



# 2024 Standard Specification Training Seminar



# 2024 Standard Specifications Changes Items 1-10

General Requirements and Covenants



The information presented is a quick comparison between the 2014 and 2024 Standard Specifications Books.

Due to the number of revisions made, not every change is listed. Multiple Items have changes so significant that a quick comparison would not suffice. To familiarize yourself with the Items of the 2024 Standard Specifications Book, you will need to read the Item Specification in its entirety. TxDOT makes no claims, promises or guarantees about the accuracy, completeness, or adequacy of the contents of this presentation and expressly disclaims liability for errors and omissions in the content presented.



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- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Department to participate in the preparation of the plans or specifications on which the bid or Contract is based, ~~or~~
- the Bidder is ineligible to bid on any proposed Contract in accordance with Article 7.15., "Responsibility ~~Damage Claims-~~"
- **the Bidder is prohibited from participating in the Contract because of a decision of the Deputy Executive Director under 43 TAC § 9.24 (relating to Performance Review Committee and Actions),**
- ~~the Bidder failed to attend a mandatory pre-bid conference.~~
- ~~the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project, or~~
- ~~the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to register or participate in the Department of Homeland Security (DHS) E-Verify system as specified in Article 2.15., "Department of Homeland Security (DHS) E-Verify System," is prohibited from rebidding that specific project.~~

Reference 43 TAC § 9.12. "Qualification of Bidders." and § 9.13. "Notice of Letting and Issuance of Bid Forms."

### 4. INTERPRETING ESTIMATED QUANTITIES

The quantities listed ~~in~~ the proposal form are approximate and will be used for the comparison of bids. Payments will be made for the work performed in accordance with the Contract.

### 5. EXAMINING DOCUMENTS AND WORK LOCATIONS

Examine the proposal form, plans, specifications, and specified work locations before submitting a bid for the work. Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for ~~the Department's use of the Department~~ in the preparation of ~~the~~ plans. This information is provided for the Bidder's information only, and the Department makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the data recorded.

## Example from redline document.

- Yellow Highlight = new change.
- Grey highlight = existing Special Provision or Practice.
- Red (no highlight) = grammar change.



- Item 1
  - Added “in Writing” definition.
  - Clarified what is in the MPL.
  - Added Material Contract and Material Suppliers Questionnaire definition.
  - Plans state documents may be digital.
  - Added definition of Repair.
  - Added Definition for Substantial Completion of Work.



## 3. ISSUING PROPOSAL FORMS

The Department will issue a proposal form to a prequalified Bidder if the Engineer's estimate is within that Bidder's available bidding capacity. Request a proposal form electronically from the Department's website. A proposal form printed directly from the Department's website is for informational purposes only and will not be accepted as an official proposal form. In the case of a joint venture, (JV), all joint venture (JV) participants must be prequalified. An equally divided portion of the Engineer's estimate must be within each participant's available bidding capacity.

The Department will not issue a proposal form if one or more of the following apply:

- the Bidder is suspended or debarred by the Commission, or the Department, or any federal agency,
- the Bidder has not fulfilled the requirements for prequalification,
- the Bidder does not have the available bidding capacity,
- the Bidder is prohibited from rebidding a specific proposal form due to a bid error on the original proposal form,
- the Bidder failed to enter into a Contract on the original award,
- the Bidder was defaulted or terminated on the original Contract, unless the Department terminated in the best interest of the State or the public,

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- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Department to participate in the preparation of the plans or specifications on which the bid or Contract is based, or
- the Bidder is ineligible to bid on any proposed Contract in accordance with Article 7.15., "Responsibility (Damage Claims.)"
- the Bidder is prohibited from participating in the Contract because of a decision of the Deputy Executive Director under 43 TAC § 9.24 (relating to Performance Review Committee and Actions),
- (Bidder failed to attend a mandatory pre-bid conference,
- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project, or
- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to register or participate in the Department of Homeland Security (DHS) E-Verify system as specified in Article 2.15., "Department of Homeland Security (DHS) E-Verify System," is prohibited from rebidding that specific project.

Reference 43 TAC § 9.12, "Qualification of Bidders," and § 9.13, "Notice of Letting and Issuance of Bid Forms."

## ■ Issuing Proposal Forms

- Removed Federal debarment and suspension check. This check is being conducted after letting and not at time of issuing proposals.
- Did not attend mandatory pre-bid.

– SP000-659;

- Contractor Evaluations and Performance Review Committee Actions (PRC).

– 002-009;

- DBE requirements at bidding.

– 002-015 (previously 002-011);

- E-Verify requirements



### 6. PREPARING THE BID

Prepare the bid on the proposal form furnished by the Department. Informational proposal forms printed from the Department's website will not be accepted.

Specify a unit price in dollars and cents for each regular item and additive alternate item, or replacement alternate item for which an estimated quantity is given.

When "Working Days" is an ~~item~~, submit the number of working days to be used to complete the Contract or phases of the Contract shown on the plans.

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The Department will not accept an incomplete bid. A bid that has one or more of the deficiencies listed below is ~~co~~nsidered incomplete:

~~the proposal form was not signed,~~

- certifications were not acknowledged,
- a regular item or the additive alternate item ~~are~~s left blank,
- a regular item and the corresponding replacement alternate item are left blank,
- the proposal form submitted had the incorrect number of items, ~~or~~
- the Bidder did not acknowledge all addenda, or

■ additionally, for printed bids:

- the blank spaces for each item as required on the bid form are not filled in by writing in words in ink,
- the bid was not signed in ink in the complete and correct name of the bidder making the bid, and signed by the person or persons authorized to bind the bidder, or
- unit prices were not stated in dollars and cents for each bid item listed on the bid form, except in the case of a regular bid item that has an alternate bid item.

Reference 43 TAC § 9.14, "Submittal of Bid."

- Clarified what constitutes incomplete bid for printed bids:
  - the blank spaces for each item as required on the bid form are not filled in by writing in words in ink,
  - the bid was not signed in ink in the complete and correct name of the bidder making the bid, and signed by the person or persons authorized to bind the bidder, or
  - unit prices were not stated in dollars and cents for each bid item listed on the bid form, except in the case of a regular bid item that has an alternate bid item.



### 7. NONRESPONSIVE BID

The Department will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- the bid was not in the hands of the Letting Official at the time and location specified in the advertisement,
- a ~~bid proposal form~~ was submitted for the same ~~proposal form project~~ by a Bidder or Bidders and one or more of its partners or affiliates, unless the Executive Director has granted an affiliation exception under 43 TAC § 9.12.
- the Bidder was not authorized to receive a proposal form under Article 2.3., "Issuing Proposal Forms";
- the Bidder failed to acknowledge receipt of all addenda issued,
- the proposal form was signed by a person who was not authorized to bind the Bidder or Bidders;
- the proposal guaranty did not comply with the requirements contained in this Item,
- the bid was in a form other than the official proposal form issued by the Department,
- the Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the proposal form,
- the Bidder bid more than the maximum or less than the minimum number of allowable working days shown on the plans when working days was an ~~item~~,
- ~~the Bidder did not attend a specified mandatory pre bid conference, or~~
- ~~a typed proposal form does not contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" on the proposal form.~~
- ~~the Bidder did not meet the requirements of the technical qualification.~~
- ~~the Bidder failed to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)," or~~
- ~~the Bidder failed to participate in the DHS E-Verify system as specified in Article 2.15., "Department of Homeland Security (DHS) E-Verify System."~~

Reference 43 TAC § 9.15. "Acceptance, Rejection, and Reading of Bids."

- Added SP for DBE, E-Verify, and Contractor Performance.
- Removed did not attend mandatory pre-bid.
- Acceptable format for typed, "Example of Bid Prices Submitted by Computer Printout" on the proposal form.



8.	<b>ELECTRONIC BID</b>  The Bidder is responsible for taking the appropriate measures to submit a bid. These measures include, but are not limited to acquiring hardware, software, and Internet connectivity needed for submitting a bid via the Department's bidding system.
8.1.	<b>Proposal Form.</b> Use the electronic proposal form in the Department's bidding system. When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda listed in the Department's bidding system.  The electronic proposal form does not contain the special provisions, special specifications, general notes, and other Contract documents. These documents are included by reference.
8.2.	<b>Proposal Guaranty.</b> Provide a proposal guaranty in the amount indicated on the proposal form. Use an electronic bid bond. Guaranty checks or printed bid bonds will not be accepted.  <del>Use the most current version of the electronic bond issued by the Department.</del> For a <u>joint venture JV</u> , the bond must be in the name of all <u>joint venture JV</u> participants. Enter the bond authorization code into the Department's bidding system.  It is the Bidder's responsibility to ensure the electronic bid bond is issued in the name or <u>as a Department vendor identification numbers</u> of the Bidder or Bidders.
8.3.	<b>Submittal of Bid.</b> Submit the bid to the vault using the Department's bidding system.
8.4.	<b>Revising the Proposal Form.</b> Make desired changes in the Department's bidding system up until the time and date set for the opening of bids. The last bid submitted to the vault will be used for tabulation purposes.
8.5.	<b>Withdrawing a Bid.</b> Submit an electronic or written request to withdraw a bid before the time and date set for the opening. The Department will not accept oral requests. An electronic request must be made using the Department's bidding system.  <u>If a bidder is unable to withdraw an electronic bid using the Department's bidding system, a written request may be submitted.</u> A written request must be signed and submitted to the Letting Official <u>conducting the letting</u> , with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of <u>joint venture JV</u> , the Department will accept a request from any person authorized to bind a party to the <u>joint venture JV</u> . The Department may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

- Removed “use the most current version of electronic bond issued by the department”
- Included SP002-009;
  - Bond may be issued in the department vendor identification numbers of the bidder(s).
- Written request is required if unable to withdrawal electronic bid.



9. **PRINTED BID**

9.1. **Proposal Form.** Mark all entries in ink. As an alternative to hand writing the unit prices ~~in~~ the proposal form, submit a typed proposal form. A typed proposal form must contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" ~~in~~ the proposal form.

When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the proposal form. In the case of a joint venture JV, provide the complete and correct name of all Bidders submitting the bid. In the case of a joint venture JV, the person signing the proposal form must be authorized to bind all joint venture JV participants.

~~If a proposal form contains both regular items for domestic steel or iron materials and replacement alternate items for foreign steel or iron materials, the Bidder must either:~~

- ~~■ submit unit bid prices for domestic items only, or~~

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- ~~■ submit unit bid prices for both the domestic and foreign items.~~

- Removed foreign iron or steel alternative bidding preference.
  - SP will be required if route is pursued.



## 11. TABULATING BIDS

11.1. **Official Total Bid Amount.** The Department will sum the products of the quantities and the unit prices bid ~~in~~ on the proposal form to determine the official total bid amount, except as provided in Section 2.11.5., "Consideration of Unit Prices." The official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.

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11.2. **Consideration of Bid Format.** When a Bidder submits both an electronic bid and a printed bid that ~~is~~ are responsive, the unit bid prices in the ~~printed~~ electronic bid will be used to determine the total bid amount. If the ~~printed~~ electronic bid is incomplete or nonresponsive, the ~~electronic~~ printed bid will be used in the tabulation of the total bid amount.

If a Bidder submits ~~two~~ or more printed bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

11.3. **Rounding of Unit Prices.** The Department will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent (\$0.001) in determining the amount of the bid as well as computing the amount due for payment of each item under the Contract. For rounding purposes, entries ~~that contain~~ five-hundredths of a cent (\$0.0005) or more will be rounded up to the next highest tenth of a cent, while entries ~~that contain~~ less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent ~~and in accordance with Section 2.11.5., "Consideration of Unit Prices."~~ Bids less than one-tenth of a cent (\$0.001) will be rounded to one-tenth of a cent (\$0.001). When credit items are included (negative unit prices), rounding is performed on the absolute value.

11.4. **Interpretation of Unit Prices.** The Department will make a documented determination of the unit bid price if a unit bid price is illegible or conflicting in the case of replacement alternate items. The Department's determination will be final.

11.5. **Consideration of Unit Prices.** Unit bid price entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of less than \$0.001 will be tabulated as one-tenth of a cent (\$0.001). The Department will consider proposals in which unit bid prices have been left blank incomplete and nonresponsive.

11.5.1. **Alternate Items.** If a proposal has a regular and corresponding alternate item or group of items, the proposal will be considered complete if:

- the regular item or group of regular items has unit prices entered,
- the alternate item or group of alternate items has unit prices entered, or
- both regular item or group of regular items and alternate item or group of alternate items have unit prices entered. The Department will use the price bid for the regular or the alternate item, or group of items, that will result in the lowest cost to the State.

The bid will be considered incomplete and nonresponsive if:

- a regular item or group of regular items is left blank, or
- a corresponding alternate item or group of alternate items is left blank.

- Electronic Bid takes preference over paper bid.
- Clarified Rounding of unit prices.
- Added section on how alternate items will be addressed.
- Clarified incomplete bids will be considered incomplete and non-responsive.



~~11.5.2-11.5.3.~~ **A + B Bidding.** The official total bid amount will be determined by the summation of the Contract amount and the time element. The Department will use the following formula to make the calculation:

$$A + B1 + B2 + BX + \dots + BT$$

The Contract amount, equal to A in the formula, is determined by the summation of the products of the approximate quantities shown in the proposal and the unit bid prices bid, and the time element, equal to B1, B2, BX (when phases are included as bid components), and BT (substantial completion of the project when

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included as a bid component), of the bid is determined by multiplying the number of working days bid to substantially complete the project, or phases, by the daily road-user cost (RUC) ~~provided~~ shown on the plans. When partial days are bid, they will be rounded up to the nearest whole day.

The formula above determines the low Bidder and establishes the Contract time or time for specific phases of the Contract.

~~11.5.3-11.5.4.~~ **Rubber Additives.** For proposed Contracts without federal funds, if an alternate item for "Hot Asphalt-Rubber Surface Treatments" or "Hot-Mix Asphalt Concrete Pavement" ~~which~~ that contains ground tire rubber is shown ~~in~~ on the proposal form and the Bidder bids that alternate item, the amounts bid for "Hot Asphalt-Rubber" and "Aggregate" or "Hot-Mix Asphalt Concrete" will be reduced to 85% of the amounts actually bid. This reduction will only be used for the purposes of determining the lowest Bidder. To qualify, the ground tire rubber used must be produced from scrap tire ground in a facility in Texas. Payment for "Hot Asphalt-Rubber" and "Aggregate" or "Hot-Mix Asphalt Concrete" will be at the actual unit prices bid.

~~11.5.4.~~ **"Buy America."** ~~The use of foreign steel is only allowed when shown on the plans. For a Bidder who proposes to use foreign steel or iron materials to be considered the apparent low Bidder, their total bid must be at least 25% lower than the next lowest bid if that bid proposes to use domestic steel or iron materials.~~

~~This requirement does not apply to minimal use of steel or iron materials provided that the total cost of all foreign source items used in the project, as delivered to the project site, is less than \$2,500 or one-tenth of one percent (1/10 of 1%) of the Contract amount, whichever is greater.~~

- Clarified B portion of A+B formula.
- Provision for alternative bidding pertaining to Foreign iron or steel was removed



## 14. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, they will be deemed nonresponsive. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Department may recommend that the Commission:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the new apparent low Bidder has already submitted DBE information to the Department.

If the new apparent low Bidder did not submit the required DBE information:

- the new apparent low Bidder will not be deemed nonresponsive.
- the new apparent low Bidder's guaranty will not be forfeited.
- the Department will reject all bids.
- the new apparent low Bidder will remain eligible to receive future proposals for the same project, and
- the proposal guaranty of the original apparent low bidder will become the property of the State, not as a penalty, but as liquidated damages.



## 15. DEPARTMENT OF HOMELAND SECURITY (DHS) E-VERIFY SYSTEM

The Department will not award a Contract to a Contractor that is not registered in the DHS E-Verify system. Remain active in E-Verify throughout the life of the Contract. In addition, in accordance with Article 8.2, "Subcontracting," sixth paragraph, include this requirement in all subcontracts and require that subcontractors remain active in E-Verify until their work is completed.

If the apparent low Bidder does not appear in the DHS E-Verify system before award, the Contractor must submit documentation showing that they are compliant within 5 calendar days after bid opening. A Contractor

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that fails to comply or respond within the deadline will be declared nonresponsive. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the scope of the work.

The Department may recommend that the Commission:

- reject all bids or
- award the Contract to the new apparent low Bidder, if the Department is able to verify the Bidder's participation in the DHS E-Verify system.

If the Department is unable to verify the new apparent low Bidder's participation in the DHS E-Verify system:

- the new apparent low Bidder will not be deemed nonresponsive.
- the new apparent low Bidder's guaranty will not be forfeited.
- the Department will reject all bids.
- the new apparent low Bidder will remain eligible to receive future proposals for the same project, and
- the proposal guaranty of the original low bidder will become the property of the State, not as a penalty, but as liquidated damages.

- No change: Current SP002-015 adding E-Verify requirements.
- No Change; Included existing SP006-009 DBE requirements



## 1. AWARD OF CONTRACT

The Commission or ~~designated representative~~ original award authority will award, reject, or defer the Contract within 30 days after the opening of the proposal. The Department reserves the right to reject any or all proposals and to waive technicalities in the best interest of the State.

1.1. **Award.** The Commission or ~~designated representative~~ original award authority will award the Contract to the low Bidder as determined by in accordance with Article 2.11., "Tabulating Bids." The Commission may award a Contract to the second lowest Bidder when the following requirements have been met:

- the Contract is for maintenance work with an Engineer's estimate bid amount less than \$300,000, and the Contract does not include federal funds,
- the low Bidder withdraws ~~his~~ their bid or fails to enter into Contract,
- the second lowest Bidder agrees to perform the work at the unit bid prices of the low Bidder,
- the Executive Director recommends in writing the award of the Contract to the second lowest Bidder, and
- the Commission agrees with the Executive Director's recommendation for award to the second lowest Bidder.

1.2. **Rejection.** The Commission or ~~designated representative~~ original award authority will reject the Contract if:

- collusion may have existed among the Bidders. Collusion participants will not be allowed to bid future proposals for the same Contract,
- the low bid is mathematically and materially unbalanced. The Bidder will not be allowed to bid future proposals for the same Contract,
- the lowest bid is higher than the Department's estimate, and re-advertising for bids may result in a lower bid,
- the low bid contains a bid error that satisfies the requirements and criteria in Article 2.12., "Consideration of Bid Errors," or
- rejection of the Contract is in the best interest of the State.

1.3. **Deferral.** The Commission may defer the award or rejection of the Contract when deferral is in the best

- Designated representative changed to original award authority.
- Engineer's Estimate changed to Bid amount.



4.3. **Insurance.** ~~Submit~~ For construction and building Contracts, submit a certificate of insurance showing coverages in accordance with the Contract requirements. For routine maintenance Contracts, refer to Article 3.8., “Beginning of Work.”

Insurances ~~must~~ cover the work for the duration of the Contract and must remain in effect until final acceptance. Provide project-specific insurance, not listed in Table 2, until acceptance of the work covered by the project-specific insurance or as approved by the Engineer. Failure to obtain and maintain insurance for the contracted work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until the Department receives an acceptable certificate of insurance.

Provide the Department with a certificate of insurance verifying the types and amounts of coverage shown in Table 2. The certificate of insurance must be in a form approved by the Texas Department of Insurance. Certificates of insurance for commercial general liability, auto liability, and workers’ compensation must include the Contractor’s prequalified name in the “Insured” field. Any certificate of insurance provided must be available for public inspection.

**Table 2**  
**Insurance Requirements**

Type of Insurance	Amount of Coverage
<del>Commercial General Liability Insurance</del> <u>general liability insurance</u>	Not <del>Less Than</del> <u>less than</u> : \$ <del>1,000,000</del> <u>600,000</u> each occurrence
<del>Business Automobile Policy</del> <u>automobile policy</u>	Not <del>Less Than</del> <u>less than</u> : \$600,000 combined single limit
<del>Workers’ Compensation</del> <u>compensation</u>	Not <del>Less Than</del> <u>less than</u> : Statutory
<del>All Risk Builder’s Risk Insurance</del> <u>(For All risk builder’s risk insurance (for building-facilities contracts only))</u>	100% of Contract <del>Price</del> <u>price</u>

- Incorporated existing SP003-011.
- Added project specific insurance is required until acceptance of work covered by the project specific insurance or as approved by the Engineer.
  - Note there is only one final acceptance on the project
  - Engineer may approve to discontinue the project specific insurance at any time.
    - An example of an acceptable situation is when no work will transpire, transverse, or be within 50 feet of a location requiring project specific insurance on a multiple location project.
    - Also note that Construction Division is not aware of project specific decision and therefore will continue to issue stop work notices for insurance requirements. The District is responsible for enforcing that requirement as needed.
- Added that the certificate of insurance provided must include the Contractor’s prequalified name in the “Insured” field.
- Incorporated SP003-013 which changed General Liability from \$1 million to \$600,000.

# Item 3 – Award and Execution of Contract



- 4.4. **Business Ownership Information.** Submit the names and ~~social security~~Social Security numbers of all individuals owning 25% or more of the firm, or firms in the case of a joint venture, on the Department's form.
- ~~4.5. **List of Quoting Suppliers and Subcontractors.** For a construction Contracts, submit a list of all suppliers and subcontractors that quoted on the Contract. Include names, addresses, telephone numbers, and types of work required.~~
- 4.6-4.5. **Railroad Documents.** Provide all required documents for satisfaction of railroad requirements for projects that have work ~~which involves~~involving railroad right of way. Comply with the requirements of Article 5.8., "Cooperation ~~With~~with Railroads."

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## 5. FAILURE TO ENTER CONTRACT

If the Contractor fails to comply with all ~~of~~ the requirements in Article 3.4., "Execution of Contract," the proposal guaranty will become the property of the State, not as a penalty, but as liquidated damages. The Contractor forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in design of the work. Failure to enter Contract may result in the application of remedial actions by the Department.

Reference 43 TAC § 9.24, "Performance Review Committee and Actions."

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## 6. APPROVAL AND EXECUTION OF CONTRACT

The Contract will be approved and signed under authority of the Commission.

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## 7. RETURN OF PROPOSAL GUARANTY

The proposal guaranty check of the low Bidder will be retained until after the Contract has been rejected or awarded and executed. Bid bonds will not be returned.

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## 8. BEGINNING OF WORK

Do not begin work until authorized in writing by the Engineer.  In addition, for a routine maintenance Contract, do not begin work until a certificate of insurance showing coverages in conformance with the Contract requirements is provided and accepted.

Verify all quantities of materials shown on the plans before ordering.

- Removed list of quoting suppliers and subcontractors from the specification.
- Mentioned refer to Performance Review Committee (PRC) for failure to enter contract.



### 3. PARTNERING

The intent of this ~~section~~Article is to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Department and the Contractor.

Informal partnering does not make use of a facilitator ~~and is led by the Engineer in charge of the work and the Contractor's counterpart~~, while formal partnering uses the services of a facilitator (internal or external).

### 4. CHANGES IN THE WORK

When the quantity of work to be done under any major item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.

When the quantity of work to be done under any major item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price. ~~Adjust the unit price by multiplying the Contract unit price by the factor in Table 1.~~

~~For routine maintenance Contracts, if an adjusted unit price cannot be agreed upon, the Engineer may determine the unit price by multiplying the Contract unit price by the factor shown in Table 1.~~

**Table 1**  
**Quantity-Based Price Adjustment Factors**

% of Original Quantity	Factor
≥50 and <75	1.05
≥25 and <50	1.15
<25	1.25

If the changes require additional working days to complete the Contract, Contract working days will be adjusted in accordance with Item 8, "Prosecution and Progress."

- Clarified that the Engineer and Contractors' counterpart are required to lead partnering.
- Table 1 now only for Routine Maintenance Contracts.



### 5. DIFFERING SITE CONDITIONS

During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The two types of differing site conditions are defined as:

- those that differ materially from those indicated in the Contract, and
- unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.

Notify the Engineer in writing when differing site conditions are encountered. The Engineer will notify the Contractor in writing when the Department discovers differing site conditions. Unless directed otherwise, suspend work on the affected items and leave the site undisturbed. The Engineer will investigate the conditions and determine whether differing site conditions exist. The Engineer will provide written notification of the determination whether or not an adjustment of the Contract is warranted. If the differing site conditions cause an increase or decrease in the cost or number of working days specified for the performance of the Contract, the Engineer will make adjustments, excluding the loss of anticipated profits, in accordance with the Contract. Additional compensation will be made only if the required written notice has been provided by either the Contractor or the Engineer.

- Clarified notification and determination of differing site conditions need to be in writing.



## 6. REQUESTS FOR ADDITIONAL COMPENSATION AND DAMAGES

Compensation.



~~Damages~~ **Compensable damages** occur when impacts that are the responsibility of the Department result in additional costs to the Contractor that could not have been reasonably anticipated at the time of letting. Costs of performing additional work are not considered damages. ~~For~~ **Notify the Engineer in writing as soon as possible for** Contractor damages. ~~the~~ **The** intent is to reimburse the Contractor for actual expenses arising ~~out of~~ **from** a compensable impact. No profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual cost. Justification for a higher percentage must be in ~~accordance~~ **conformance** with the methodology provided by the Department, submitted separately for project overhead labor and direct labor, and determined and submitted by a Certified Public Accountant (CPA). Submit CPA-prepared labor burden rates directly to the Construction Division for approval.

The Department will not consider fees and interest on requests for additional compensation and damages. Fees include, but are not limited to: preparation, attorney, printing, shipping, and various other fees.

If the Contractor requests compensation for damages and the damages are determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable damage and will be limited as follows:

- 6.1. **Standby Equipment Costs.** Payment will be made in accordance with Section 9.7.1.4.3., "Standby Equipment Costs."
- 6.2. **Project Overhead.** Project overhead is defined as the administrative and supervisory expenses incurred at the work locations. When delay to project completion  occurs, reimbursement for project overhead for the Contractor will be made using the following options **at the Contractor's discretion:**
  - reimbursed at 6% (computed as daily cost by dividing 6% of the original Contract amount by the number of original Contract work days), or
  - actual documented costs for the impacted period.

Project overhead for delays impacting subcontractors will be determined from actual documented costs submitted by the Contractor.

- Emphasized notification of damages must be in writing as soon as possible.
- Clarified options for Overhead calculation using 6% or actual documented cost is at the Contractor's discretion.



## 7. DISPUTE OR CLAIMS PROCEDURE

The dispute resolution policy promotes a cooperative attitude between the Engineer, Contractor, and Contractor's subcontractors working through the Contractor. Emphasis is placed on resolving issues while they are still current, at the area office or the district office, and in an informal manner. Open sharing of information is encouraged by all parties involved so the information provided completely and accurately reflects the issues and facts. If information is not shared, decisions may be limited to relying on the documentation that is available for review.

It is the Department's goal to file a dispute settled in the District before elevating it to the Contract Claim Committee (CCC) as a claim. ~~The Construction Division can assist in the resolution of a dispute with a Contractor when requested by the District. The Contractor may request that a District ask for assistance of the Construction Division; however, the request for a recommendation prepared by the Construction Division to settle a dispute must come from the District.~~

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If a dispute cannot be resolved, initiate the Contract claim procedure by submitting a claim to the District Engineer, the Director of the Construction Division, or the CCC.

The Department's Contract claim procedure has been established in accordance with ~~Title 43 of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §TAC § 9.2, "Contract Claim Procedure."~~ Detailed instructions for submitting a claim and its components can be found on the Department's website.

The Contractor, or subcontractor through the Contractor, will file a Contract claim request and a detailed report that provides the basis for the claim. The detailed report will include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation requested, and documents supporting the claim.

The claim must include the following certification: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Department is liable, and that I am duly authorized to certify the claim on behalf of the Contractor."

If a claim has been submitted and the Contractor wishes to resume negotiations with the District, notify the CCC 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.

File a claim after completion of the Contract or when required for orderly performance of the Contract. For a claim resulting from enforcement of a warranty period, file the claim no later than ~~one year~~ 1 yr. after expiration of the warranty period. For all other claims, file the claim no later than 1 yr. after the date the Department issues notice to the Contractor that they are in default, the date the Department terminates the Contract, or ~~one year after~~ the date of final acceptance of the Contract. It is the Contractor's responsibility to submit requests in a timely manner.

- Removed CST assisting with Disputes.
- Clarified claim needs to have a detailed report.
- Claims must include certification statement.



## 1. AUTHORITY OF ENGINEER

The Engineer has the authority to observe, test, inspect, approve, and accept the work, either in writing or orally. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, applicability of standard details, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions.

■ Unless noted elsewhere in the Contract or by the Engineer, payment for Contractor work supports it in accordance with the Contract requirements at that time. This payment does not eliminate the Contractor's responsibilities for the work as defined in Article 7.17., "Contractor's Responsibility for Work," or Article 5.12., "Final Acceptance."

■ The Engineer acts as a referee in all questions arising under the terms of the Contract.

■ The Engineer's decisions will be final and binding.

The Engineer may pursue and document actions against the Contractor, including, as warranted to address Contract performance issues. Contract remedies include, but are not limited to, the withholding of estimates following:

■ conducting interim performance evaluations requiring a Project Recovery Plan, in accordance with 43 TAC § 9.23.

■ requiring the Contractor to remove and replace defective work, or reducing payment for defective work,

■ removing an individual from the project,

suspending the work, for noncompliance of the Contract.

■ The Engineer may suspend the work, without suspending working day charges for noncompliance,

■ assessing standard liquidated damages to recover the Department's administrative costs, including additional project-specific liquidated damages when specified in the Contract in accordance with 43 TAC §9.22.

■ withholding estimates.

■ declaring the Contractor to be in default of the Contract, and

■ in case of a 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.

The Engineer will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards, including consideration of sufficient time.

Follow the issue escalation ladder if there is disagreement regarding the application of Contract remedies.

- Engineer may act verbally or in writing.
- Added statement clarifying payment supports pay item is in accordance with the contract at the time the payment is made.
  - The pay item is still contractor's responsibility to meet contract requirements prior to final acceptance.
- Incorporated existing SP005-002 which list the contract remedies.



## 9. CONSTRUCTION SURVEYING

Use Method C unless otherwise specified in the Contract. Upon request, the Engineer will allow the Contractor to copy available earthwork cross-sections, computer printouts or data files, and other information necessary to establish and control work. ~~Maintain the integrity of control points.~~ Preserve all control points, stakes, marks, and right of way markers. Assume cost and responsibility of replacing disturbed control points, stakes, marks, and right of way markers damaged by the Contractor's or its ~~subcontracters~~ subcontractor's operations. If the Department repairs disturbed control points, stakes, marks, or right of way markers, the cost of repair may be deducted from money due or to become due to the Contractor. Replace right of way markers under the direction of aan RPLS. This work performed under this Article will not be measured or paid for directly, but will be ~~considered~~ subsidiary to pertinent Items.

The Engineer reserves the right to make measurements and surveys to determine the accuracy of the work and determine pay quantities. The Engineer's measurements and surveys do not relieve the Contractor's responsibility for accuracy of work. Allow the Engineer adequate time to verify the surveying.

9.1. **Method A.** The Engineer will set control points for establishing lines, slopes, grades, and centerlines and for providing both vertical and horizontal control.

At ~~a~~ minimum, provide a controlling pair of monument points at both the beginning and end of construction project for projects less than 2 mi. in length. For projects greater than 2 mi. in length, monuments will be set in pairs ~~of 2~~ at a minimum of 2 mi. based on the overall length of the project. Use these control points as reference to perform the work.

Furnish materials, equipment, and qualified workforce necessary for the construction survey work. Place construction points, stakes, and marks at intervals sufficient to control work to established tolerances. Place construction stakes at intervals of no more than 100 ft., or as directed. Place stakes and marks so as not to interfere with normal maintenance operations.

9.2. **Method B.** The Engineer will set adequate control points, stakes, ~~stationing~~ stationing, and marks to establish lines, slopes, grades, and centerlines. Furnish additional work, stakes, materials, and templates necessary for marking and maintaining points and lines.

9.3. **Method C.** ~~Set~~ Set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines. Place construction points, stakes, and marks at intervals sufficient to control work to established tolerances. Place construction stakes at intervals of no more than 100 ft., or as directed. Place stakes and marks so as not to interfere with normal maintenance operations.

- Removed “maintain the integrity of control points”
- Stationing was added to Method B.
- Provided interval for construction stakes and statement that construction points, stakes, and marks at intervals sufficient to meet tolerances.



## 10. INSPECTION

Inspectors are authorized representatives of the Engineer. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. The Engineer may authorize Inspectors to adjust the traffic control. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection or lack of inspection will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract.

Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense. Remove or uncover portions of finished work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Article 4.4., "Changes in the

- Added language allowing the Engineer to empower inspectors to adjust traffic control as needed.
  - Use caution in making changes.
  - Document any changes to the TCP.
- Clarified Construction project litter.

## 11. FINAL CLEANUP

Upon completion of the work, remove construction project litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition.

Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction. Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

The work performed under this Article will not be paid for directly, but will be ~~considered~~ subsidiary to Items of the Contract.



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### 12. FINAL ACCEPTANCE

- 12.2.3. **Final Measurement.** Final measurements and pay quantity adjustments may be made after final acceptance. Final acceptance will not be held for final measurements or pay quantity adjustments.
- 12.2.4. **Removal of Traffic Control Devices.** Remove any remaining construction traffic control devices and advance warning signs upon final acceptance or as directed.

- Added final acceptance cannot be held for final measurement or pay quantity adjustments.



## 1. SOURCE CONTROL

Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the Work. Secure the Engineer's approval of the proposed source of materials to be used before their delivery. Materials can be approved at a supply source or staging area but may be inspected in accordance with Article 6.4., "Sampling, Testing, and Inspection."

- 1.1. **Buy America.** Comply with the latest provisions of **Buy America pertaining to steel and iron in accordance with 23 CFR § 635.410.** Use steel or iron **materials** manufactured in the United States except when **waived in accordance with** Section 6.1.2., "Buy America Exceptions."

Submit a notarized original FORM D-9-USA-1 (Department Form 1818) with the proper attachments for verification of compliance.

Manufacturing includes any process that modifies the chemical content, physical shape or size, or final finish of a product. The manufacturing process begins with initial melting and mixing and continues through fabrication (e.g., cutting, drilling, welding, and bending) and coating (e.g., paint, galvanizing, and epoxy)

- 1.2. **Buy America Exceptions.** Use of iron, steel, construction materials, and manufactured products manufactured in the United States **is required unless the material meets an exception below.**

- A waiver exists exempting the material from Buy America compliance.
- 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. **The Contractor must provide documentation showing under threshold in advance for the Engineer's consideration.**
- **Foreign steel may be allowed when** the Contract contains an alternate item for a foreign source iron or steel product and the Contract is awarded based on the alternate item.
- The materials are temporarily installed **or are supplies, tools, and equipment not incorporated into the project. Temporarily installed means the materials and products must be removed at the end of the project or may be removed at the Contractor's convenience with the Engineer's approval.**

- 1.3. **Buy Texas.** For construction or maintenance Contracts without federal funds, buy materials produced in Texas when the materials are available at a comparable price and in a comparable period of time. Provide documentation of purchases or a description of good-faith efforts on request.

- State Buy America provision included in 2024 specification.
  - Moved waiver/allowances for foreign iron or steel products to new section.
  - Alternative Bidding for foreign iron or steel products needs to be handled through Special provision if pursued by the Designer.



## Special Provision to Item 6 Control of Materials



Item 6, "Control of Materials" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 1.1. "Buy America.," This section is voided and replaced by the following:

1.1. **Buy America.** Comply with the latest provisions of Build America, Buy America Act (BABA Act) of the Bipartisan Infrastructure Law and applicable CFR, which restrict funds being made available from Federal financial assistance programs unless all the iron products, steel products, manufactured products, and construction materials used in the project are produced in the United States. Use iron or steel products, manufactured products, or construction materials produced in the United States for all permanently installed materials and products except when defined in Section 1.1.5., "Buy America Exceptions."

A material is solely classified based on its status at the time it is brought to the work site as either an iron or steel product, construction material, manufactured product, or Section 70917(c) material. Refer to the Buy America Material Classification Sheet found in the general notes or txdot.gov for additional clarification on material classification.

1.1.1. **Iron or Steel** Iron or steel products means articles, materials, or supplies that consist of iron or steel or a combination of both. For iron or steel products, manufacturing includes any process that modifies the chemical content, physical shape or size, or final finish of a product. The manufacturing process begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

For iron or steel products submit a notarized original FORM D-9-USA-1 (Department Form 1818) with the proper attachments for verification of compliance.

1.1.2. **Section 70917(c) Materials** Section 70917(c) materials mean cement and cementitious material; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Section 70917(c) materials do not require domestic sourcing or Buy America certification.

1.1.3. **Construction Materials.** Construction materials are classified as articles, materials, or supplies that consist of only one of the items listed in bullets below. Minor additions (as determined by plans or Engineer) to any of the items listed is still a construction material.

- non-ferrous metals,
- plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables),
- glass (including optic glass),
- fiber optic cable (including drop cable),
- optical fiber,
- lumber,
- engineered wood, or
- drywall.

For construction materials, submit a Construction Material Buy America Certification Form (Department Form 2806) for verification of compliance that all manufacturing processes, as required, occurred in the

Material Classification based on its status at time it arrives at the work site.

Clarified any Iron or Steel requires certification.

New Classification – Section C materials

Minor Additions still count statement

- Fiber Optic Cable (including drop cable)
- Optical fiber,
- Engineer Wood



United States. Each construction material has specific certification requirements stated below. Provide additional documentation as requested.

Details shown on the plans provide additional clarification on Buy America requirements.

For non-ferrous metals, certification requires all manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

For plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables), certification requires all manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

For glass (including optic glass), certification requires all manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

For fiber optic cable (including drop cable), certification requires all manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

For optical fiber, certification requires all manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

For lumber, certification requires all manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

For engineered wood, certification requires all manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

For drywall, certification requires all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

- 1.1.4. **Manufactured Products** Materials classified as a manufactured product are currently waived from Buy America requirements by an FHWA general waiver and are not required to be domestically sourced. However, iron or steel products incorporated into manufactured products must meet iron and steel compliance requirements.

Certification requirements are now specifically called out.

Manufactured Products Still Exempt



- 1.1.5. **Buy America Exceptions.** Use of iron, steel, construction materials, and manufactured products manufactured in the United States is required unless the material meets an exception below.
- A waiver exists exempting the material from Buy America compliance.
  - 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 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.
  - Foreign steel may be allowed when the Contract contains an alternate item for a foreign source iron or steel product and the Contract is awarded based on the alternate item.
  - The materials are temporarily installed or are supplies, tools and equipment not incorporated into the project. Temporarily installed means the materials and products must be removed at the end of the project or may be removed at the contractor's convenience with Engineers approval.



## Exceptions

1. Added 1 additional waiver.
2. Clarified existing waiver and applicability.

## Waivers

1. **Construction Materials is no more than 1 million or 5% of Total Applicable Cost.**
  - Total Applicable Cost driven by OMB guidance. Means cost of all Buy America required materials.
  - Documentation must be shown in advance for Engineer's consideration.

# Item 6 – Control of Materials



## 4. SAMPLING, TESTING, AND INSPECTION

Meet with the Engineer and choose either the Department laboratory or a Department-selected Commercial Lab (CL) for conducting the subset of project-level sampling and testing shown in Table 1. Selection may be made on a test-by-test basis. CLs will meet the testing turnaround times shown (including test time and time for travel and sampling and reporting) and in all cases issue test reports as soon as possible.

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- If the Contractor chooses a Department-selected CL for any sampling and testing as shown in Table 1:
  - notify the Engineer, District Lab, and the CL of project scheduling that may require CL testing;
  - provide the Engineer, District Lab, and CL at least 24 hr. notice by telephone and email;
  - reimburse the Department for CL testing shown in Table 1 using the Contract fee schedule for the CL (including mileage and travel and standby time) at the minimum Guide Schedule of Sampling and Testing (Guide Schedule) testing frequencies;
  - reimburse the Department for CL testing shown in Table 1 above the minimum Guide Schedule frequencies for retesting when minimum frequency testing results in failures to meet specification limits;
  - agree with the Engineer and CL on a policy regarding notification for testing services;
  - give any cancellation notice to the Engineer, District Lab, and CL by telephone and email;
  - reimburse the Department a \$150 cancellation fee to cover technician time and mileage charges for previously scheduled work canceled without adequate notice that resulted in mobilization of technician or equipment by the CL; and
  - all CL charges will be reimbursed to the Department by a deduction from the Contractor's monthly pay estimate.

If the CL does not meet the turnaround times shown in Table 1, testing charges to the Contractor will be reduced by 50% for the first late day and an additional 5% for each succeeding late day.

Approved CL project testing above the minimum testing frequencies in the Guide Schedule, and not as the result of failing tests, will be paid by the Department.

Other project-level Guide Schedule sampling and testing not shown in Table 1 will be the Department's responsibility.

**Table 1**  
Select Guide Schedule Sampling and Testing

Department Test	Test Description	Turn-Around Time (Calendar days)
<b>SOILS/BASE</b>		
Tex-101-F	Preparing Soil and Flexible Base Materials for Testing (included in other tests)	
Tex-104-F	Atter Limit of Soils (included in 106-F)	
Tex-105-F	Plastic Limit of Soils (included in 106-F)	
Tex-106-F	Calculating the Plasticity Index of Soils	7
Tex-110-F	Empirical Site Analysis of Soils	4
Tex-113-F	Moisture-Density Relationship of Base Materials	7
Tex-114-F	Moisture-Density Relationship of Subgrade and Embankment Soil	7
Tex-115-F	Field Method for In-Place Density of Soils and Base Materials	7
Tex-116-F	Ball Mill Method for the Disintegration of Flexible Base Material	8
Tex-117-F, Part I	Triaxial Compression Tests for Disturbed Soils and Base Materials (Part I)	8
Tex-117-F with Tex-117-F	Moisture-Density Relationship of Base Materials with Triaxial Compression Tests for Disturbed Soils and Base Materials (Part II)	10
Tex-140-F	Measuring Thickness of Pavement Layer	2
Tex-145-F	Determining Sulfate Content in Soils – Colorimetric Method	4
<b>HOT MIX ASPHALT</b>		
Tex-200-F	Sieve Analysis of Fine and Coarse Aggregate (dry, from ignition oven with known correction factors)	11
Tex-205-F	Sand Equivalent Test	3
Tex-207-F with Tex-207-F, Part I with Tex-227-F	(Lab-Molded Density of Production Mixture – Superpave Gyration) Method of Comparing Test Specimens of Bituminous Mixtures with Density of Compacted Bituminous Mixtures, Part I, "Bulk Specific Gravity of Compacted Bituminous Mixtures" with Theoretical Maximum Specific Gravity of Bituminous Mixtures	11
Tex-207-F, Part I	(In-Place Air Voids of Roadway Course)	11

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Department Test	Test Description	Turn-Around Time (Calendar days)
and/or Part VI	Density of Compacted Bituminous Mixtures, Part I, "Bulk Specific Gravity of Compacted Bituminous Mixtures" and/or Part VI, "Bulk Specific Gravity of Compacted Bituminous Mixtures Using the Vacuum Method"	
Tex-207-F, Part V	Density of Compacted Bituminous Mixtures, Part V, "Determining Mat Segregation using a Density-Testing Gauge"	3
Tex-207-F, Part VII	Density of Compacted Bituminous Mixtures, Part VII, "Determining Longitudinal Joint Density using a Density-Testing Gauge"	4
Tex-212-F	Moisture Content of Bituminous Mixtures	3
Tex-217-F	Deleterious Material and Decantation Test for Coarse Aggregate	4
Tex-221-F	Sampling Aggregate for Bituminous Mixtures, Surface Treatments, and LRA (included in other tests)	
Tex-222-F	Sampling Bituminous Mixtures (included in other tests)	
Tex-224-F	Determination of Flakiness Index	3
Tex-226-F	Indirect Tensile Strength Test (production mix)	4
Tex-235-F	Determining Draindown Characteristics in Bituminous Materials	3
Tex-236-F (Connection Factors)	Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Determining Correction Factors)	4
Tex-236-F	Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Production Mixture)	11
Tex-241-F with Tex-207-F, Part I with Tex-227-F	(Lab-Molded Density of Production Mixture – Superpave Gyration) Superpave Gyration Compacting of Specimens of Bituminous Mixtures (production mixture) with Density of Compacted Bituminous Mixtures, Part I, "Bulk Specific Gravity of Compacted Bituminous Mixtures" with Theoretical Maximum Specific Gravity of Bituminous Mixtures	11
Tex-242-F	Hamburg Wheel-Tracking Test (production mix, molded samples)	3
Tex-244-F	Thermal Profile of Hot Mix Asphalt	1
Tex-246-F	Permeability of Water Flow of Hot Mix Asphalt	3
Tex-290-F	Flat and Flaked Particles	3
Tex-530-C	Effect of Water on Bituminous Paving Mixtures (production mix)	4
<b>AGGREGATES</b>		
Tex-400-A	Sampling Flexible Base, Stone, Gravel, Sand, and Mineral Aggregates	3
Tex-410-A	Abrasion of Coarse Aggregate Using the Los Angeles Machine	5
Tex-411-A	Soundness of Aggregate by Use of Sodium Sulfate or Magnesium Sulfate	12
Tex-451-A	Degradation of Coarse Aggregate by Micro-Deval Abrasion	5
<b>CHEMICAL</b>		
Tex-612-I	Acid Insoluble Residue for Fine Aggregate	4
<b>GENERAL</b>		
	HMA Production Specialist (TxAPA – Level 1-A) (5/hr)	
	HMA Roadway Specialist (TxAPA – Level 1-B) (5/hr)	
	Technician Travel/Standby Time (5/hr)	
	Per Diem (\$3/day – meals and lodging)	
	Mileage Rate (\$/mile from closest CL location)	

- Turn-Around Time includes test time and time for travel/sampling and reporting.
- These tests require turn-around times meeting the governing specifications. Provide test results within the stated turn-around time. CL is allowed 1 additional day to provide the signed and sealed report.

- Included 2014's SP006-001 allowance for Commercial labs.



## 5. PLANT INSPECTION AND TESTING

The Engineer may but is not obligated to inspect materials at the acquisition or manufacturing source. Material samples will be obtained and tested for compliance with quality requirements. Materials produced under Department inspection are for Department use only unless released in writing by the Engineer.

If inspection is at the plant, meet the following conditions unless otherwise specified:

- cooperate fully and assist the Engineer during the inspection,

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- ensure the Engineer has full access to all parts of the plant used to manufacture produce materials,
- provide a facility at the plant for use by the Engineer as an office or laboratory, in accordance with Item 504, "Field Office and Laboratory."
- provide and maintain adequate safety measures and restroom facilities, and
- furnish and calibrate scales, measuring devices, and other necessary equipment, in accordance with Item 320, "Equipment for Asphalt Concrete Pavement."

The Engineer may provide inspection for periods other than daylight hours if:

- continuous production of materials for Department use is necessary due to the production volume being handled at the plant, and
- the lighting is adequate to allow satisfactory inspection.

- Added clarification to respective bid items for “504 Field Office and Laboratory” and “Equipment for asphalt concrete pavement.”



## 10. HAZARDOUS MATERIALS

Comply with the requirements of Article 7.12., "Responsibility for Hazardous Materials."

~~The Notify the Engineer immediately when a visual observation or odor indicates that materials on sites owned or controlled by the Department may contain hazardous materials. Except as noted herein, the Department is responsible for testing, removing, and disposing of hazardous materials not introduced by the~~

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Contractor, except for paint removal associated with Item 446, "Field Cleaning and Painting Steel," Item 776, "Metal Rail Repair," and Item 784, "Steel Member Repair." The plans will indicate locations where paint on steel is suspected to contain hazardous materials. The Engineer may suspend work wholly or in part during the testing, removing, or disposing of hazardous materials, except in the case where hazardous materials are introduced by the Contractor.

Use materials that are free of hazardous materials. Notify the Engineer immediately if materials are suspected to contain hazardous materials. If materials delivered to the project by the Contractor are suspected to contain hazardous materials, have an approved ~~commercial laboratory~~ test the materials for ~~the presence of hazardous materials as approved~~. Remove, remediate, and dispose of any of these materials found to ~~be contaminated~~ contain hazardous materials. The work required to comply with this section will be at the Contractor's expense ~~if materials are found to contain hazardous materials~~. Working day charges will not be suspended and extensions of working days will not be granted for activities related to handling hazardous material introduced by the Contractor. ~~If suspected materials are not found to contain hazardous materials, the Department will reimburse the Contractor for hazardous materials testing and will adjust working day charges if the Contractor can show that this work impacted the critical path.~~

~~10.1. Painted Steel Requirements. Paint-containing coatings on existing steel contain hazardous materials will be removed as shown on the plans.~~

~~10.1.1. Paint Removed by Third Party. The Department will provide a third party to remove paint-containing hazardous materials where paint must be removed to perform work when dismantling steel under Item 496, "Removing Structures."~~

~~10.1.2. Paint Removed by the Contractor. This work may only be performed by a firm or company with one of the following certifications unless otherwise shown on the plans:~~

- ~~• SEPC QP3 Category A certification for lead-painting operations, or~~
- ~~• Certified Lead Firm by the Texas Department of State Health Services.~~

~~Maintain certifications for the duration of the Contract. Provide copies of audits and certification to the Engineer.~~

~~Comply with worker and public safety regulations including but not limited to 29 CFR Parts 1910, 1926, and 1926. Monitor permissible exposure limits in accordance with OSHA requirements.~~

~~Remove paint containing hazardous materials from designated areas shown on the plans or as directed by the Engineer. Comply with access limitations shown on the plans.~~

~~Provide power hand tools, equipped with high efficiency particulate air filter vacuums to mechanically remove paint unless otherwise approved.~~

~~10.2.1. Contain, collect, store, transport, and dispose of all waste generated by cleaning operation in accordance with local, state and federal requirements including 40 CFR 990. Properly characterize and dispose of all wastes. Manage wastes in accordance with regulatory requirements and dispose in a facility authorized to accept such wastes. Provide copies of disposal manifests to the Engineer. Steel coated with paint containing hazardous materials in accordance with the following.~~

~~10.1.1. Refer to "Removing Paint from Steel." For contracts that are specifically for painting steel, include the cleaning and painting of steel under Item 446, "Field Cleaning and Painting Steel" for measurement and payment as a pay item. Perform work in accordance with that item.~~

~~For projects where paint must be removed to allow for the dismantling of steel or to perform other work, the Department will provide for a separate contractor (third party) to remove paint containing hazardous materials before or during the Contract. Remove paint covering existing steel shown not to contain hazardous materials in accordance with Item 446.~~

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~~10.1.2. Removal and Disposal of Painted Steel. For steel able to be dismantled by unbolting, paint removal will not be performed by the Department. The Department will remove paint at locations shown on the plans or as agreed, for the Contractor's cutting and dismantling purposes. Use Department-cleaned locations for dismantling when provided or provide own means of dismantling at other locations.~~

~~Painted steel will be disposed. Locations where the Department will be shown on the plans. For painted steel that contains hazardous materials, dispose of the painted steel at a steel recycling or smelting facility unless otherwise shown on the plans. If the paint contains hazardous materials, maintain and make available to the Engineer invoices and other records obtained from the facility showing the received weight of the steel and the facility name. Dispose of steel that does not contain hazardous material coatings in conformance with federal, state, and local regulations.~~

~~Refer to Item 496, "Removing Structure" and Item 497, "Sale of Salvageable Material" for measurement and payment.~~

~~10.2.2. Asbestos Requirements. The plans will indicate locations or elements where asbestos-containing materials (ACM/ACMs) are known to be present. Where ACMs are known to exist or where previously unknown ACM has been found, the Department will arrange for abatement by a separate contractor before or during the Contract. Notify the Engineer of proposed dates of demolition or removal of structural elements with ACM at least 60 days before beginning work to allow the Department sufficient time for abatement.~~

~~The Texas Department of State Health Services (DSHS), Asbestos Programs Branch, is responsible for administering the requirements of the National Emissions Standards for Hazardous Air Pollutants, (NESHAP) in accordance with 40-CFR-Part 61, Subpart M, and the Texas Asbestos Health Protection Rules (TAHPR). Based on EPA guidance and regulatory background information, bridges are considered to be a regulated "facility" under NESHAP. Therefore, therefore, federal standards for demolition and renovation apply.~~

~~The Department is required to notify the DSHS at least 10 working days (by postmarked date) before initiating demolition or renovation of each structure ~~or load-bearing member~~ shown on the plans. If the actual demolition ~~or renovation~~ date is changed or delayed, notify the Engineer in writing of the revised dates in sufficient time to allow for the Department's notification to DSHS to be postmarked at least 10 days in advance of the actual work.~~

~~Failure to provide the above information may require the temporary suspension of work under Article 8.4., "Temporary Suspension of Work or Working Day Charges," due to reasons under the control of the Contractor. The Department retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.~~

~~10.2.1. Asbestos Removed by Third Party. At locations where unknown ACM is discovered, the Department will arrange for abatement by a third party.~~

~~10.2.2. Asbestos Removed by the Contractor. Maintain certification as Asbestos or Lead Abatement Contractor by the Texas Department of State Health Services for the duration of the Contract. Provide copies of audits and certification to the Engineer.~~

~~10.2.3. Work Performed by a Third Party. When the work for removal of paint or asbestos abatement is to be provided by a third party, traffic control as shown on the plans, and coordinate and cooperate with the third party and the Department. Continue other work detailed in the plans for managing or removing hazardous materials. Work for the traffic control shown on the plans and coordination work will not be paid for directly involved in the paint removal or asbestos abatement work. Provide notice to the Department regarding the progress of the work to allow the Department sufficient time to schedule the third party work, but will be subsidiary to pertinent items.~~

- Hazardous Material section was rewritten to match existing SP006-012.



**2. SAFETY**

2.1. **Safety Point of Contact.** Designate, in writing, a Contractor Safety Point of Contact (CSPOC). The Department will assign a Department employee for their point of contact designated as DSPOC. The CSPOC will ensure Contract requires that the Contractor's and Subcontractor's employees' subcontractor's employees use the appropriate personal protective equipment (hard hats PPE) (e.g., hardhats, safety vests, and protective toe footwear, etc.) to meet regulations.

The CSPOC Contractor will ensure require that crew leaders and foremen (including subcontractors) have attended the required training.

2.4. **Public Safety and Convenience.** Ensure in accordance with the Contract and as directed, provide for the safety and convenience of the public and property as provided in the Contract and as directed. Keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel. Manage construction to minimize disruption to traffic. Maintain the roadway in a good and passable condition, including proper drainage, and provide for ingress and egress to adjacent property.

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If the construction of the project requires the closing of a highway, as directed, coordinate the closure with the Engineer and work to ensure all lanes and ramps possible are available during peak traffic periods before, during, and after significant traffic generator events to avoid any adverse economic impact on the municipalities during:

- dates or events as shown on the plans, and
- other dates as directed.

Store all equipment not in use in a manner and at locations that will not interfere with the safe passage of traffic.

If the Engineer determines that any of the requirements of this Article have not been met, the Engineer may take corrective action. This will not change the legal responsibilities set forth in the Contract. The cost to the Department for this work will be deducted from any money due or to become due to the Contractor.

- Clarified that contractor and subcontractor's employees use appropriate protective equipment.
- Contractor Safety Point of contact is still required. Clarified responsibility is on the Contractor.
- SP007-010 included coordination of highway closures during dates shown on plans or as directed.

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2.6.2. **Flaggers.** Designate, in writing, a flagger instructor who will serve as a flagging supervisor and is responsible for training and assuring that all flaggers are qualified to perform flagging duties. Before beginning work, provide/Certify to the Engineer that all flaggers will be trained and make available upon request a list of flaggers certified/trained to perform flagging duties.

2.6.5. **Training.** Workers/Train workers involved with the traffic control must be trained using Department-approved training, except in as shown on the case of Section 7.2.6.4, "Other Work Zone Personnel" who may be trained using Contractor-developed Traffic Control Training in lieu of Department-approved Training MPL.

Provide/Coordinate enrollment, pay associated fees, and successfully complete Department-approved training or Contractor-developed training. Training is valid for the period prescribed by the provider. Except for law enforcement personnel training, refresher training is required every 4 yr. from the date of completion unless otherwise specified by the course provider. The Engineer may require training at a specified frequency instead of the period prescribed based on the Department's needs. Training and associated fees will not be measured or paid for directly, but will be subsidiary to pertinent Items.

Certify to the Engineer that workers involved in traffic control and other work zone personnel have been trained and make available upon request a copy of the certification of completion to the Engineer, except in the case of Contractor-developed Training. Ensure the. The certification of completion includes the following:

- name of provider and course title,
- name of participant,
- date of completion, and
- date of expiration.

For/Where Contractor-developed Training training or a Department-approved training course does not produce a certification, maintain a log of attendees. Make the log available upon request. Ensure the/Provide a log that is legible and includes the following:

- ~~print~~printed name and signature of participant,
- name and title of trainer, and
- date of training.

2.6.5.1. **Contractor-Developed Training.** Develop and deliver Contractor-developed training meeting the minimum requirements established by the Department. The outline for this training must be submitted to the Engineer for approval at the preconstruction meeting. The CRP or designated alternate may deliver the training instead of the Department-approved training. The work performed and materials furnished to develop and deliver the training will not be measured or paid for directly, but will be subsidiary to pertinent Items.

2.6.5.1.1. **Flagger Training Minimum Requirements.** A Contractor's certified flagging instructor is permitted to train other flaggers.

2.6.5.1.2. **Other Contractor-Developed Training for Other Work Zone Personnel.** For other work zone personnel, the Contractor may provide training meeting the curriculum described below instead of Department-approved training.

Minimum curriculum for Contractor-provided training is as follows.

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Contractor-developed training must provide information on the use of PPE, occupational hazards and health risks, and other pertinent topics related to traffic management. The type and amount of training will depend on the job duties and responsibilities. Develop training applicable to the work being performed. Develop training to include the following topics.

- Adopt a company safety motto: "The Life You Save May Be Your Own," or similar.
- Purpose of the training includes the following.
  - "It's the Law."
  - Make work zones safer for workers and motorists.
  - Understand what is needed for traffic control.
  - Save lives including your own.
- Personal and co-worker safety includes the following.
  - High-Visibility Safety Apparel. Discuss compliant requirements; inspect regularly for fading and reduced reflective properties; if night operations are required, discuss the additional and appropriate required apparel in addition to special night work risks; and if moving operations are underway, discuss appropriate safety measures specific to the situation and traffic control plan.
  - Blind Areas. A blind area is the area around a vehicle or piece of construction equipment not visible to the operators, either by line of sight or indirectly by mirrors. Discuss the "Circle of Safety" around equipment and vehicles; use of spotters; maintaining eye contact with equipment operators and use of hand signals.
  - Runovers and Backovers. Remain alert at all times; keep a safe distance from traffic; avoid turning your back to traffic, and if you must, then use a spotter, and stay behind protective barriers whenever possible. It is not safe to sit on or lean against a concrete barrier, these barriers can deflect 4 ft. or more when struck by a vehicle.
  - Look out for each other and warn co-workers.
  - Be courteous to motorists.
  - Do not run across active roadways.
  - Workers must obey traffic laws and drive courteously while operating vehicles in the work zones.
  - Workers must be made aware of company distracted driving policies.
- Nighttime Operations. Focus on projects with a nighttime element.
- Traffic Control Training. Basics of traffic control include the following.
  - Identify work zone traffic control supervisor and other appropriate persons to report issues to when they arise.
  - Emphasize that work zone traffic control devices must be in clean and undamaged condition. If devices have been hit but not damaged, return them to their correct place and report to the traffic control supervisor. If devices have been damaged, replace with new devices and report to the traffic control supervisor. If devices are dirty, faded, or have missing or damaged reflective tape, clean or replace them and report to the traffic control supervisor. Show examples of unacceptable device conditions. Discuss various types of traffic control devices to be used and where spacing requirements can be found.
  - Channelizing Devices and Barricades with Slanted Stripes. Stripes must slant in the direction in which you want traffic to stay or move; demonstrate this with a device.
  - Traffic Queuing. Workers must be made aware of traffic queuing and the dangers created by it. Workers must be instructed to immediately notify the traffic control supervisor and other supervisory personnel if traffic is queuing beyond advance warning sign and devices or construction limits.
  - Signs. Signs must be straight and not leaning. Report problems to the traffic control supervisor or other as designated for immediate repair. Covered signs must be fully covered. If covers are damaged or out of place, report to the traffic control supervisor or other as designated.

- Included existing SP 007-011; This SP address training requirements.



## 7. PRESERVATION OF CULTURAL AND NATURAL RESOURCES AND THE ENVIRONMENT

Project-specific information pertinent to cultural and natural resources is included in the plan set in the General Notes and on the Environmental Permits, Issues, and Commitments (EPIC) sheet. Adhere to all guidance, Best Management Practices (BMPs), and permits shown on the plans. Signing the Contract certifies compliance with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment as issued by the following or other agencies.

- OSHA
- TCEQ
- Texas Department of Transportation
- Texas Historical Commission
- Texas Parks and Wildlife Department
- Texas Railroad Commission
- U.S. Army Corps of Engineers (USACE)
- U.S. Department of Energy
- U.S. Department of Transportation
- EPA
- Federal Emergency Management Agency
- U.S. Fish and Wildlife Service

7.2. **Protected and Imperiled Species and Wildlife.** Cease all work immediately and within 50 ft. if a protected or imperiled species, or any species assumed to be protected or imperiled, or wildlife is encountered onsite. Allow any animals to leave the area. Do not kill any wildlife. Contact Department environmental staff to investigate and evaluate any species or wildlife issues.

7.3. **Migratory Birds.** Bird and nest removal must not occur during vegetation clearing, construction, or maintenance activities on structures where birds or nests are present during the nesting season, as shown on the plans. If work will occur during the nesting season, measures to prevent nest establishment must be used before the start of nesting season or any activity. Contact Department environmental staff for assistance with birds and nests.

- Added new as an intro to section.
  - follow guidance, BMPs, permits, laws, rules and regulations.
  - List of Agencies moved to this section.
- 7.7.2 new;
  - Cease work within 50ft of wildlife, Allow animals to leave the area and do not kill them. Contact District staff to investigate and evaluate any wildlife issues.
- 7.7.3 No Change; Added Migratory Birds requirement to specification.

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7.4.1. Projects with Less than 1 Acre of Soil Disturbance Including Required Associated Project Specific Locations (PSLs) in Accordance with TPDES Construction General Permit (CGP) No. TXR150000. No construction site notice (CSN) posting will be required for soil disturbances within the right of way. Adhere to the requirements of the SWP3 and environmental layout as shown on the plans.

7.4.2. Projects with 1 Acre but Less than 5 Acres of Soil Disturbance Including Required Associated PSLs in Accordance with TPDES CGP No. TXR150000. The Department will and the Contractor will operate under a shared SWP3 for portions of the project in the right of way.

The Department will be considered the primary operator with operational control over plans and specifications as defined in TPDES CGP No. TXR150000 for construction activity in the right of way. The Department will post a small CSN and follow other requirements as defined in TPDES CGP No. TXR150000 as the entity having operational control over plans and specifications for work shown on the plans in the right of way.

The Contractor will be considered the primary operator with day-to-day operational control as defined in TPDES CGP No. TXR150000 for construction activity in the right of way. In addition to the Department's actions, the Contractor will post a small CSN and follow other requirements as defined in TPDES CGP No. TXR150000 as the entity having day-to-day operational control of the work shown on the plans in the right of way. This is in addition to the Contractor being responsible for TPDES CGP No. TXR150000 requirements for on-right-of-way and off-right-of-way PSLs. The Contractor will adhere to all requirements of the SWP3 and environmental layout as shown on the plans. The Contractor will be responsible for implementing the SWP3 for the project site as shown on the plans, in conformance with specifications, in accordance with TPDES CGP No. TXR150000, and as directed. Notification to Municipal Separate Storm Sewer System (MS4) operators (when applicable) upon project initiation and completion must be provided in accordance with TPDES CGP No. TXR150000 requirements. A signed copy of the small CSN will be provided to MS4 operators (where applicable) at least 2 days before commencing construction.

With the Engineer's concurrence upon the completion of soil disturbing activities and achieving permanent stabilization of 70% native background vegetation cover, the CSN may be removed.

7.4.1-7.4.3. Projects with 5 Acres or More of Soil Disturbance Including Required Associated PSLs in Accordance with TPDES CGP No. TXR150000. The Department and the Contractor will operate under a shared SWP3 for portions of the project in the right of way. The Department will be considered the primary operator with operational control over plans and specifications as defined in TPDES CGP No. TXR150000 for construction activities in the right of way. The Department will post a large CSN and file the Notice of

- Existing SP007-004; Co-permit requirements

- Existing SP506-005;
- Training Certificates available upon request

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Intent (NOI) and the Notice of Change (NOC), if applicable; and Notice of Termination (NOT), along with other requirements in accordance with TPDES CGP No. TXR150000, as the entity having operational control over plans and specifications for work shown on the plans in the right of way. Adhere to all requirements of the SWP3.

The Contractor will be considered the primary operator for day-to-day operational control as defined in TPDES CGP No. TXR150000 for construction activities in the right of way. In addition to the Department's actions, the Contractor will file an NOI; NOC, if applicable; and NOT and post a large CSN along with other requirements as the entity having day-to-day operational control of the work shown on the plans in the right of way. This is in addition to the Contractor being responsible for TPDES CGP No. TXR150000 requirements for on-right-of-way and off-right-of-way PSLs. Adhere to all requirements of the SWP3 and environmental layout as shown on the plans.

7.4.3.1. Notice of Intent (NOI). Contractor will submit an NOI to TCEQ in accordance with TPDES CGP No. TXR150000 requirements. NOI must be submitted at least 7 days before commencement of construction activities at the project site. Contractor must file NOI under the same Regulated Entity Number (REN) as the Department. Provide a signed copy to the Engineer and any other MS4 operators (where applicable) at the time of submittal. The Department will submit their NOI before Contractor submission and will provide a copy for Contractor's use in completing the Contractor's NOI form.

7.4.3.2. Notice of Change (NOC). Upon concurrence of the Engineer, submit an NOC to TCEQ within 14 days of discovery of a change or revision to the NOI as required by the CGP. Provide a signed copy of the NOC to the Engineer and any other MS4 operators (where applicable) at the time of submittal.

7.4.3.3. Notice of Termination (NOT). Upon concurrence of the Engineer, submit an NOT to TCEQ within 30 days of the Engineer's approval that 70% native background vegetative cover is met or equivalent permanent stabilization has been employed in accordance with TPDES CGP No. TXR150000. Provide a signed copy of the NOT to the Engineer and any other MS4 operators (where applicable) at the time of submittal.

7.4.4. Training. All Contractor and subcontractor employees involved in soil disturbing activities, small or large structures, stormwater control measures, and seeding activities must complete training as prescribed by the Department.

Training is provided by the Department at no cost to the Contractor and is valid for 3 yr. from the date of completion. The Engineer may require the following training at a frequency less than 3 yr. based on environmental needs:

- "Environmental Management System: Awareness Training for the Contractor" (English and Spanish) (approximate running time 20 min.)
- "Stormwater: Environmental Requirements During Construction" (English and Spanish) (approximate running time 20 min.)

In addition to the standard training requirements, the Contractor Responsible Person—Environmental (CRPE), alternate CRPE designated for emergencies, and Contractor's superintendent must enroll in and complete the training listed on the Department Environmental Management System training matrix and maintain and make available upon request the certificate of completion. Training is provided by a third party and is valid for 3 yr. from the date shown on the certificate of completion. Training and associated fees will not be paid for directly, but will be subsidiary to Item 506, "Temporary Erosion, Sedimentation, and Environmental Controls."



~~7.7~~ ~~Work~~ ~~Over the over~~ ~~Recharge~~ or ~~Contributing Zone of Protected Aquifers~~. Make every reasonable effort to minimize the degradation of water quality resulting from impacts relating to work over the recharge or contributing zones of protected aquifers, as defined and delineated by ~~the~~ TCEQ. Use ~~best management practices~~ ~~BMPs~~ and perform work in accordance with ~~the~~ Contract requirements.

~~Project-Specific Locations~~. For all ~~project-specific locations~~ (PSLs) on or off the right of way (e.g., material sources, waste sites, parking areas, storage areas, field offices, staging areas, ~~and~~ haul roads, ~~etc.~~), ~~signing the Contract certifies compliance~~, ~~comply~~ with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment ~~as issued by the following or other agencies:~~

~~■ Occupational Safety and Health Administration;~~

~~■ Texas Commission on Environmental Quality;~~

~~■ in accordance with Section 7.7.1, "Cultural Resources." All subcontractors must also comply with applicable environmental laws, rules, regulations, Texas Department of Transportation,~~

~~■ Texas Historical Commission;~~

~~■ Texas Parks and Wildlife Department;~~

~~■ Texas Railroad Commission;~~

~~■ U.S. Army Corps of Engineers;~~

~~■ U.S. Department of Energy;~~

~~■ U.S. Department of Transportation;~~

~~■ U.S. Environmental Protection Agency;~~

~~■ U.S. Federal Emergency Management Agency; and~~

~~■ U.S. Fish and Wildlife Service.~~

~~All subcontractors must also comply with applicable environmental laws, rules, regulations, and requirements in the Contract.~~ ~~requirements in the Contract~~. Maintain documentation of ~~certification~~ ~~environmental compliance~~ activities, including environmental consultant reports. ~~Contractor documentation on certification decisions and contacts~~, and correspondence with the resource agencies. Provide documentation upon request.

- No change; moved information to 1<sup>st</sup> section.



17.2.1. **Unreimbursed Repair.** Except for destruction (not reusable) due to Acts of God, reimbursement will not be made for repair of damage to the following temporary appurtenances, regardless of cause:

- signs,
- barricades, and
- ~~changeable message signs, and~~
- other work zone traffic control devices.

Crash cushion attenuators and guardrail end treatments are reimbursed in accordance with Section 7.17.2.2., "Reimbursed Repair." Truck-mounted attenuators, trailer attenuators, and portable changeable message signs are eligible for reimbursed repair in accordance with Section 7.17.2.2., "Reimbursed Repair." Reimbursement will only be made when the Engineer directs the placement of the device in a location other than what is depicted in the Contract and the Contractor is unable to seek reimbursement from third-party insurance.

Where the Contractor retains replaced appurtenances after completion of the project, the Department will limit the reimbursement to the cost that is above the salvage value at the end of the project.

17.4. **Detours.** The Contractor will be responsible for the cost of maintenance of detours constructed under the Contract, unless the failure or damage is due to one of the causes listed in Section 7.17.1., "Reimbursable Repair." The In addition, the Engineer may consider will reimburse the Contractor for repairs to detours when failures occur for reasons beyond the Contractor's control when determining reimbursement. Reimbursement will be made for repairs to detours constructed unless the failure was due to materials and workmanship. The Department will be responsible for the cost of maintenance of existing streets and roadways used for detours or handling traffic.

17.5. **Relief from Maintenance.** The Engineer may relieve the Contractor from responsibility of maintenance as outlined in accordance with this Section. This relief does not release the Contractor from responsibility for defective materials or work or constitute final acceptance. The Engineer will direct the Contractor to remove advance warning signs upon issuance of relief from maintenance.

- TMAs and portable changeable message signs are eligible for reimbursement for repair if the location directed was not called for in the contract and Contractor is unable to seek reimbursement from third party.
- Reimbursement for repairs to detours is allowed if outside the contractor's control.
  - Recommend to document any unacceptable materials or workmanship in DWRs, emails, and/or meeting minutes.
- Advance warning signs to be removed upon relief of Maintenance.



## 19. PAYROLLS

~~Ensure that~~ Pay employees, and contract labor, ~~and any subcontractor's employees are paid at least no less than~~ the predetermined wage rates shown ~~on~~ in the Contract. Require that subcontractors pay no less than the predetermined wage rates shown in the Contract.

Payroll records must contain the information required by law. As an option, ~~form~~ Form WH-347, "Payroll," is provided by the U.S. Department of Labor.

Maintain payroll and related records during the course of the Contract and preserve these records for a ~~period of 3 years~~, following the completion of the Contract or as required by law.

19.1. ~~49.1~~ **Minimum Wage Requirements for Federally Funded Contracts.** Comply with the requirements of FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contracts."

~~Submit~~ For construction contracts, submit electronic payroll records to the Engineer ~~in~~ using the ~~manner prescribed by the Department~~ Department's payroll system.

~~49.2~~ For federal-aid maintenance contracts, submit payroll records to the Engineer.

19.2. **Minimum Wage Requirements for State-Funded Contracts.** Comply with the requirements of 29 USC § 206 unless otherwise shown in the Contract.

~~Upon request~~ For construction contracts, submit electronic payroll records to the Engineer ~~in~~ using the ~~manner prescribed by~~ Department's payroll system.

For State-funded maintenance contracts, submit payroll records to the Engineer upon request.

## 20. SECURITY INCIDENTS

~~49.3-20.1.~~ **Reporting of Security Incidents.** Immediately notify the Department's Cyber Security Operations Center (CSOC) via the Report Cybersecurity Incident form on [txdot.gov](http://txdot.gov) of any potential cybersecurity incident or breach involving Department data. A breach of system security is the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.

~~20.2.~~ **Liability for Costs Incurred.** The Department reserves the right to hold the Contractor liable for all costs incurred by the Department to resolve a security incident introduced by the Contractor, their subcontractors, or their suppliers.

- Payrolls are required for Construction Projects and Federal aid maintenance contracts. Payrolls are required upon request for state funded maintenance contracts.

- New; Notification requirements for potential cybersecurity incident breach.
  - TxDOT reserves right to hold Contractor liable for all cost incurred by the Department



## 2. SUBCONTRACTING

 The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is not registered in the Department of Homeland Security (DHS) E-Verify system. Require that all subcontractors working on the project register and require that all subcontractors remain active in the DHS E-Verify system until their work is complete on the project.

2.1. **Construction Contracts and Federally Funded Maintenance Contracts.** Perform work with own organization on at least 30% of the total original Contract cost (25% if the Contractor is a ~~Small Business~~ **Enterprisean SBE** on a wholly State- or local-funded Contract), excluding any specialty items as determined by the Engineer. Specialty items are those that require highly specialized knowledge, abilities, or equipment not usually available in the contracting firm expected to bid on the proposed Contract as a whole.

Specialty items will be shown on the plans or as determined by the Engineer. Bid cost of specialty items performed by subcontractors will be deducted from the total original Contract cost before computing the required amount of work to be performed by the Contractor's own organization.

The term "perform work with own organization" includes only:

- workers employed and paid directly by the Contractor or wholly owned subsidiary;
- equipment owned by the Contractor or wholly owned subsidiary;

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- rented or leased equipment operated by the Contractor's employees or wholly owned subsidiary's employees;
- materials incorporated into the work if the majority of the value of the work involved in incorporating the material is performed by the Contractor's own organization, including a wholly owned subsidiary's organization; and
- labor provided by staff leasing firms licensed under Chapter 91 of the Texas Labor Code for nonsupervisory 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.

 Mobilization is not included in calculation of 30%.

When staff leasing firms provide materials or equipment, they are considered subcontractors. In these instances, submit staff leasing firms for approval as a subcontractor.

Copies of ~~cancelled~~**canceled** checks and certified statements may be required to verify compliance with the requirements of this Section.

- SP008-30; E-Verify Requirement

- Mobilization is not counted towards 30% calculation.



## 3. COMPUTATION OF CONTRACT TIME FOR COMPLETION

The number of working days is established by the Contract. For Contracts with work orders, the number of working days is established in each work order. Working day charges will begin when work begins as prescribed in Article 8.1., "Prosecution of Work." Working day charges will continue in accordance with the Contract.



The development of the conceptual time determination is intended to establish the number of working days on the Contract. Upon request, the Engineer will provide the conceptual time determination schedule to the Contractor for informational purposes only. The schedule assumes generic resources, production rates, sequences of construction and average weather conditions based on historic data. The Department will not adjust the number of working days and milestones, if any, due to differences in opinion regarding any assumptions made in the preparation of the schedule or for errors, omissions, or discrepancies found in the Department's conceptual time determination schedule. Schedule labor, equipment, procurement of materials, subcontractor work, and all other necessary means to prosecute the work within the number of working days specified by the Contract.

3.1.3. **Seven-Day Workweek.** Working days will be charged Monday ~~through~~ Sunday, excluding national holidays, regardless of weather conditions or material availability. Work on national holidays will not be permitted without written permission of the Engineer. If work is performed on any of these holidays or critical path activities requiring an Inspector to be present are performed on any of these holidays, and weather or other conditions permit the performance of work for 7 hr. between 7:00 A.M. and 6:00 P.M., a working day will be charged.

3.1.4. **Standard Workweek.** Working days will be charged Monday ~~through~~ Friday, excluding national or ~~state~~State holidays, if weather or other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. between 7:00 A.M. and 6:00 P.M., unless otherwise shown in the Contract. The Contractor has the option of working on Saturdays or ~~state~~State holidays. Provide sufficient advance notice to the Engineer when scheduling work on Saturdays. Work on Sundays and national holidays not be permitted without written permission of the Engineer. If work requiring an Inspector to be present is or critical path activities are performed on a Saturday, Sunday, or holiday, and weather or other conditions permit the performance of work for 7 hr. between 7:00 A.M. and 6:00 P.M., a working day will be charged.

## 4. TEMPORARY SUSPENSION OF WORK OR WORKING DAY CHARGES

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.

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

- Language added stating schedule work to prosecute the work within the number of working days in the contract.
- Removed statement stating TxDOT would not change days due to errors. These notification need to be brought up at the beginning of the project and the Engineer still decides on any ambiguities.
- Added days are charged if critical path activities are performed or an inspector is needed.
  - Added similar language to all applicable workweeks.



## 5. PROJECT SCHEDULES

5.4. **Activity Format.** For each activity on the project schedule, provide:

- a concise description of the work represented by the activity,
- an activity duration in whole working days, and
- code activities so that organized plots of the schedule may be produced.

CPM schedules must also include the quantity of work and estimated production rate for major items of work. Provide enough information for review of the work being performed.

Total float is defined as the amount of time (in whole days) that an activity can be delayed before impacting the project's completion date. Total float is a shared commodity between the Department and the Contractor.

5.5. **Schedule Types and Schedule Impacts.**

5.5.1. **Bar Chart.** Seven calendar days before the preconstruction meeting, prepare and submit a hard or electronic copy of the schedule using the bar chart method.

5.5.1.1. **Progress Schedule Reviews.** Update the project schedule and submit a hard or electronic copy when changes to the schedule occur or when requested.

5.5.2. **Critical Path Method.** Prepare and submit the schedule using the CPM. Submit an electronic copy to the Engineer within the timeframes specified. An electronic copy is defined as the scheduling software's native file, saved in a format acceptable to the Engineer. In all cases, an electronic format (.xer) of Primavera Project Planner and Enterprise Project Portfolio Management (P6) will be acceptable.

5.5.2.1. **Preliminary Schedule.** Seven business days otherwise agreed for a later submission, 7 calendar days before the preconstruction meeting, submit both the plotted and an electronic copy of the project schedule showing activities beginning with the authorization date to begin work and including activities to be performed within the first 90 calendar days from the work start date.

5.5.2.2. **Baseline Schedule.** The baseline schedule will be considered the Contractor's plan to successfully construct the project within the timeframe and construction sequencing indicated in the Contract. Submit both plotted and electronic copies of the baseline schedule. Submit 2 When requested, submit two plots of the schedule: one organized with the activities logically grouped using the activity coding, and the other plot showing only the critical path determined by the longest path, not based on critical float.

Develop and submit the baseline schedule for review within the first 45 calendar days from the work start date unless the time for submission is extended by the Engineer.

- Defined float and stating it is a shared commodity between the Department and the Contractor.
- Clarified schedule may be electronic.
- Stated CPM schedules are to be electronic and, in the format, acceptable to the Engineer. P6 is acceptable.
- Preliminary schedule may be submitted later than 7 days prior to precon if agreed to.
- Only an electronic copy of the project schedule is required. Plots will be upon request.



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5.5.2.3. **Progress Schedule.** Maintain and submit the project progress schedule monthly for use by both the Contractor and the Engineer. Submit ~~both the plotted and an~~ electronic copy as it will become an as-built record of the daily progress achieved on the project. If continuous progress of an activity is interrupted for any reason except non-work periods (such as e.g., holidays, weekend, or interference from temperature or precipitation), then the activity will show the actual finish date as that date of the start of the interruption and the activity will be broken into a subsequent activity (or activities, based on the number of interruptions) similarly numbered with successive alpha character as necessary. The original duration of the subsequent activity will be that of the remaining duration of the original activity. Relationships of the subsequent activity will match those of the original activity so that the integrity of the project schedule logic is maintained. Once established, the original durations and actual dates of all activities must remain unchanged. Revisions to the schedule may be made as necessary.

7. **DEFAULT OF CONTRACT**

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If any of these conditions occur, the Engineer will give notice in writing to the Contractor and the Surety of the intent to declare the Contractor in default. If the Contractor does not proceed as directed within 10 days after the notice, the Department will provide written notice to the Contractor and the Surety to declare the Contractor to be in default of the Contract. If the Contractor provides the Department written notice of voluntary default of the Contract, the Department may waive the 10-day notice of intent to declare the Contractor in default and immediately provide written notice of default to the Contractor and the Surety. Working Calendar day charges will continue until completion of the Contract. The Department may suspend work in accordance with ~~Section Article~~ 8.4., "Temporary Suspension of Work or Working Day Charges," to investigate apparent fraud or other unfixable conduct before defaulting the Contractor. The Contractor may be subject to sanctions under the TAC. A default may result in the application of remedial action by the Department.

Reference 43 TAC § 9.24, "Performance Review Committee and Actions."

7.2. **Wrongful Default.** If it is determined after the Contractor is declared in default, that the Contractor was not in default, the rights and obligations of all parties will be the same as if termination had been issued for the convenience of the public as provided in Article 8.8., "Termination of Contract." For consideration of wrong default, submit a written request to the Construction Division within 30 calendar days of receipt of notice of default.

- Stating Calendar day charges will continue until completion of the contract is an ambiguity in the contract. Working Day charges should remain the same after a default as in the contract.
- Added referral to PRC in the event of a default this has been the standard practice.
- no change; SP008-033: Wrongful default SP.



## 5. PROGRESS PAYMENTS

The Engineer will prepare a monthly estimate of the amount of work performed, including materials in place. Incomplete items of work may be paid at an agreed upon percentage approved by the Engineer. Payment of the monthly estimate is determined at the Contract item prices less any withholdings or deductions in accordance with the Contract. Progress payments may be withheld for failure to comply with the Contract.

It is the Department's intent 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 is the 25th of the month.

## 6. PAYMENT FOR MATERIAL ON HAND (MOH)

If payment for MOH is desired, request compensation for the invoice cost of acceptable nonperishable materials that have not been used in the work before the request, and that have been delivered to the work location or are in acceptable storage places. Nonperishable materials are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. Include only materials that have been sampled, tested, approved, or certified, and are ready for incorporation into the work. Only materials ~~which that~~ are completely constructed or fabricated on the Contractor's order for a specific Contract and are so marked and on which an approved test report has been issued are eligible. Payment for MOH may include the following types of items: concrete traffic barrier, precast concrete box culverts, concrete piling, reinforced concrete pipe, and illumination poles. Any repairs required after fabricated materials have been approved for storage will require the Engineer's approval of the Engineer before being made and will be made at the Contractor's expense. Include only those materials and products, when cumulated under an individual item or similar bid items, that have an invoice cost of at least \$1,000 in the request for MOH payment. (E.g., for MOH eligibility, various sizes of conductor are considered similar bid items and may be cumulated to meet the threshold; for small roadside signs, the sign supports, mounting bolts, and the sign face are considered one bid item or similar bid items for more than one pay item for sign supports.) Requests for MOH are to be submitted at least 2 days before but not later than the estimate cut-off date unless otherwise agreed. If there is a need to request MOH after the established cut-off date, the District can make accommodation as the need arises. This needed accommodation is to be the exception, though, and not the rule.

- No change; SP009-010: MOH and estimate cut off.
  - Earliest cut off date for estimates is the 25<sup>th</sup> of the month.
  - Clarified cumulated cost under 1 bid item of at least \$1,000 for MOH.



## 7. PAYMENT FOR EXTRA WORK AND FORCE ACCOUNT METHOD

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When using Force Account Method, determine an estimated cost for the proposed work and establish labor and equipment rates and material costs. Maintain daily records of extra work and provide copies of these records daily, signed by the Contractor's representative, for the Department's verification by the Department. Request payment for the extra work no later than the 10th day of the month following the month in which the work was performed. Include copies of all applicable invoices. If the extra work to be performed has an estimated cost of less than \$10,000, submit for approval and payment an invoice of actual cost for materials, equipment, labor, tools, and incidentals necessary to complete the extra work. When added work requires mobilization that is exclusive to the added work, mobilization may be added to the force account invoice for payment.

7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9.7.1.4., "Equipment," except that: "The 15% markup will be paid when standby is associated with extra work but will not be paid when standby is associated with damages."

7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment:

- Standby will be paid at 50% (to remove operating cost) of the FHWA rental rates found in the Rental Rate Blue Book multiplied by monthly Equipment Watch rate after the regional and age adjustment factor and factors have been applied. Operating costs will not be allowed. Calculate the standby rate as follows.

$$\text{Standby rate} = (\text{FHWA hourly rate} - \text{operating costs}) \times 50\%$$

- If an hourly rate is needed, divide the monthly Equipment Watch rate adjustment factor by 176.
- No more than 8 hr. of standby will be paid during a 24-hr. day period, nor more than 40 hr. per week.
- Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

7.1.5. **Subcontracting.** An additional 5% of the actual invoice cost will be paid to the Contractor as compensation for administrative cost, superintendence, and profit.

7.1.6. **Law Enforcement Personnel.** An additional 5% of the actual invoice cost will be paid as compensation for administrative costs, superintendence, and profit.

7.1.7. **Railroad Flaggers.** An additional 5% of the actual invoice cost will be paid as compensation for administrative cost, superintendence, and profit.

- Added clarification; mobilization may be paid if exclusive to the added work.
- Corrected Standby equation. Mentioned Standby is allowed for extra work and not damages.
- Removed superintendence from subcontracting, law enforcement, and rail road flagger mark up. Superintendent will be added for reasonable time associated in coordination.



## ■ What is it?

- New general provisions for materials contracts only (MMCs and TMCs)
- Items 1-9 no longer used for MMC/TMCs
- Went live November 2022 letting

## ■ What are the highlights?

- Allows for up to 365 day contracts with 1 extension (or 2 extensions if contract is less 6 months or less)
- Contractor can charge TxDOT for demurrage; TxDOT can only charge contractor for actual damages
- Calendar days start within 30 days of letting
- Provisions for expedited work orders (48 hour or less response time)
- Pricing adjustments from Producer Price Index, only at extensions
- Bid bonds and insurance required, but no performance or payment bonds
- No special provision to item 4 in the contract for extensions since Item 10 already allows them via change order





HELP

# #EndTheStreakTX

End the streak of daily deaths on Texas roadways.

[TxDOT.gov](https://www.txdot.gov) (Keyword: #EndTheStreakTX)



#EndTheStreakTX Toolkit

