDC at the DCO. The contractor is still responsible for meeting the DBE goal.
- ◆ [Form 2177](#), “Prompt Payment Certification,” required on all projects (federal and state), must be submitted by the end of the month following each month that the prime contractor receives payments. This is a mandatory report, and the district may withhold estimates for late reports received. (Make sure this topic is covered in preconstruction meeting and prime is fully aware of the Prompt Payment requirements).
- ◆ Projects let since February 2017
  - These projects include Special Provision [000-394](#), “Disadvantaged Business Enterprise in Federal-Aid Contracts,” which includes requirements for a web-based Compliance Tracking System to be used by contractors and TxDOT (Diversity Management System).
- ◆ Projects let prior to February 2017
  - SBE (State): Use Monthly Progress Reports ([Form SMS.4907](#)) and Final Report ([Form SMS.4908](#)). Includes all payments made to race-neutral DBEs/SBEs/HUBs.
  - DBE Prime Contractors only: Use [Form SMS.4902](#) for payments made to non-DBE(s) subcontractors for monthly and final reporting.
  - DBE (Federal): Use Monthly Progress Reports ([Form SMS.4903](#)) and Final Report ([Form SMS.4904](#)). Include all payments made to race-neutral DBEs.

## **EEO, Training, and Labor Compliance**

### *Equal Employment Opportunities (EEO) Compliance*

- ◆ Requirements are contained in the following special provisions.
  - Required Contract Provisions Federal-Aid Construction Contracts ([Form FHWA 1273](#)).

- Standard Federal EEO Construction Contract Specifications ([Executive Order 11246](#)) - including Form FHWA 1391 - Certification of Nondiscrimination in Employment and Notice of Requirement for Affirmative Action to Ensure EEO (Executive Order 11246).
- The Federal Aid Construction Contractors Annual Report ([FHWA Form 1391](#)) is required from the contractor and all subcontractors in accordance with the FHWA-1273. Instructions are sent directly to each contractor from TxDOT Civil Rights Division (CIV) and data is entered in DMS and monitored by DCO. FHWA Form 1392 is submitted to FHWA to report EEO data based on the Form 1391.
- ◆ In addition, the applicable wage determination, the DBE or SBE special provision, and the prompt payment requirement must be physically included in subcontract agreements.
- ◆ Form FHWA-1273 must be physically attached to all federally assisted contracts, subcontracts, and purchase orders of \$10,000.00 or more.
- ◆ The contractor must designate an EEO Officer in accordance with the FHWA 1273.

#### *On-the-Job Training (OJT)*

- ◆ Special Provision [000-006](#), OJT Program, incorporated into all Federally Funded highway improvement contracts.
- ◆ TxDOT's CIV will notify every contractor selected for participation in the program at the beginning of each calendar year and advise them of the number of trainees they are expected to support. Participating contractors must enroll, train and graduate a number of trainees sufficient to meet their assigned annual trainee goal.

#### *Prevailing Wage Rate Requirements*

- ◆ 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.

#### *Payroll Records*

- ◆ Payroll records certifying compliance with the contract's minimum wage rates, overtime and payroll deduction requirements must be submitted within 7 calendar days (weekly) on construction projects. Submit payroll records to the Engineer in the manner prescribed by the Department.

#### *Bulletin Board Requirements*

- ◆ The USDOL, FHWA, and U.S. Department of Transportation (USDOT) required certain posters to be posted on bulletin boards in places accessible to the employees on a job site. This is required for the contractor and any subcontractors with a contract greater than \$10,000. The posters should be posted at the beginning of construction. The bulletin board requirements apply to all construction contracts.

- ◆ EEO officer's name and contact information for prime and all subcontractors must be posted on the bulletin board.

#### *EEO Meeting Requirements*

- ◆ EEO meetings with supervisory and personnel office employees must be conducted before the start of work and then at least once every 6 months. EEO meetings with non-supervisory employees must be conducted at least annually.

#### **Other Matters**

- ◆ Procedures
  - [Shop drawings](#)
  - Guide - All shop drawings should be submitted electronically
- ◆ Contacts – List of all dedicated shop plan addresses
- ◆ Erection details
- ◆ Forming details
- ◆ Audits – The District and AO will perform periodic audits of project paperwork and notify the contractor in writing of deficiencies.
- ◆ TxDOT requires the submission of Form 1295 prior to change order execution in SiteManager at any time an existing contract awarded by the District Engineer or Chief Engineer increases in value to \$1,000,000 or more due to changes in the contract, at any time there is an increase of \$1,000,000 or more to an existing contract (change orders, extensions, and renewals); or at any time there is a change to the information in Form 1295, when the form was filed for an existing contract.

#### **Comments and Adjourn**

- ◆ Summary and follow up.
  1. Close Pre-Construction Conference:
    - May include a summary, comments, action items, or topics that need a follow up.
  2. Safety Meeting:
    - The safety meeting agenda can be found on Form 2796.
    - More information on the safety meeting can be found in CCAM Chapter 3, Section 5, “*Preconstruction Safety Meeting.*”
    - For more information on construction safety, see Health and Safety Items and Article 7.2.4, “Public Safety and Convenience.”

3. Include the following completed attachments with the preconstruction meeting notes:

- Attachment A – TxDOT Form 2795, “Contractor Staff Designee Submission”

The contractor must submit Form 2795, “Contractor Staff Designee Submission,” at the preconstruction meeting, unless otherwise agreed. The completed form will be part of the Form 2796 attachments as “Attachment A.” This form is required for all projects starting with May 2020 letting.

The contractor’s required contacts include the Superintendent, Contractor Safety Point of Contact, DBE Liaison Officer, SBE Liaison Officer, Payroll Officer, CRP, CRP alternate, Flagger Instructor, Project Scheduler, CRPE, and CRPE alternate. Their name, phone number, and email must be listed on the form.

The form also includes an assurance statement stating that all required trainings have been completed in accordance with contract specifications. This includes training for flaggers, environmental, other work zone personnel, and law enforcement, among others. The associated certifications are not required to be submitted at the preconstruction meeting, but they should be made available upon request. The certifications may be collected throughout the audit process or may be requested at any time if there’s an issue.

If a contractor has a change in personnel, a new form submission isn’t needed. The contractor may send an email to inform the AO of the updated staff. The AO should include this information with the project records.

- Attachment B – TxDOT Form 2390, “Escalation Ladder”
- Attachment C – TxDOT Form 2391, “TxDOT – Contractor Project Pledge”
- Attachment D – If needed, Environmental Special Issue Attachments

The last attachments in Form 2796 includes any additional documents that may needed. This can include specifics about endangered species in the project among other information that Environmental Affairs Division (ENV) may need to share. This may also include any permits that are required.

The Form 2796 also includes the following.

- ◆ TxDOT’s Required Documentation
  - List of TxDOT responsible contacts, important project dates and general project information.
  - If applicable, third-party information needed.
- ◆ Prime Contractor’s Required Documentation – Information Sheet listing required documents needed prior to the preconstruction conference.
- ◆ Sign in Roster – Used for attendees to sign in.

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**Suggested Preconstruction Seal Coat Topics**

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

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- Discuss any proposed pavement changes (i.e., new turn lanes).
  - Discuss the potential impact of weather and placement of centerline markings as it relates to the 14-day striping requirement.
  - Discuss time suspension for pavement curing. In addition, establish if there is a need for additional pavement markings or changes to existing markings.
  - Discuss other items such as removal of existing stripe, the use of temporary markings, and the placement of different marking types (i.e., profile markings).
6. Payment for Asphalt and Aggregate
- On jobs where aggregate is paid by the ton, review how to pay for partial loads that are transferred from one job/reference section to another.
  - Review options to measure Asphalt Distributors to confirm asphalt rates. Examples are strapping, distributor gauges, distributor computers, or a combination of these items. Documentation of distributor calibration and spray bar is also vital.
  - On jobs where aggregate is paid by the cubic yard (CY), review items such as premeasurement of trucks, verification of aggregate placed based upon agreed measured truck volume, and the striking off of loads. These are critical items to determine before work begins.
  - Discuss dry/loose unit weights of all aggregate and the anticipated conversion factor.
  - Confirm aggregate MOH quantities per reference section. Confirm plan rates/plan quantity of aggregate.
  - Review how field adjustments in aggregate/asphalt rates or reductions in square yards impact the contractor and how the excess aggregate on hand is compensated.
  - Discuss how remainder aggregate not carried forward is to be handled.
  - If remainder of aggregate is to be bought by TxDOT, determine measurement of quantities.
7. Corrective Measures
- Major corrective measures should be addressed prior to leaving a roadway or reference section.
  - Patching, stockpile condition acceptance and other items related to clean up should be discussed with contractor representatives prior to leaving a roadway or reference section.
8. Miscellaneous
- Discuss shared ownership of the contract (partnership) and that the outcome of the work reflects on both TxDOT and the Contractor.
  - Include suppliers at the preconstruction meeting and at the job site. They have a vested interest in the performance of their product and often provide helpful insight.
  - Review the Seal Coat Manual and include printed copies on the job site. This is a helpful resource to all parties involved.



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## General Information

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

Refer to the Prime Contractor Performance Evaluation (PCPE) Manual, Chapter 2 Section 6, for the process on accessing contractor signature authority.

The contractor sets their signature authority list when they qualify through the prequalification paperwork; it is an annual renewal and tracked by the CST Construction and Maintenance Contract Letting Section (CMCL). Should the contractor need to make a change to the list of authorized signers in the interim, there are three methods available:

- ◆ Sending an email from the email address identified on their prequalification paperwork.
- ◆ Signed letter from a current authorized signer on behalf of the contractor making the request for a new individual to be added/removed (can be scanned and emailed).
- ◆ Legal documents enforcing an individual's ability to sign all documents on behalf of the contractor (can be scanned and emailed).

Requests are submitted by the contractor to one of the following:

by email: [CST\\_Prequalification@txdot.gov](mailto:CST_Prequalification@txdot.gov) or

by mail: 125 E. 11th Street, Austin, TX 78701-2483

NOTE: CMCL only tracks full signature authority and only lists an individual that has the authority to sign any and all legal documents on behalf of the contractor. If there is any negotiable clause such as “for change orders” or “guardrail contracts”, then that person will not be added.

## Section 5 — Preconstruction Safety Meeting

### Purpose of the Preconstruction Safety Meeting

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

### Preconstruction Safety Meeting Responsibilities

The preconstruction safety meeting takes place immediately after the preconstruction conference.

Ensure meeting attendees include:

- ◆ appropriate representatives from the district and AO,
- ◆ the contractor’s organization,
- ◆ subcontractors (as required),
- ◆ local government entities (as required), and
- ◆ local law officers (as required)

### Preconstruction Safety Meeting Agenda

Use the safety meeting agenda found in [Form 2796](#), “Pre-Construction Conference – Agenda (internal access only).” Prepare a preconstruction safety meeting agenda to discuss specific items. Tailor the agenda to the specific project to ensure important topics are discussed with appropriate detail.

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## Section 6 — Partnering

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. The purpose of partnering is for TxDOT and the Contractor to achieve mutually beneficial goals. TxDOT should not use the partnering process to circumvent contract provisions.

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

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

Informal partnering does not make use of a facilitator, while formal partnering uses the services of a facilitator (internal or external). The need for partnering will be determined by the DE after consideration of the following factors:

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

### Procedure

Complete the following tasks to arrange an informal partnering meeting.

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

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

### **Partnering Performance**

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

## Section 7 — References

### Section 1 – Press Release

- ◆ FHWA Core Curriculum
  - [23 U.S.C. 112](#), “Letting of Contracts”
- ◆ Code of Federal Regulations
  - [23 CFR 635.113](#), “Bid Opening and Bid Tabulations”

### Section 2 – Legislative Notification Requirement

- ◆ Texas Transportation Code
  - [§201.609](#), “Notice to Legislators of Completed Projects”

### Section 5 – Pre-Construction Safety Meeting

- ◆ FHWA Core Curriculum
  - [29 CFR 1926.200](#), “Accident Prevention Signs and Tags”

# Chapter 4 — Project Records and Closeout

## Contents:

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

[Section 2 — Public Information Act](#)

[Section 3 — Traffic Control Plan](#)

[Section 4 — Project Records](#)

[Section 5 — Project Closeout](#)

[Section 6 — References](#)

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## 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 are required for legal purposes and provide for the following:

- ◆ facts and details of all tests, inspections and work performed, including activities, events, critical path work performed and cancelled, visitors, directions, disputes, conflicts and resolutions, correspondence, and any issues relating to the project;
- ◆ include information recorded by or from a person with direct knowledge of the event.
- ◆ include information recorded at or near the time of the events, but no later than the third day after the event.
- ◆ ensure only authorized personnel enters the information.
- ◆ proof of and support for decisions, actions, and fulfillment of the Department's responsibilities; and
- ◆ documentation of the contractor's compliance or noncompliance, with the contract plans and specifications.

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

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

### Correspondence

General correspondence is maintained in the project records to document the communication between two or more parties through

letters or emails. Correspondence can be subject to open records request.

Be aware of your District policies regarding correspondence and the templates available. Only TxDOT personnel may use Department letterhead.

[CST templates](#) are available on the Crossroads website (internal access only).

### **Project Record Reviews**

All projects are to be inspected/reviewed on a regular basis to ensure compliance with the contract requirements and that the work is performed according to the plans and specifications. District offices should document their project record reviews for project records compliance at 30%/60%/90% completion (based on project dollar values). [30, 60, 90 Project Review Template](#) (internal access only).

### **Electronic Records**

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

- ◆ Ensure only authorized personnel enter information
- ◆ Do not maintain duplicate records
- ◆ Store data on appropriate software programs and hardware

Refer to [Records Management Manual](#), Chapter 7 “Electronic Records,” for additional information.

Follow [Records Retention Schedule](#) (internal access only) for proper destruction of electronic records.



## Section 2 — Public Information Act

### Overview

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

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

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## Section 3 — Traffic Control Plan

### Construction or Work Phase Requirements

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

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

- ◆ make routine inspections to determine if project traffic control is in compliance with the plans and specifications and the [Texas Manual on Uniform Traffic Control Devices](#) (TMUTCD), *ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features*, TxDOT Standard Sheets, *AASHTO Roadside Design Guide*, and the [Compliant Work Zone Traffic Control Device List](#).
- ◆ communicate all pertinent work zone requirements to the contractor in the preconstruction meeting.
- ◆ ensure formal inspections are conducted using [Form 599](#), “Traffic Control Devices Inspection Checklist,” following the instructions outlined on the form.
- ◆ ensure all Transportation Management Plan (TMP) strategies identified on [Form 2229](#) are properly deployed in the work zone.
- ◆ notify the contractor of discrepancies at the time of inspection or by the end of the next business day.
- ◆ ensure the flagger instructor’s information is on [Form 2795](#).
- ◆ upon request or audit a list of flaggers trained to perform flagging duties or contractors employees’ certification of completion in accordance with Section 7.2.6.5, “Training,” should be made available.
- ◆ ensure that contractor-developed traffic control training, when used, complies with the requirements of Section 7.2.6.5 and any associated special provisions.
- ◆ have authority to halt work until applicable or remedial safety measures are taken.
- ◆ report changes needed to the Area or Project Engineer.
- ◆ document any major changes to the TCP and provide signed and sealed copies to the contractor.
- ◆ assist in work zone accident reviews and
- ◆ coordinate with and assist the Public Information Officer (PIO) with information required for implementation of public information strategies for which the contractor is not responsible.

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

- ◆ upon receipt of the 599 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 begin taking 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, when available.

### **Phase Change Inspections and Documentation**

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

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

### **Formal Inspections and Procedures**

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

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

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

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

- ◆ Pedestrian pathways or detours must be accessible in accordance with Americans with Disabilities Act standards and as outlined in the [Texas Manual On Uniform Traffic Control Devices](#) (TMUTCD). Temporary signs and other devices should not block pathways intended for pedestrian use.
- ◆ Barriers must have reflectors meet the requirements of BC sheets and are properly attenuated or flared away to the edge of the clear zone.
- ◆ Flaggers must have an unobstructed escape route in the event of an errant vehicle.

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

### Formal Inspection Documentation

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

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

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

Verify Form 599 has been completed.

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

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

### 599 Disclosure

Immediately upon completion of Form 599, file the form and related documentation separate from the project files in a folder boldly labeled “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 U.S.C. 407.” Maintain separation by filing the folder at the District or the Area Office. Destroy additional copies of the form.

Immediately forward public information requests for copies of the form to the General Counsel Division (GCD) with copies of all completed contract forms for the affected contract(s). The

Department must seek a ruling from the Office of the Attorney General (OAG) on each request for copies of Form 599.

### TCP Change Documentation

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

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

Changes to TCP plans sheets, sketches, and marked up copies of plan sheets are under the direct supervision of an Engineer and require **signing, sealing, and dating**. The Engineer's written instructions to the field for the TCP changes require the Engineer's Professional Engineer (PE) designation and the date. Refer to Chapter 16, Section 4 for more information regarding change orders that include changes to the TCP.

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.

### Law Enforcement Usage

A 1% markup for bond and 5% markup for administration and superintendence costs, and profit is allowed on off duty law enforcement cost. Law enforcement costs includes payment for the offices, their equipment, and coordinator fees.

For additional information on law enforcement usage refer to the [Work Zone Safety and Mobility Guidelines](#), Section 10 (internal access only).

### Highway Closures during Certain Periods (Transportation Code 224.034)

If a proposed improvement of the state highway system requires the closing of a highway, the Department will, before entering into a contract for the proposed improvement, coordinate the

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highway closure by working with your PIO and DE to communicate in person or by telephone call, e-mail, or other direct method of communication with public officials from municipalities affected by the closure to avoid any adverse economic impact on the municipalities during:

- ◆ periods of increased travel on the state highway system, including major state and federal holidays and school holidays; and
- ◆ other periods of high commercial activity in the state, including limited periods in which certain items are exempted from the sales tax imposed by [Chapter 151, Tax Code](#).

If municipalities meeting the following criteria notify the Department or the Contractor at least 180 days before an event is scheduled to be held, temporary closures, including temporary relocations or changes to entrance or exit ramps, are prohibited on specified dates. When major items of work are impacted by the inability to close lanes or ramps, time will be suspended, as approved.

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

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

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## Section 4 — Project Records

### Notice of Beginning Work

After the Preconstruction Meeting and prior to beginning work, the Area Engineer (AE) will send the Director of Construction (DOC) a Work Begin Memo by email including the CSJ and date work begin.

Immediately after the contractor begins work, the District inputs the Work Begin date in SiteManager's Critical Dates tab. The Work Begin Date is when barricades are placed or when breaking ground, whichever occurs first. Enter the Work Begin Date only once for each construction contract.

When the contractor requests payment for material on hand (MOH) for projects such as seal coat or traffic signal installation before actual work begins or time charges begin, payment may be made:

- ◆ create a DWR for payment, and
- ◆ if prior to the time charges begin date, credit time as "TIME NOT STARTED."

### Progress Schedules

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

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

Unless otherwise shown in the contract, obtain monthly updated progress schedules from the contractor no later than the 20th calendar day of the following month. 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. When reviewing the schedule, consider how approved or potential COs may impact or reflect on the schedule. A notice of potential time impact or time analysis may be submitted by the contractor when they believe a time adjustment is justified. When the district receives a notice of a potential time impact, the district may request that the contractor start the time impact analysis process. Refer to Section 8.5.5.4 in the *Standard Specifications*.

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

### Daily Project Records

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

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

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

### SiteManager Daily Work Report (DWR)

DWR entries must include, as a minimum, the following:

- ◆ date
- ◆ temperature
- ◆ weather conditions
- ◆ contractor/subcontractor work hours
- ◆ controlling item of work based on schedule
- ◆ work performed:
  - who performed the work
  - what was performed (inspected and not inspected)
  - where work was performed (station numbers and offsets)

DWR Template Guidance can be found on the [CST Support page](#) (internal access only).

DWR entries include, if applicable, but are not limited to the topic listed on the guidance.

When working day charges are suspended due to non-acquired right of way (ROW), railroad issues, or utility relocation, list the weather conditions in the DWR with a note indicating whether a day would normally be charged in accordance with the contract. This allows for easy determination of Federal Highway Administration (FHWA) participation. Exclude working days that would not have been charged due to weather conditions when calculating FHWA non-participation

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, ensure that all records and documents pertaining to the project (daily diaries, pay records, photos, correspondence, etc.) are maintained in the location specified by the District. See Section 5, “Project Closeout,” for more information.

### **DWR Authorization**

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

### **Third-Party Damage Procedures**

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

### **Materials Received**

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

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

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

Ensure all materials received comply with Item 6 “Buy America,” of the *Standard Specifications*. Refer to Chapter 6, “Control of Materials,” Section 3, “Buy America,” for information on the Extended Buy America Requirements. For fully state funded jobs, “Buy America” and “Buy Texas” apply.

### **Records on Temporary Suspension of Work or Working Day Charges**

When work or working day charges are temporarily suspended, provide the contractor a written notice that includes the reasons for the action and the effective date of the suspension. Record the suspension and reasons in the DWR accordingly. For additional information, refer to Chapter 10, Section 5, “Temporary Suspension of Work or Working Day Charges.”

### **Resumption of Work**

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

### **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.

Once an Estimate has been processed, working day charges and credits may not be changed without AE approval.

### **Anticipated Project Completion Letter**

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

### **Bulletin Board Checklist**

The Prime Contractor is responsible for setting up and maintaining the project bulletin board on all state and federally funded construction projects. The primary location is the field office or a general

location where employees gather, but also needs to be visible to the general public. For mobile operations, the suggested method is a foldable board on the side of a tool or utility trailer displayed close to the work location for the day. No binders are allowed per the [Department of Labor](#).

Review the bulletin board utilizing the [checklist](#) after initial set up and during project reviews. Additional reviews may be performed depending on the board's exposure to weather and general location. Address any deficiencies with the contractor. File all checklist with the project records.

## 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
- ◆ date of completion and acceptance
- ◆ final contract cost, and
- ◆ AE's seal and signature.

Show a summary of all 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. A copy of all As-built Bridge Plan Sheets, Pile Driving Records (TxPlng.xlsx), and Drill Shaft Records (TxDrIshft.xlsx) are to be provided to the district bridge office to be included in the bridge file in the bridge inspection management system (currently AssetWise). Refer to [Bridge Division Field Operations](#) for guidance (internal access only).

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

The responsible Engineer affixes the final plans statement to the title sheet and signs, seals, and dates the final as-built plans. Send As-Built drawings to [plansol@txdot.gov](mailto:plansol@txdot.gov). If the file is too large to email you can send it to CST via us through box.com. Be sure to indicate it is a set of “As-Built” plans.

## Supplemental Agreements (SA)

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

### **Final Estimates (FE)**

Refer to Chapter 11 Section 1, “Estimates and Issues Affecting Payments.”

### **Form FHWA 1494 – Semi-Annual Labor Compliance Enforcement Report**

This report contains information concerning the compliance and enforcement of the Davis-Bacon and Related Acts (DBRA) for projects. Semi-annual reports requiring time periods are October 1 through March 31 and April 1 through September 30. Refer to Chapter 15, Section 2, “Labor Requirements” for additional information.

### **Materials Certification Letter**

Materials Certification letters are discussed in Chapter 6 of this manual as well as in the Quality Assurance Program for Design-Bid-Build Projects.

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

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

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## Section 5 — Project Closeout

### Overview

Project Closeout is the process of collecting all of the paperwork required to be submitted over the life of the project, to support pay quantities and to support the decisions made during the life of the project. The information contained in this documentation may be needed in the future if a claim or lawsuit is filed. The project closeout is a two-step process, beginning with project record keepers in the Area Office (AO) and finished by the District Construction Office (DCO). Close out a project within 60 days from final acceptance.

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

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

### Project Closeout Checklist

1. Project Event List - A chronological list of all of the major events on the project
  - Letting
  - Award
  - Execution
  - Preconstruction Meeting
  - Preconstruction Safety Meeting
  - Work Begin
  - Time Suspensions
  - Milestone Dates
  - Substantial Completion
  - Project Acceptance
  - Final Estimate
  - Other important dates
2. Preconstruction Contract Correspondence
3. Contract
4. Bid Tabulations
5. Utility or ROW Conflicts

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6. Railroad Right of Entry (ROE)
    - Railroad insurance information
  7. Preconstruction Meeting Notes, Sign-In Sheets, etc.
  8. Partnering Meeting, Invoice, etc.
  9. Preconstruction Safety Meeting Notes
  10. DBE/SBE Subcontractors
    - Subcontract Agreements
    - Purchase Orders
    - Monthly/Final Payouts
    - Completed CUFs
    - Goal Shortfall Explanations and Analysis if applicable.
  11. Subcontractor Approval (Form 2802 Contractor Request for Sub Approval for projects let May 2020)
  12. Monthly/Final Prompt Payment certification
  13. Prompt Pay Audits (Form 2177A)
  14. Project Schedule
    - Baseline Schedule
    - Monthly Updates
    - Notice of Potential Time Impact
    - Time Impact Analysis
  15. Materials
    - Sources
    - Materials Lists
    - Tickets
    - Materials Test Documentation/Deficiencies
    - Product Data Sheets
    - Requests for Material on Hand (MOH)
    - Materials Invoices
    - Lab Invoices
    - Testing Employee and Lab Certifications
    - Manufacturers' Literature
    - Mix Designs
    - Certified Test Reports

- Quality Control Plans
- Joint Density Test Results
- Seed Mix Certifications
- Materials Certification Letter (MCL)
- Test Exception Letter (TEL) (if applicable)

#### 16. Construction

- Bulletin Board Compliance
- Asphalt Pavement Records
  - Seal Coat Records
  - Asphalt
  - Aggregate
  - ACP Records
- Ride Quality Measurement Records
- Concrete Pavement Paving and Quality Control Plan
- Flowable Fill Construction Method and Plan
- Temporary Special Shoring Details
- Pile Driving Erection Plans
- Pile Jetting Plans
- Pile Bearing Evaluation Document
  - Pile Driving Records and updated Bridge Layouts showing actual foundation tip elevations, provide to the district bridge office to be included in the bridge file in the bridge inspection management system (currently AssetWise)
- Soil Nail Wall Construction Plans
- Drilled Shaft Installation Plan
  - Drill Shaft Records and updated Bridge Layouts showing actual foundation tip elevations, provide to the district bridge office to be included in the bridge file in the bridge inspection management system (currently AssetWise)
- Freeze Protection Measures
- Plans for Falsework and Forms
- Bridge Paint Containment Plans
- Special Concrete Finish Plans
- Work Plans
- Technical Support Representatives
- Welding Procedures



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- Certificate of Conformance
  - Shop Drawings/Working Drawings
  - Erection Drawings
  - Nonconformance Reports
  - Demolition Plans
  - SWP3 Training List
  - Herbicide Records
17. Equipment Verifications
  18. DWRs - make sure all DWRs in SiteManager have been authorized
  19. Monthly Estimates
    - Check percentage of work performed by prime and subs
    - Check major items for over/underrun greater than 25%
  20. COs, Force Account, etc. - All correspondence and approved or unapproved COs
  21. Dispute Correspondence, Requests for additional compensation, etc., – approvals, denials
  22. Traffic Control Plans, Revisions, Contractor Proposed Changes, etc.
    - Paper copies of Form 599, “Traffic Control Devices Inspection Report”
      - Barricade Folder includes all 599s performed
    - The 599 folder is separate from the project files, labeled with “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 USC §407.” This file is considered safety information that federal law exempts from discovery, which makes them exempt from disclosure under the Public Information Act
  23. Environmental Compliance
    - SWP3 Documentation
    - BMPs
    - Construction Stage Gate Checklist
    - Other Environmental Commitment Documentation as required
  24. Buy America/Buy Texas Documentation
  25. Overweight Construction Traffic Submittals and Approvals
  26. Construction Equipment Operating on Structures or Materials Stored on Structures Plans and Approvals
  27. Employee Certifications
    - Flaggers (if requested)
    - Electricians

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- Irrigators
  - Profilers
28. Labor Compliance
    - Payroll hard copies ([Form WH-347](#)) if not submitted to the Engineer in the manner prescribed by the Department
    - Labor Interviews
    - OJT
  29. Incident and Injury Reporting (for projects let before September 2020 in which SP 000-010 was not removed by change order)
    - Check EPRS to ensure contractor has submitted incidents and injuries that have occurred on the project. These should correspond to information in the DWRs.
  30. Other Correspondence
  31. Disposal of Wells Plugging Report
  32. As Built Plans
  33. Statement of Cost (SOC) (if applicable)
  34. Final hard copy Contractor Performance Evaluation Form 2707, Form 2707R and complete backup documentation saved in a folder separate from the project files, labeled “DO NOT DISCLOSE - Attorney General Opinion Required.”
  35. Form 2803 Project Evaluations (Design) - Required for all Final Estimates processed after NOV 2022
  36. District project review(s).

## Section 6 — References

### Section 2 – Public Information Act

- ◆ Texas Administrative Code
  - [43 TAC Rule §3.10](#), “Purpose and Scope”
  - [43 TAC Rule §3.12](#), “Public Access”

### Section 3 – Traffic Control Plan

- ◆ Texas Transportation Code
  - [§223.052](#), “Notification by Certain Municipalities of Scheduled Event”
  - [§224.034](#), “Highway Closures During Certain Periods”
  - [§544.002](#), “Placing and Maintaining Traffic-Control Device”
- ◆ Code of Federal Regulations
  - [23 CFR 630 Subpart J](#), “Work Zone Safety and Mobility”
  - [23 CFR 630 Subpart K](#), “Temporary Traffic Control Devices”
  - [23 CFR 655.605](#), “Project Procedures”

# Chapter 5 — Control of the Work

## Contents:

[Section 1 — Project Authority](#)

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[Section 3 — Inspections](#)

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## Section 1 — Project Authority

### Authority of the Engineer

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

The Engineer is responsible for:

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

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

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

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

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

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

### **Contractor's Superintendent**

In accordance with Article 5.5, "Cooperation of Contractor," the contractor must designate, in writing, a competent English-speaking superintendent employed by the contractor on [Form 2795](#), which is submitted at the preconstruction meeting. The superintendent must be experienced with the work being performed and capable of reading and understanding the contract. The contractor must ensure that the superintendent is available at all times, and able to receive instructions and act for the contractor.

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

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

### **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.

Refer to specific requirements in the plans and railroad agreement.

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## Authority and Duties of Inspectors

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

Inspector duties may include, but are not limited to:

- ◆ reporting the progress of the work as compared to the project schedule and contractor performance to the Engineer
- ◆ Ensuring all materials used on the project are approved and listed on the appropriate Material Producer List, or have been tested as shown on the Material Verification Report prior to installation
- ◆ notifying the Engineer and contractor when materials furnished or work performed fail to fulfill contract requirements
- ◆ communicating to the contractor all problems in a timely manner or otherwise providing relevant information to the contractor to assist in the progress, safety (to workers and the public), and quality of the work
- ◆ documenting all matters related to the prosecution of the contract and the progress of the work as required for payment through sufficiently detailed Daily Work Reports (DWRs)
- ◆ acting as the authorized Department representative to ensure the contractor is following the project's plans, specifications, and special provisions and that any pay items are completed as detailed therein, and
- ◆ verifying that items of work needing attention by the contractor are not be paid at 100% until completed in a satisfactory manner. Deny or reduce payment for non-compliance with plans, specifications, and provisions.

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

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

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## Section 2 — Work Documents

### Traffic Control

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

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

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

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

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

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

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

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



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## TCP Documentation

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

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

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

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

Refer to Chapter 4, Section 3 for more information regarding changes in TCP documentation.

## Open Records Requests for Form 599

File Form 599 separate from the project files in a folder labeled “DO NOT DISCLOSE - EXCEPTED FROM DISCLOSURE BY 23 USC §407.”

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

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

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

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

### **Pedestrian and ADA Requirements**

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

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

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

### **Working Drawings**

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

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

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

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## Section 3 — Inspections

### Inspection by the Department

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

### Defective and Unauthorized Work

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.

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

### Final Acceptance

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

### State Oversight of Federal-Aid Projects

In accordance with the Stewardship and Oversight Agreement between Federal Highway Administration (FHWA) and Texas Department of Transportation (TxDOT) dated May 21, 2015, the Department assumed FHWA responsibilities for the program, design, and inspection of certain federal-aid projects. Refer to Chapter 16 for FHWA requirements. Ensure projects reviews are conducted in compliance with the local, state and federal requirements.

In addition to construction projects, state oversight duty is required on any project that includes federal funds, such as those falling under these categories:

- ◆ emergency relief (ER),

- ◆ congestion mitigation (CM),
- ◆ state force account work, 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. Refer to Chapter 16, “FHWA Oversight Requirements,” 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

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

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

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

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

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 RAS. Directions for submittal may be found under the TDLR Construction Accessibility Requirements.

**Federal Oversight Projects**

FHWA periodically inspects projects financed with federal funds in accordance with federal laws, rules, policy and guidance. This inspection does not make the FHWA a party to the contract.

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

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.

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## Section 4 — Evaluations

### Prime Contractor Performance Evaluations

An interim and final evaluation of the prime contractor's performance is required for all construction projects. Using [Form 2707](#) (internal access only) perform interim evaluation at or within 30 days after the anniversary of the notice to proceed for contracts extending beyond 1 year and perform the final evaluation upon project closeout. A final evaluation is required to generate the final estimate.

The district must audit every final evaluation using [Form 2707-R](#) (internal access only).

Store all completed Form 2707 evaluation forms (final and interim), Forms 2707-R, and complete supporting documentation (paper copies), separate from the project files, in a folder boldly labeled, "DO NOT DISCLOSE - Attorney General Opinion Required." This includes documentation provided by the contractor as justification to support their position. Files may be stored with Form 599 documents in a fireproof cabinet. No electronic copies of the completed form are allowed, including but not limited to scanned copies, photographs, copies saved on an external device, or electronically signed copies. Standard records retention procedures apply.

Refer to the [Prime Contractor Performance Evaluations Manual](#) (internal access only) for more information or contact CST or the Maintenance Division (MNT).

### Project Evaluation

A project evaluation is an overall review of the design of the project. All projects are required to complete the [Form 2803](#), "Project Evaluation Form," (internal access only) after substantial completion or final acceptance. The information must be completed in SiteManager to generate the final estimate. Refer to the form for instructions.

## Section 5 — References

### Section 1 – Project Authority

- ◆ Texas Administrative Code
  - [43 TAC §9.23](#), “Evaluation and Monitoring of Contract Performance”
  - [43 TAC §9.24](#), “Performance Review Committee and Actions”
  - [43 TAC §9.26](#), “Inclusion of Contract Remedies in Contracts”

### Section 2 – Work Documents

- ◆ Texas Administrative Code
  - [43 TAC §2.105](#), “Public Meeting”
  - [43 TAC §5.10](#), “Collections of Debts”

### Section 3 – Inspection

- ◆ [FHWA Core Curriculum](#)
  - [23 U.S.C 120](#), “Federal Share Payable”
  - [23 U.S.C 125](#), “Emergency Relief (ER)”
  - [23 CFR 668](#), “Emergency Relief (ER)”

# Chapter 6 — Control of Materials

## Contents:

[Section 1 — Materials](#)

[Section 2 — Materials Testing](#)

[Section 3 — Buy America](#)

[Section 4 — Buy Texas](#)

[Section 5 — References](#)



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## Section 1 — Materials

### Background

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

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

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

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

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

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

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

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## Materials Source Information

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

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

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

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

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

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

- ◆ aluminum
- ◆ compost
- ◆ glass traffic beads
- ◆ ground granulated blast furnace slag
- ◆ shredded brush
- ◆ steel
- ◆ tire rubber
- ◆ ceramics, glass cullet, plastics, and crushed concrete from non-industrial sources
- ◆ Reclaimed Asphalt Pavement (RAP)
- ◆ fly and bottom ash from electrical utility plants, and

◆ Department-owned materials.

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

Article 6.9 of the Standard Specifications states:

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

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

### Required or Listed Materials Sources

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

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

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

If issuing a change order for the mandatory use of local materials, it must be supported with a public interest finding (PIF) ([23 CFR 635.407](#)). If the contractor chooses to use local materials, no PIF is required. If local quantity is not enough, utilize items initially in the contract.

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

using the listed source, the Contractor may provide acceptable materials from another source at his or her expense.

### **Materials Certification from the Contractor**

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

### **Royalty Payments**

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

### **Use of Designated Materials**

If specified in the contract, require that the Contractor use state-owned material (i.e., material from a RAP stockpile). The Department assumes full responsibility for the quantity and quality of acceptable designated materials. If the designated material is unacceptable, compensate the Contractor through a Change Order (CO) for any justifiable additional cost in securing acceptable material. The additional cost to replace the material would be subject to review for federal participation.

If issuing a change order for the mandatory use of designated materials provided by TxDOT, it must be supported with a public interest finding (PIF) ([23 CFR 635.407](#)). If the contractor chooses to use designated materials provided by TxDOT as a cost saving, no PIF is required. If designated quantity is not enough, utilize items initially in the contract.

### **Storage of Materials**

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

### **Stockpiling Aggregates**

The Contractor is responsible for maintaining the quality of accepted stockpiled material and must be environmentally cleared. Resample and retest stockpiled materials that have been subject to

incorrect or careless handling resulting in excessive degradation, segregation, or contamination. Reject all failing materials. If required by the contract, conduct acceptance sampling from the windrow.

### **Purchasing Excess Materials**

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

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

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

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

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## Section 2 — Materials Testing

### General

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

### Testing of Materials

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

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

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

- ◆ Project Acceptance – Results Pass or Fail

Action – Material(s) is accepted by independent verification sampling and testing by TxDOT. Failing material is rejected and replaced, reworked and re-treated, accepted at the reduced unit price if specified in the contract and only if engineering judgement is documented in SM, accepted based on engineering judgement of reasonable conformance with the specification requirements.

Test Performance – Usually in the AE laboratory. In other cases, district laboratory, MTD central laboratory, or outside laboratory Material(s) is accepted by independent verification sampling and testing by TxDOT
- ◆ MPL and QMP – Preapproved Material or Product/Source(s)

Action – Preapproved material sources must be sampled and tested in accordance with the required program interval.

Test Performance – MTD Central Lab or it's designee
- ◆ IA Program – Meets tolerance or does not meet tolerance

Action – Compare the Independent Assurance test to acceptable tolerances established in Appendix B of the QAP for Design Bid Build Projects. Document results of the comparison. If the result is out of tolerance, determine the cause and take remedial action.

## Test Methods and Testing Equipment

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

## Project Tests

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

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

## Independent Assurance Program

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

## System Approach

The system approach bases frequency of IA activities on time-regardless of tests, quantities of materials, or numbers of projects tested by the individual being evaluated. Use the system approach and implement testing schedule for testers, laboratories, and testing equipment qualified in accordance with the QAP. Ensure that IA sampling and testing is conducted by split or proficiency samples and complies with the QAP.

## Forms, Reports, and Materials Documentation

Refer to the [Project Records Checklist](#) found on the Materials and Tests Division internet page. This document provides project requirements per Item number, to be used in conjunction with the [Guide Schedule](#) and the [Material Inspection Guide](#). Ensure SiteManager is updated with all acceptance and Sampling and Testing (S&T) requirements.

## MPL

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

## Sampling and Testing

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

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

## Commercial Labs

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

## Helpful Links for Materials Testing and Inspection

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

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

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

[Project Records Checklist](#) is a list of all paperwork and requirements per pay item.

[Material Producers List](#) are lists of pre-approved providers that may not require testing.

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



[SiteManager Testing Forms](#) are excel sheets to input testing data for project records such as TxPling, TxDr1Shft,

[Form 202](#), "Identification of Material Samples," a form used when sending in samples to MTD.

### **Project Closeout for Materials**

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

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

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## Section 3 — Buy America

### Overview

Project requirements pertaining to Buy America are dictated by Standard Specification, Item 6 and associated Special Provisions found in the contract. Buy America also applies to all materials donated to the project by the State or a third party.

The Material Inspection Guide and Project Records Checklist provides a comprehensive overview of the Buy America program and a list defining the required documentation that must accompany the Material Statement, Form 1818 (D 9-USA-1) and/or, "Construction Materials Buy America Certification" Form 2806. Note the project record checklist is connected to the item code not the description code of a pay item. This means some items may state a Form 1818 or Form 2806 is required, but since the specific item description is not installed or not installed permanently the requirement does not apply. For example, a crash cushion being removed will not require a Buy America certification.

### Iron and Steel

Requirements pertaining to iron and steel are applicable to all projects per Transportation Code 223.045 and 23 CFR 635.410. Iron and Steel products are certified via Form 1818.

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

- ◆ all predominantly steel and iron items received and sampled by the Project Engineer for testing by MTD, and
- ◆ all predominantly steel and iron items received, inspected, and accepted by the Project Engineer, with the following exceptions.
- ◆ Form 1818 is required on 100% State Funded Projects regarding amendment 223.045, "IRON AND STEEL PREFERENCE PROVISIONS IN IMPROVEMENT CONTRACTS."
  - Steel items inspected and tested by MTD - The Project Engineer receives a MTD Structural Test Report as proof of compliance.

Reinforcing Steel - The Project Engineer obtains only mill test reports and any applicable coating certifications for reinforcing steel furnished in accordance with Item 440.

## Miscellaneous Steel

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

For extra guidance refer to CST's Construction Support intranet page.

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, SSD, or MTD) must notify the Contractor/supplier (handled according to the type of contract) in writing regarding the problem and take appropriate action to resolve the issue. Do not threaten the Contractor/supplier with false claim statements or legal action.

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

## Expanded Buy America (BABA) Requirements

Federal aid projects or for any state funded projects that were cleared as a part of a corridor under a single NEPA decision with any federal funding on past or future projects within that corridor have to comply with Build America, Buy America (BABA). These requirements are reflected and communicated in the contract under Item 6 or a Special Provision to Item 6 and are included in the design process.

Due to evolving expanded Buy America requirements, additional guidance may be found within the [Buy America Material Classification](#) website on [TxDOT.gov](#). Also, contact the CST's Construction Support for any additional clarification.

## Material Classification

For November 2022 letting, BABA required state DOTs to classify materials as Iron or Steel products, Construction Materials, or Manufactured products. Therefore, classification is stated via Special Provision, Form 2806, and the Buy America Material Classification Sheet found on [Txdot.gov](#).

Section 70917 (c), “Materials,” were added as a classification starting December 2023 letting. These materials did not have an official title for contracts letting through November 2023, but were still exempt from BABA requirements.

Construction Material classification definition is different depending on the letting date of the contract. Therefore, Construction Materials are specifically listed in a special provision to item 6, [Buy America Material Classification Sheet](#) and [Form 2806](#), “Construction Materials Buy America Certification”.

### **Form 2806, “Construction Materials Buy America Certification”**

[Form 2806](#) is the certification form required for Construction Materials. Depending on Letting month there are two definitions of construction material classification and certification, therefore two versions of the Form 2806 are available. It is imperative to use the correct form version associated with the project. Version 1 is for contracts let between November 2022 and November 2023. Version 2 is for contracts let on or after December 2023.

Form 2806 has been updated to state that a contractor is certifying all quantities on the project for the respective construction material, and that an additional Form 2806 will be provided in the event the stated producer/fabricator is no longer compliant or there is a change in producer/fabricator. A purchase order is needed connecting the material to the project.

Collect the Form 2806 prior to making payment for any construction material. [Buy America Material Classification Sheet](#) and the [Project Records Checklist](#) provides guidance and clarification for materials requiring the Form 2806. The documents do not encompass all materials to be use in construction and therefore judgement is required for items not listed. Remind contractors of BABA requirements and for them to ask for material requirements if not listed. Questions may be directed through the District to Construction Division, CST Support Section.

### **Buy America Exceptions**

#### **Temporary Items**

Buy America does not apply to materials that are temporarily installed or are supplies, tools and equipment not incorporated into the project.

Temporary items are not required to be permanently incorporated into the project for completeness and may be removed through the course of construction. If the contractor finds the material is inconvenient for removal, Engineer’s approval is required for the material being left on the project. A typical application is when a drill shaft casing is stuck upon removal and contractor request to leave the casing in place.

## Waivers

There are four waivers currently allowed. Waivers may be found on [FHWA website](#) or will be incorporated into the project.

- ◆ **Manufactured Product Waiver.**
  - FHWA waived BABA requirements for all materials classified as a manufactured product. This waiver is stated in a [Special Provision](#) to Item 6 and General Notes. In the event the waiver is redacted or modified, another SP will be issued statewide.
- ◆ **Construction Material De Minims Waiver.**
  - The total value of the non-compliant products (other than iron or steel products) is no more than the lesser of \$1,000,000 or 5% of Total Applicable Costs for the project. Total Applicable Cost means the actual cost of all materials requiring Buy America compliance including iron, steel, or other materials that are within the scope of existing waivers. Contractor must provide documentation showing under threshold in advance for Engineer's consideration.
  - The amount of total value of non-compliant products is the limit for the entire project. In the event a contractor request material to be considered de minis that are typically not considered de minims, request documentation from the contractor justifying they are within the allowed limit for the entire project.
- ◆ **Iron or Steel Product De Minims Waiver.**
  - The total value of foreign iron and steel products, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater. Contractor must provide documentation showing under threshold in advance for Engineer's consideration.
  - The total value of foreign iron and steel products is the limit for the entire project. In the event a contractor request material to be considered de minis that are typically not considered de minims, request documentation from the contractor justifying they are within the allowed limit for the entire project.
- ◆ **Small Federal Assistance Grant Waiver.**
  - The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.
  - This waiver is determined in the Design process and does not apply during construction.

## Alternative Bidding Preference

Buy America may not be required if the contract was bid with an alternate bid item for a foreign source steel or iron product, and the contract is awarded based on the alternate item. This allowance cannot be applied via Change orders.

## Section 4 — Buy Texas

### Overview

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

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## Section 5 — References

### Section 1 – Materials

- ◆ Code of Federal Regulations
  - [40 CFR 261](#), “Identification and Listing of Hazardous Waste”.
  - [23 CFR 635.407](#), “Use of Materials Made Available by a Public Agency”.

### Section 2 – Materials Testing

- ◆ Code of Federal Regulations
  - [23 CFR §637.207](#), “Quality Assurance Program”.

### Section 3 – Buy America

- ◆ FHWA Core Curriculum
  - [23 U.S.C 313](#), “Buy America”.
- ◆ Code of Federal Regulations
  - [23 CFR 635.410](#), “Buy America Requirements”.
  - [2 CFR 184](#), “Buy America Preferences for Infrastructure Projects”.
- ◆ Texas Transportation Code
  - [§223.045](#), “Iron and Steel Provisions in Improvement Contracts”.

### Section 4 – Buy Texas

- ◆ Texas Government Code
  - [§2155.4441](#), “Preference Under Service Contracts”.

# Chapter 7 — Changes to the Contract

## Contents:

[Section 1 — Change Orders](#)

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

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

[Section 4 — Supplemental Agreements](#)

[Section 5 — Terminations](#)

[Section 6 — References](#)



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## Section 1 — Change Orders

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 adjustment is granted. A reduction in time may be warranted when scope changes reduce the amount of work on the project. Ensure that the CO is approved before beginning the changed or altered work; the Area Engineer (AE) may give verbal approval at his or her discretion prior to formal approval in SiteManager. Refer to Professional Engineering Procurement Services Division 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. Determine the need for environmental review, re-evaluation, and approval as required. Include cost breakdowns and price justifications for any added items. “Fair and reasonableness” price determination must accompany an independent cost analysis/cost justification by the District. Do not approve COs based solely on the contractor's submitted request and documentation. Review all price justification documents received from the contractor. When approved, ensure the documents are initialed by the approver. Initial all price justification documents received from the contractor to ensure that it has been reviewed and approved. Use Statewide/District average prices, comparative analysis, materials/labor, and equipment break-downs to justify cost. Unit prices that are comparable to bid prices for the same character of work are acceptable. Obtain assistance from the Construction Division (CST), Design Division (DES), or the district construction office (DCO), as needed. Obtain contractor agreement regarding the scope of work and basis of payment for the CO. Provide the contractor the opportunity to sign the CO.

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

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

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.)

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

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

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

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

- ◆ Slight change, relocation, or adjustment:
  - in the flow line, grade, or the skew of a drainage pipe or culvert, Note: Contact the District’s Environmental Quality Coordinator (DEQC) if drainage affected conveys waters of the US
  - of a crossroad drainage facility
  - of the road grade line
  - to a drainage channel
  - to a traffic sign, traffic signal pole, or illumination pole foundation
- ◆ Addition or deletion of a driveway pipe

For federal participating COs, see Chapter 16.

### Change Order Preparation

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

- ◆ an error or omission in the contract (consultant errors and omission refer to PEPS procedures)
- ◆ differing site conditions
- ◆ adding a specification
- ◆ adding new items of work
- ◆ resolving a dispute
- ◆ changing the sequence of work or
- ◆ other contract changes.

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

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

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

1. For CO description, answer the following questions:
  - What is the purpose of the CO?
  - Why is the CO needed?
  - Where is the change occurring (alignment, station/offset, lane direction)?
  - Are the costs verified and considered fair and reasonable?
  - Are there added/modified plan sheets?
  - Has environmental clearance been addressed, including TDLR requirements?
2. Determine appropriate CO reason code(s).
3. Determine appropriate function (zero dollar, overrun, time extensions, etc.)
4. Determine whether or not time adjustments are required. If so, provide a description, including a breakdown of the days added.
  - Address time by one of the following methods:
    - 1) Add Time extension number and time in the box provided
    - 2) State in the narrative that no time in is added by this CO
    - 3) State in the narrative that time will be addressed later in the project when time impacts to the critical path are known.

Methods 1 and 2 are preferred. Method 3 should not be normal practice. If time cannot be agreed on with the contractor upon execution of a CO, method 3 is acceptable. See “Adding Time” guidance below.

5. Before adding items in SiteManager, coordinate with the DCO to determine participation. Refer to the *SiteManager Contract Administration User Manual* for information on creating CO’s in SiteManager.

NOTE: Participating and non-participating pay items must be on separate CO’s.
6. Unique CO items will only be used when an appropriate bid code is not available.
7. Under the New Contract Item tab, add a supplemental description in the following format, “Added by CO#X, description of Item”.
8. Copy the supplemental description, navigate to the CO Item tab, and paste the supplemental description into the CO Item Description field.
9. Coordinate with DCO to determine funding category.
10. CO signatures can be either written or electronic. Signatures must follow District, Construction Division and Executive Director signature of authority found on Contract Services webpage.

11. If the CO involves third party funding, complete the funding notification sheet (final page of Form 2146). Provide notice to the local government or other third party. Ensure that an authorized third-party representative signs the Third-Party Funding Notification Sheet, regardless of the CO amount. See “Advance Funding Agreements” under “Other Factors Affecting CO’s” for additional requirements.

If the CO involves funding by a third party, complete the funding information on Form CO Advanced Funding Agreement (AFA).

The dollar amount to be placed for Advance Funding Notification or Donation Agreement (third party funding) on the Form CO should be the same as the dollar amount on line 3(a) on the Form CO-AFA, which should be only the amount of contract items corresponding to the third party without the E&C and Indirect Costs.

In accordance with the AFA, ensure that the signature block for the third party on the Form CO-AFA is signed. The contractor is not responsible for any delays the district may have in the obtaining a third party’s signature.

12. Determine if the CO requires Form 1295. See “Form 1295 Guidance” under “Other Factors Affecting CO’s” for more information.

### **Additional Time Guidance**

Per FHWA, method 3 for adding time should rarely be used. Discussion of additional time needs to take place with the contractor. This may be done by reviewing when work will take place on the most recent accepted project schedule.

Questions to consider include:

- ◆ Is the CO work on the critical path or affects current and downstream critical path activities?
- ◆ Will a crew need to be pulled from a critical path activity to do the CO work?
- ◆ Is a crew available to work off critical path for the CO work?
- ◆ Can a crew from a different project be mobilized to perform the CO work off critical path? Will involve negotiating additional cost.
- ◆ Will additional barricade months be needed? Be wary of contractor requesting to move work to end of project.
- ◆ Is float time available to mitigate some or all of the needed time?
- ◆ Is the extent or impact of the change order work able to be estimated?

Document the information and then work to resolve the time issue as soon as possible (not at the end of the project).

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## Environment Review of Change Orders

Forward all proposed COs to the District’s Environmental Staff for review. The Environmental Staff will determine if amended or additional environmental clearance, permits or authorizations are required. Do not proceed with CO work until the Environmental Staff indicates environmental requirements have been met. Place a statement in the CO Memo and CO Explanation indicating that the Environmental Staff has reviewed the proposed CO and has taken appropriate documentation or coordination actions if necessary (for example, completed environmental clearance). If any additional environmental requirements are necessary, list the additional environmental requirements.

## Other Factors Affecting COs

Other factors affecting COs include Advance Funding Agreements, Texas Department of Licensing and Regulation (TDLR) submissions, converting COs from participating to non-participating (and vice versa), and Texas Ethics Commission (TEC) Form 1295. Reference [Title 1, Texas Administrative Code, Chapter 46](#) and Government Code [§2252.908](#).

## Advance Funding Agreements

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

Under standard AFA, the local government (LG) is responsible for all non-federal or non-state participation costs associated with the project, including any overruns in excess of the approved local project budget. Obtain payment from the LG within 30 calendar days of the written notification date, unless otherwise provided in the AFA. Include in the required written notice to the LG the exact language in the AFA concerning funding.

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

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

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## Texas Department of Licensing and Regulation (TDLR) Submissions

If the CO causes the total contract amount for the pedestrian elements to exceed \$50,000, the CO along with the plan set will need to be registered with TDLR and reviewed by a Registered Accessibility Specialist (RAS). Submission for this process can be found on [TDLR Construction Accessibility Requirements](#) on CSTs intranet page.

## Converting Change Orders from Participating to Non-Participating

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

## Texas Ethics Commission (TEC) Form 1295

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

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

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

CST Standard Operating Procedure 01-19 provides instruction for:

- ◆ contractor completion and submittal of Form 1295.
- ◆ AO internal processing of CO and Form 1295, and acknowledgment of receipt in the Texas Ethics Commission's Electronic Filing Application.
- ◆ Once the Contractor completes the Form 1295 on the Ethic Commission website, the Contractor should print the form and complete the remaining requested information on the hard copy.
- ◆ Once that information is completed on the hard copy form, the Contractor should provide that to the District and upon receipt the District then logs onto the Ethics Commission website and acknowledges the Contractor's Form 1295.

## Section 2 — Change Order Approval Authority

CO approval authority is based on the [Standard Operating Procedure No. 01-22 \(SOP\)](#) showing that the District Engineers (DEs) will delegate signature authority in accordance with policy. When signed by the designated official, the CO is approved.

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

### Federal-Aid Projects

Refer to Chapter 16, “FHWA Oversight Requirements,” for more information.

### State Funded Projects

COs on state funded projects are approved in accordance with the approval authority outlined in the [Standard Operating Procedure No. 01-22 \(SOP\)](#). CO work may not begin until either written or verbal approval is obtained. (Written documentation is required to follow up verbal approval.) Signatures must follow District, Construction Division, and Executive Director Signature authority found on Contract Services Division (CSD) webpage.

### Extending or Adding Project Limits to the Contract

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

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

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

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

How to Add CSJ's to the Contract (State Funded Projects Only):

- ◆ **District** – Notifies CST, DES, and the Financial Management Division (FIN) there is a need to add a new CSJ to a project, Assigns CSJ number, Updates the “Remarks” field on the P1 screen in the Design and Construction Information System (DCIS).
- ◆ **CST** – Updates SiteManager
- ◆ **DES** – Updates “Contract CSJ” field in DCIS
- ◆ **FIN** – Adds the CSJ to DIMS upon receipt of the CO.

### CO Submission Requirements Related to Added Limits

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

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

CST should be consulted to review significant COs with added limits and/or significant change in scope.



## Section 3 — Force Account and Interim Adjustments to the Contract

### Change Orders Involving Contractor Force Work Account

Create unique CO items as described in Section 1 for payment of force account work. Use [Form 316](#), “Daily Report of Force Account Work,” to capture the actual time, equipment, labor, and materials used for the work. CO documentation should include but is not limited to:

- ◆ The equipment description:
  - make
  - year
  - model
  - type
  - size
  - horsepower, or
  - other identification
- ◆ Equipment rates established in accordance with Article 9.7. Verify rates utilizing [Equipment Watch](#),
- ◆ All labor classifications with applicable wage rates (Refer to Chapter 15, “Contractor Workforce,” for more information.)
- ◆ Material costs associated with the force account work
- ◆ Contractor’s invoice
- ◆ Time needed to complete the work, 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 materials. Obtain cost justification as necessary. Subsequent to the completion of the force account work, obtain from the contractor a certified invoice listing the total cost for labor, equipment, materials, incidentals, and additional compensation provided in Article 9.7, “Payment for Extra Work and Force Account Method Force Account.” Agree to the labor, equipment, and material rates used for the force account work prior to beginning work.

A 5% markup will be added to the subcontractor’s submitted price for the prime contractor’s administrative cost, superintendence, and profit. Request a price breakdown of equipment, labor, and materials when a price submitted by a subcontractor is not fair and reasonable. Cost incurred by the state need to be justified.

**Taxes**

TxDOT is not required to pay taxes on services and materials fully incorporated into its projects, nor is it required to provide a certification to prove tax exempt status per the Texas Administrative Code, [Title 34, Rule 3.322\(c\)\(4\)](#). Refer to the [Contractor Manual](#) on the Texas State Comptroller website.

**Change Orders Involving Interim Adjustments**

If an agreement cannot be reached with the contractor regarding the basis of payment for the CO, work may proceed by making an interim adjustment to the contract. Subsequent to performance of the work, consider modifying compensation to the contractor based on actual work performed. Interim adjustment is an adjustment made in the contract that has not been finalized by a Change Order.

**Unilateral Change Orders**

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

**Change Order Audit**

CST will perform quarterly audits of COs. CST will request executed COs from the district along with supporting documentation.

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## Section 4 — Supplemental Agreements

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

Use SAs to:

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

Coordinate SAs with CST.

### Assignments

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

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

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

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

### Change the Legal Name of the Contractor

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

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

- ◆ verify the legal filing of the name change,

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

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## Section 5 — Terminations

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

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

### Procedures

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

The contractor will submit a final termination settlement proposal within 60 calendar days of the date of the written termination notice. The District will prepare a CO by adding only the acceptable costs for termination and work performed since the last progress estimate, if any. Do not zero-out the remaining items of the contract. The CO should include the applicable CO reason code for Termination (7A-7G) as the primary CO reason. Do not include anticipated profits. Include reasonable and verifiable termination costs as provided in Section 8.8.2, “Settlement Provisions.” Then process the final estimate to release the project from SiteManager.

## Section 6 — References

### Section 1 – Change Orders

- ◆ FHWA Core Curriculum
  - [23 CFR 635.120](#), “Changes and Extra Work”
  - [23 CFR 635.121](#), “Contract Time and Contract Time Extensions”
  - [FHWA Technical Advisory TA5080.3](#): Commodity Price Escalation Clauses
  - [23 CFR 771](#), “Environmental Impact and Related Procedures”
- ◆ Texas Government Code
  - [§2252.908](#), “Disclosure of Interested Parties”

### Section 5 – Terminations

- ◆ Code of Federal Regulations
  - [23 CFR 635.125](#), “Termination of Contract”
- ◆ FHWA Core Curriculum
  - CFR 200 [Subpart D](#) & [Appendix II](#)
  - [23 CFR 635.125](#), “Termination of Contract”

# Chapter 8 — Disputes and Claims

## Contents:

[Section 1 — Disputes](#)

[Section 2 — Claims](#)

[Section 3 — Payment in Settlements of Disputes and Claims](#)

[Section 4 — References](#)

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## Section 1 — Disputes

A dispute is a disagreement between the Department and contractor on a contract issue. Only the prime contractor may submit disputes. Make every effort, within the provisions of the contract, to resolve disputes at the lowest level possible. Resolving disputes 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 on the contractor.

### Partnering and Issue Escalation

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

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

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

### Appeal of Disputes

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



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## Section 2 — Claims

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

Only the prime contractor may file contract claims. A prime contractor may make a claim on behalf of a subcontractor.

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

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

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

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

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

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

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

### **Contract Claim Committee Meeting**

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

The informal meeting conducted before the CCC allows both the District and the contractor to discuss the claim. The meeting will be conducted in a cordial, professional, and orderly manner. As dispute negotiation discussions have not resolved the claim, any comments or presentations are to be directed to the CCC. Additional concerns may be brought before the CCC by a contractor, but additional claim issues not submitted in the initial claim or any claim amendments may not be considered for compensation.

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

### **Appeal of Claims**

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

### Section 3 — Payment in Settlements of Disputes and Claims

In accordance with best practices involving good partnering and dispute resolution concepts, the CCC encourages Districts to work with the Contractor to resolve a dispute or claim at the District level during the course of the contract. In this case, the District processes payment for resolution through SiteManager following the established CO process. The DE's signature is required on all dispute resolution COs. These COs are not eligible for federal participation; Reason code, 3A "Dispute Resolution," must be used.

If the Control-Section-Job (CSJ) has not been closed, the District can process payment by CO. The District will need to process a supplemental estimate (SE) in SiteManager. A CO needs to be created, including language stating, "This payment settles all claims pertaining to this project." The CO will include a unique item as a lump sum, with DOL as a unit of measure. The item's supplemental description will state "paid by supplemental estimate." Upon obtaining the Contractor's signature on the CO, the District can process the SE.

For processing the SE, refer to the *SiteManager Contract Administration Manual*, Chapter 7 "Contractor Payments," Section 3 "Estimate Process," [Table 7-3](#).

If the CSJ has been closed, the District must submit [Form 2557](#), "Billing Worksheet," to the Financial Management Division (FIN). Claim payments are not eligible for federal participation and must be coded appropriately.

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

## Section 4 — References

### Section 2 – Claims

- ◆ Texas Administrative Code
  - [Rule §9.1](#), “Contract Claims Under Government Code, Chapter 2260”
  - [Rule §9.2](#), “Contract Claim Procedure”

### Section 3 – Payments

- ◆ Texas Administrative Code
  - [Rule §2.52](#), “Dispute Resolution Process”
- ◆ [SiteManager Contract Administration User Manual](#) (internal access only)

# Chapter 9 — Legal Relations and Responsibilities

## Contents:

[Section 1 — Introduction](#)

[Section 2 — Employee Responsibilities](#)

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

[Section 4 — References](#)

## Section 1 — Introduction

### Ethics

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

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

## Section 2 — Employee Responsibilities

### Cooperation with the Contractor

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

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

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

Resolve differences of opinion in accordance with the escalation ladder established at the preconstruction meeting. Contact the Construction Support Section of Construction Division (CST-CS) for assistance in resolving disputes.

### Contact with the Public

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

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

Include with the notice a courteous explanation of the reasons for the interruption. Provide courteous and prompt responses to questions received.

### Sanitary Accommodations

Ensure that the contractor provides and maintains adequate, neat, and sanitary toilet 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.

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## Public Safety and Convenience

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

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

- ◆ Have the contractor maintain the road in a good and passable condition.
- ◆ Coordinate the placement of regulatory speed zone signs with the contractor.
- ◆ Use regulatory speed limits only as needed.
- ◆ Coordinate with area law enforcement to ensure the posted regulatory speed limits are enforced.
- ◆ Check the project site for flaggers’ compliance with contract requirements.
- ◆ Make careful effort to reduce damage caused by loose gravel.
- ◆ Use appropriate work zone signing to warn the public of driving and traffic handling precautions.
- ◆ Ensure contractors, utility companies, and others are aware of the requirements for use of high visibility safety apparel on the project, and take appropriate enforcement actions, when necessary, in accordance with Barricade and Construction (BC) Standard Sheets, BC (1) - 14 or BC (1) - 21.
- ◆ Coordinate with the Public Information Officer to provide announcements of upcoming traffic impacts as necessary.
- ◆ Perform other actions as deemed necessary.

## Abatement and Mitigation of Excessive or Unnecessary Noise

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

Complaints from the public on any noise issue are addressed by the District PIO.

## Using Explosives

Obtain a written blasting plan from the contractor when required by the contract or as deemed appropriate. Observe and monitor the contractor’s operations to ensure compliance with the federal, state, and applicable local laws, ordinances, and regulations pertaining to the storage and use of



explosives. Ensure the contractor provides at least a 48-hour advance notice to the appropriate Road Master (as defined in the *Standard Specifications*, Section 1.3.115) before performing any blasting work involving the use of electric blasting caps within 200 feet of any railroad track.

### **Protection of Adjacent 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.

### **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 Requirements**

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 7.18, “Electrical Requirements,” of the *Standard Specifications*.

### **Barricades, Warning and Detour Signs, and Traffic Handling**

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

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

Ensure the District responsible person (DRP) observes the implementation of the TCP on each project. The District Safety Review Team and the District Traffic Control Coordinator (TCC) will periodically review the project for contract compliance. The TCC, accompanied by the DRP (if possible), performs quarterly barricade inspections and completes [Form 599](#), “Traffic Control Devices Inspection Checklist.” The TCC should accompany each DRP on the first inspection.

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

## 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 the [Human Resources Policy Manual](#), Chapter 8, Section 2, “Conduct and Expectations” (internal access only) 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”).

The Compliance Division maintains a [dashboard](#) (internal access only) that tracks allegations and investigations of fraud, waste, and abuse.

### Gifts, Benefits, and Favors

Refer to the [Human Resources Policy Manual](#), Chapter 8, Section 2, “Conduct and Expectations” (internal access only).

### **I** Information Security Policy

The Information Security and Privacy Policy is mandatory and applies to all TxDOT employees, contractors, and systems that create, collect, process, use, share, disseminate, maintain, or dispose of TxDOT data. Violations of the information security policies or misuse of TxDOT information resources may result in disciplinary actions, including termination and legal prosecution. Refer to the [Statewide Security Policy](#) (internal access only).

## Section 4 — References

### Section 1 – Introduction

- ◆ Texas Administrative Code
  - [Rule §10.101](#), *Required Conduct*
  - [Rule §10.102](#), *Consequences of Violation*

### Section 3 – Conflict of Interest and Ethics

- ◆ Texas Administrative Code
  - [Rule §10.6](#), *Conflict of Interest*

# Chapter 10 — Prosecution and Progress

## Contents:

[Section 1 — Workers and Equipment](#)

[Section 2 — Project Schedules](#)

[Section 3 — Subcontracting](#)

[Section 4 — Contract Time](#)

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

[Section 6 — Construction Project Timeliness](#)

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

[Section 8 — Default of Contract](#)

[Section 9 — References](#)

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## Section 1 — Workers and Equipment

### General

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

### Superintendent

Ensure that the contractor staffs every project under contract with Department with a Superintendent who is available at all times during the course of the project. The project Superintendent should be named in writing and documented ([Form 2795](#)) by the contractor. If the Superintendent changes at any time during the project, the contractor may update Form 2795 or simply send an email indicating the updated Superintendent. The email must be sent by an authorized signer or the documentation indicating this change must be signed by an authorized signer. In accordance with Article 5.5, the Engineer may suspend work without suspending working day charges for any of the following reasons.

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

### Construction Workers

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

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

The Contractor must maintain a list of Contractor and subcontractor employees who have completed the training required in Chapter 3 of this manual and Item 7 of the *Standard Specifications*.

**Nighttime Work**

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

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

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

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

## Section 2 — Project Schedules

### General

Use project schedules obtained from the contractor to:

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

Submitted contract schedules should:

- ◆ include an indication of the Contractor's planned completion date within the number of working days specified in the contract,
- ◆ include all planned work activities necessary for the successful completion of the project based on the sequence of work and traffic control plan shown in the contract,
- ◆ include a beginning date, ending date, and duration in working days for each activity,
- ◆ include any major materials procurements and known utility relocations,
- ◆ include other activities that may affect the completion date of the contract, such as activities performed by the Department or third parties such as ROW or utilities,
- ◆ include interim milestones or specific scheduled activities in the contract where completion of specific portions of the work may be required at specific times and may include incentive and disincentives, and
- ◆ not include activities exceeding 20 working days unless agreed upon with the Engineer.

### Schedule Types

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



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

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

Unless otherwise shown in the contract, obtain monthly updated progress schedules from the Contractor no later than the 20th calendar day of the following month and document the received date for each. Review the schedule to ensure conformance with the contract. If the progress schedule indicates that the contract will not be completed within the number of working days specified, obtain written clarification that states whether the contractor will revise the progress schedule to meet the number of working days specified or will exceed the number of working days specified and why.

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

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

### **Acceptance of Baseline Schedules**

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

### **Contract Time vs. Planned Finish Date**

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

A Contractor has the right to finish early. If the Contractor plans to finish early per the baseline schedule, and the schedule appears to be reasonable, yet finishes later than they had planned, the Contractor can still claim delays and/or overhead costs even if contract time has not yet expired. Such a claim will require a Time Impact Analysis to determine the cause of the delays and which party (TxDOT or the Contractor) is responsible for the delay.

## Failure to Complete Work on Time

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

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

Additional Project Specific Liquidated Damages (APSLD), when applicable, are typically identified within a contract’s General Notes, are calculated using the Road User Cost (RUC) Excel Calculator and may be associated with the timely completion of project milestones or may be applied at the end of a project determined to have a significant impact on the traveling public as an additional disincentive to help ensure timely completion. Each year, the Department issues updated road user costs for use in A+B bid contracts, incentives/disincentives for milestones and project substantial completion, and projects with lane rental provisions. [Form 2699](#), “Determination of Additional Project-Specific Liquidated Damages,” should be used to evaluate APSLDs for all projects except Preventative Maintenance (PM) and Non-Freeway Resurfacing or Restoration (2R).

## Section 3 — Subcontracting

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

### Subcontract Approval Procedure

In accordance with Article 8.2, “Subcontracting,” all subcontractors (regardless of the tier) require the Engineer's written approval prior to performing work on a contract. For further guidance, refer to the [Subcontracting and Payroll Requirements](#) Table (internal access only).

Obtain a signed and completed Form 2802, “Subcontract Request for Approval,” from the Prime Contractor. As a reminder (if applicable):

- ◆ For federally funded projects:
  - The contractor signature on Form 2802 certifies that all required SP and FHWA Form 1273 are included in the subcontract.
  - The contractor must request to add a subcontractor in DMS
  - Disadvantaged Business Enterprise/Small Business Enterprise/Historically Underutilized Business (DBE/SBE/HUB) goal credit must be captured, when the subcontractor is classified as a DBE/SBE/HUB. Reference the following:
    - [District Disadvantaged Business Enterprise Coordinator Compliance and Monitoring Guide](#) (for projects let prior to Feb. 2017)
    - [District Disadvantaged Business Enterprise Coordinator Compliance Monitoring Guide](#) (for projects let Feb. 2017 and thereafter)
    - [District Small Business Enterprise Coordinator Standard Operating Procedures](#) (internal access only)
  - As a Best Practice, a Texas Unified Certification Program (TUCP) printout to show, DBE or SBE certification. Ensure date is current in header and footer. The TUCP must be verified for all DBEs, both race conscious and race neutral.

Confirm the following information prior to approval of Form 2802, “Subcontract Request for Approval”:

- ◆ Total value of all subcontracted work does not exceed 70% of the original contract value.

- ◆ For federal-aid projects verify race conscious DBE participation on an approved commitment agreement or utilization plan. Race conscious DBE subcontract work item must match the work items in the executed commitment agreements including substitutions. Verify race neutral DBE participation.
- ◆ The subcontractor is not on the TxDOT or federal list of Debarred/Sanctioned Contractors.
- ◆ The subcontractor is listed on the E-Verify program or has submitted documents for MOU (see E-Verify section below).
- ◆ On federal-aid projects

NOTE: For non-DBE subcontracts, this will be verified via the subcontract certification monitoring plan below.

Subcontracts are considered approved once the District approval date is entered into SiteManager. Refer to the [SiteManager Contract Administration Manual](#) and the [Flow Chart Aid](#) on CST Division webpage (internal access only). Notify the Contractor of such approval by letter or by email in a timely fashion, so as not to create delay impacts to the project.

### **Subcontractor Audit (Certification Monitoring Plan)**

All DBE and one Non-DBE fully executed contract(s) are to be collected at the beginning of the project. Request one additional Non-DBE fully executed contract to be reviewed during each of the 30, 60 and 90 project reviews. If there are any concerns, additional subcontracts may be audited. The number of audits does not need to exceed the number of subcontracts.

### **Subcontracting Limit**

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

The Contractor’s own organization only includes:

- ◆ workers employed and paid directly by the contractor or wholly owned subsidiary
- ◆ equipment owned by the contractor or wholly owned subsidiary
- ◆ rented or leased equipment operated by the Contractor’s employees or wholly owned subsidiary employees

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

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

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

Per the [23 CFR 635.116](#) "Subcontracting and Contractor Responsibilities", the Contractor is to perform the work defined in the contract by installing the pay items, not to provide contract administration oversight (which is not a pay item and not part of their contract). The prime contractor must perform at least 30% of the contract work using their own company resources. Mobilization does not count towards performing 30% of the contract.

### Non-DBEs

For non-DBEs, when assuring compliance with the 30% contract provision, the Department can perform its monitoring and approve the subcontract based on the total amount of the subcontract. If a question arises regarding the prime contractor performing 30% of the work with their own forces, require additional details from the Contractor, including actual unit prices, to verify contract compliance.

### Subcontracts Exceeding 70% of the Total Contract Amount

Do not approve subcontracts, or cumulative subcontracts, that exceed 70% of the total contract amount after deducting the cost of specialty items. Notify the District Construction Office of any subcontract rejections. If the reduction or elimination of work quantities being performed by the prime contractor's organization results in the subcontracted amount exceeding 70%, no action is needed. If the overrun, increase, or addition of work quantities being performed by a subcontractor's organization results in the subcontracted amount exceeding 70%, no action is needed. However, new subcontractors will require approval to perform additional work. In either instance, the intent of Standard Specification Article 8.2.1 is satisfied.

## Disadvantaged Business Enterprise Requirements

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

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

## DBE/SBE Monthly Progress Reports

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

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

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

## Sanctioned/Debarred Contractors

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

## E-Verify

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

- ◆ If a subcontractor does not appear on the TxDOT list, check the DHS website for participation using the DHS [E-Verify Employers Search Tool](#).

- ◆ If a subcontractor does not appear on the TxDOT list, the district must require that the subcontractor submit the appropriate documentation to [CST\\_everify@txdot.gov](mailto:CST_everify@txdot.gov) prior to allowing the subcontractor to begin work.

### Instructions to access list of E-Verify Participants:

- ◆ Access the DHS E-Verify Search tool:  
<https://www.e-verify.gov/about-e-verify/e-verify-data/how-to-find-participating-employers>
- ◆ If the DHS E-Verify Search tool yields results, then the employer is verified as participating in E-Verify. Follow your documented process to save a record of your search results.
- ◆ The DHS system does not report results for employers of fewer than 5 employees. If the DHS E-Verify search tool does not yield results, it's because the employer has registered as having fewer than 5 employees or because they have not registered with E-Verify.
- ◆ For those employers with no search results, check the List of Participants (second tab below entitled "List of Participants"). If the employer is on TxDOT's List of Participants that means TxDOT has a fully executed MOU on file for the employer, indicating they have registered with E-Verify.
- ◆ For those employers with no search results and that do not appear on TxDOT's List of Participants, request that they provide a copy of their fully executed (signed and dated by the employer and by DHS) Memorandum of Understanding (MOU).

How employers obtain a copy of their fully executed MOU:

- The employer will log into the account => <https://www.e-verify.gov/>
- From "Home" page select the down arrow next to your name
- Select "Company Account", then select "Company Profile"
- In the "Company Access and MOU" selection, select hyperlink "View Current MOU" located on the bottom of the "My Company Profile" page
- Once the page has loaded, you may print the page as a PDF file to save your MOU (Ensure your web browser's pop-up blocker is disabled as this will prevent you from opening your company's MOU).
- ◆ For those employers that are not on TxDOT's List of Participants and need to register with DHS, refer the employers to the following: <https://www.e-verify.gov/employers>
- ◆ Once the employer provides their **fully executed MOU**, coordinate with the District for the District to email the MOU to the following email and the employer will be added to TxDOT's list: [CST\\_everify@txdot.gov](mailto:CST_everify@txdot.gov)
- ◆ Contractors and Subcontractors must remain active with E-Verify registration for the life of the contract so regularly scheduled verification of the employer's registration with E-Verify should occur. This again accomplished following the aforementioned steps.

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**Requirements to be added to TxDOT's List of Participants (effective 3/10/2023) :**

- ◆ The request should come from the TxDOT District in which the project is associated with.
- ◆ It is the responsibility of the (TxDOT District office [Area Office]) to ensure an employer is set up in the internal TxDOT system\* prior to E-Verification submittal to => [CST\\_verify@txdot.gov](mailto:CST_verify@txdot.gov)
- ◆ Employer name on fully executed (digitally signed and digitally dated by employer and by DHS) Memorandum of Understanding (MOU) must be relatively similar to the name in the internal TxDOT system\*.
- ◆ TxDOT's List of Participants serves only the purpose of “marrying up” the name in DHS (as the MOU reflects) with the name in the internal TxDOT system \*.

\*Internal TxDOT system refers to SMS (where Subcontractor setup resides).



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## Section 4 — Contract Time

### Beginning Time Charges

Time charges begin within 30 calendar days after the Authorization to Begin Work. Unless otherwise shown in the contract, the contractor has the option to begin work any time within the 30 calendar days after.

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

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

### Computation of Contract Time

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

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

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

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

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

Consider adjusting the number of contract working days by change order under extraordinary circumstances. When reducing scope on a project, reduction in working days may be discussed.

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

For standard workweek contracts, do not allow the Contractor to perform work on national or state holidays unless requested in writing. Email is acceptable. State Holidays authorized by State Legislature are Martin Luther King, Jr. Day, Confederate Heroes Day, Presidents' Day, Texas Independence Day, San Jacinto Day, Emancipation Day, LBJ Day, Veterans Day, Day After Thanksgiving, Christmas Eve and Day After Christmas.

For five-, six- or, seven-day workweek contracts, do not allow the Contractor to perform work on national holidays unless requested in writing. Email is acceptable. National holidays are January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, and December 24 or December 25.

Provide written authorization to the Contractor if work will be allowed on a state or national holiday.

## Section 5 — Temporary Suspension of Work or Working Day Charges

Per Article 8.4, “The Engineer may suspend the work, wholly or in part, and will provide notice and reasons for the suspension in writing. Suspend and resume work only as directed in writing.” Refer to [CST Training and Development webpage](#) for additional guidance and [Form 2807](#) 8.4 “Temporary Suspension of Work or Working Days Charge” (internal access only).

### Reasons for Temporary Suspension of Work

Work may be suspended for the following reasons (time charges may still apply):

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

### Reasons for Temporary Suspension of Working Day Charges

When part of the work is suspended, the Engineer may suspend working day charges only when conditions not under the control of the Contractor prohibit the performance of critical activities. When all of the work is suspended for reasons not under the control of the Contractor, the Engineer will suspend working day charges. Examples for temporary suspension of working day charges:

- ◆ Safety of the traveling public and contractor due to external circumstances such as increased heavy holiday traffic
- ◆ In preparation for hazardous weather conditions for safety purposes at Engineers direction
- ◆ Performance or vegetative establishment periods where no critical path activities are performed

- ◆ At the Area Engineer's discretion for flexible start dates for projects.

A contractor cannot be placed under a time suspension of working day charges to complete critical path activities whether added by change order or originally included in the project. In addition, reasons within the contractor's control do not constitute a suspension of working day charges. Work not requiring an inspector to be present or no need for traffic control is not a reason for time suspension. However, it may be a reason for not charging a working day per Item 8 of the specification.

## Section 6 — Construction Project Timeliness

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

Project Managers (PM) can determine the estimated completion date and an estimate of the project’s percent complete status on a monthly basis.

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

It is recommended as a Best Practice that the PMs report the “Estimated Completion Date – PM Estimated” and the “PM’s Estimated Percent Complete” in SiteManager monthly.

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

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## Section 7 — Best Practices for Holiday Periods

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

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

These dates will be included in the contract in accordance with Texas Transportation Code [§224.034](#) and as otherwise directed. Items listed in this section may not apply to every project. Engineering judgement and experience will be required to provide the appropriate applications based on project location.

### Two Weeks Out

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

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

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

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

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

Check construction detours for pavements in need of repair.

### One Week Out

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

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

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

Ensure Contractor prepare equipment for incident response and have staged and fueled in appropriate yard.

**During the Period**

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

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

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## Section 8 — Default of Contract

### Declaration of Default

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

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

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

Do not default a contractor for insufficient surety bond coverage or allow them to perform any work on the project should their bonds lapse. Should a contractor’s surety bond become inadequate for any reason, suspend all work and working day charges 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 failure to perform the work in accordance with the contract requirements.

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

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



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Default letters must follow the District’s latest delegation of signature authority. Signatures may not be delegated below the Deputy District Engineer or District Director.

### **Contract with Performance Bond**

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

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

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

In obtaining a completion contractor for performing the remainder of the contract, the surety may use the original contractor, if approved by the District, or enter into an agreement with a new completion contractor. The completion contractor will be considered a subcontractor on the contract.

Do not require that the surety comply with the Department’s contracting rules or use Department prequalified contractors. Suspend the 70% subcontracting limitation requirement. Follow the subcontractor approval procedure in accordance with Section 3, “Subcontracting,” of this chapter.

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

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

### **Contract without Performance Bond**

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

- ◆ Department resources,
- ◆ re-letting the contract, or

- ◆ an emergency contract.

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

## Procedures

Use the following procedures in initiating and processing contractor defaults.

1. Except when default is at the request of the contractor, send the contractor a 10-day cure notice (by certified letter with return receipt requested) explaining the performance deficiencies and reason for potential default. State in the letter that the contractor must correct the deficiencies and resume work within 10 calendar days. Be specific about the reason(s) for potential default and quote directly from the contract using the potential default items listed in Item 8.7.1. If the Contractor submits a voluntary default, skip to Step 5.
2. Coordinate the letter with CST/CS. If applicable, send the surety a certified copy of the letter with return receipt requested. Make sure the 10-day notice is signed at minimum by the Area Engineer in coordination with District Administration.
3. Begin the 10-calendar-day period on the date the contractor signs the receipt. If the certified letter to the contractor is returned or the return receipt is not received, note this information in the DWR and make the time period effective 10 calendar days from the date the contractor and surety (if applicable) receive notification by email and delivery attempt of the certified tracking number.
4. Do not default the contractor if work is resumed and a concerted attempt is made to correct the problem within 10 calendar days.
5. If the contractor does not resolve the problem in 10 calendar days or default is at the request of the contractor, send the contractor a certified letter of default with return receipt requested. The default letter's reason for default should exactly track the cause(s) listed in the 10-day notice and should state that TxDOT is making a claim against the performance bond. Provide a copy of the letter to the CST/CS and FIN. If applicable, send the surety a certified copy of the letter with return receipt requested. The default is effective per the date of the certified letter of default unless otherwise specified. Stop all payments to the contractor. Do not suspend working day charges; continue working day charges until contract completion.

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

- ◆ Contractor name
- ◆ Project number
- ◆ Control-section-job (CSJ)

- ◆ Contract number
- ◆ Highway and county
- ◆ Name and mailing address of the surety, if applicable.

If determined necessary, perform work to ensure the safety of the traveling public between the time of default and the time that work resumes. Charge the surety for these costs. Continue working day charges until the project is completed.

[Template Letters](#) can be found on the CST Support website (internal access only).

## Section 9 — References

### Section 2 – Project Schedules

- ◆ Texas Administrative Code
  - [Rule §9.22](#), “Liquidated Damages”
- ◆ Code of Federal Regulations
  - [23 CFR §635.127](#), “Agreement Provisions Regarding Overrun in Contract Time”

### Section 3 – Subcontracting

- ◆ FHWA Core Curriculum
  - [23 CFR §635.116](#), “Subcontracting and Contractor Responsibilities”

### Section 7 – Best Practices for Holiday Periods

- ◆ Transportation Code
  - [§224.034](#), “Highway Closure During Certain Periods”

### Section 8 – Default of Contract

- ◆ Transportation Code
  - [§601.121](#), “Surety Bond”
- ◆ Texas Administrative Code
  - [§9.19](#), “Emergency Contract Procedures”
- ◆ Code of Federal Regulations
  - [23 CFR §635.125](#), “Termination of Contract”

# Chapter 11 — Measurement and Payment

## Contents:

[Section 1 — Estimates and Issues Affecting Payment](#)

[Section 2 — Material on Hand \(MOH\)](#)

[Section 3 — Prompt Payment](#)

[Section 4 — References](#)

## Section 1 — Estimates and Issues Affecting Payment

### Overview

Measure quantities in accordance with the contract as specified in Article 9.1, “Measurement of Quantities”. Pay Contractors according to the amount of work performed. Maintain sufficient documentation to support all quantities paid. Ensure the documentation supports:

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

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

### Monthly Progress Estimates

Start generating monthly progress estimates (including zero dollar and negative amounts) when time charges on the project begin. Continue generating estimates monthly until the final estimate/payment is generated. (See Chapter 4 Section 5 Project Closeout for final estimate.)

### Supplemental Progress Estimate

The purpose of a Supplemental Progress Estimate is to pay for work that was not included in the standard monthly progress estimate. When generated the estimate period end date will auto populate to the last day of the previous month's estimate.

Finance will require the district to provide the date an estimate should have been approved based off policies and procedures to ensure the correct amount of interest is calculated based on Prompt Payment Law.

### Collection on Negative Estimates

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

Send a letter notifying the Contractor to pay the balance owed to the Department within 30 days. Copy Financial Management (FIN) Division-Accounts Payable.

FIN-Accounts Payable will assist in creating Form 1234, “Refund of Expenditure”.

After 30 days have elapsed from the date of the initial notification, send a demand letter instructing the Contractor to make payment within 30 days.

After 30 days have elapsed from the date of the first demand letter, send a second demand letter instructing the Contractor to make payment within 10 days.

In the event the Contractor is nonresponsive to the second demand letter, contact FIN/Revenue Management for collection.

Send all letters via certified mail requesting address correction and verify that the correct address is on record with CST's Construction and Maintenance Contract Letting Section (CST-CMCL). Carbon copy FIN/Revenue Management and CST/Construction Support Section (CST-CS) on each letter sent. FIN/Revenue Management has template letters available upon request.

### Final Estimates (FE)

Prior to approving the FE:

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

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

### Supplemental Estimate

Districts process the Supplemental Estimate in SiteManager to make payments to the contractor after the Final Estimate has been approved. These payments are lump sum amounts, not payments based on placed quantities for Contract Line Items. Refer to the *SiteManager Contract Administration User Manual* for additional guidance.

## Measurement of Quantities

Provide calculations for payments in the DWR remarks bubble. When measurements cannot be described as shown below, computer measurements or drawings for irregular areas will be acceptable as supporting documentation.

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

$$\text{Area} = \text{Length} \times \text{Width} = 100 \text{ FT} \times 3 \text{ FT} = 300 \text{ SF}$$

$$\text{Area in SY} = 300 \text{ SF} \div 9 \text{ SF/SY} = 33.33 \text{ SY}$$

$$\text{Depth} = 5 \text{ IN} \times 1 \text{ FT}/12 \text{ IN} = 0.417 \text{ FT}$$

$$\text{Volume} = \text{Length} \times \text{Width} \times \text{Depth} = 100 \text{ FT} \times 3 \text{ FT} \times 0.417 \text{ FT} = 125 \text{ CF}$$

$$\text{Volume in CY} = 125 \text{ CF} \div 27 = 4.63 \text{ CY}$$

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

$$1 \text{ MI} = 5,280 \text{ FT}$$

$$1 \text{ broken stripe} = 10 \text{ FT of stripe} + 30 \text{ FT of spacing between stripes}$$

$$1 \text{ MI} = 5,280 \text{ FT} \div (10 \text{ FT} + 30 \text{ FT}) = 132 \text{ stripes per MI}$$

$$132 \text{ Stripes per MI} \times 10 \text{ FT of stripes} = 1320 \text{ LF of stripes}$$

Partial payments to an item of work can be made when agreed upon. Items such as embankment cannot truly be measured; therefore, payment can be made by percentage or by station range if earthwork tables are provided. Cast-in-place inlets are completed in multiple stages, so partial payments in the form of percentages can be made. Document reasons for partial payments in the payment portion of the DWR.

## Plans Quantity Measurement

Measurement of actual quantities is not required if a pay item under “Measurement” states in part, “This is a plans quantity measurement Item.” The intent of plans quantity measurement items is to relieve Department personnel from performing quantity field measurements. Monthly estimates for plans quantity measurement items can be established by the quantities shown in the plans or with an established and agreed on payment formula such as a percentage of the total plan quantity installed.



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

### Payments not to Exceed 10% of the Original Contract Amount

- ◆ 0100 Preparing Right of Way (ROW): total payment of this item will not exceed 10% of the original contract amount until Final Acceptance.
- ◆ 0502 Barricades, Signs, and Traffic Handling: total payment for this item will not exceed 10% of the total contract amount before Final Acceptance.

### Payment of Items with Overweight Loads

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

### Quality Control (QC)/Quality Assurance (QA) Hot Mix Payments

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

### Road User Costs (RUC) 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 RUC. Refer to the *SiteManager Contract Administration User Manual* for instructions to add these standard items to the construction estimate.

### Force Account

Force account work is described under Chapter 7, Section 3 - Force Account and Interim Adjustments to the Contract.

Ensure [Form 316](#), “Daily Report of Force Account Work,” is completed on a daily basis and signed by the Contractor. Collect the necessary documentation supporting the information on the form.

Payment for force account work will be made on a created line item for that work.

## Section 2 — Material on Hand (MOH)

### Overview

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

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

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

### Eligible Items

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

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

Transportation costs are eligible for MOH reimbursement when the materials are delivered to the project. Transportation costs may be eligible when Contractors receive the materials at a remote

Contractor-owned yard where the Department can monitor the materials. If materials are delivered to a remote Contractor-owned yard, the transportation cost cannot exceed the cost for a direct delivery to the project.

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

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

### Acceptable Storage

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

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

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

### Testing and Approval

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

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

The following are examples of perishable materials.

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

### **Records and Reports**

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

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

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

Future MOH payments may be excluded if the Contractor is found in violation of MOH contract requirements. The [Form 1259](#), “Summary Materials Received and Used,” can be used to aid with MOH.

### Contractor’s Responsibility for MOH

To request payment for MOH, the Contractor must submit Forms 1914 and 1915. Do not accept these forms from subcontractors. The prime Contractor may request subcontractor MOH on their behalf. With their submittal, the Contractor must:

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

### Approval for Early Estimates

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

### Area Office Responsibility for MOH

Contract MOH payments are monitored or audited as follows:

- ◆ cursory reviews,
- ◆ quarterly audits,
- ◆ process reviews, and
- ◆ Contractor record audits.

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

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

**Quarterly Audits.** Audit one material item per quarter that has reached the 60-day threshold. If issues are found, increase the number of items verified. On the monthly MOH payment request, indicate which item was checked and initial the document to show that the audit was completed and document the reviewer. In addition to these random audits, conduct audits for cause or as directed by authorized personnel.

If an audit indicates the need for corrective action, the affected Contractor request for MOH payment may be corrected. Notify the Contractor in writing of any corrections made.

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

Use the guidelines listed in the following to conduct audits:

1. The engineer or their representative performs audit at the Contractor's office.
2. Check eligibility of requested material: nonperishable, test report issued (when required)
3. Review documentation to verify quantity and manufacturer
4. Review Contractor's producer for determining plan quantity for material
5. Review Contractor's procedure for determining how much material was used each month
6. Verify Contractor has paid invoices (for all material request for payment) dated within 60 days of receiving MOH payment as part of the quarterly audits.
7. Verify material are properly stored in approved stockpiles.

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

If a process review indicates the need for corrective action, notify the Contractor in writing of corrective actions needed. Consider conducting a complete audit of the Contractor's records and

record-keeping system if the process review indicates serious concerns or possible noncompliance with contract MOH requirements. (Refer to “Contractor Record Audits” for additional information.)

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

Possible Causes for Auditing a Contractor's Records:

- ◆ The Contractor is suspected of submitting erroneous, inflated, deceptive, or fraudulent requests for MOH payment.
- ◆ An audit of the Contractor's MOH quantities indicates the possibility of a large-scale error.
- ◆ A process review indicates a major flaw in the Contractor's record-keeping system.
- ◆ The Contractor is suspected of willfully neglecting to comply with any of the MOH contract requirements.
- ◆ The Contractor has indicated, or it is suspected, that the Contractor will file for compensation and use MOH records to support the claim.

Once approved, send a written notice via email or certified mail advising the Contractor of the impending audit. Specify in the notice that the Contractor must allow the Department access to conduct the audit within 7 days of receipt of the notice.

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

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

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## Section 3 — Prompt Payment

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

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.

Per Article 9 “Payment Provisions for Subcontractor,” Pay subcontractors for work performed within 10 days after receiving payment from the Department. The Contractor may withhold retainage on subcontractors in accordance with the state and federal regulations.

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

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

### Contractor Complaints

Contractor needs to submit all complaints in writing. 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 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 correct areas of noncompliance or offer reasonable compensation for areas where noncompliance cannot be achieved in accordance with the contract. Do not waive the Contractor's responsibility to comply with the contract.



## Subcontractor and Materials Supplier Non-Payment Notices

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 [Prompt Pay Sample Letter](#) CST Support page on Crossroads internal access only.) A sworn statement of account notice is required to be sent to the bonding company under [Tex. Gov. Code §2253.041](#), "Public Work Performance and Payment Bonds." The applicable portion corresponds to Subchapter C, "Notice Requirements." We recommend that said statement include the project information and location.

If the subcontractor is a DBE, the District should contact the Civil Rights division for initial guidance. Also, TxDOT's responsibility (in addition to what service CIV can offer) is limited to providing the subcontractor/supplier the name of the Bonding Company, their listed mailing address, and the bond number.

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

1. Verify the Department has approved the work in question.
  - If the Department has not approved the work or materials in question, notify the prime Contractor and subcontractor that no prompt payment issue exists. \*
  - If the Department has approved the work, determine if the Department made payment. If not, make payment to the prime Contractor and notify the parties involved of the resolution. \*
2. If the Department paid for work or materials, determine if a dispute exists by referring to prompt payment certifications and other supporting information. NOTE: Supporting information aids in the determination of a dispute or resolution to a dispute that may include a subcontractor. Examples: subcontractor agreements (includes quantities and unit prices) or supplier agreements, invoices, subcontract or supplier revisions (change orders), canceled checks, identification of billing errors, etc.
  - 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. Advise the subcontractor that they may file against the payment bond surety
  - Forward the subcontractor's letter of complaint to the prime contractor advising it of its responsibility to work with the subcontractor to resolve the dispute
  - Provide copies of the letter to the prime contractor, subcontractor, and the payment bond surety. \*
4. Request payment or justification for non-payment

- If the prime contractor makes payment or provides documentation that substantiates the dispute, forward the response to the subcontractor and advise that payment was made or a dispute exists. Send a copy of the subcontractor notice to the payment bond surety. In instances of a dispute advise the parties it is the responsibility of the parties involved to resolve the issue. \*
  - If the prime contractor has not made payment and does not provide notification of a dispute within the timeframe specified, initiate the appropriate administrative action. Possible administrative actions include suspending work, withholding all or a portion of an estimate, withholding project acceptance, placing the prime contractor in default for breach of contract, or other actions deemed appropriate.
  - Set a 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.

(\* No further Department action necessary related to prompt payment.)

## Contractor Compliance

The prime Contractor must complete a [Form 2177](#), "Prompt Payment Certification." For example, if the work was performed in January and the Contractor was paid in February, the Contractor must submit certification no later than the end of March. If final acceptance occurred in January, the Contractor must submit the final certification no later than the end of February. On federally funded projects, Disadvantaged Business Enterprises (DBEs) certify in the Diversity Management System (DMS) that they have been promptly paid.

Initiate the following actions for receipt and review of the required certification form.

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

When determining if a legitimate dispute exists, the following situations are not considered valid reasons, which both FHWA and United States Department of Transportation (USDOT) requirements.

1. A prime Contractor may not withhold payment to a subcontractor due to the prime not being paid the final estimate on the project. A subcontractor is entitled to payment when the Department makes payment for the work and the subcontractor meets the requirements of the subcontract.
2. A prime Contractor may not withhold payment to a subcontractor on Project A for delinquencies or issues with the subcontractor on other projects, such as Project B or C.
3. All subcontracts on federal-aid projects must contain [FHWA Form 1273](#).

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

### Prompt Pay Audit

The Department must provide appropriate means to enforce the requirements of Prompt Pay ([49 CFR 26.29](#)). The Department will conduct a minimum of one audit per quarter per project based on a calendar year basis starting January 1. DBEs certifying they are promptly paid in DMS is considered taking affirmative steps to ensure compliance. Use [Form 2177A](#), "Prompt Pay Audit," (internal access only) to complete this process.

## Section 4 — References

### Section 2 – Issues Affecting Payments

- ◆ Texas Administrative Code
  - [Rule §9.20](#), “Partial Payments”

### Section 3 – Prompt Payment

- ◆ Code of Federal Regulations
  - [49 CFR §26.29](#), “What Prompt Payment Mechanisms Must Recipients Have?”

# Chapter 12 — Environment

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## Section 1 — Introduction

TxDOT and our Contractors are required to comply with all applicable state and federal environmental laws, rules, and regulations throughout the project delivery process, including during construction and post construction both on and off ROW (for PSLs). Failure to comply can result in fines, violations, enforcement actions, citations, and criminal prosecution for TxDOT and Contractor personnel.

TxDOT's environmental review phase for the project may establish environmental permits, issues, and commitments (EPICs). EPIC's that are the responsibility of the Contractor to comply with are incorporated into the Plans, Specifications, and Estimates (PS&E) and documented on the EPIC sheet, in the general notes, and in specifications. It is the Engineer's responsibility to ensure that any EPIC's in the plans are complied with during the construction process. Because change orders can impact assumptions made during the environmental review phase of the project's development, it is important that environmental staff can review them before change ordered work is completed to prevent unpermitted and unauthorized activities from occurring. If the Contractor initiates changes to the Contract and the Department approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agencies.

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## Section 2 — Stormwater Requirements

The Texas Pollutant Discharge Elimination System (TPDES), administered by the Texas Commission on Environmental Quality (TCEQ) regulates stormwater discharges from various sources to surface waters of the State. The nature of TxDOT operations means most of our activities are regulated under this program.

There are two main types of TPDES permits that apply to TxDOT operations, the Construction General Permit (CGP) and the MS4 Permit. Information for these requirements is posted to [TxDOT's external facing website](#).

TxDOT projects disturbing one acre or more of soil or disturbing less than one acre of soil but have EPICs that require stormwater and water quality controls are required to develop a stormwater pollution prevention plan (SWP3) that will be implemented during construction and maintenance activities.

Projects with soil disturbing activity, that let beginning in March 2023 are required to utilize the [SWP3 Template](#). Projects that let before this date are not required to use the template, but must still fulfill all obligations in the March 5, 2023, CGP.

Additionally, for projects located with the MS4 boundaries, TxDOT is required to comply with conditions outlined in the [Stormwater Management Program \(SWMP\) Minimum Control Measure 3 - Construction Site Stormwater Runoff Control](#).

For additional questions about CGP requirements please reach out to ENV's Operations Compliance/Stormwater team.

### Section 3 — Water Resources

TxDOT and our Contractors must comply with various rules, regulations, and permitting requirements for water resources. Generally, most the permits for these activities will be obtained prior to the start of construction. In some cases, the permitting process will still be ongoing after construction has started and these actions might be captured in the Construction Management Plan (CMP). TxDOT and the Contractor will need to be mindful of project phasing and the CMP to ensure that non-permitted actions are avoided until proper permits are finalized.

For more information on Section 404, Section 9, and Section 10 permit requirements, Edwards Aquifer Protection Program requirements, and CZMA and TCMP requirements refer to the [Environmental Handbook for Water Resources](#) or contact ENV's Natural Resources Management Section.

#### **Complying with US Army Corps of Engineers Requirements for Work in Waters of the United States, Section 404**

Section 404 of the Clean Water Act aims to restore and maintain the chemical, physical, and biological integrity of waters of the U.S. by regulating the discharge of dredged or fill material into these waters.

Waters of the U.S. may include but are not limited to streams, wetlands, some open water, some ditches, and some stock ponds. The following common construction activities typically require a permit from the U.S. Army Corps of Engineers (USACE):

- ◆ land clearing in waters of the U.S.
- ◆ placement of dredged or fill material, temporarily or permanently, within waters of the U.S.
- ◆ bridge or culvert replacements
- ◆ placement of dredged material that flows back into water from an upland dredged material placement site
- ◆ any heavy equipment use in waters of the U.S.
- ◆ converting any water of the U.S. to a different type of water of the U.S. or to upland.

In order to comply with Section 404, TxDOT must:

- ◆ Obtain any required USACE permit for proposed work before work begins in TxDOT ROW. Contractors are responsible for obtaining any off-site permits, including for PSLs. Check the CMP for any permits that have not be finalized before project letting.



- ◆ Review the commitments pertaining to the USACE permit in the environmental permits, issues, and commitments (EPICs) section in the PS&E. A copy of the permit will also be kept in the SWP3 Binder for easy access and reference.
- ◆ Ensure that the contractor is aware of any waters of the U.S. in the area where work will occur, and make sure these are delineated prior to construction.
- ◆ Ensure that the contractor is familiar with the work and associated impacts that have been authorized by the Section 404 permit.
- ◆ Ensure that the contractor adheres to all agreements, mitigation plans, general conditions, and BMPs required by the permit.
- ◆ Ensure change orders are reviewed by environmental staff to they can determine if proposed changes may alter the USACE permit prior to work being conducted. When contractor-initiated changes to the issued Section 404 permit are desired, it is the contractor's responsibility to obtain a new or revised Section 404 permit from the USACE at the cost of the contractor (unless otherwise agreed upon by both parties). In this situation, no claims for schedule delays are allowed.
- ◆ Understand that failure to comply with all permit conditions may result in contract work stoppages being issued by the USACE or TxDOT.

### **Complying with US Coast Guard requirements for Work in Navigable Waters of the U.S., Section 9 and Section 10**

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

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

In order to comply with Section 9 and Section 10, TxDOT must:

- ◆ TxDOT must obtain any required permits from the USCG and USACE for proposed work before work begins in TxDOT ROW. Contractors are responsible for obtaining any off-site permits, including for PSLs. Check the CMP for any permits that have not be finalized before project letting.

- ◆ Review the commitments pertaining to the permit(s) in the EPICs section in the PS&E. A copy of the permit(s) will also be kept in the SWP3 Binder for easy access and reference.
- ◆ Ensure that the contractor adheres to the stipulations of the authorization/permit including agreements, mitigation plans, general conditions, and BMPs.
- ◆ Ensure change orders are reviewed by environmental staff so they can determine if proposed changes in the contract that may alter the permit(s) prior to work being conducted. When contractor-initiated changes to the issued permit(s) are desired, it is the contractor's responsibility to obtain a new or revised permit(s) at the cost of the contractor (unless otherwise agreed upon by both parties). In this situation, no claims for schedule delays are allowed.
- ◆ Ensure contractors are following USCG and USACE permit requirements as described above.
- ◆ Understand that failure to comply with all permit conditions may result in contract work stoppages being issued by the USCG, USACE or TxDOT.

### **Complying with TCEQ requirements for Work Over the Edwards Aquifer**

The TCEQ administers the Edwards Aquifer Protection Program (EAPP) to prevent pollution of the Edwards Aquifer to protect groundwater use and maintain Texas surface water quality standards. If work involves soil disturbing construction activities in areas identified as the Edwards Aquifer Recharge Zone, Edwards Aquifer Contributing Zone, and Edwards Aquifer Transition Zone in the following eight counties, EAPP compliance may apply: Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson.

In order to comply with the EAPP, TxDOT must:

- ◆ TxDOT must obtain any required EAPP authorization via required submittals such as a Water Pollution Abatement Plan (WPAP) or Contributing Zone Plan (CZP) from the TCEQ before work begins.
- ◆ Review the commitments made in the WPAP, CZP or other EAPP permit in the EPICs section in the PS&E. A copy of the approval will also be kept in the SWP3 Binder for easy access and reference.
- ◆ Ensure that the contractor adheres to the stipulations of the EAPP authorization including associated BMPs and performance of the work in accordance with contract requirements.
- ◆ Ensure that the contractor has the necessary information to recognize subsurface voids in bedrock. This information is available from the DEQC. If a subsurface void is encountered, the contractor must notify the TxDOT District DQEC. The void must be protected until an evaluation is completed and the contractor is cleared to continue work near the void.

- ◆ When contractor-initiated changes in the construction methodology affect the previously compliant impacts to the Edwards Aquifer, including encountering subsurface voids, immediately notify the district environmental coordinator and EAPP engineer, who may then need to notify the TCEQ and/or assist in obtaining a revised EAPP permit or void closure authorization. Contractor initiated changes will be the responsibility of the contractor, such as “In this situation, no claims for schedule delays are allowed.”

### **Complying with General Land Office (GLO) and other entities' requirements for Work in Coastal Counties**

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

In order to comply with CZMA and the TCMP, TxDOT must:

- ◆ Ensure change orders are reviewed by environmental staff for consistency with CZMA and TCMP requirements.
- ◆ Ensure contractors are following USACE permit requirements as described above.

## Section 4 — Cultural Resources

Cultural resources include historical and archeological resources that can be found within and adjacent to TxDOT projects. During the environmental review stage of project development, TxDOT will evaluate the project actions to ensure they comply with the **National Historic Preservation Act (54 U.S.C. 300101 et seq. and 36 CFR Part 800) and/or Texas Antiquities Code (Texas Natural Resources Code, Chapter 191)** when applicable and will develop plan notes and conduct necessary surveys. Necessary actions for the contractor will be captured in the PS&E. The TxDOT PM must be aware that changes in construction activities can affect requirements, and these may not necessarily be captured in the PS&E because they are addressed through other internal processes. Consult environmental staff whenever changes in work are proposed.

TxDOT will ensure contractor compliance with commitments made for the project. If necessary, do the following as required in the contract.

- ◆ Become aware of the commitments pertaining to cultural resources in the EPICs section in the PS&E.
- ◆ Ensure no construction-related activities occur in specifically-designated project avoidance areas until the Department's commitments have been completed. Some locations may be designated as avoidance areas for the duration of construction. Note: state law protects archeological site locations from disclosure, so project avoidance areas will be indicated on the plan sheets, but those avoidance areas will not be labeled as archeological sites. ENV will coordinate these commitments and their completion with the District.
- ◆ Ensure the barriers or other obstacles required by commitments are installed to prevent accidental impacts to protected resources.
- ◆ 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 appropriate parties. When work may resume, ENV will notify the District, and then the District will notify the contractor.
- ◆ Generally resource surveys are completed prior to construction. However, in the case they are not, TxDOT and the Contractor will need to be mindful of project phasing and the CMP to ensure that non-permitted actions are avoided until all surveys are completed.

\*\*If archaeological materials are identified within the ROW or a Department-designated material source, cease all construction-related activities and report the find to the AE and DEQC in accor-

dance with the contract and the Department’s Emergency Discovery Guidelines. When work may resume, ENV will notify the District, and then the District will notify the contractor.

### **Texas Health and Safety Code, Chapter 711**

If human remains are identified within the ROW or in a material source, cease all construction-related activities and report the find. Report the find first to local law enforcement and then to the AE and DEQC in accordance with the contract and the Department's [Emergency Discovery Guidelines](#). When work may resume, ENV will notify the District, and then the District will notify the contractor.

### **| Documenting Compliance with Cultural Resources Plan notes**

TxDOT must verify and document compliance with cultural resources commitments before releasing the contractor from the project utilizing the “[Documentation of Compliance with Historic Resources Monitoring Commitment](#)” Form 422.01.FRM. TxDOT will inspect the project to ensure the cultural resources commitments in the EPICs are followed. The District and ENV will record compliance through narrative and photographic documentation for the project record. Once ENV finalizes documentation, the contractor may be released from the project.

Do not release the contractor until this documentation is complete. Should TxDOT’s inspection show that the contractor did not follow cultural resources commitments, or that cultural resources are damaged, the contractor is responsible for correcting the work and/or damage at their own expense.

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## Section 5 — Vegetation Resources

Vegetation resources must be managed throughout the life of the project. Strategies such as phasing the clearing of vegetation need to be implemented to avoid erosion issues caused by too much bare soil, and to ensure compliance with regulations like the Migratory Bird Treaty Act and Chapter 64 of the Parks and Wildlife Code or ESA if habitat is protected. The CGP outlines TxDOT and the Contractor's requirements for managing temporary and permanent soil stabilization measures. TxDOT's Standard Specifications Item 164: Seeding for Erosion Control outlines specific materials and installation requirements pertinent to the implementation of seeding as both a temporary and permanent erosion control. Where soil retention blankets or erosion control blankets will be utilized, efforts should be made to furnish only spray-on products or blankets that do not contain UV degradable, photodegradable, or polypropylene materials. Products should be comprised of natural, woven fibers. Products that have mesh with fixed corners should not be used when prohibited by EPICs and through the PS&E.

Vegetative buffers must be maintained adjacent to water bodies and other sensitive areas whenever possible. If it's not possible to maintain vegetative buffers adjacent to surface waters of the State, a justification needs to be provided as part of the SWP3 Summary Sheet. The contractor should avoid clearing unnecessary vegetation in riparian areas. Additional best management practices may be appropriate depending on the site. Coordinate with TxDOT environmental staff to determine if any protected, imperiled, or sensitive plant or animal species or plant communities might be present. Refer to TPWD's "Beneficial Management Practices: Avoiding, Minimizing, and Mitigating Impacts of Transportation Projects on State Natural Resources" available on TxDOT's Natural Resources Toolkits for more information.

## Section 6 — Protected Species Requirements

TxDOT is required to comply with rules, regulations, and permits administered by the Texas Parks and Wildlife Department (TPWD) and the U.S. Fish and Wildlife Service (USFWS). Failure to comply with Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), National Marine Fisheries Service (NMFS) and other requirements can result in administrative and criminal penalties for TxDOT or contractor personnel. Ensure the contractor adheres to any USFWS or TPWD EPIC requirements included in the contract. Protected species include state or federally listed endangered species, migratory birds, sensitive wildlife, and wildlife habitats that may be found within the project at any time. These requirements could include avoidance and minimization measures stated in the plans, such as avoidance of sensitive wildlife and wildlife habitats in the project area, project phasing requirements (such as clearing vegetation outside of bird nesting season), or the implementation of BMPs such as Amphibian and Reptile Exclusion Fence (AREF). The Contractor will also need to be made aware of any incomplete surveys or permit actions, including any CMPs, and must be instructed to avoid work in those areas until surveys and permits are completed to avoid non-permitted impacts.

To meet protected species requirements:

- ◆ Become aware of the commitments pertaining to any species in the environmental permits, issues, and commitments (EPICs) section in the plans, specifications, and estimates (PS&E). Check the CMP for any permits that have not been finalized before project letting. Review all species requirements during the preconstruction conference.
- ◆ Ensure the contractor has the necessary information to identify and recognize sensitive wildlife and wildlife habitats. This information is available from the District Environmental Quality Coordinator (DEQC).
- ◆ Provide the contractor with copies of applicable permits or coordination documentation.
- ◆ Provide any species-specific training to contractor personnel, and periodically ensure that new personnel have also received required training.
- ◆ Review species coordination specific to the project, including avoidance and minimization measures in the construction plans.
- ◆ Ensure the contractor makes a good faith effort to implement any avoidance and minimization measures in the construction plans and recommendations included in the contract.

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- ◆ Require the contractor to notify the DEQC immediately if any protected species or new habitat is found in the project area.
  - ◆ Ensure any existing wildlife crossing structures, fences, wildlife guards, escape ramps, and other mitigation are not moved, cut, or altered in any activities that may allow wildlife to access the road right of way, or impede their finding and moving through the structures. If wildlife crossing structures, fences, and other features are part of the contract, ensure all infrastructure elements are exactly to specifications, with fences completely buried or at the soil level with no holes, escape ramps to the correct heights and slope ratios, wildlife crossing structures completely open and accessible to wildlife and not blocked by any fences, no barb wire placed on any fences, and other wildlife considerations in the contract. Contact the environmental coordinator for specific project information.
  - ◆ Ensure that ENV is given the opportunity to review project activities resulting from change orders that extend project impacts into new right of way (ROW) or easements that were not included in the original PS&E. ENV will then coordinate the review with the appropriate agencies and provide the results of the review to the AE and the DEQC, who will then notify the contractor when work may resume.

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



## Section 7 — Hazardous Materials or Waste

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

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

### Procedure

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

There are three methods for mitigating hazardous materials.

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

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

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

### **Hazardous Materials Anticipated During Construction**

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

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

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

When paint is determined to contain hazardous materials and Item 446, “Cleaning and Painting Steel,” will be used, the project should be let separately. Contact [MTD\\_Paint@txdot.gov](mailto:MTD_Paint@txdot.gov) for assistance.

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

Responsibilities for anticipated hazardous materials include:

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

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## Bridge Demolition and Renovation Activities

Asbestos issues should be identified and addressed early in project development to minimize impacts to construction and project costs. Early identification will allow time to plan and execute abatement or mitigation under the procedures provided in this guidance.

### Steps to Comply with State and Federal Regulations

1. Identify all bridge demolition projects or renovation projects.
2. Inspect each project for Asbestos Containing Materials (ACM) in accordance with the procedures herein.
3. Notify the Department of State Health Services (DSHS) at least 10 working days prior to commencing the work.
4. Amend notifications as necessary.
5. Pay all fees.
6. Abate any ACM which might be disturbed by project activities.

DSHS notification is required prior to all bridge demolition projects, even when no asbestos is present. On-line submittal of the notification form is available and recommended. Alternately, a hard-copy version of the form may be printed out and mailed. The form must be submitted at least 10 working days prior to starting the demolition work. Instructions and a link to the on-line notification system can be found on the DSHS Asbestos Programs Branch web page.

Amend the Department of State Health Services notification form if the start date changes, or if the demolition completion date changes significantly. The start date is particularly important because DSHS inspectors may schedule site visits to coincide with the start of ACM related activities.

DSHS does recognize the difficulty of precise advanced scheduling in highway construction, and have indicated a willingness to be flexible, within the limits of the Environmental Protection Agency (EPA) rules. At the least, however, preparatory activities should be occurring at the bridge site on the given start date. If an inspector arrives at the bridge site on the start date and there is no activity, a violation notice for failure to provide timely notification will likely result.

When the demolition will begin later than the date in the original notice, submit an amended notification prior to the original notified start date. Contact the appropriate DSHS Regional Office by phone as soon as possible but prior to the original notified start date. For hardcopy notification submissions, also provide the regional office with a fax or email copy of the amended notice prior to the original notified start date. Contact information for DSHS Regional Offices may be found the following link: <https://www.dshs.texas.gov/asbestos/inspectors.aspx>.

Refer to the Environmental Affairs Division's Asbestos Procedures for TxDOT Projects guidance ([ENV Asbestos Guidance Document](#)) for additional information on compliance with state and federal regulations for bridge demolition and renovating activities.

### Unanticipated Hazardous Materials Encountered During Construction

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

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

The following may indicate hazardous materials:

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

When notified by the contractor of the possible existence of hazardous materials or waste:

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

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

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

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

### **Use of Consultants**

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

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

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

### **Cost Recovery and Accounting**

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

- ◆ coordination with regulatory authorities
- ◆ worker/public safety plan actions

- ◆ step-by-step preventative action measures, and
- ◆ costs attributable to hazardous material issues on sites, (Consider assigning a unique pay Items related to the hazardous material on site.)

These records may be used for:

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

### Responsible Parties

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

### Surplus Materials

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

Reference ENV's [Hazardous Materials Toolkit](#) for additional information regarding Department procedures for handling hazardous materials during advanced planning, right-of-way acquisition, design, and construction.

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## Section 8 — Noise/Sound Walls

Ensure compliance with commitments made for the project regarding noise abatement. If necessary, do the following as required in the contract:

- ◆ Become aware of the commitments pertaining to noise abatement as proposed in the traffic noise analysis report and as implemented in the PS&E.
- ◆ Ensure the noise/sound walls required by commitments are installed to provide mitigation to adjacent impacted noise-sensitive receptors.
- ◆ Ensure that district environmental staff and ENV are notified and/or given an opportunity to review change orders that affect noise abatement included in the PS&E. ENV submits inventory information on constructed noise barriers to FHWA every three years and needs accurate information about changes.

If phasing or timing regarding noise/sound walls are not specified in the general notes or traffic control plan of the PS&E, contractors are encouraged to schedule and perform work related to noise/sound walls early during construction. This provides mitigation for noise impacts to communities adjacent to the project.

## Section 9 — Project Specific Locations (PSLs)

A [Project-Specific Location \(PSL\)](#), also known as an area of construction support activity, a staging area, or a laydown area, is a material source, plant, waste site, parking area, storage area, field office, staging area, haul road, or other similar location either outside the project limits or within the project limits but not specifically addressed in the Contract. Refer to Article 7.7.6, “Project Specific Locations.”

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

- ◆ the PSL’s total acreage
- ◆ acreage disturbed
- ◆ location
- ◆ description and
- ◆ applicable permits and authorizations, such as CGP authorization

TxDOT will document any PSLs within 1 mile of the project area on the SWP3 layout sheets and keep appropriate documentation in Attachment 2.10 of the SWP3 binder for projects disturbing one acre or more (Attachment 2.6 for projects disturbing less than one acre).

The contractor must:

- ◆ obtain written approval from the Engineer for all PSLs in the ROW not specifically addressed on the plans
- ◆ be responsible for off ROW permits, clearances, Notice of Intent (NOI)s, and monitoring – there may be additional requirements or commitments in TxDOT’s permits and clearances
- ◆ prepare an SWP3 for all contractor facilities, such as asphalt or concrete plants located within Department right of way, and comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, asphalt plants, etc.
- ◆ address all environmental issues, such as Section 404 permits, species consultation requirements, or archaeological and historic site impacts and
- ◆ obtain all permits and clearances in advance.



## Section 10 — Construction Stage Gate Checklist (CSGC) Form 2448 Inspections

### Purpose

The [CSGC](#) is intended to be a construction project inspection and communication tool. It should be completed with both designated TxDOT and Contractor personnel present to emphasize the expectations for environmental compliance on the project and to foster communication. The CSGC helps ensure that TxDOT and the Contractor meet their commitment to environmental compliance by providing a comprehensive overview of all environmental requirements and identifying areas where improvements, additional attention and/or actions are needed. The CSGC also serves as a compliance metric for TxDOT's Statewide MS4 Permit's (Municipal Separate Storm Sewer System) reporting requirements.

### Suggested Usage

Each District will be responsible for determining their representative for completing the CSGC, preferably, an experienced employee such as the DEQC, Project Engineer, Project Manager or Chief Inspector. TxDOT and Contractor should present their representatives at the pre-construction meeting. It is recommended that these representatives communicate with project managers, construction inspectors and contractor personnel during the completion of the CSGC to communicate findings. It is expected that needed action(s) should occur early in the process for any issue including those which could be potentially noncompliant. Input and/or action(s) may be needed by other parties (i.e. AE, DEQC, AP&D, ENV Coordinator, etc.) to resolve issue(s).

### Applicability

The CSGC should be completed on construction and maintenance contracts that have soil disturbing activities and/or environmental permit requirements. Types of projects include new location, existing pavement rehabilitations/widening, culvert work, bridge rehabilitation/ replacement. Districts should determine whether the CSGC should be completed on minimal soil disturbance type projects such as MBGF upgrade, landscaping, or ACP overlays. Typical projects not requiring the CSGC would be crack sealing, retrace striping, seal coating, or bridge joint repair on non-historic structures.

### Frequency

The initial CSGC inspection should occur within one month of beginning initial construction activities and at minimum annually, or if project is less than one year when 50% of work has been completed. Annual DEQC inspections cannot be used in place of this inspection requirement unless

the TxDOT inspector and Contractor representative are present and involved during inspection. Frequency for completing additional CSGC inspections by TxDOT and Contractor CRPE will be determined at the preconstruction. Factors influencing frequency include permit requirements, duration/complexity of the project. It is recommended that completed CSGC be reviewed by another TxDOT representative for quality monitoring of the environmental process.

### **Documentation and Record Retention**

The completed CSGC must be kept with project files and retained according to file retention requirements. For projects within the MS4 area, records must be made available upon request by TCEQ and no later than 24 hours from when the request was made. The CSGC may be stored in the SWP3 Binder in Attachment 2.5 pertaining to inspections (Attachment 2.3 for projects that disturb less than an acre) or in a separate project file folder as long as the information is easily accessible.

## Section 11 — Regulatory Agency Investigations

TxDOT operations are subject to investigations by regulatory agencies, before, during, and after construction. These investigations can be routine, such as a scheduled site inspection, or can be unannounced based on complaints or other suspicions of non-compliance by a regulatory agency.

Regulatory agencies that may conduct an investigation include but are not limited to include the Texas Commission on Environmental Quality (TCEQ), Texas Department of State Health Services U.S. (DSHS), the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (USACE), Texas Parks and Wildlife Department (TPWD), and the US Fish and Wildlife Services (USFWS).

Common operations affected by regulatory investigations include:

- ◆ Stormwater management
- ◆ Army Corps of Engineer permit management
- ◆ Texas Parks and Wildlife (TPWD) and US Fish and Wildlife (USFWS) permit management
- ◆ Petroleum storage tank management
- ◆ Spill prevention, control, and counter measure planning (SPCC)
- ◆ Asbestos-containing materials management
- ◆ Drinking water and wastewater operations at safety rest areas and maintenance facilities

These investigations can result in administrative, criminal and monetary penalties to both TxDOT and the Contractor when non-compliances are found. TxDOT personnel are expected to fully cooperate with regulatory agencies personnel and provide true and accurate information when information is requested. Failure to do so could result in further actions by the regulatory agencies.

### How to handle a regulatory investigation

- ◆ Regulatory inspectors are allowed by law to enter and perform inspections and document results related to programs their agencies regulate.
- ◆ The regulatory inspector should provide credentials and must wear appropriate PPE.
- ◆ Let the TxDOT Engineer, DEQC, and Contractor know of the visit as soon as possible.
- ◆ Review safety information in the office before visiting the site.
- ◆ Stay with the inspector to answer any questions that may arise.
- ◆ TxDOT's policy is to comply with all environmental laws and to cooperate with environmental inspectors responsible for enforcing laws.

**In the event your District or Division receives an NOV, please ensure your staff complete the following actions.**

1. Immediately notify District or Division management.

Staff must report any NOV to the District Engineer or Division Director.

2. Immediately send the NOV to the Environmental Affairs Division (ENV).

Send an email to ENV at [env\\_complianceassistance@txdot.gov](mailto:env_complianceassistance@txdot.gov). In the email include a summary of the issue, any related documents, and the name of the contact person responsible for coordinating the district's or division's work with ENV.

3. Ensure the necessary actions are taken to resolve the matter quickly.

District or Division staff must communicate regularly with ENV to ensure all necessary actions are being completed.

## Chapter 13 — Health and Safety

### Contents:

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

[Section 2 — Contract Requirements](#)

[Section 3 — Violations](#)

[Section 4 — References](#)

## Section 1 — Federal Safety and Health Laws

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 Occupational Safety and Health Administration (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, CFR, Parts 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*.

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## Section 2 — Contract Requirements

### Construction Surveillance

Record any violations of safety requirements in the Daily Work Report (DWR). The following 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](#) and [1926.50](#).
- ◆ Housekeeping - Clear scrap and used materials from work areas (scattered debris and combustible scrap) that would constitute hazards to workers, per [29 CFR 1926.25](#).
- ◆ Noise exposure - If the contractor cannot provide means to lower noise level exposures to permissible levels, personal protective equipment must be provided, per [29 CFR 1926.52](#).
- ◆ Head protection - Employees must wear protective helmets to avoid injuries, per the requirements of [29 CFR 1926.100](#).
- ◆ Eye and face protection - Eye and face protection must be provided to protect against eye or face injury, per [29 CFR 1926.102](#).
- ◆ Safety nets - Safety nets are used as protection for unprotected sides, leading edges, working on the face of formwork or reinforcing steel, overhead or below surface bricklaying, work on roofs, and precast concrete work. For further information about “Fall Protection,” see [29 CFR 1926, Subpart M](#).
- ◆ Power-operated hand tools - Only employees trained in operating power tools are permitted to use them. Certain hand-held power tools must be equipped with a constant pressure switch that will shut off the power when the pressure is released. These include circular saws, chain saws, and percussion tools without positive accessory holding means. Electrically powered hand tools must be of the double-insulated type or grounded. Pneumatic power tools must be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected. Additional requirements for the safe operation of power tools are found in [29 CFR 1926.302](#).
- ◆ Ladders -
  - must be free of defects,
  - adequately supported or anchored, and
  - fixed ladders must have cages per the requirements of [29 CFR 1926.1053](#).
- ◆ Scaffolds - All scaffolding will be erected in accordance with the requirements for the specific scaffold type as provided in [29 CFR 1926 Subpart L](#).

- ◆ Cranes and derricks - Operations must comply with the requirements of [29 CFR 1926.550](#). Other material handling requiring the use of overhead lift equipment must comply with applicable standards of [Subpart N Helicopters, Hoists, Elevators, and Conveyors](#). 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. [29 CFR 1926.1408](#) provides more information on powerline safety and includes a table with the minimum clearance distances for different voltages.
- ◆ Earth moving equipment - Equipment must have brakes capable of stopping and holding the equipment when fully loaded. All bi-directional machines (rollers, compactors, front-end loaders, bulldozers, and similar equipment) must have an operable horn. Audible back up warning devices must be in place and in good operating condition on equipment, that has an obstructed view to the rear. Other applicable specific requirements as found in [29 CFR 1926 Subpart O](#), Motor Vehicles, Mechanized Equipment and Marine Operations, Article .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 begins. All excavation operations must be done in accordance with the requirements of [29 CFR 1926 Subpart P](#), Excavation, Article .650 through .652 and all appropriate/applicable appendices.

NOTE: There may be additional 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.
- ◆ 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](#).



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- ◆ Handling traffic through and around construction - Temporary roadways and detours must be properly maintained. Use the Traffic Control Plan (TCP) and *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* to check signs, barricades, and flaggers. Flaggers must be trained using a [recognized training course](#).
  - ◆ Construction Sanitation Facilities per OSHA and as defined by 29 CFR 1926.51, “Toilets at construction jobsites,” states the Prime Contractor shall provide sanitation facilities as per below.

Required Sanitation Facilities:

Number of employees -

- 20 or less – minimum number of facilities
  - 20 or more – 1 toilet seat and 1 urinal per 40 workers
  - 200 or more – 1 toilet seat and 1 urinal per 50 workers
- ◆ The above table is not applicable to mobile crews having transportation readily available to nearby toilet facilities.
  - ◆ Sanitary provisions are the responsibility of the prime Contractor unless responsibility is delegated to the subcontractor through the subcontract.

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

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## Section 3 — Violations

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

### Definitions

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

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

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

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

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

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

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

Report all incidents to OCC. Reporting other types of near-miss events to OCC is encouraged but not mandatory.

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

### Incident Reporting Requirements

Take these steps when a violation occurs:

1. Inform the superintendent at once so that immediate corrective action may be taken.
2. Document all discussions and interactions and in DWR or a follow up email.

3. For an 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, including notification that without correction, the U. S. Department of Labor (USDOL) will be notified.

Provide OCC with a copy of all written notices sent to the contractor. OCC will notify any other agencies as required. Contact OCC for guidance or additional information as needed.

Notify the CST, Construction Support Section (CST-CS) of all work suspensions due to serious violations, or if a contractor refuses to take corrective action. Either event may require a request for a review by OSHA. Provide notification to OSHA if determined necessary. Contact OCC for guidance or additional information as needed.

### **Investigations by Other Agencies**

Cooperate with the FHWA, USDOL and other agencies.

## Section 4 — References

### Section 1 – Federal Safety and Health Laws

- ◆ Code of Federal Regulations
  - [29 CFR Part 1926](#), “Safety and Health Regulations for Construction”
  - [29 CFR Part 1910](#), “Occupational Safety and Health Standards”

### Section 2 – Contract Requirements

- ◆ Code of Federal Regulations
  - [29 CFR Part 1926](#), “Safety and Health Regulations for Construction”

### Section 3 – Violations

- ◆ Code of Federal Regulations
  - [29 CFR Part 1926](#), “Safety and Health Regulations for Construction”

# Chapter 14 — Small Business Programs

## Contents:

[Section 1 — Program Overview](#)

[Section 2 — References](#)

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## Section 1 — Program Overview

### General

The Civil Rights Division (CIV) is responsible for the oversight of the Department's Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) programs.

This part seeks to achieve several objectives:

- ◆ To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs
- ◆ To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts
- ◆ To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law
- ◆ To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs
- ◆ To help remove barriers to the participation of DBEs in DOT-assisted contracts
- ◆ To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients
- ◆ To assist the development of firms that can compete successfully in the marketplace outside the DBE program and
- ◆ To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Contact CIV at (512) 416-4700 for more information regarding these programs.

### Disadvantaged Business Enterprise (DBE) Program

The DBE Program as authorized by [Title 49, Code of Federal Regulations \(CFR\), Part 26](#) ensures nondiscrimination in the award and administration of United States Department of Transportation (USDOT) contracts. The Disadvantage Business Enterprise (DBE) Program is a legislatively mandated USDOT program that applies to Federal-aid highway dollars expended on federally-assisted contracts. The USDOT must approve the Department's DBE Program and its annual goals to ensure compliance with all Program requirements.

### Small Business Enterprise (SBE) Program

The Department's SBE Program (as authorized by 43 TAC [§9.300](#) and [SP000-009](#), "Small Business Enterprise in State Funded Projects,") offers small businesses another avenue to maximize their

opportunities of doing business with TxDOT. The Program applies to highway improvement contracts that are funded entirely using state or local funds.

## Resources

DBE Program Compliance Guides are available to assist contractors in complying with the DBE special provisions.

- ◆ [Prime Contractors' Compliance Guide](#)
- ◆ [DBE Contractors' Compliance Guide](#)

The *District DBE Compliance and Monitoring Guide* should be used by district construction staff that have oversight responsibilities specific to the DBE program as outlined in [49 CFR, Part 26](#). The guides contain procedures related to monitoring and enforcement to verify that the work committed to DBEs is actually performed by DBEs and that their payments are consistent with their approved contracts.

- ◆ [District DBE Compliance and Monitoring Guide](#) (for projects let prior to February 2017)
- ◆ [District DBE Compliance and Monitoring Guide](#) (for projects let February 2017 and thereafter)

## Rules and Regulations

The following is a list of the DBE contract regulations and provisions with which contractors must comply.

- ◆ FHWA DBE Regulations [49 CFR, Part 26](#)
- ◆ [Special Provision 000-007](#), “Disadvantaged Business Enterprise in Federal-Aid Contracts” (for projects let prior to February 2017)
- ◆ [Special Provision 000-394](#), “Disadvantaged Business Enterprise in Federal-Aid Contracts” (for projects let February 2017 and thereafter)
- ◆ Prompt Payment is included in the contract through Item 9 of the *Standard Specifications* and covered in Chapter 11 - Section 3 of this manual for further guidance.
- ◆ The DBE goal applies to the final value of the original contract requirements. The DBE goal also applies to all change orders which increase or decrease the final value of the contract. Refer to Chapter 1, Section 1 in the Prime Contractors Compliance Guide.

## Section 2 — References

### Section 1 – Program Overview

- ◆ Texas Administrative Code
  - Title 43, [Chapter 9](#), Subchapters J-L
  - Rule [§9.300](#), “Policy”
- ◆ Code of Federal Regulations
  - [49 CFR, Part 26](#), “Participation of Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”



# Chapter 15 — Contractor Workforce

## Contents:

[Section 1 — EEO Requirements](#)

[Section 2 — Labor Requirements](#)

[Section 3 — On-the-Job Training](#)

[Section 4 — References](#)

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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](#), “Construction Contract Equal Opportunity Compliance Procedures”.

Every federal-aid contractor, subcontractor, and material supplier must perform all employment-related activities in full accordance with applicable equal employment opportunity (EEO) statutes, executive orders, regulations, and policies enunciated thereunder, to ensure equal employment opportunity and the treatment of employees without regard to race, color, sex, age, disability, religion, or national origin.

### Contract Provisions

As a recipient of federal funds, the Department must ensure that Federal Highway Administration (FHWA) equal employment 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. (Per [Executive Order 11246](#) the Department has no authority to enforce or ensure compliance of the Federal Contract Compliance requirements.)

A contractor’s minimum equal opportunity requirements are set forth in [FHWA Form 1273](#), “Required Contract Provisions, Federal-Aid Construction Contracts.” This is a standard document containing required federal EEO contract provisions and proposal notices required to be physically incorporated in each direct federal and federal-aid highway construction contract and subcontract (at any tier) of \$10,000 or more. When a contractor signs a direct federal or federal-aid contract of \$10,000 or more, the non-discrimination provisions in Form FHWA-1273 constitutes the contractor’s EEO/Affirmative Action Plan standards for that contract.

### General

Reference the Civil Rights Division (CIV) [Technical Assistance Guide for Federal Construction Contractors](#) or contact CIV at (512) 416-4700 for more information regarding contractor federal EEO requirements.

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## Section 2 — Labor Requirements

Contractors must be familiar with and comply with all laws, ordinances, and regulations regarding labor-related requirements that affect the contract. Monitor the contractor and subcontractor to ensure compliance with contract labor provisions.

### Labor Laws

Following are applicable labor-related laws and descriptions of each.

#### Contract Work Hours and Safety Standards Act ([29 CFR Part 5](#))

The Contract Work Hours and Safety Standards Act is a federal law that:

- ◆ applies to all construction contracts
- ◆ provides that any laborer, worker, mechanic, watchman or guard must be paid on the basis of a 40-hr. 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
- ◆ contractor's or subcontractors furnishing supplies and equipment when such operations are located off the project site
- ◆ 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, is a federal law, that provides regulations concerning the construction and repair of public works contracts and subcontracts exceeding \$2,000 and financed in whole or in part by federal funds. A portion of the Act concerns the payment of wages to the contractor and subcontractor employees. The Act authorizes the U.S. Department of Labor (USDOL) to develop regulations, including payroll records and submission requirements.

The Copeland Anti-Kickback Act permits certain payroll deductions, such as:

- ◆ bona fide fringe benefits
- ◆ any deduction made in compliance with the requirements of federal, state, or local law, such as income and social security taxes
- ◆ any deduction required by court process, such as child support and
- ◆ any deduction for the cost of safety equipment for the employee's own protection such as safety glasses provided the cost is nominal and the employer is not otherwise required to furnish the equipment pursuant to law.

The Act also permits certain payroll deductions from the wages of laborers and mechanics when the employee's written consent is provided, such as life insurance, hospitalization and medical insurance, retirement plan, vacation plan, safety shoes, and safety hats. Other deductions require a written application and approval of the USDOL. For example, gasoline and uniforms that are required by the employer as a condition of employment.

No monitoring responsibilities are required for certain types of personnel, contracts, and employers, such as:

- ◆ supervisory and office employees
- ◆ contractor's or subcontractors furnishing supplies and equipment when such operations are located off the project site
- ◆ 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. 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 to laborers and mechanics when included in the U. S. Secretary of Labor's prevailing minimum wage rate decision and
- ◆ requires that the contractor post the prevailing minimum wage rates at the job site.

The Davis-Bacon Act does **not** apply to:

- ◆ contractor's supervisory and office employees
- ◆ contractors or subcontractors or suppliers furnishing supplies and equipment when such operations are located off-site of the project
- ◆ contracts with a political subdivision or

- ◆ contracts or work agreements for construction work or services with railroads or public utilities when the work or services is done by their employees.

### **Fair Labor Standards Act ([29 CFR Chapter V](#))**

The Fair Labor Standards Act (FLSA), a federal Act, applies to all contracts and requires contractor and subcontractor compliance with USDOL regulations.

Many of the requirements contained in this Act mirror those in the previous laws described. FLSA does, however, provide additional requirements regarding child labor, as follows.

- ◆ Children of any age are generally permitted to work for businesses entirely owned by their parents, **EXCEPT** those under 16 years of age may not be employed in mining or manufacturing, and **NO ONE** under 18 years of age may be employed in any occupation determined to be hazardous by the U. S. Secretary of Labor.
- ◆ Children under 14 years of age may not be employed on Department contracts.
- ◆ Young persons 14 and 15 years of age may be employed in non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.
- ◆ Young persons 16 and 17 years of age may work an unlimited number of hours in any occupation other than those determined by the U. S. Secretary of Labor to be hazardous in nature.
- ◆ Individuals 18 years of age and older are no longer subject to the Child Labor Provisions of the FLSA.

The FLSA establishes an 18-year minimum age for all nonagricultural occupations determined to be hazardous in nature by the U. S. Secretary of Labor. The following are considered hazardous occupations.

- ◆ Manufacturing or storing explosives
- ◆ Driving a motor vehicle or work as an outside helper on motor vehicles
- ◆ Mining
- ◆ Logging and sawmilling
- ◆ Power-driven woodworking machines\*
- ◆ Exposure to radioactive substances and ionizing radiation
- ◆ Power-driven hoisting apparatus
- ◆ Power-driven metal-forming, punching and shearing machines\*
- ◆ Power-driven meat-processing machines, slaughtering and meat packing plants\*
- ◆ Power-driven bakery machines
- ◆ Power-driven paper-products machines\*

- ◆ Manufacturing of brick, tile, and related products
- ◆ Power-driven circular saws, band saws, and guillotine shears\*
- ◆ Wrecking, demolition, and ship-breaking operations
- ◆ Roofing operations\*
- ◆ Trenching and excavation operations\*

\* Limited exemption is provided for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.

Additional detailed information may be obtained from the USDOL website regarding FLSA Child Labor Provisions.

### **Prevailing Wage Rates (Title 10, Texas Government Code, Chapter 2258)**

[Title 10, Chapter 2258](#) of the Texas Government Code requires payment of prevailing wage rates for each craft needed to execute a public works contract on behalf of the State of Texas. This statute mirrors the federal Davis-Bacon Act and may be referred to as a state-mandated “little Davis-Bacon Act.” This statute:

- ◆ sets a prevailing minimum wage rate for various labor classifications predetermined by the Secretary of Labor to be paid to laborers and mechanics, and
- ◆ requires the contractor and all subcontractors keep, or cause to be kept, copies of weekly payrolls for review for a period of 3 years from the date of the completion of the contract.

### **Contract Labor Requirements**

At the preconstruction meeting, advise the contractor of their contract labor requirements and obligations:

- ◆ All mechanics and laborers working on a TxDOT construction project must be paid at least once a week.
- ◆ Mechanics and laborers must be paid at least the minimum prevailing wage as shown in the contract for the work classifications being performed (Mechanics and laborers performing in more than one classification must be paid at the rate specified for each classification for the time actually worked in each.)
- ◆ The prevailing wage rates applicable to the contract must be posted at the project site where they can easily be seen by all employees.
- ◆ If an employee is performing in a work classification that does not appear in the prevailing wage rate, the contractor must submit [Form CST-C-1](#), “Additional Classification and Wage Rate Request,” to the Construction Division by emailing [CST\\_LaborCompliance@txdot.gov](mailto:CST_LaborCompliance@txdot.gov).

- ◆ Contractors must submit weekly certified payrolls listing the wages paid to each employee. Effective with projects let August 2017, contractors must use LCPTracker, the Department’s certified payroll system. The weekly certified payrolls must be submitted to the appropriate Area Engineer’s office within 7 calendar days after the end of the payroll period. The chart “Subcontracting and Payroll Requirements” illustrates when payroll records are required and when a firm must be approved as subcontractor.
- ◆ All weekly certified payroll records must be retained for a period of 3 years from the contract completion date. These payroll records must be made available at all times for inspection by the Department, any authorized state governmental investigating or state auditing agency, and authorized representatives of the USDOL.
- ◆ Only the following payroll deductions are permissible without prior approval from the USDOL (For more detailed information, please refer to [29 CFR Part 3.5](#).)
  - Deductions made in compliance with federal, state or local law (i.e., federal or state withholding income taxes, and federal social security taxes)
  - Deductions of sums previously paid an employee (prepayment of wages), but only if such deduction is made without discount or interest
  - Deductions of amounts required by court order
  - Deductions authorized by the employee that constitute a contribution for the purpose of providing medical or hospital care; pensions or annuities on retirement; death benefits; or compensation for injuries, illness, accidents, sickness, or disability (or similar payments) for the benefit of the employee. These deductions are permissible provided they are not otherwise prohibited by law and are included in a bona fide collective bargaining agreement between the contractor and subcontractor and its employees or are pre-approved by the employee and serve the convenience or interest of the employee. In addition, the contractor and subcontractor may not profit from or otherwise receive benefits (e.g., commissions and dividends) for any employee payroll deductions.
  - Deductions contributing toward the purchase of U.S. Defense Stamps and Bonds when voluntarily authorized by the employee
  - Deductions requested by the employee to enable repayment of loans or to purchase shares in credit unions
  - Deductions voluntarily authorized by the employee for contributions to governmental or quasi-governmental agencies (e.g., American Red Cross)
  - Deductions voluntarily authorized by the employee for contributions to Community Chests, United Givers funds, and similar charitable organizations
  - Any deductions to pay regular union initiation fees and membership dues, provided that a collective bargaining agreement exists between the contractor and subcontractor and its employees, and the deductions are not otherwise prohibited by law
  - Deduction for the “reasonable cost” of reimbursement for board, lodging, or other facilities meeting the requirements of the FLSA (refer to [29 CFR Part 531](#).)

- Deduction for the cost of nominal value safety equipment (e.g., hard hats, safety shoes, safety glasses, and safety gloves), provided that such equipment is purchased by the employee as their own property for personal protection in work. This deduction is permissible provided the deduction is only for the actual cost of the safety equipment, and such deduction is provided for in a bona fide collective bargaining agreement between the contractor and subcontractor and its employees or voluntarily consented to by the employee in writing.
- ◆ All payment of wages must be made by cash or negotiable instruments payable on demand.
- ◆ Payments of fringe benefits are limited to those benefits as stated in the contract wage determination. Fringe benefits not included in the contract wage determination must be paid as an hourly cash equivalent.
- ◆ Employees who work in excess of 40 hrs. in any given workweek must be paid at a rate of 1-1/2 times their regular rate for all hours worked in excess of 40 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 compliance with labor requirements as listed in “Contractor Labor Responsibilities,” above. Ensure that the contract prevailing wage rates are posted on the work site in an area accessible to all contractor and subcontractor employees.

The names of truck owner-operators are to appear on the contractor’s weekly payroll under the heading, “Truck Owner-Operator.” No other information is required.

Recommend the use of the standard job classifications contained in the booklet [Standard Job Classifications and Descriptions for Highway, Heavy, Utilities and Industrial Construction in Texas](#) for the contractor’s and subcontractor’s payrolls. The contractor may use other code numbers or abbreviations on the payroll forms, provided the contractor attaches a list of the code numbers or abbreviations with the corresponding title classification to each payroll.

When no work is performed, obtain from the contractor a statement of compliance with the statement “No work done this week.” When no work is performed for long periods of time, the statement “No work until further notice” should be shown, and weekly statements are not required.



## Additional Labor Classifications

When the contract wage schedule does not include a job classification needed to complete the work on the contract, the contractor must submit [Form CST-C-1](#), “Additional Classification and Wage Rate Request,” to the Construction Division (CST) for approval by emailing [CST\\_LaborCompliance@txdot.gov](mailto:CST_LaborCompliance@txdot.gov).

## Labor Interviews

For federally funded projects, conduct at least three employee labor interviews for each project per quarter to determine if the contractor and subcontractors are in compliance with labor laws use Form 2220, “Labor Standards Review,” for the labor interviews. The quarter will be based on a calendar year starting January 1st per the recommendation of the Federal Highway Administration (FHWA). Randomly select employees to be interviewed.

Inform the contractor when payroll errors are found. Refer to the following for guidance in resolving payroll errors.

Payroll Error Problems and Resolution:

- ◆ If the payrolls do not match interview information, then notify the contractor to correct the problem.
- ◆ If the contractor does not correct the problem, then notify the district office.

Contact CST for additional guidance in conducting wage dispute investigations.

## Payroll Review

For federally funded projects, review at least 10% of all payrolls for each contract. The use of discretion in determining the composition of this 10% is left to the AE. Verify that the payrolls submitted include the following information for each employee.

- ◆ Name
- ◆ Unique Employee ID (Individual Identity number)
- ◆ Address
- ◆ Classification
- ◆ Rates of pay
- ◆ Daily and weekly number of hours worked
- ◆ Deductions made
- ◆ Actual wages paid

NOTE: Employee’s full name, unique employee identification number, and address need only appear on the first payroll in which the employee’s name appears.

Ensure that legal holiday work is paid at the regular prevailing per diem, wage rate, and overtime pay for actual hours worked in excess of 40 hrs. per workweek is compensated at a rate not less than 1-1/2 times the basic rate of pay.

Review selected payrolls to ensure that employees are compensated at least the appropriate prevailing minimum wage for the actual work performed. Document in the project file the review results, review date and reviewer name. Bring any discrepancies or questionable wage rates to the attention of the contractor for explanation or correction. Bring any contractor failures to correct or adequately address deficiencies and requests for information by the contractor to the attention of the district office. If the contractor still does not address identified issues, request that the Financial Management Division (FIN) withhold the monthly estimates. Once the problem is corrected, provide notification to FIN to resume monthly estimates.

For payrolls submitted in LCPTracker:

- ◆ ensure the correct number of hours are reported,
- ◆ verify that workers on multiple projects are accurately reported on all projects,
- ◆ ensure payroll submitted applies to the correct project, and
- ◆ identify subcontractors on the project during a time period using diary recordings and verify their payrolls were submitted.

### **Semiannual Labor Compliance Enforcement Report** (federally funded projects only)

Twice annually, CST will send a request and instructions for completing [Form FHWA 1494](#), “Semiannual Labor Compliance Enforcement Report,” to the districts. Submit completed forms to [CST\\_LaborCompliance@txdot.gov](mailto:CST_LaborCompliance@txdot.gov) on or before **April 15** and **October 15** of each year. Reporting periods are October 1–March 31 and April 1–September 30 each year. Provide data for questions 4–11. CST personnel will compile district information received to report statewide information for questions 1–3 and will provide the completed report to USDOL and FHWA.

### **Wage Rate Survey**

Wage rate surveys are conducted periodically as mandated by the USDOL and State statutes. These surveys determine applicable prevailing wage rates for the highway construction industry in Texas. CST will extract contractor and subcontractor wage information from the Department's payroll system for this purpose. Payroll accuracy is crucial to improved classification reporting and in determining prevailing wages. Both proper classification and paid hourly wages for the work being performed are key to resulting in an overall decrease of the number of classification

requests that need to be submitted. The frequency of the surveys depends on the Department's survey plan for a given year. Forward questions regarding wage rate surveys to [CST\\_LaborCompliance@txdot.gov](mailto:CST_LaborCompliance@txdot.gov) or call the Construction Division at 512-416-2428.

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## Section 3 — On-the-Job Training

### General

Reference the Civil Rights Division (CIV) On-the-Job Training (OJT) Program webpage or contact CIV at (512) 416-4700 for more information regarding the [OJT Program](#).

### Procedure

The Department has established an On-the-Job Training (OJT) Program in accordance with [23 CFR Part 230, Subpart A](#). It is TxDOT's policy to require full utilization of all available training and skill improvement opportunities to assure the increased participation of minority group, female, and disadvantaged individuals in all phases of the highway construction industry.

Under 23 CFR 230 and [23 USC 140](#), the Department has the authority to conduct contractor compliance reviews of contractors to ensure compliance with the Equal Employment Opportunity (EEO) contract provisions and the implementation of special requirements for the provision of OJT training ([23 CFR 230.111](#)). A Contractor's failure to comply with the requirements of OJT special provisions will constitute a material breach of the contract.

TxDOT's CIV will notify every contractor selected for participation in the program at the beginning of each calendar year and advise them of the number of trainees they are expected to support. Participating contractors must enroll, train and graduate a number of trainees sufficient to meet their assigned annual trainee goal.

### Contract Provisions

Special Provision [000-006](#) "On-the-Job Training Program," is included in all TxDOT federal-aid construction contract proposals effective with the January 2014 state letting.

### Diversity Management System

For projects with annual goals, Contractors must submit all OJT information through the Diversity Management System (DMS). OJT progress reports should be submitted monthly, on the 10th of the following month through DMS.

Per the [Federal OJT Manual](#):

Upon submission of the monthly reports, compliance staff in the AO will verify the training hours and wage rates against certified payroll for accuracy. Certified payroll must reflect the trainee's training classification and the actual number of hours of training for that payroll period.

District staff will conduct labor interviews and wage rate monitoring utilizing [Form 2220](#), "Labor Standards Review." At least one interview per trainee should be conducted during their training period to verify training status and/or progress toward completing the training program. A copy of the completed form will be uploaded to the trainee record in DMS.

For reimbursement, district personnel can either add a detail number during contract activation or by change order to pay contractors. Reimbursement is allowed only on federal-aid projects where the total hours to be reimbursed have been verified through a review of certified payrolls, and accurately reflect the total hours of actual training. The contractor will not be reimbursed if there was a lack of good faith effort on their part in meeting the requirements of the program.

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## Section 4 — References

### Section 1 – EEO Requirements

- ◆ FHWA Core Curriculum
  - [23 CFR, Part 230, Subpart D](#), “Construction Contract Equal Opportunity Compliance Procedures”

### Section 2 – Labor Requirements

- ◆ FHWA Core Curriculum
  - [40 U.S.C. 3704](#), “Health and Safety Standards in Building Trades and Construction Industry”
  - [29 CFR §5.12\(a\)\(1\)](#), “Davis-Bacon and Related Acts Provisions”
  - [29 CFR, Part 5](#), “Contract Work Hours and Safety Standards Act”
- ◆ Government Code
  - [Chapter 2258](#), “Prevailing Wage Rates”
- ◆ Code of Federal Regulations
  - [29 CFR, Subtitle A](#), Parts 1, 3, 5, 6, 7, 531, and 778

### Section 3 – On-the-Job Training

- ◆ United States Code
  - [23 U.S.C. 140](#), “Nondiscrimination”
- ◆ Code of Federal Regulations
  - [23 CFR 230, Subpart A](#), “Equal Employment Opportunity on Federal and Federal Aid Construction Contracts”

# Chapter 16 — FHWA Oversight Requirements

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[Section 8 — References](#)

## Section 1 — Background

On May 21, 2015, the U.S. Department of Transportation – Federal Highway Administration (FHWA) and the Texas Department of Transportation (TxDOT) signed the [Stewardship and Oversight Agreement on Project Assumption and Program Oversight \(S&O Agreement\)](#). The intent and purpose of this agreement is to document the roles and responsibilities of the FHWA’s Texas Division Office (FHWA or Division) and the Texas Department of Transportation (the Department) with respect to project approvals and related responsibilities, and to document the methods of oversight that will be used to efficiently and effectively deliver the Federal-Aid Highway Program (FAHP). The agreement includes program and project responsibilities, governing Code of Federal Regulations (CFR) and United States Code (USC) titles, and funding and monitoring requirements detailing the delegation and acceptance of oversight responsibilities that will meet or exceed Federal regulations on all Federal-Aid projects. (See S&O Agreement, Attachments A and B.)

The Department assumes full responsibility for all Title 23 approval actions for project levels from design through construction on all federal-aid projects except as modified by FHWA’s risk-based assessment for projects in any given FHWA fiscal year (FY). A fiscal year is defined as beginning in October of a current year through September of the subsequent fiscal year (October 1 to September 30). The State’s compliance agreement is specified in detail in the Department’s manuals. The applicable agreements, policies, manuals, and reports for each Program Area are listed in the S&O Agreement, Attachment C.

One of the main components of the Risk-Based Project Stewardship and Oversight are projects classified as Texas Division Involved Projects (TxDIP), formerly known as Projects of Division Interest (PoDI). In short, TxDIPs may have an elevated risk in one or more core functions (as defined in S&O Agreement, Attachment D), and FHWA has made a risk-based decision to retain project approval actions or conduct S & O activities for the project as provided for in [23 USC 106](#). FHWA develops a TxDIP Plan for each project based on the perceived risks and conducts oversight activities. In addition to TxDIPs, FHWA also administers the Compliance Assessment Program (CAP) through reviews to evaluate joint risk assessments for various project functions. These are usually desk reviews wherein FHWA will request copies of various project record documents. FHWA representatives may also request an on-site project visit as part of a CAP review. The FHWA representatives will review the requested project record documents for compliance with regulations and policies and issue a report of findings. All federal-aid projects are subject to CAP reviews, including local government projects that have federal funding.

### Basic Federal-Aid Project Checklist (Construction and Civil Rights Core Functions)

- ◆ Final Environmental Clearance – Required for all federal-aid projects. Work closely with District environmental staff, Environmental Affairs Division (ENV), and the District Environmental Quality (DEQC) Coordinator for total compliance with federal regulations.



- ◆ Material Deficiencies Clearance – Required for all federal-aid projects. Work closely with Area Office (AO) Record Keeper, the materials lab, and the District Construction Office (DCO) Auditor for total compliance with federal regulations.
- ◆ MAT Certification – Required for all federal-aid projects. The Area Engineer (AE) or Director of Construction (DOC) must submit a “[Materials Certification Letter](#)”(internal access only) at final acceptance of the project. Any material represented by an acceptance test that does not meet the criteria contained in the plans and specifications is considered an exception. Exceptions must be listed in the materials certification letter. For projects with federal-aid funding, submit the materials certification letter to [MTD\\_MATERIALS\\_CERT@txdot.gov](mailto:MTD_MATERIALS_CERT@txdot.gov)
- ◆ Refer to the [Guide Schedule](#) and [Quality Assurance Program](#) (QAP) Design-Bid Build (DBB) Projects for more information.
- ◆ Final Labor Issues Clearance – Required for all projects. Work closely with the contractor, AO Record Keeper, and the District Disadvantaged Business Enterprise (DBE)/Historically Underutilized Business (HUB) coordinator for total compliance of federal labor- related issues.
- ◆ Final CIV Clearance – Required for all projects if there is a DBE goal.
- ◆ Final Auditor Clearance – Required for all projects. Work closely with the DCO Auditor for total compliance of federal requirements.
- ◆ Interim Project Reviews (30%, 60%, 90% completion based on dollar value) – Required for all federal-aid projects. Consist of informal field inspections and audits (coordinate with applicable DCO Auditor) that assist the AO with interim evaluations of project compliance with all federal regulations and cover an array of requirements. (See S&O Agreement, Attachment B).
- ◆ Final Project Review – Required for all federal-aid projects. Consists of formal field inspection that covers an array of requirements. (See S&O Agreement, Attachment A.)
- ◆ Change Orders (CO’s) – All change orders to be internally reviewed and approved by the department for federal participation.
- ◆ Buy America – Ensure compliance with all Buy America requirements as stated in the contract. Refer to Chapter 6, Section 3 for additional information.

Refer to the FHWA [Contract Administration Core Curriculum Manual](#) for additional detail regarding federal requirements.

## Section 2 — Required Contract Provisions – Federal-Aid Construction Projects

### Form FHWA-1273 and Special Provisions

Form FHWA-1273 and specific Special Provisions must be physically incorporated in each construction contract, all subcontracts, and lower-tier subcontracts compensated with federal-aid funds.

- ◆ [Form FHWA-1273](#), “Required Contract Provisions – Federal-Aid Construction Contracts,”
- ◆ [Special Provision 000-003](#), “Certification of Nondiscrimination in Employment” – include in all subcontracts, at any tier, greater than \$10,000.00,
- ◆ [Special Provision 000-004](#), “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)” – include in all subcontracts, at any tier, greater than \$10,000.00,
- ◆ [Special Provision 000-005](#), “Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)” – include in all subcontracts, at any tier, greater than \$10,000.00,
- ◆ [Special Provision 000-002](#), “Nondiscrimination” (Include provisions of Articles 3.1 – 3.6 in all subcontracts and agreements for materials),
- ◆ [Special Provision 000-241](#), “Cargo Preference Act Requirements in Federal-Aid Contracts” – include in all subcontracts, and
- ◆ [Special Provision 000-394](#), “Disadvantaged Business Enterprise in Federal-Aid Contract” – include in any subcontract

### Major Project Requirements

The district typically begins preparation of a project management plan (PMP) and initial finance plan (IFP) for projects that receive federal financial assistance and are designated as Federal Highway Administration (FHWA) “Major Projects” ( $\geq$  \$500M total project cost). Other Federal-Aid projects between \$100M to \$500M total project cost require IFPs and corresponding annual updates, as well as Operationally Independent and Non-Concurrent construction projects. The Department’s procurement team may also prepare the PMP and IFP if it has not been prepared by the district.

Once a PMP and IFP have been prepared and have received FHWA approval, comply with PMP and IFP guidelines and review and perform Financial Plan Annual Updates (FPAUs) and updates to the PMP as needed.

PMP and IFP requirements for FHWA Major Projects can be found on the FHWA website under “Innovative Program Delivery.” Verify that the PMP includes all contract and DB contractor proposal commitments and expectations to assist with oversight and auditing. Reference the [Design-Build Contract Administration Manual; Procedure 125](#). See Chapter 17 for a copy of Procedure 125 and FHWA’s [“Major Project Financial Plan Guidance”](#).

## Section 3 — Interim Project Review Guide – State and Federal-Aid Projects

All projects are to be inspected/reviewed on a regular basis to ensure compliance with the contract requirements and that the work is performed according to the plans and specifications. District offices should document their project record reviews for project records compliance at 30%/60%/90% completion (based on project dollar values).

### Basic Project Compliance Categories and Required Acceptance Standards

- ◆ Contractor Bulletin Board –
  - Accessible, readable, postings in accordance with current federal requirements
- ◆ Traffic Control Plan (TCP)/Barricades –
  - Set up according to project TCP, Barricades and Construction (BC), and Work Zone (WZ) standard sheets.
  - Signs & barricades in compliance with current Compliant Work Zone Traffic Control Device (CWZTCD) list
  - Clean, plumb, none to slight damage, good reflectivity, command attention
- ◆ Construction Items –
  - Contractor's work is in compliance with plans and specifications and good quality
- ◆ Inspections –
  - Quantity of inspection staff is adequate for work underway.
  - Inspectors are knowledgeable of the applicable plans and specification requirements for the work being observed.
  - Testing equipment and inspection staff certifications and testing proficiencies are up to date
  - Adequate testing is occurring to ensure compliance with the QAP and Guide Schedule requirements and quality of the work.
- ◆ Materials –
  - All materials incorporated into the project are from qualified manufacturers/producers listed on the appropriate Material Producer List (MPL)
  - Inspectors ensure materials delivered to the project are manufactured according to the relevant plans and specifications requirements and are free of defects and damage.
  - Adequate supporting documentation is available to provide assurance of Buy America compliance for all predominantly steel or iron products.
- ◆ Progress –
  - Monthly schedule updates are being sent by the contractor.

- Work activities observed are according to current 2-3 week look-ahead schedule.
- Overall progress is on or ahead of the approved project schedule.
- If work is behind schedule, the AO has requested the contractor submit a make-up schedule that shows how the contractor will complete the work within the contract time.
- ◆ Storm Water Pollution Prevention Plan (SW3P) coordinate with DEQC –
  - Copies of required certifications and letters are in the project files.
  - Notice of Intent (NOI), if required, is available in the SWP3 binder and the appropriate construction site notice is posted.
  - Stage-Gate Checklist is completed, and deficiencies corrected.
  - SWP3 log is up to date.
  - Reports are complete.
  - Noted deficiencies show correction date.
  - No missing reports.
  - Installed Best Management Practices (BMPs) are emplaced correctly and noted on SWP3 sheets with installation/removal dates.
- ◆ DBE (coordinate with district DBE coordinator) –
  - Required DBE reporting and Prompt Payment reports are up to date.
- ◆ Labor Compliance –
  - Labor Interviews are completed, and payrolls are reviewed.
  - Commercially Useful Functions (CUFs) are performed.
- ◆ AO and DCO Audits –
  - Ensure applicable audit documentation is in the project files.
  - Coordinate with AO record keeper and DCO auditors.

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## Section 4 — Change Orders

COs must be reviewed for all federal-aid projects. The DCO assists the AO with the CO description and reason coding, if necessary, and coordinates with the District or Construction Division (CST) FHWA Liaison to confirm federal participation. The AE and /or DCO also coordinates with the District Transportation Planning and Development (TP&D) Financial Manager to procure funding for COs.

### Federal-Aid Projects

A TxDIPs S&O Plans are project specific and will dictate the requirements for TxDIP Change Orders. All TxDIP projects and Statewide Management have a [S&O \(Stewardship and Oversight\) plan](#).

S&O Plans may state the coordination, communication and review/approval requirements for COs on TxDIP projects on Major, Minor, or all change orders. If S&O states approval/review contact your FHWA Area Engineer. FHWA does not require notification, review or approval of change orders on TxDIP projects unless specifically stated in the S&O Plan.

COs on TxDIPs are categorized as either major or minor, as defined in the table below. Confirm verbal approval with written correspondence and retain in project files.

Major/Minor Change Orders for FHWA Oversight Projects:

- ◆ Major –
  - Reduces the geometric design or structural capacity below project design criteria (any reduction in geometric design that would normally have required a design exception)
  - Increases the cost of the contract by 25% of the original cost or by \$300,000, whichever is less.
  - Changes project limits
  - Any change in the TCP that reduces the capacity as shown on the plans for the through traffic or the traffic on major cross streets.
  - Settlement of a dispute
  - Changes the access on a controlled access highway.
  - Waives or modifies contract specification requirements.
- ◆ Minor –
  - Everything not described above.

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## Non-TxDIP Federal-Aid Projects

TxDOT assumes all project oversight responsibilities for all Federal-Funded projects unless otherwise stated in the TxDIP S&O Plan, or 2015 Stewardship and Oversight agreement. Use the FHWA Contract Administration Core Curriculum (CACC), related federal regulations, and Department policy to determine federal participation for TEs and COs. Approve CO work on Federal-Aid projects in accordance with the CO Approval Policy given in Chapter 7.

### Federal Participation

The Federal Project Authorization and Agreement (FPAA) must reflect accurate project limits. For COs that change project limits, include detailed drawings showing the new project limits.

Federal-aid funds may be used to participate in COs that all:

- ◆ in conformance with federal and state laws
- ◆ allowed by the CACC and federal regulation.
- ◆ in compliance with an FHWA policy or procedure.

Federal-aid participation may be granted if all:

- ◆ the work on the CO did not adversely affect the public.
- ◆ the Department acted in good faith and did not willfully violate a federal requirement.
- ◆ the work was performed in full compliance with federal and state laws.
- ◆ the federal participation does not exceed the cost that would have been incurred had full compliance been achieved.
- ◆ 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 and/or involves a significant change in scope, unless the additional work is an emergency, is to provide a transition at the existing project limits, and is covered by a CST-reviewed and concurrence provided Public Interest Finding (PIF) determination.
- ◆ routine maintenance items that are the responsibility of either the contractor or the Department. Examples: graffiti removal, culvert cleaning, worksite maintenance, etc.

Examples of individual contract items not eligible for federal participation are:

- ◆ work performed by state forces or other “non-competitively bid” work.

- ◆ significant changes in contract scope, unless covered under an approved Public Interest Finding (PIF) determination.
- ◆ completed work that is determined not to be in substantial compliance with the contract.
- ◆ materials that do not meet specifications (Federal participation may be allowed for the reduced price of materials determined to serve the intended purpose of the contract. Accept for federal participation minor deviations at the full price of materials.)
- ◆ additional time or cost caused by un-acquired Right of Way (ROW) or incomplete utility adjustments.
- ◆ purchase of unused contractor materials placed in state stock (If the material is subsequently used on another federal-aid project, charge the material cost to that project.);
- ◆ negotiated prices that are determined to be unjustified.
- ◆ work done for the convenience of the contractor (may be eligible for participation depending on specifics and adequate justification)
- ◆ unaudited claim settlements, unless the audit requirement is waived in writing.
- ◆ contract work paid through another means, such as Incidental Construction.
- ◆ anything involving rework.
- ◆ State-furnished materials not included in the original contract and not supported by a PIF.

### Change Order Reason Codes

Change order checklist Form 2146 provides a key list of items to consider when developing a change order and includes a list of reason codes to choose from, both federally participating and non-participating.

The following shows CO reason codes that have been classified as mandatory federally non-participating:

1. Error or Omission –
  - 1D Design error or omission that resulted in delay, rework or inefficiencies (TxDOT Design)
  - 1E Design error or omission that resulted in delay, rework or inefficiencies (Consultant Design)
2. TxDOT Convenience –
  - 3A Dispute resolution
  - 3K Addition stock account or material supplied by TxDOT
3. Third-Party Accommodation –
  - 4A Failure 3rd party to meet commitment.



- 4B 3rd Party request for additional work
  - 4D 3rd Party accommodation
4. ROW and Utilities –
- 6A ROW not clear 3rd party responsible
  - 6B ROW not clear TxDOT responsible
  - 6E Untimely ROW
  - 6F Joint bid utilities
  - 6G Known unadjusted utilities
  - 6H Unknown unadjusted utilities

These are indicated with an asterisk by the reason code number on Form 2146. Other reason codes may be associated with federally non-participating change orders depending on the circumstances for the change order.

### **Extending or Adding Project Limits to the Contract and/or Significant Change in Contract Scope**

Submit to CST for review and concurrence any CO, with accompanying PIF, that extends or adds project limits and/or that includes any significant change in contract scope that does not meet the criteria given in Chapter 7. Once reviewed and concurrence received, the District will complete the CO review and Approval Process. Include a note in the CO explanation regarding PIF submission and concurrence received.

Communicate with FHWA regarding the proposed changes for TxDIP.

### **Exception for Allowing Federal Participation Related to Added Limits and Significant Changes in Contract Scope**

An exception may be made when CST determines the added limits and/or change in contract scope CO is in the public interest. To seek the exception, coordinate with CST, in advance, and submit a [Public Interest Finding](#) (internal access only) request with justification along with the CO to the CST Division Director. Adding locations for District wide projects such as district wide seal coat project do not require a Public Interest Funding (PIF) concurrence.

### **Submission Requirements Related to Added Limits and/or Significant Change in Contract Scope**

Approval of added limit and/or significant change in contract scope change orders require the following.

- ◆ Statement of environmental clearance status

- ◆ Notice of Intent threshold impacts
- ◆ Texas Department of Licensing and Regulation (TDLR) review for Texas Accessibility Standards (TAS) compliance
- ◆ Explanation of the reason(s) the CO is needed.
- ◆ Justification, such as a description of:
  - emergency work
  - transition end work
  - explanation of cost saving over cost to re-let or
  - discussion of imminent need
- ◆ Request for federal participation:
  - discussion notes on change order coordination, to date, with CST, including the CST contacts and
  - request for Public Interest Finding determination that includes a Cost Effectiveness Determination and
- ◆ Funding source category.

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## Section 5 — Final Federal Program Inspection Guide – TxDOT Federal Program Projects

Schedule the final inspection with the AO project engineer and/or the assigned inspector. Additionally, invite the Engineer of Record (EOR) and other designers (TxDOT or consultant) to attend the final inspection to hear and discuss design issues encountered by the AO project management staff in order to improve future designs.

Once the field review is complete, prepare a final inspection report memo listing the design issues and the construction observations. Send the report memo to the AE, with a copy to the DCO and District Design Engineer. The EOR and associated designers are copied along with the AO project engineer or project manager.

Filed Inspection Review Guide:

1. Overall Quality –
  - Appearance of pavement, striping, concrete work, etc.
2. Construction Items –
  - Constructed in general compliance with plans and specifications.
  - Drainage structures clean and undamaged
3. Roadside Safety –
  - Metal Beam Guard Fence (MBGF), terminal connections, Crash Cushion Attenuators (CCAs), permanent concrete barriers, bridge railing, Safety End Treatment (S.E.T.s.), etc. are constructed and installed according to the plans and specifications and manufacturers' recommendations.
4. Erosion Control/Vegetation Establishment –
  - Soil retention blankets (SRBs), seeding, sod, armoring - concrete riprap, loose rock riprap, gabion baskets and mattresses are all installed according to the plans and specifications.
  - All disturbed areas are stabilized.
  - BMP removal - coordinate with DEQC.
5. Site Clean –
  - All construction debris removed.
  - RFD wire and rock removed to not damage future mowers.
  - Erosion control log netting removed.
  - Contractor's equipment and material storage yard clean and stabilized.

## Section 6 — Final Requirements of Federal-Aid Projects

FHWA requires the below for reconciling of federal participating & non-participating funds. Refer to Chapter 4 for the project records closeout checklist for all items required at closeout.

- ◆ Final Inspection Documentation
- ◆ Final Acceptance to Contractor
- ◆ Material Certification Letter per QAP for DBB (if it is specifically noted in the S&O plan)
- ◆ Reconciliation of Federal Participating & Non-Participating dollars.

### Filed Inspection:

- ◆ DCO receives the Advance Completion Notice from the AO
- ◆ DCO schedules a final project inspection with the AO and EOR
- ◆ Perform the project inspection. Place inspections report/memo in FHWA file folder.

### Final Acceptance to Contractor

When the project is accepted send the Notice of Final Acceptance to the contractor certified mail and email, include in project records. Place accepted dates (final) in critical dates in SiteManager. [Letter Template](#) is available on the Construction Division Crossroads webpage (internal access only).

### Material Certification Letter

Submit completed Material Certification Letters to MTD via email at: [MTD\\_Materials\\_Cert@txdot.gov](mailto:MTD_Materials_Cert@txdot.gov). Refer to Material and Test Divisions [Quality Assurance Program \(QAP\)](#) for Design Bid Build projects for more information.

Districts are no longer required to submit Material Certification Letters directly to FHWA. Instead, MTD uploads all of TxDOT's Material Certification Letters to a SharePoint site where FHWA can access the letters from a single location. In addition, MTD reports on Material Certification Letter data to FHWA as part of TxDOT's annual FHWA Stewardship & Oversight Report.

## **Reconciliation of Federal Participating and Non-Participating Dollars**

Financial Management Division uses SiteManager to reconcile Federal funds. All non-participating days and dollars need to be accounted for.

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## Section 7 — Local Government Projects

The Local Government Projects Program provides guidance and training for local governments, including municipalities, counties, or regional mobility authorities in the development of transportation projects with Department oversight. The program addresses both federal and state requirements but does not address public transportation, aviation, or turnpike projects.

Local governments (LGs) are responsible to ensure all project requirements are met and, if federal funding is involved, are in compliance with advance funding agreement provisions. These projects allow LGs to administer a project and minimize the use of TxDOT resources.

For LG projects with federal-aid funding, the Department provides oversight to comply with federal requirements. The LG Projects Section maintains oversight guidance documents and checklists on the [LG Projects webpage](#).

### Training

All local entities are required to have an individual qualified by the Department in Local Government Project Procedures assigned to each project being performed through an Advanced Funding Agreement (AFA). Through its Local Government Project Procedures (LGPP) Qualification Program, the Department offers a course that trains and qualifies individuals to work on these projects. Anyone working directly on or overseeing local government projects including senior managers, project managers, consultants, and local government employees is encouraged to complete this training. The Department requires all “qualified” persons to successfully complete the LGPP qualification course at least once every three years.

The class takes a total of 12 hours and covers the following topics.

- ◆ Introduction to the qualification program
- ◆ Applicable federal and state laws and regulations
- ◆ Typical TxDOT/local government contract terms
- ◆ The project development process (contract execution through project close-out)
- ◆ Available tools and resources

More information on the training requirements, qualified individuals, training calendar, and training registration form are available on the [LG Project Procedures Training and Qualification webpage](#).

## Resources

- ◆ [\*Local Government Projects Policy Manual\*](#)
- ◆ [\*\*Local Government Projects Toolkit\*\*](#) – provides organized access to rules, regulations and procedures for projects managed by local governments that include federal or state funding provided by the Department. Does not address public transportation, aviation or concessionaire projects.

## Section 8 — References

### Section 1 – Background

- ◆ United States Code
  - [23 U.S.C. 106](#), “Project Approval and Oversight”
- ◆ Code of Federal Regulations
  - [23 CFR §635.410](#), “Buy America Requirements”