

# Item 1

## Abbreviations and Definitions



### 1. APPLICABILITY

Wherever the following terms are used in these specifications or other Contract documents, the intent and meaning will be interpreted as shown below.

### 2. ABBREVIATIONS

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALSC	American Lumber Standard Committee, Inc.
<u>AMPP</u>	<u>Association for Materials Protection and Performance</u>
AMRL	AASHTO Materials Reference Laboratory
ANLA	American Nursery and Landscape Association
ANSI	American National Standards Institute
APA	The Engineered Wood Association
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASBI	American Segmental Bridge Institute
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWC	American Wood Council
AWG	American Wire Gage
AWPA	American Wood Protection Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BMP	Best Management Practices
CFR	Code of Federal Regulations
CMP	Corrugated Metal Pipe
COE	U.S. Army Corps of Engineers
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
DMS	Departmental <del>Material</del> <u>Materials</u> Specification
EIA	Electronic Industries Alliance
EPA	<del>United States</del> <u>U.S.</u> Environmental Protection Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards (General Services Administration)
GSA	General Services Administration
HUB	Historically Underutilized Business

ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineering Society of North America
IMSA	International Municipal Signal Association
ISO	International Organization for Standardization
<del>ITS</del>	<del>Intelligent Transportation System</del>
ITE	Institute of Transportation Engineers
<del>ITS</del>	<del>Intelligent Transportation System</del>
LRFD	Load and Resistance Factor Design
MASH	Manual for Assessing Safety Hardware
MPL	Material Producer List
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report
NEC	National Electrical Code (Published by NFPA)
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
<del>NPCA</del>	<del>National Precast Concrete Association</del>
NRM	Nonhazardous Recyclable Material
NRMCA	National Ready Mixed Concrete Association
NSBA	National Steel Bridge Alliance
<del>NTPEP</del>	<del>National Transportation Product Evaluation Program</del>
OSHA	Occupational Safety & Health Administration, U.S. Department of Labor
PCA	Portland Cement Association
PCI	Precast/Prestressed Concrete Institute
PPI	Plastics Pipe Institute
PS&E	Plans, Specifications, and Estimates
PSL	Project-Specific Location
PTI	Post-Tension Institute
QA	Quality Assurance
QC	Quality Control
RCP	Reinforced Concrete Pipe
RPLS	Registered Public Land Surveyor
RRC	Railroad Commission of Texas
SBE	Small Business Enterprise
SFFPA	Southern Forest Products Association
SI	International System of Units
SPIB	Southern Pine Inspection Bureau
<del>SSPC</del>	<del>The Society for Protective Coatings</del>
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TDLR	Texas Department of Licensing and Regulation
TMUTCD	Texas Manual on Uniform Traffic Control Devices
UL	Underwriters Laboratory, Inc.
USC	United States Code
WRI	Wire Reinforcement Institute
WWPA	Western Wood Products Association

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### 3. DEFINITIONS

- 3.1. **Abrasive Blasting.** Spraying blasts of pressurized air combined with abrasive media.
- 3.2. **Actual Cost.** Contractor's actual cost to provide labor, material, equipment, and project overhead necessary for the work.

- 3.3. **Addendum.** Change in proposal forms developed between advertising and bid submittal deadline.
- 3.4. **Additive Alternate.** A bid item contained in a proposal that is not a regular item or a replacement alternate bid item. The additive alternate item(s) include work that may be added to the base bid at the time of letting.
- 3.5. **Advertisement.** The public announcement required by law inviting bids for work to be performed or materials to be furnished.
- 3.6. **Affiliates.** Two or more ~~firms~~Bidders are affiliated if they share common officers, directors, or stockholders; a family member of an officer, director, or stockholder of one ~~firm~~Bidder serves in a similar capacity in another of the ~~firms~~Bidders; an individual who has an interest in, or controls a part of, one ~~firm~~Bidder either directly or indirectly also has an interest in, or controls a part of, another of the ~~firms~~Bidders; the ~~firms~~Bidders are so closely connected or associated that one of the ~~firms~~Bidders, either directly or indirectly, controls or has the power to control another ~~firm~~Bidder; one ~~firm~~Bidder controls or has the power to control another ~~of the firms~~Bidder; or the ~~firms~~Bidders are closely allied through an established course of dealings, including, but not limited to, the lending of financial assistance. Refer to 43 TAC § 9.12(g), "Affiliated Entities."
- 3.7. **Air Blasting.** Spraying blasts of pressurized air free of oil and moisture.
- 3.8. **Air Temperature.** The temperature measured in degrees Fahrenheit (°F) in the shade, not in the direct rays of the sun, and away from artificial heat.
- 3.9. **Anticipated Profit.** Profit for work not performed.
- 3.10. **Apparent Low Bidder.** The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Department.
- 3.11. **Architect of Record.** A person registered as an architect or licensed as a landscape architect, in ~~accordance~~conformance with State law, exercising overall responsibility for the design or a significant portion of the design and ~~performs~~performing certain Contract administration responsibilities as described in the Contract; or a firm employed by the State to provide professional architectural services.
- 3.12. **Arterial Highway.** A highway used primarily for through traffic and usually on a continuous route.
- 3.13. **Available Bidding Capacity.** The Contractor's approved bidding capacity less uncompleted work on Department Contracts.
- 3.14. **Award.** The Commission's acceptance of a Contractor's bid for a proposed Contract that authorizes the Department to enter into a Contract.
- 3.15. **Bid.** The offer from the Bidder for performing the work described in the proposal.
- 3.16. **Bid Bond.** The security executed by the Contractor and the Surety furnished to the Department to guarantee payment of liquidated damages if the Contractor fails to enter into an awarded Contract.
- 3.17. **Bid Error.** A mathematical mistake made by a Bidder in the unit price entered into the proposal.
- 3.18. **Bidder.** An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed Contract.
- 3.19. **Bidders Questionnaire.** A prequalification form ~~completed by a prospective Bidder reflecting a Bidder's that reflects detailed equipment and experience data but waives audited~~ financial data ~~and experience~~.
- 3.20. **Bidding Capacity.** The maximum dollar value a Contractor may have under Contract with the Department at any given time.

- 3.21. **Blast Cleaning.** Using one of the blasting methods including, but not limited to water blasting, low-pressure water blasting, high-pressure water blasting, abrasive blasting, water-abrasive blasting, shot blasting, slurry blasting, water -injected abrasive blasting, and brush blasting.
- 3.22. **Bridge.** A structure, including supports, erected over a depression or an obstruction (e.g., water, a highway, or a railway) ~~having~~with a roadway or track for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 ft. between faces of abutments, spring lines of arches, or extreme ends of the openings for multiple box culverts.
- 3.23. **Brush Blasting.** Sweeping lightly with an abrasive blast to remove loose material.
- 3.24. **Building Contract.** A Contract entered under Transportation Code, Chapter 223, Subchapter A, "Competitive Bids," for the construction or maintenance of a Department building or appurtenance facilities. Building Contracts are considered ~~to be~~ construction Contracts.
- 3.25. **Callout Work.** Contracts, or work items in Contracts, that require a Contractor's response on an as-needed basis (e.g., see Item 351, "Flexible Pavement Structure Repair").
- 3.26. **Certificate of Insurance.** A form approved by the Department covering insurance requirements stated in the Contract.
- 3.27. **Change Order.** Written order to the Contractor detailing changes to the specified work, item quantities, or any other modification to the Contract.
- 3.28. **Commission.** The Texas Transportation Commission or authorized representative.
- 3.29. **Concrete Construction Joint.** A joint formed by placing plastic concrete in direct contact with concrete that has attained its initial set.
- 3.30. **Concrete Repair Manual.** Department manual specifying methods and procedures for concrete repair as an extension of the standard specifications.
- 3.31. **ConcreteWorks®.** Department-owned software for concrete heat analysis. Software is available on ~~Department~~the Department's website.
- ~~3.32.~~ **Confidential Questionnaire.** ~~A prequalification form that reflects detailed financial and experience data.~~
- ~~3.32-3.33.~~ **Construction Contract.** A Contract entered under Transportation Code, ~~Chapter § 223, Subchapter A, 001(b)(1),~~ for the construction, reconstruction, repair, or maintenance of a segment of the State highway system.
- ~~3.33-3.34.~~ **Consultant.** The licensed professional engineer or engineering firm, or the architect or architectural firm, registered in the State of Texas and under Contract to the Department to perform professional services. The consultant may be the Engineer or architect of record or may provide services through and be subcontracted to the Engineer or architect of record.
- ~~3.34-3.35.~~ **Contract.** The agreement between the Department and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- ~~3.35-3.36.~~ **Contract Documents.** Elements of the Contract including, but not limited to, the plans, specifications incorporated by reference, special provisions, special specifications, Contract bonds, change orders, and supplemental agreements.
- ~~3.36-3.37.~~ **Contract Time.** The number of working days specified for completion of the work, including authorized additional working days.

- ~~3.37.3.38.~~ **Contractor.** The individual, partnership, limited liability company, corporation, or joint venture and all principals and representatives with which the Contract is made by the Department.
- ~~3.38.1.1.~~ **Controlled Access Highway.** Any highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys, or other public or private ways.
- 3.39. **Control of Access.** The condition in which the right to access of owners or occupants of abutting land or other persons in connection with a highway is fully or partially controlled by public authority.
- 3.40. **Control Point.** An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.
- ~~3.41.~~ **Controlled Access Highway.** Any highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys, or other public or private ways.
- ~~3.41.3.42.~~ **Cross-Sections.** Graphic representations of the original ground and the proposed facility, at right angles to the centerline or base line.
- ~~3.42.3.43.~~ **Culvert.** Any buried structure providing an opening under a roadway for drainage or other purposes. Culverts may also be classified as bridges. (See Section 1.3.22., "Bridge.")
- ~~3.43.3.44.~~ **Cycle.** The activity necessary for performing the specified work within the right of way project limits once.
- ~~3.44.3.45.~~ **Daily Road-User Cost.** Damages based on the estimated daily cost of inconvenience to the traveling public resulting from the work.
- ~~3.45.3.46.~~ **Debar (Debarment).** ~~Action taken by the Department or federal government pursuant to regulation that prohibits a person or company~~ **Disqualification of an entity** from bidding on or entering into a Contract, ~~or with the Department,~~ from participating as a subcontractor, ~~or under a Contract with the Department, and from participating as a~~ supplier of materials or equipment ~~to be used in a highway improvement Contract as defined in Transportation Code, Chapter 223, Subchapter A, under a Contract with the Department. Refer to 43 TAC § 10.2, "Definitions."~~
- ~~3.47.~~ **Department.** The Texas Department of Transportation (TxDOT).
- ~~3.48.~~ **Departmental Materials Specifications.** Reference specifications for various materials published by the Materials and Tests Division.
- ~~3.46.3.49.~~ **Detour.** A temporary traffic route around a closed portion of a road.
- ~~3.47.1.1.~~ **Department.** The Texas Department of Transportation (TxDOT).
- ~~3.48.~~ **Departmental Material Specifications.** Reference specifications for various materials published by the Construction Division.
- ~~3.49.3.50.~~ **Direct Traffic Culvert.** Concrete box culvert whose top slab is used as the final riding surface or is to have an overlay or other riding surface treatment.
- ~~3.50.3.51.~~ **Disadvantaged Business Enterprise.** A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which ~~is~~ at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.
- ~~3.51.3.52.~~ **Divided Highway.** A highway with separate roadways intended to move traffic in opposite directions.

- ~~3.52-3.53.~~ **Easement.** A real property right acquired by one party to use land belonging to another party for a specified purpose.
- ~~3.53-3.54.~~ **Electronic Vault.** The Department's bidding system where electronic bids are stored before bid opening.
- ~~3.54-3.55.~~ **Engineer.** The Chief Engineer of the Department or the authorized representative of the Chief Engineer.
- ~~3.56.~~ **Equipment Watch.** Publication containing equipment rental rates.
- ~~3.57.~~ **Escalation Ladder.** A process to determine issue resolution during the course of the Contract.
- ~~3.55-3.58.~~ **Expressway.** A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.
- ~~3.56-3.59.~~ **Family Member.** A family member of an individual is the individual's parent, parent's spouse, ~~step-parent,~~ ~~step-parent's~~~~stepparent,~~ ~~stepparent's~~ spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse. Refer to 43 TAC § 9.12(g), "Affiliated Entities."
- ~~3.57-3.60.~~ **Force Account.** Payment for directed work based on the actual cost of labor, equipment, and materials furnished with markups for project overhead and profit.
- ~~3.58-3.61.~~ **Freeway.** An expressway with full control of access.
- ~~3.59-3.62.~~ **Frontage Road.** A local street or road auxiliary to and located along an arterial highway for service to abutting property and adjacent areas and for control of access (sometimes known as a service road, access road, or insulator road).
- ~~3.60-3.63.~~ **Hazardous Materials or Waste.** Hazardous materials or waste include, but are not limited to, explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable state and federal regulations.
- ~~3.61-3.64.~~ **High-Pressure Water Blasting.** Water blasting with pressures between 5,000 and 10,000 psi.
- ~~3.62-3.65.~~ **Highway, Street, or Road.** General terms denoting a public way for purposes of and related to vehicular, pedestrian, and bicycle travel, including the entire area within the right of way: including Intersections and Easements; all related structures, improvements, and appurtenances, including but not limited to the roadside and roadside facilities, drainage systems, signal systems, and other traffic in formation and control systems; or other structures or improvements that directly or indirectly serve public travel. Recommended usage in urban areas is highway or street; and in rural areas, highway or road.
- ~~3.63-3.66.~~ **Historically Underutilized Business- (HUB).** A corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit certified by the Texas Building and Procurement Commission, and 51% owned by one or more persons who are economically disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, or women, and have a proportionate interest and demonstrate active participation in the control, operation, and management of the business' affairs. Individuals meeting the HUB definition are required to be residents of the State of Texas. Businesses that do not have their primary headquarters in the State of Texas are not eligible for HUB certification.
- ~~3.67.~~ **In Writing.** Communication memorialized, including written or electronic documentation by email or letter only.
- ~~3.64-3.68.~~ **Incentive and Disincentive Provisions.** An adjustment to the Contract price of a predetermined amount for each day the work is completed ahead of or behind the specified milestone, phase, or Contract completion

dates. The amount of the incentive and disincentive is determined based on estimated costs for engineering, traffic control, delays to the motorists, and other items involved in the Contract.

- ~~3.65.3.69.~~ **Independent Assurance Tests.** Tests used to evaluate the sampling and testing techniques and equipment used in the acceptance program. The tests are performed by the Department and are not used for acceptance purposes.
- ~~3.66.3.70.~~ **Inspector.** The person assigned by the Engineer to inspect for compliance with the Contract any or all parts of the work and the materials used.
- ~~3.67.3.71.~~ **Intelligent Transportation System.** An integrated system that uses video and other electronic detection devices to monitor traffic flows.
- ~~3.68.3.72.~~ **Intersection.** The general area where ~~2~~two or more highways, streets, or roads join or cross, including the roadway and roadside facilities for vehicular, pedestrian, and bicycle traffic movements within it.
- ~~3.69.3.73.~~ **Island.** An area within a roadway from which vehicular traffic is intended to be excluded, together with any area at the approach occupied by protective deflecting or warning devices.
- ~~3.70.3.74.~~ **Joint Venture.** Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid proposal.
- ~~3.71.3.75.~~ **Lane Rental.** A method to assess the Contractor daily or hourly rental fees for each lane, shoulder, or combination of lanes and shoulders taken out of service.
- ~~3.72.3.76.~~ **Letting.** The receipt, opening, tabulation, and determination of the apparent low Bidder.
- ~~3.73.3.77.~~ **Letting Official.** The Executive Director or any Department employee empowered by the Executive Director to officially receive bids and close the receipt of bids at a letting.
- ~~3.74.3.78.~~ **Licensed Professional Engineer.** A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas; also referred to as a Professional Engineer.
- ~~3.75.3.79.~~ **Limits of Construction.** An area with established boundaries, identified within the highway right of way and easements, where the Contractor is permitted to perform the work.
- ~~3.76.3.80.~~ **Local Street or Road.** A street or road primarily for access to residence, business, or other abutting property.
- ~~3.77.3.81.~~ **Low-Pressure Water Blasting.** Water blasting with pressures between 3,000 and 5,000 psi.
- ~~3.78.3.82.~~ **Major Item.** An item of work included in the Contract that has a total cost equal to or greater than 5% of the original Contract or \$100,000 whichever is less. A major item at the time of bid will remain a major item. An item not originally a major item does not become one through the course of the Contract.
- ~~3.79.~~ **Manual of Testing Procedures.** ~~Department manual outlining test methods and procedures maintained by the Materials and Pavements Section of the Construction Division.~~
- ~~3.80.3.83.~~ **Material Producer List.** Department-maintained list of approved products, materials, laboratories, service providers, manufacturers, and producers.
- ~~3.81.3.84.~~ **Materially Unbalanced Bid.** A bid that generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the State.



- ~~3.85.~~ **Materials Contract.** A Contract entered under Transportation Code § 223.001(b)(2) and (3) for roadway materials, maintenance materials, traffic control devices, or safety devices. These Contracts are designated as "MMC" and "TMC" for Maintenance Materials Contracts or Traffic Materials Contracts, respectively.
- ~~3.86.~~ **Materials Supplier's Questionnaire.** A prequalification form that reflects basic information, such as company contact, signature authority, and other requirements, but waives financial, equipment, and experience data.
- ~~3.82-3.87.~~ **Mathematically Unbalanced Bid.** A bid containing bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.
- ~~3.83-3.88.~~ **Median.** The portion of a divided highway separating the traffic lanes in opposite directions.
- ~~3.84-3.89.~~ **Milestone Date.** The date that a specific portion of the work is to be completed, before the completion date for all work under the Contract.
- ~~3.85-3.90.~~ **Monolithic Concrete Placement.** The placement of plastic concrete in such manner and sequence to prevent a construction joint.
- ~~3.86-3.91.~~ **National Holidays.** January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, ~~and~~ December 24 ~~or,~~ and December 25.
- ~~3.87-3.92.~~ **Nonhazardous Recyclable Material.** A material recovered or diverted from the nonhazardous waste stream for the purposes of reuse or recycling in the manufacture of products that may otherwise be produced using raw or virgin materials.
- ~~3.88-3.93.~~ **Nonresident Bidder.** A Bidder whose principal place of business is not in Texas. This includes a Bidder whose ultimate parent company or majority owner does not have its principal place of business in Texas.
- ~~3.89-3.94.~~ **Nonresponsive Proposal.** A proposal that does not meet the criteria for acceptance contained in the proposal form.
- ~~3.90-3.95.~~ **Non-Site-Specific Contracts.** Contracts where a geographic region is specified for the work and work orders, with or without plans, detail the limits and work to be performed.
- ~~3.91-3.96.~~ **Notification.** Either written or oral instruction to the Contractor. Voice mail is oral notification.
- ~~3.92-3.97.~~ **Pavement.** That part of the roadway ~~having~~with a constructed surface for the use of vehicular traffic.
- ~~3.93-3.98.~~ **Pavement Structure.** Combination of surface course and base course placed on a subgrade to support the traffic load and distribute it to the roadbed.
- ~~3.93.1.1.1.1.~~ **Surface Course.** ~~Pavement structure layers designed to accommodate the traffic load. The top layer resists skidding, traffic abrasion, and the disintegrating effects of climate and is sometimes called the wearing course.~~
- ~~3.93.2-3.98.1.~~ **Base Course.** One or more layers of specified material thickness placed on a subgrade to support a surface course.
- ~~3.93.3-3.98.2.~~ **Subgrade.** The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.
- ~~3.93.4-3.98.3.~~ **Subgrade Treatment.** Modifying or stabilizing material in the subgrade.



- ~~3.98.4.~~ **Surface Course.** Pavement structure layers designed to accommodate the traffic load. The top layer resists skidding, traffic abrasion, and the disintegrating effects of climate and is sometimes called the wearing course.
- ~~3.94.3.99.~~ **Payment Bond.** The security executed by the Contractor and the Surety, furnished to the Department to guarantee payment of all legal debts of the Contractor pertaining to the Contract.
- ~~3.95.3.100.~~ **Performance Bond.** The security executed by the Contractor and the Surety, furnished to the Department to guarantee the completion of the work in accordance with the terms of the Contract.
- ~~3.96.3.101.~~ **Plans.** The drawings approved by the Engineer, including true reproductions of the drawings that may show the location, character, dimensions, and details of the work and are a part of the Contract. Documents may include drawings or digital files.
- ~~3.97.3.102.~~ **Power of Attorney for Surety Bonds.** An instrument under corporate seal appointing an attorney-in-fact to act on behalf of a Surety in signing bonds.
- ~~3.98.3.103.~~ **Prequalification.** The process for determining a Contractor's eligibility to bid work.
- ~~3.99.3.104.~~ **Prequalification Statement.** The forms on which required information is furnished concerning the Contractor's ability to perform and finance the work.
- ~~3.100.3.105.~~ **Project-Specific Location.** A material source, plant, waste site, parking area, storage area, field office, staging area, haul road, or other similar location either outside the project limits or within the project limits but not specifically addressed in the Contract.
- ~~3.101.3.106.~~ **Proposal.** The offer from the Bidder submitted on the prescribed form, including addenda issued, giving unit bid prices for performing the work described in the plans and Specifications specifications.
- ~~3.102.3.107.~~ **Proposal Form.** The form printed and sent to the Bidder by the Department or printed by the Bidder from the Department's bidding system.
- ~~3.103.3.108.~~ **Proposal Guaranty.** The security furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.
- ~~3.104.3.109.~~ **Quality Assurance- (QA).** Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.
- ~~3.105.3.110.~~ **Quality Control- (QC).** Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.
- ~~3.106.3.111.~~ **Ramp.** A section of highway for the primary purpose of making connections with other highways.
- ~~3.107.3.112.~~ **Recurring Maintenance Work Contracts.** Contracts or work for which maintenance is needed at the same location on more than one occasion (e.g., mowing contractsContracts for which mowing cycles are requested on multiple occasions).
- ~~3.108.3.113.~~ **Referee Tests.** Tests requested to resolve differences between Contractor and Engineer test results. The referee laboratory is the ConstructionMaterials and Tests Division.
- ~~3.109.3.114.~~ **Regular Item.** A bid item contained in a proposal and not designated as an additive alternate or replacement alternate bid item.
- ~~3.110.3.115.~~ **Rental Rate Blue Book for Construction Equipment.** Publication containing equipment rental rates.

- 3.116. **Repair.** Performed under Transportation Code §223, Subchapter A for Highway Improvement Contracts and includes restoration of a Highway, Street, or Road by replacing or putting together, in whole or in part, what is torn, broken, or otherwise damaged. Repair denotes the process of restoring all or part of a Highway, Street, or Road that has been subjected to decay, waste, injury, partial destruction, erosion, dilapidation, degradation, etc. Repair includes work in Construction and Routine Maintenance Contracts.
- 3.114-3.117. **Replacement Alternate.** A bid item identified the proposal form that a Bidder may substitute for a specific regular item of work.
- 3.112-3.118. **Responsive Bid.** A proposal that meets all requirements of the proposal form for acceptance.
- 3.113-3.119. **Right of Way.** A general term denoting land or property devoted to transportation purposes.
- 3.114-3.120. **Roadbed.** The graded portion of a highway prepared as foundation for the pavement structure and shoulders. On divided highways, the depressed median type and the raised median type highways are considered to have two roadbeds. Highways with a flush median are considered to have one roadbed. Frontage roads are considered separate roadbeds.
- 3.115-3.121. **Road Master.** A railroad maintenance official in charge of a division of railway.
- 3.116-3.122. **Roadside.** The areas between the outside edges of the shoulders and the right of way boundaries. Unpaved median areas between inside shoulders of divided highways and areas within interchanges are included.
- 3.117-3.123. **Roadway.** The portion of the highway (including shoulders) used by the traveling public.
- 3.118-3.124. **Routine Maintenance Contract.** A maintenance Contract entered under Transportation Code Subchapter A for Highway Improvement Contracts let through and executed as a result of the routine maintenance contracting procedure, to preserve and repair roadways, bridges, and rights of way, and appurtenances with all its components to its designed or accepted configuration.
- 3.119-3.125. **Sandblasting, Dry.** Spraying blasts of pressurized air combined with sand.
- 3.120-3.126. **Sandblasting, Wet.** Spraying blasts of pressurized water combined with sand.
- 3.127. **Shot Blasting.** Spraying blasts of pressurized air combined with metal shot.
- 3.121-3.128. **Shoulder.** That portion of the roadway contiguous with the traffic lanes for accommodation of stopped vehicles for emergency use or for lateral support of base and surface courses.
- 3.122-1.1. **Shot Blasting.** Spraying blasts of pressurized air combined with metal shot.
- 3.123-3.129. **Sidewalk.** Portion of the right of way constructed exclusively for pedestrian use.
- 3.124-3.130. **Slurry Blasting.** Spraying blasts of pressurized air combined with a mixture of water and abrasive media.
- 3.131. **Small Business Enterprise.** A firm (including affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for 4 consecutive yr.
- 3.125-3.132. **Special Provisions.** Additions or revisions to these standard specifications or special specifications.
- 3.126-3.133. **Special Specifications.** Supplemental specifications applicable to the Contract not covered by these standard specifications.
- 3.127-3.134. **Specifications.** Directives or requirements issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the Contract. References to DMSs, ASTM or AASHTO specifications, or Department bulletins and manuals, imply the latest standard

or tentative standard in effect on the date of the proposal. The Engineer will consider incorporation of subsequent changes to these documents in accordance with Item 4, "Scope of Work."

~~3.128. **Small Business Enterprise.** A firm (including affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for 4 consecutive years.~~

~~3.129-3.135.~~ **State.** The State of Texas.

~~3.130-3.136.~~ **State Holiday.** A holiday authorized by the State Legislature excluding optional ~~state~~State holidays and not listed in Section 1.3.~~8691~~, "National Holidays." A list of ~~state~~State holidays can be found on the Department's website.

~~3.131-3.137.~~ **Station.** A unit of measurement consisting of 100 horizontal ~~feet~~ft.

~~3.132-3.138.~~ **Subcontract.** The agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.

~~3.133-3.139.~~ **Subcontractor.** ~~A Subcontractor is defined as an~~An individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, a truck owner-operator, a wholly-owned subsidiary, or specialty-type businesses such as security companies and rental companies.

~~3.134-3.140.~~ **Subsidiary.** Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.

~~3.141.~~ **Substantial Completion of Work.** The date (day) when all project work requiring lane or shoulder closures or obstructions is completed, and traffic is following the lane arrangement as shown on the plans for the finished roadway; all pavement construction and surfacing are complete; and traffic control devices and pavement markings are in their final position, unless otherwise shown on the plans. The Engineer may make an exception for permanent pavement markings provided the lack of markings does not cause a disruption to traffic flow or an unsafe condition for the traveling public, and work zone pavement markings are in place.

~~3.135-3.142.~~ **Substructure.** The part of the structure below the bridge seats but not including, bearings, drilled shafts, or piling. Parapets, back walls, wing walls of the abutments, and drainage structures are considered parts of the substructure.

~~3.136-3.143.~~ **Superintendent.** The representative of the Contractor who is available at all times and able to receive instructions from the Engineer or authorized Department representatives and to act for the Contractor.

~~3.137-3.144.~~ **Superstructure.** The part of the structure above the bridge seats or above the springing lines of arches and including the bearings. Flatwork construction may be considered superstructure.

~~3.138-3.145.~~ **Supplemental Agreement.** Written agreement entered into between the Contractor and the State and approved by the Surety, covering alterations and changes in the Contract. A supplemental agreement is used by the Department whenever the modifications include assignment of the Contract from one entity to another or other cases as desired by the Department.

~~3.139-3.146.~~ **Surety.** The corporate body or bodies authorized to do business in Texas bound with and for the Contractor for the faithful performance of the work covered by the Contract and for the payment for all labor and material supplied in the prosecution of the work.

~~3.140-3.147.~~ **Surplus Materials.** Any debris or material related to the Contract not incorporated into the work.

~~3.141-3.148.~~ **Suspension.** Action taken by the Department or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of

materials or equipment used in a highway improvement Contract as defined in Transportation Code, Chapter 223, Subchapter A.

- ~~3.142-3.149.~~ **Traffic Lane.** The strip of roadway intended to accommodate the forward movement of a single line of vehicles.
- ~~3.143-3.150.~~ **Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
- ~~3.144-3.151.~~ **Truck Owner-Operator.** An individual who owns and operates ~~4one~~ truck for hire.
- ~~3.145-3.152.~~ **UT-Bridge.** Department-owned software for steel girder erection. Software is available on the Department's website.
- ~~3.146-3.153.~~ **UT-Lift.** Department-owned software for steel girder erection. Software is available on the Department's website.
- ~~3.147-3.154.~~ **Utility.** Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, heat, gas, oil, water, waste, or ~~storm water~~~~stormwater~~ that are not connected with the highway drainage, signal systems, or other products that directly or indirectly serve the public; the utility company.
- ~~3.148-3.155.~~ **Verification Tests.** Tests used to verify accuracy of QC and QA and mixture design testing.
- ~~3.149-3.156.~~ **Water-Abrasive Blasting.** Spraying blasts of pressurized water combined with abrasive media.
- ~~3.150-3.157.~~ **Water Blasting.** Spraying blasts of pressurized water of at least 3,000 psi.
- ~~3.151-3.158.~~ **Water-Injected Abrasive Blasting.** Abrasive blasting with water injected into the abrasive ~~and~~ air stream at the nozzle.
- ~~3.152-3.159.~~ **Wholly-Owned Subsidiary.** A legal entity owned entirely by the Contractor or subcontractor.
- ~~3.153-3.160.~~ **Work.** The furnishing of all labor, materials, equipment, and ~~other~~ incidentals necessary for the successful completion of the Contract.
- ~~3.154-3.161.~~ **Work Order.** Written notice to the Contractor to begin the work. The work order may include the date when work and time charges will begin, the allowable number of working days, and plan sheets providing details specific to a location or to an item of work for non-site-specific work. A work order is part of the Contract.
- ~~3.162.~~ **Written Notice.** Written notice is considered to have been duly given if delivered in person to the individual or member to whom it is intended or if sent by regular, registered, or certified mail and delivered to the last known business address; sent by facsimile to the last known phone number; or sent by ~~e-mail~~~~email~~ to the last known address. The date of the letter will serve as the beginning day of notice. Unclaimed mail or failure to provide current contact information will not be considered a failure to provide written notice.

## Item 2

# Instructions to Bidders



### 1. INTRODUCTION

Instructions to the Contractor in these ~~Specifications~~ specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be “the Contractor.” The Department’s responsibilities are generally written in passive voice, indicative mood. Phrases such as “as approved,” “unless otherwise approved,” “upon approval,” “as directed,” “as verified,” “as ordered,” and “as determined” refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

### 2. ELIGIBILITY OF BIDDERS

Obtain a prequalification form from the Department’s website. A Bidder may choose to be prequalified by submitting either a Confidential Questionnaire or a Bidder’s Questionnaire. Submit the appropriate questionnaire at least 10 calendar days before the last day of the bid opening for the District or statewide letting. Comply with all technical prequalification requirements in the proposal.

Reference 43 TAC §9.11, “Definitions,” and § 9.12, “Qualification of Bidders.”

- 2.1. **Confidential Questionnaire- (CQ).** Submit a ~~Confidential Questionnaire~~ CQ and an audited financial statement for approval. Once prequalified, a Bidder’s eligibility is valid for a period of ~~one-year~~ 1 yr. from the balance sheet statement date.
- 2.2. **Bidder’s Questionnaire- (BQ).** Bidders prequalified with a ~~Bidder’s Questionnaire~~ BQ are only eligible to bid on projects identified as being waived from the requirements of Section 2.2.1., “Confidential Questionnaire- (CQ).” These projects are designated with a “W” on the Proposal Request Form. Submit a ~~Bidder’s Questionnaire~~ BQ for approval. Once prequalified, a Bidder’s eligibility is valid for a period of ~~one-year~~ 1 yr. from the date the ~~Bidder’s Questionnaire~~ BQ was received by the Department.

### 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,

- 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 for 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."

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#### 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.

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#### 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 date recorded.

Oral explanations, instructions, or consideration for Contractor-proposed changes ~~in~~ the proposal form given during the bidding process are not binding. Only requirements included ~~in~~ the proposal form, associated specifications, plans, and Department-issued addenda are binding. Request explanations of documents in adequate time to allow the Department to reply before the bid opening.

Immediately notify the Department of any error, omission, or ambiguity discovered in any part of the proposal form and Contract documents. The Department will issue addenda when appropriate.

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#### 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.

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

- ~~the proposal form was not signed,~~
- certifications were not acknowledged,
- a regular item or the additive alternate item ~~are~~ is 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."

## 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<sup>2</sup>."
- 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<sub>1</sub>,
- 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<sub>1</sub>,
- 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."



## 8. ELECTRONIC BID

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. **Proposal Form.** 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. **Proposal Guaranty.** 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.

~~Use the most current version of the electronic bond issued by the Department.~~ For a joint venture JV, the bond must be in the name of all joint venture JV 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 names Department vendor identification numbers of the Bidder or Bidders.

- 8.3. **Submittal of Bid.** Submit the bid to the vault using the Department's bidding system.

- 8.4. **Revising the Proposal Form.** 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. **Withdrawing a Bid.** 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.

~~If a bidder is unable to withdraw an electronic bid using the Department's bidding system, a written request may be submitted.~~ A written request must be signed and submitted to the Letting Official conducting the letting, with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venturea JV, the Department will accept a request from any person authorized to bind a party to the joint venture JV. 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.

## 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~~

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

- 9.2. **Proposal Guaranty.** Provide a proposal guaranty in the amount indicated on the proposal form. Use either a guaranty check or a printed bid bond. An electronic bid bond may be used as the guaranty. Ensure the electronic bid bond meets the requirements of Section 2.8.2., "Proposal Guaranty," and submit the electronic bid bond with the printed bid.
- 9.2.1. **Guaranty Check.** ~~Make~~When used, make the check payable to the Texas Transportation Commission or the Texas Department of Transportation. The check must be a cashier's check, money order, or teller's check drawn by or on a state or national bank, or a state or federally chartered credit union (collectively referred to as "bank"). The check must be dated on or before the date of the bid opening. Postdated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument, except in the case of a teller's check, and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument; ~~it~~it be drawn by a bank and on a bank; ~~it~~it or be payable at or through a bank. The Department will not accept personal checks, certified checks, or other types of money orders.
- 9.2.2. **Bid Bond.** ~~Use~~When a bond is used, use the bid bond form provided by the Department. Submit the bid bond in the amount specified with the powers of attorney dated and attached. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety. As an alternative for joint venture JV Bidders, each ~~of the Bidders~~Bidder may submit a separate bid bond completed as outlined in this Section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with state law.
- 9.3. **Submittal of Bid.** Place the completed proposal form and the proposal guaranty in a sealed envelope marked to indicate the contents.
- When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the Bidder's responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by that time of opening regardless of the method chosen for delivery.
- 9.4. **Revising the Proposal Form.** Make desired changes to the proposal form in ink, initial each change made, and submit the proposal to the Letting Official. Correction fluid or tape will be considered a change to the bid and requires the initials of the Bidder. The Department will not ~~make revisions to~~revise a bid on behalf of a Bidder.
- 9.5. **Withdrawing a Bid.** Submit to the Letting Official conducting the letting a written request to withdraw a bid before the time and date set for the opening. The Department will not accept oral requests. A written request must be signed and submitted to the Letting Official conducting the letting, with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture a JV, the Department will accept a request from any person authorized to bind a party to the joint venture JV. 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.

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## 10. OPENING AND READING OF BIDS

At the time, date, and location specified in the official advertisement, the Letting Official will publicly open and read bids.

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## 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.

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 ~~2~~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 ~~of that contain~~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). Proposals in which unit bid prices have been left blank are 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.

11.5.1, 11.5.2. **Additive Alternate Items.** The Department will sum the products of the quantities and the unit prices bid for the regular items ~~in~~on the proposal form to determine the total bid amount for the base bid. The official total bid amount will be determined by the summation of the base bid plus a ~~pre-determined~~predetermined order of additive alternate items, not to exceed the Department's budgeted amount for the Contract. An estimate of the budgeted amount may be shown on the plans.

The Contract- will identify the base bid work and additive alternate work to be performed. The Department makes no guarantee that the additive alternate work will be required.

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 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.~~

11.5.5. **Home State Bidding Preference.** For the purpose of determining the apparent low Bidder on proposed Contracts without federal funds, the Department will select the option that results in the greatest bidding preference to the resident Bidder.

11.5.5.1. **Reverse Application of Non-Resident Bidder's Home State Bidding Preference.** The total bid amount will be based upon the reverse application of the non-resident Bidder's home state bidding preference, if any. This will also apply to another state's preference for a Bidder that offers materials grown, produced, processed, or manufactured in that state.

Any reverse application of the home state bidding preference ~~would~~will be the greater of the following:

- the amount by which a resident Bidder would be required to underbid the non-resident Bidder to obtain a comparable contract in the state in which the non-resident's ~~principle~~principal place of business is located; or
- the amount by which a resident Bidder would be required to underbid the non-resident Bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the Contract will be performed.

11.5.5.2. **Texas Home State Bidding Preference.** A Bidder will be considered the apparent low Bidder if the Bidder's home office is located in this state and their bid does not exceed an amount equal to 105% of the apparent low bid received from a Bidder whose home office is not located in this state. This will not apply to a Bidder from a bordering state whose state does not give a preference to a Bidder in a manner similar to this Section.

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## 12. CONSIDERATION OF BID ERRORS

The Department will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

- a written notification is submitted to the Department within 5 business days after the date the bid is opened; and
- the submittal identifies the items of work involved and ~~include~~includes bidding documentation. The Department may request clarification of submitted documentation.

The Department will evaluate the claim of ~~ana bid~~ error by the apparent low Bidder by considering the following:

- the bid error relates to a material item of work,
- the bid error amount is a significant portion of the total bid,
- the bid error occurred despite the exercise of ordinary care, and
- the delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Department will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is ~~relet-re-let~~. Rejection of bids due to the Contractor's bid error may result in the application of ~~sanctions~~ remedial actions by the Department.

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

### 13. TIE BIDS

If the official total bid amount for ~~two~~ or more Bidders is equal and those bids are the lowest submitted, each tie Bidder will be given an opportunity to withdraw their bid. If ~~two~~ or more tie Bidders do not withdraw their bids, the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than ~~two~~ Bidders. If all tie Bidders request to withdraw their bids, no withdrawals will be allowed and the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than ~~two~~ Bidders. The Letting Official will preside over the proceedings.

### 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

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.

## Item 3

### Award and Execution of Contract



#### 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~~a bid amount less than \$300,000, and the Contract does not include federal funds,
- the low Bidder withdraws ~~its~~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 interest of the State.

#### 2. RESCINDING OF AWARD

The Commission or ~~designated representative~~original award authority reserves the right to cancel the award of any Contract before ~~contract~~Contract execution with no compensation due when the cancellation is in the best interest of the State. The Department will return the proposal guaranty to the Contractor.

#### 3. DISADVANTAGED BUSINESS ENTERPRISE (DBE) ~~AND~~ SMALL BUSINESS ENTERPRISE (SBE)

Submit all DBE ~~and~~ SBE information in the timeframe specified when required by the proposal.



**4. EXECUTION OF CONTRACT**

Provide the following within 15 days after written notification of award of the Contract.

4.1. **Contract.** Execute the Contract as prescribed by the Department.

4.2. **Bonds.** Execute and date the performance and payment bond in the full amount of the Contract with the powers of attorney. Provide bonds in accordance with Table 1. Furnish the payment and performance bonds as a guaranty for the protection of the claimants and the Department for labor and materials and the faithful performance of the work.

**Table 1  
Bonding Requirements**

Contract Amount	Required Bonds
Less than \$25,000	None
\$25,000 <del>to \$</del> 100,000	Payment
More than \$100,000	Performance and <del>Payment</del> payment

Sample versions of the standard performance and payment bonds may be viewed on the Department’s website.

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

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers’ compensation insurance. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements shown in Table 2, either through their own coverage or through the Contractor’s coverage.

The ~~Workers’ Compensation~~ workers’ compensation policy must include a waiver of subrogation endorsement in favor of the Department.

For building-facilities contracts, provide ~~All Risk Builder's Risk Insurance~~all risk builder's risk insurance to protect the Department against loss by storm, fire, or extended coverage perils on work and materials intended for use on the project, including the adjacent structure. Name the Department under the Lost Payable ~~Clause~~clause.

For contracts with railroad requirements, see project-specific details for additional insurance requirements.

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety's underwriting limitation drops below the Contract amount or the Surety's right to do business is terminated by the State. The substitute Surety must be authorized by the laws of the State and acceptable to the Department. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

The work performed under this ~~section~~Section will not be measured or paid for directly, but will be subsidiary to pertinent Items.

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.

For Contracts with callout work and work orders, the purchase of materials before a work order is issued or without prior written approval of the Engineer is at the Contractor's risk, and the Department is not obligated for the cost of the materials or work to acquire the materials.

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**9. ASSIGNMENT OF CONTRACT**

Do not assign, sell, transfer, or otherwise dispose of the Contract or any portion of the rights, title, or interest (including claims) without the approval of the Commission or ~~designated representative~~ original award authority. The Department must deem any proposed assignment justified and legally acceptable before the assignment can take place.

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**10. EXCLUDED PARTIES**

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Department or any federal agency.

## Item 4

### Scope of Work



#### 1. CONTRACT INTENT

The intent of the Contract is to describe the completed work to be performed. Furnish materials, supplies, tools, equipment, labor, and other incidentals necessary for the proper prosecution and completion of the work in accordance with Contract documents.

#### 2. PRECONSTRUCTION CONFERENCE

Before starting work, schedule and attend a preconstruction conference with the Engineer. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working day charges. The preconstruction conference may be scheduled with the safety preconstruction meeting described in Section 7.2.2., "Safety Preconstruction Meeting" and the railroad coordination meeting described in Article 5.8., "Cooperation ~~With~~with Railroads". Work with the Engineer to resolve or escalate all issues. Execute the project pledge and establish an issue escalation ladder.

2.1. **Project Pledge.** Contractor representatives at the level of foreman and above will certify in writing they will approach the construction of this project in a manner consistent with delivering a high-quality project in a safe, cost-effective, and timely manner, and they will be committed to not allowing personality conflicts or personal interests to interfere with providing the public with a quality project. Failure to uphold this commitment may result in grounds for removal from the project.

2.2. **Issue Resolution Process.** An issue is any aspect of the Contract where parties of the Contract do not agree. The individuals identified at the lowest level of the issue escalation ladder will initiate the issue resolution process by escalating any issue that remains unresolved within the ~~time frame~~timeframe outlined in the issue escalation ladder.

Work with the Engineer to resolve all issues during the course of the Contract. Refer to Article 4.7., "Dispute or Claims Procedure" for all unresolved issues.

#### 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).

3.1. **Procedures for Partnering Meetings and Format.** Informal partnering is required, unless formal partnering is mutually agreed ~~to in lieu~~upon instead of the informal partnering.

3.2. **Facilitators.** The facilitator is to act as a neutral party seeking to initiate cooperative working relationships. This individual must have the technical knowledge and ability to lead and guide discussions. Choose either an internal or external facilitator. The facilitator must be acceptable to the Engineer.

3.2.1. **Internal Facilitators.** A Department or Contractor staff member may be selected as the facilitator at no additional cost to either party.

- 3.2.2. **External Facilitators.** A private firm or individual that is independent of the Contractor and the Department may be selected as the facilitator. Submit the facilitator's name and estimated fees for approval before contracting with the facilitator.
- 3.3. **Meetings and Arrangements.** Coordinate with the Engineer for meeting dates and times, locations including third party facilities, and other needs and appurtenances including but not limited to audio or visual equipment. Make all meeting arrangements for formal partnering. Use Department facilities or facilities in the vicinity of the project if available. Submit the estimated meeting costs for approval before finalizing arrangements.
- Coordinate facilitator discussions before the partnering meeting to allow the facilitator time to prepare an appropriate agenda. Prepare a list of attendees with job titles and include critical Contractor, subcontractor, and supplier staff ~~upon~~ the list. Provide the facilitator with the list of attendees and invite the attendees listed.
- The Department will invite and provide a list of attendees that includes, but is not limited to Department, City, County, law enforcement, railroad, and utility representatives.
- Participate in additional partnering meetings as mutually agreed upon.
- 3.4. **Payment.** Expenses for labor, Contractor equipment, or overhead will not be allowed. Markups as prescribed in Article 9.7., "Payment for Extra Work and Force Account Method," will not be allowed.
- Informal partnering will be conducted with each party responsible for their own costs.
- For formal partnering using internal facilitators, the Contractor will be responsible for arrangements and for expenses incurred by ~~its~~their internal facilitator, including but not limited to meals, travel, and lodging. Department facilitators may be used at no additional cost.
- For formal partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Department but used at the Contractor's option, the Contractor will be responsible for all costs of the external facilitator.
- For meeting facilities and appurtenances, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved.

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#### 4. CHANGES IN THE WORK

The Engineer reserves the right to make changes in the work, including addition, reduction, or elimination of quantities and alterations needed to complete the Contract. Perform the work as altered. These changes will not invalidate the Contract nor release the Surety. The Contractor is responsible for notifying the sureties of any changes to the Contract.

If the changes in quantities or the alterations do not significantly change the character of the work under the Contract, the altered work will be paid for at the Contract unit price. If the changes in quantities or the alterations significantly change the character of the work, the Contract will be amended by a change order. If no unit prices exist, this will be considered extra work and the Contract will be amended by a change order. Provide cost justification as requested, in an acceptable format.

Payment will not be made for anticipated profits on work that is eliminated.

Agree on the scope of work and the basis of payment for the change order before beginning the work. If there is no agreement, the Engineer may order the work to proceed under Article 9.7., "Payment for Extra Work and Force Account Method," or by making an interim adjustment to the Contract. In the case of an adjustment, the Engineer will consider modifying the compensation after the work is performed.

A significant change in the character of the work occurs when:

- the character of the work for any item as altered differs materially in kind or nature from that in the Contract, or
- a major item of work varies by more than 25% from the original Contract quantity, except for non-site-specific Contracts.

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."

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## 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.

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## 6. REQUESTS FOR ADDITIONAL COMPENSATION AND DAMAGES

Notify the Engineer in writing of any intent to request additional compensation once there is knowledge of the basis for the request. An assessment of damages is not required to be part of this notice but is desirable. The intent of the written notice requirement is to provide the Engineer an opportunity to evaluate the request and to keep an accurate account of the actual costs that may arise. Minimize impacts and costs.

If written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before performing the work. Notice of the request and the documentation of the costs will not be construed as proof

or substantiation of the validity of the request. Submit the request in enough detail to enable the Engineer to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and 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-offrom~~ 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.

Time extensions and suspensions alone will not be justification for reimbursement for project overhead.

- 6.3. **Home Office Overhead.** The Department will not compensate the Contractor for home office overhead.

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## 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 have 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.~~



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.

## Item 5

### Control of the Work



#### 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 is 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~~will 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.

#### 2. PLANS AND WORKING DRAWINGS

When required, provide working drawings to supplement the plans with all necessary details not included on the Contract plans. Prepare and furnish working drawings in a timely manner and obtain approval, if required, before the beginning of the associated work. For all working drawing submittal requirements, the Engineer may allow electronic and other alternative submission procedures. Have a licensed professional engineer sign, seal, and date the working drawings as indicated~~shown~~ in Table 1.

Prepare working drawings using United States standard measures in the English language. The routing of submittals for review and approval will be established at the preconstruction conference. The Contractor is responsible for the accuracy, coordination, and conformity of the various components and details of the working drawings. Department approval of the Contractor's working drawings will not relieve the Contractor of any responsibility under the Contract. The work performed under in accordance with this Article will not be measured or paid for directly, but will be subsidiary to pertinent Items.

**Table 1**  
**Signature and Approval Requirements for Working Drawings**

Working Drawings For		Requires Licensed Professional Engineer's Signature, Seal, and Date	Requires Departmental Approval
1. Alternate or optional designs submitted by Contractor		Yes	Yes
2. Supplementary shop and fabrication drawings for structural Items		No unless required on the plans	See applicable Item
3. Contractor-proposed temporary facilities that affect the public safety, not included on the plans		Yes	Yes
4. Form and falsework details	Bridges, retaining walls, and other major structures	Yes unless otherwise shown on the plans	No <sup>1</sup>
	Minor structures	No unless otherwise shown on the plans	No
5. Erection drawings		Yes	No <sup>1,2</sup>
6. Contractor-proposed major modifications to traffic control plan		Yes	Yes

1. The Engineer may require that the Contractor have a licensed professional engineer certify that the temporary works are constructed according to the sealed drawings.
2. Approval is required for items spanning over live traffic or where safety of the traveling public is affected, ~~in the opinion of~~ as determined by the Engineer.

Submit shop drawings electronically for the fabrication of structural items ~~as documented in~~ accordance with the *Guide to Electronic Shop Drawing Submittals* available on the internet at [http://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/e-submit\\_guide.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/e-submit_guide.pdf) Department's website and as directed for other items required by the Contract. References to 11 × 17-in. sheets in individual specifications for structural items imply electronic computer-aided design sheets.

### 3. CONFORMITY WITH PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

Furnish materials and perform work in reasonably close conformity with the lines, grades, cross-sections, dimensions, details, gradations, physical and chemical characteristics of materials, and other requirements shown in the Contract. Reasonably close conformity limits ~~will be as~~ are defined in the respective Items of the Contract or, if not defined, as determined by the Engineer. Obtain approval before deviating from the plans and approved working drawings. Do not perform work beyond the lines and grades shown on the plans or any extra work without the Engineer's authority. Work performed beyond the lines and grades shown on the plans or any extra work performed without authority is considered unauthorized and excluded from pay consideration. The Department will not pay for material rejected due to improper fabrication, excess quantity, or any other reasons within the Contractor's control.

- 3.1. **Acceptance of Defective or Unauthorized Work.** When work fails to meet Contract requirements, but is adequate to serve the design purpose, the Engineer will decide the extent to which the work will be accepted and remain in place. The Engineer will document the basis of acceptance by a letter and may adjust the Contract price.

- 3.2. **Correction of Defective or Unauthorized Work.** When work fails to meet Contract requirements and is inadequate to serve the design purpose, it will be considered defective. Correct, or remove and replace, the work at the Contractor's expense, as directed.

The Department has the authority to correct or to remove and replace defective or unauthorized work. The cost may be deducted from any money due or to become due to the Contractor.

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#### 4. COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

The specifications, accompanying plans, special provisions, change orders, and supplemental agreements are intended to work together and be interpreted as a whole.

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

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

Notify the Engineer promptly of any omissions, errors, or discrepancies ~~discovered upon discovery~~ so that necessary corrections and interpretations can be made. Failure to promptly notify the Engineer ~~of discovered omissions, errors, or discrepancies~~ will constitute a waiver of all ~~Contract~~ claims ~~against the Department~~ for misunderstandings or ambiguities that result from the errors, omissions, or discrepancies ~~discovered~~.

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#### 5. COOPERATION OF CONTRACTOR

Cooperate with the Engineer. Respond promptly to instructions from the Engineer. Provide all information necessary ~~for~~ the successful completion of the Contract.

Designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced ~~within~~ the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized Department representatives and to act for the Contractor. The Engineer may suspend work without suspending working day charges if a Superintendent is not available or does not meet the above criteria.

At the written request of the Engineer, immediately remove from the project any employee or representative of the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform work in a proper and skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable. Do not reinstate these individuals without the written consent of the Engineer.

Furnish suitable machinery, equipment, and construction forces for the proper prosecution of the work.

Provide adequate lighting to address quality requirements and inspection of nighttime work.

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#### 6. COOPERATING WITH UTILITIES

Use established safety practices when working near utilities. Consult with the appropriate utilities before beginning work. Notify the Engineer immediately of utility conflicts. The Engineer will decide whether to adjust utilities or adjust the work to eliminate or lessen the conflict. Unless otherwise shown on the plans, the Engineer will make necessary arrangements with the utility owner when utility adjustments are required.

Use work procedures that protect utilities or appurtenances that remain in place during construction. Cooperate with ~~utilities~~utility companies to remove and rearrange utilities to avoid service interruption or duplicate work by the ~~utilities~~utility companies. Allow utilities access to the right of way.

Immediately notify the appropriate utility of service interruptions resulting from damage due to construction activities. Cooperate with utilities until service is restored. Maintain access to fire hydrants when necessary.

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## 7. COOPERATION BETWEEN CONTRACTORS

Cooperate and coordinate with other Contractors working within the limits or adjacent to the limits.

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## 8. COOPERATION WITH RAILROADS

Plan and prosecute portions of the work involving a railway to avoid interference with or hindrance to the railroad company.

If the work is on railroad right of way, do not interfere with the operation of the railroad company's trains or other property.

- 8.1. **Railroad Coordination Meeting.** When shown on the plans or directed by the Engineer, schedule and attend a railroad coordination meeting with the Engineer before beginning work or as agreed ~~upon~~ (may be a part of the preconstruction conference described in Article 4.2., "Preconstruction Conference"). Prepare a list of attendees and invite personnel ~~that includes, including,~~ but ~~is~~ not limited to Department, Contractor, subcontractor, and railroad representatives.

Provide the ~~invite~~invitation to the railroad representatives at least 21 calendar days before the railroad coordination meeting.

- 8.2. **Project-Specific Information.** Refer to project-specific plan sheets in the Contract for specific information concerning the work to be completed by ~~both~~ the Contractor and the railroad within railroad right of way; railroad right of way locations impacted by construction; percentage of ~~contract~~Contract work at each location; train movements at each location; and requirements for railroad insurance, flagging, and Right of Entry (ROE) Agreements.

- 8.3. **Right of Entry Agreement by the Department.** When shown on the plans, the process for obtaining a fully executed ROE Agreement is as follows~~-~~:

- The Department will send the unexecuted ROE Agreement to the Contractor with the unexecuted Contract.
- Partially execute the ROE Agreement and return it to the Department with the partially executed Contract and required insurance.
- The Department will coordinate with the railroad company regarding the further execution of the ROE Agreement and associated fees. The Department will pay any ROE Agreement fees directly to the railroad company.
- Once the Department has received the fully~~-~~executed ROE Agreement from the railroad company, the Department will forward the fully~~-~~executed ROE Agreement to the Contractor.

- 8.4. **Right of Entry Agreement by the Contractor.** When shown on the plans, contact the railroad company to obtain the ROE Agreement before beginning work on the Contract.

Provide the required insurance to the Department before beginning work on the Contract.

Execute the ROE Agreement and pay any associated fees to the railroad company. Provide a copy of the fully~~-~~executed ROE Agreement to the Department.

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## 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 ~~subcontractors~~ 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, 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 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.

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## 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

Work." If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed.

When a government entity, utility, railroad company, or other entity accepts or pays a portion of the Contract, that organization's representatives may inspect the work but cannot direct the Contractor. The right of inspection does not make that entity a party to the Contract and does not interfere with the rights of the parties to the Contract.

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## 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

12.1. **Routine Maintenance Contracts.** The Engineer will perform final acceptance and notify the Contractor of acceptance. The Engineer may use final acceptance procedures shown for construction Contracts.

12.2. **Construction Contracts.** Final acceptance is made when all work is complete and the Engineer, in writing, accepts all work for the work locations in the Contract. Final acceptance relieves the Contractor from further Contract responsibilities.

12.2.1. **Work Completed.** Work completed must include work for vegetative establishment and maintenance, test, and performance periods, and work to meet the requirements of Article 5.11., "Final Cleanup."

12.2.2. **Final Inspection.** After all work is complete, the Engineer in charge of the work will request a final inspection by the Engineer authorized to accept the work.

The final inspection will be made as soon as possible and not later than 10 calendar days after the request. No working day charges will be made between the date of request and final inspection.

After the final inspection, if the work is satisfactory, the Engineer will notify the Contractor in writing of the final acceptance of the work. If the final inspection finds any work to be unsatisfactory, the Engineer will identify in writing all deficiencies in the work requiring correction. Correct the deficiencies identified. Working day charges will resume if these deficiencies are not corrected within 7 calendar days, unless otherwise authorized by the Engineer. Upon correction, the Engineer will make an inspection to verify that all deficiencies were corrected satisfactorily. The Engineer will provide written notice of the 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.



- 12.3. **Multiple Work Orders.** For Contracts with multiple work orders, final acceptance may be made upon completion of the work for each work order, in accordance with Section 5.12.1., "Routine Maintenance Contracts."

## Item 6

### Control of Materials



#### 1. SOURCE CONTROL

Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the ~~work~~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 ~~as listed at~~ 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."~~

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

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

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

1.2. **Buy America Exceptions.** Use of iron and steel 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 iron or 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.

1.2.1.3. **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.

#### 2. MATERIAL QUALITY

Correct or remove materials that fail to meet Contract requirements or that do not produce satisfactory results. Reimburse the Department for cost incurred if additional sampling and testing ~~is~~are required by a change of source.

Materials not meeting Contract requirements will be rejected, unless the Engineer approves corrective actions. Upon rejection, immediately remove and replace rejected materials.

If the Contractor does not comply with this Article, the Department may remove and replace defective material. The cost of testing, removal, and replacement will be deducted from the payments due to the Contractor.

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### 3. MANUFACTURER WARRANTIES

Transfer to the Department warranties and guarantees required by the Contract or received as part of normal trade practice.

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### 4. SAMPLING, TESTING, AND INSPECTION

Incorporate into the work only material that has been inspected, tested, and accepted by the Department. Remove, at the Contractor's expense, materials from the work locations that are used without prior testing and approval or written permission of the Engineer.

The material requirements and standard test methods in effect at the time the proposed Contract is advertised govern. Unless otherwise ~~noted~~specified, the Department will perform testing at its expense. In addition to facilities and equipment required by the Contract, furnish facilities and calibrated equipment required for tests to control the manufacture of construction items. If requested, provide a complete written statement of the origin, composition, and manufacture of materials.

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

Unless otherwise ~~noted~~specified in the Contract, all testing must be performed within the United States and witnessed by the Engineer. If materials or processes require testing outside the contiguous 48 United States, reimburse the Department for inspection expenses.

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.

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 charge 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<sup>1</sup>**

<u>Department Test</u>	<u>Test Description</u>	<u>Turn-Around Time</u> <u>(Calendar days)</u>
<b>SOILS/BASE</b>		
<u>Tex-101-E</u>	<u>Preparing Soil and Flexible Base Materials for Testing (included in other tests)</u>	
<u>Tex-104-E</u>	<u>Liquid Limit of Soils (included in 106-E)</u>	
<u>Tex-105-E</u>	<u>Plastic Limit of Soils (included in 106-E)</u>	
<u>Tex-106-E</u>	<u>Calculating the Plasticity Index of Soils</u>	<u>7</u>
<u>Tex-110-E</u>	<u>Particle Size Analysis of Soils</u>	<u>6</u>
<u>Tex-113-E</u>	<u>Moisture-Density Relationship of Base Materials</u>	<u>7</u>
<u>Tex-114-E</u>	<u>Moisture-Density Relationship of Subgrade and Embankment Soil</u>	<u>7</u>
<u>Tex-115-E</u>	<u>Field Method for In-Place Density of Soils and Base Materials</u>	<u>2</u>
<u>Tex-116-E</u>	<u>Ball Mill Method for the Disintegration of Flexible Base Material</u>	<u>5</u>
<u>Tex-117-E, Part II</u>	<u>Triaxial Compression Tests for Disturbed Soils and Base Materials (Part II)</u>	<u>6</u>
<u>Tex-113-E with Tex-117-E</u>	<u>Moisture-Density Relationship of Base Materials with Triaxial Compression Tests for Disturbed Soils and Base Materials (Part II)</u>	<u>10</u>
<u>Tex-140-E</u>	<u>Measuring Thickness of Pavement Layer</u>	<u>2</u>
<u>Tex-145-E</u>	<u>Determining Sulfate Content in Soils – Colorimetric Method</u>	<u>4</u>
<b>HOT MIX ASPHALT</b>		
<u>Tex-200-F</u>	<u>Sieve Analysis of Fine and Coarse Aggregate (dry, from ignition oven with known correction factors)</u>	<u>12</u>
<u>Tex-203-F</u>	<u>Sand Equivalent Test</u>	<u>3</u>
<u>Tex-206-F, with Tex-207-F, Part I, with Tex-227-F</u>	<u>(Lab-Molded Density of Production Mixture – Texas Gyrotory) Method of Compacting 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</u>	<u>12</u>
<u>Tex-207-F, Part I and Part VI</u>	<u>(In-Place Air Voids of Roadway Cores) Density of Compacted Bituminous Mixtures, Part I, “Bulk Specific Gravity of Compacted Bituminous Mixtures,” and Part VI, “Bulk Specific Gravity of Compacted Bituminous Mixtures Using the Vacuum Method”</u>	<u>12</u>
<u>Tex-207-F, Part V</u>	<u>Density of Compacted Bituminous Mixtures, Part V, “Determining Mat Segregation using a Density-Testing Gauge”</u>	<u>3</u>
<u>Tex-207-F, Part VII</u>	<u>Density of Compacted Bituminous Mixtures, Part VII, “Determining Longitudinal Joint Density using a Density-Testing Gauge”</u>	<u>4</u>
<u>Tex-212-F</u>	<u>Moisture Content of Bituminous Mixtures</u>	<u>3</u>
<u>Tex-217-F</u>	<u>Deleterious Material and Decantation Test for Coarse Aggregate</u>	<u>4</u>
<u>Tex-221-F</u>	<u>Sampling Aggregate for Bituminous Mixtures, Surface Treatments, and LRA (included in other tests)</u>	
<u>Tex-222-F</u>	<u>Sampling Bituminous Mixtures (included in other tests)</u>	
<u>Tex-224-F</u>	<u>Determination of Flakiness Index</u>	<u>3</u>
<u>Tex-226-F</u>	<u>Indirect Tensile Strength Test (production mix)</u>	<u>4</u>
<u>Tex-235-F</u>	<u>Determining Draindown Characteristics in Bituminous Materials</u>	<u>3</u>
<u>Tex-236-F (Correction Factors)</u>	<u>Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Determining Correction Factors)</u>	<u>4</u>
<u>Tex-236-F</u>	<u>Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Production Mixture)</u>	<u>12</u>

<u>Department Test</u>	<u>Test Description</u>	<u>Turn-Around Time (Calendar days)</u>
<u>Tex-241-F with Tex-207-F, Part I, with Tex-227-F</u>	<u>(Lab-Molded Density of Production Mixture – Superpave Gyratory) Superpave Gyratory 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</u>	<u>1<sup>2</sup></u>
<u>Tex-242-F</u>	<u>Hamburg Wheel-Tracking Test (production mix, molded samples)</u>	<u>3</u>
<u>Tex-244-F</u>	<u>Thermal Profile of Hot Mix Asphalt</u>	<u>1</u>
<u>Tex-246-F</u>	<u>Permeability of Water Flow of Hot Mix Asphalt</u>	<u>3</u>
<u>Tex-280-F</u>	<u>Flat and Elongated Particles</u>	<u>3</u>
<u>Tex-530-C</u>	<u>Effect of Water on Bituminous Paving Mixtures (production mix)</u>	<u>4</u>
<b><u>AGGREGATES</u></b>		
<u>Tex-400-A</u>	<u>Sampling Flexible Base, Stone, Gravel, Sand, and Mineral Aggregates</u>	<u>3</u>
<u>Tex-410-A</u>	<u>Abrasion of Coarse Aggregate Using the Los Angeles Machine</u>	<u>5</u>
<u>Tex-411-A</u>	<u>Soundness of Aggregate by Use of Sodium Sulfate or Magnesium Sulfate</u>	<u>12</u>
<u>Tex-461-A</u>	<u>Degradation of Coarse Aggregate by Micro-Deval Abrasion</u>	<u>5</u>
<b><u>CHEMICAL</u></b>		
<u>Tex-612-J</u>	<u>Acid Insoluble Residue for Fine Aggregate</u>	<u>4</u>
<b><u>GENERAL</u></b>		
<u>HMA Production Specialist [TxAPA – Level 1-A] (\$/hr)</u>		
<u>HMA Roadway Specialist [TxAPA – Level 1-B] (\$/hr)</u>		
<u>Technician Travel/Standby Time (\$/hr)</u>		
<u>Per Diem (\$/day – meals and lodging)</u>		
<u>Mileage Rate (\$/mile from closest CL location)</u>		

1. Turn-Around Time includes test time and time for travel/sampling and reporting.
2. 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.

**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,
- ensure the Engineer has full access to all parts of the plant used to manufacture or 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.

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## 6. STORAGE OF MATERIALS

Store and handle materials to preserve their quality and fitness for the work. Store materials so that they can be easily inspected and retested. Place materials under cover, on wooden platforms, or on other hard, clean surfaces as necessary or when directed.

Obtain approval to store materials on the right of way. Storage space off the right of way is at the Contractor's expense.

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## 7. DEPARTMENT-FURNISHED MATERIAL

The Department will supply materials as shown on the plans. The cost of handling and placing materials supplied by the Department will not be paid for directly, but will be subsidiary to the Item in which they are used. Assume responsibility for materials upon receipt.

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## 8. USE OF MATERIALS FOUND ON THE RIGHT OF WAY

Material found in the excavation areas and meeting the Department's specifications may be used in the work. This material will be paid for at the Contract bid price for excavation and under the Item for which the material is used.

Do not excavate or remove any material from within the right of way that is not within the limits of the excavation without written permission. If excavation is allowed within a right of way project-specific location, replace the removed material with suitable material at no cost to the Department as directed.

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## 9. RECYCLED MATERIALS

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

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## 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 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~~ CL test the materials for ~~contamination~~ 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~~ 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:~~

- ~~■ SSPC-QP2 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, 1925, 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.~~

~~10.2.10.1. Contain, collect, store, transport, and dispose of all waste generated by cleaning operation in accordance with local, state and federal requirements including 40 CFR 302. 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.~~

~~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 to be disposed of retained by 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, maintainMaintain 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 Structures" and Item 497, "Sale of Salvageable Material" for measurement and payment.~~



~~10.3.10.2.~~ **Asbestos Requirements.** The plans will indicate locations or elements where asbestos-containing materials (ACMACMs) 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.

~~10.3.1.~~ **Asbestos Removed by Third Party.** ~~At locations where unknown ACM is discovered, the Department will arrange for abatement by a third party.~~

~~10.3.2.~~ **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.~~

~~10.4.10.3.~~ **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.~~

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## 11. SURPLUS MATERIALS

Take ownership of surplus materials unless otherwise shown on the plans or directed. Remove and dispose of materials in ~~accordance~~ conformance with federal, state, and local regulations. If requested, provide an appropriate level of documentation to verify proper disposal. When materials are disposed of on private property, provide written authorization from the property owner for the use of the property for this purpose upon request.

# Item 7

## Legal Relations and Responsibilities



### 1. ETHICS

Honor the Department's ethics policy. The Department's ethics policy has been established in accordance with Title 43 of the Texas Administrative Code, Part 1, TAC Chapter 10. A complete copy of the Department's ethics policy can be found on the Department's website.

By entering into Contract, the Contractor certifies that the Contractor has read and understands the Department's ethics policy.

Failure to honor this policy may result in action by the Department, which includes but is not limited to verbal warning, removal of project personnel, termination of the Contract, and sanctions under the Texas Administrative Code TAC.

### 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 protection 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.

2.2. **Safety Preconstruction Meeting.** In cooperation with the Engineer, schedule and attend a safety preconstruction meeting (may be a part of the preconstruction conference in accordance with Article 4.2., "Preconstruction Conference"). Attendees for this safety preconstruction meeting will be:

- the Contractor,
- subcontractors,
- the Department,
- local law enforcement, and
- other personnel that who play an active role on the project.

2.3. **Safety Contingency.** In order to To improve the effectiveness of traffic handling and enhancing enhance safety during the course of this project, a safety contingency fund may have been included in the project budget for traffic control plan adjustments and other safety-related improvements.

Costs associated with the adjustments or improvements will be paid for in accordance with Article 9.7., "Payment for Extra Work and Force Account Method." Article 9.7., "Payment for Extra Work and Force Account Method" is is not intended to be used in lieu of bid items established by the Contract.

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.

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.

- 2.5. **Use of Blue Warning Lights.** Texas Transportation Code § 547.105 authorizes the use of warning lights to promote safety and provides an effective means of gaining the ~~travelling~~traveling public's attention as they drive in areas where construction crews are present. ~~In order to~~To influence the public to move over when high-risk construction activities are taking place, minimize the ~~utilization~~use of blue warning lights. These lights must be used only while performing work on or near the travel lanes or shoulder where the ~~travelling~~traveling public encounters construction crews that are not protected by a standard work zone ~~set up~~setup, such as a lane closure, a shoulder closure, or one-way traffic control. Refrain from leaving the warning lights engaged while ~~travelling~~traveling from one work location to another or while parked on the right of way away from the pavement or a work zone.

- 2.6. **Barricades, Signs, and Traffic Handling.** Comply with the requirements of Item 502 "Barricades, Signs, and Traffic Handling," and as directed. Provide traffic control devices ~~that conform to the details~~as shown on the plans, ~~and in accordance with~~ the TMUTCD, and the Department's Compliant Work Zone Traffic Control Device List (CWZTCDL) maintained by the Traffic ~~Operations Division. In cases of disagreement between these documents, the CWZTDL governs over the plans, and the TMUTCD governs over both the CWZTDL and the plans.~~Safety Division. When authorized or directed, provide additional signs or traffic control devices not required by the plans.

If an unexpected situation arises that causes the Contractor to believe that the traffic control should be changed, make all reasonable efforts to promptly contact the Engineer. Take prudent actions until the Engineer can be contacted.

The Engineer will ~~make an inspection of~~inspect the traffic control devices. Comply with the results of the inspection in the prescribed ~~time frame~~timeframe.

The work performed and materials furnished in accordance with this ~~section~~Section and Item 502 have no bearing on the prosecution of Items 1 ~~through 9-10~~, "General Requirements and Covenants-" of the Contract. This includes, but is not limited to installing, relocating, and removing project limit advance warning signs.

- 2.6.1. **Contractor Responsible Person and Alternate.** Designate in writing, a Contractor's Responsible Person (CRP) and an alternate to be the representative of the Contractor who is responsible for taking or directing corrective measures regarding the traffic control. The CRP or alternate must be accessible by ~~phone~~telephone 24 hr. per day and able to respond when notified. The CRP and alternate must comply with the requirements of Section ~~7.2.6.5.~~, "Training."
- 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,~~ provideCertify to the Engineer that all flaggers will be trained and make available upon request a list of flaggers ~~certified~~trained to perform flagging duties.

Provide flaggers as directed. Flaggers must be courteous and able to effectively communicate with the public. When directing traffic, flaggers must dress appropriately; wear high-visibility safety apparel; use flags, signs, stop-slow paddles, and other hand-signaling devices; and follow the flagging procedures in the TMUTCD. Comply with the requirements of Section 7.2.6.5., "Training."

2.6.3. **Law Enforcement Personnel.** Provide uniformed law enforcement personnel with patrol vehicles as directed. Document the work zone traffic services provided in the manner prescribed by the Department. Law enforcement personnel providing work zone traffic services must be trained for the service they perform. Comply with Section 7.2.6.5., "Training."

2.6.4. **Other Work Zone Personnel.** Workers involved with traffic control, including the maintenance of the traffic control, must comply with the requirements of Section 7.2.6.5., "Training."

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.

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.

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**3. LAWS TO BE OBSERVED**

Comply with all federal, state, and local laws, ordinances, and regulations that affect the performance of the work. The Contractor is not required to comply with city electrical ordinances not included in this Contract. Indemnify and save harmless the State and its representatives against any claim arising from violation by the Contractor of any law, ordinance, or regulation.

This Contract is between the Department and the Contractor only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

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**4. PERMITS, LICENSES, AND TAXES**

Procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of work, except for permits provided by the Department and as specified in Article 7.7., "Preservation of Cultural and Natural Resources and the Environment."

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**5. PATENTED DEVICES, MATERIAL, AND PROCESSES**

Indemnify and save harmless the State from any claims for infringement from the Contractor's use of any patented design, device, material, process, trademark, or copyright selected by the Contractor and used in connection with the work. Indemnify and save harmless the State against any costs, expenses, or damages that it may be obliged to pay, by reason of this infringement, at any time during the prosecution or after the completion of the work.

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**6. PERSONAL LIABILITY OF PUBLIC OFFICIALS**

Department employees are agents and representatives of the State and will incur no liability, personal or otherwise, in carrying out the provisions of the Contract or in exercising any power or authority granted under the Contract.

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**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](#)



All subcontractors must also comply with applicable environmental laws, rules, regulations, and requirements in the Contract.

- 7.1. **Cultural Resources.** Cease all work immediately if a site, building, or location of historical, archeological, educational, or scientific interest is discovered within the right of way. The site, building, or location will be investigated and evaluated by the Department.
- 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.
- 7.4. Texas Pollutant Discharge Elimination System (TPDES) Permits and ~~Storm Water~~ Stormwater Pollution Prevention Plans (~~SWP3~~-SWP3s).
- 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 a Notice of



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 (RN) 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."

7.2-7.5. **Work in Waters of the United States.** For work in the right of way, the Department will obtain any required Section 404 permits from ~~the U.S. Army Corps of Engineers~~USACE before work begins. Adhere to all agreements, mitigation plans, and standard ~~best management practices~~BMPs required by the permit. When Contractor-initiated changes in the construction method ~~changes~~change the impacts ~~to water~~on Waters of the ~~U.S., United States,~~ obtain new or revised Section 404 permits.

~~7.3.7.6.~~ **Work in Navigable Waters of the United States.** For work in the right of way, the Department will obtain any required Section 9 permits from the U.S. Coast Guard before work begins. Adhere to the stipulations of the permits and associated ~~best management practices-BMPs~~. When Contractor-initiated changes in the construction method ~~changeschange~~ the impacts ~~to navigable waterson~~ **Navigable Waters** of the ~~U.S.,United States~~, obtain new or revised Section 9 permits.

~~7.4.7.7.~~ **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 practicesBMPs~~ and perform work in accordance with ~~the~~ Contract requirements.

~~7.5.~~ **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.

~~7.6.7.8.~~ Obtain written approval from the Engineer for all PSLs in the right of way not specifically addressed on the plans. Prepare an SWP3 for all Contractor facilities, such as asphalt or concrete plants located within Department right of way. Comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, ~~and~~ asphalt plants, ~~etc.~~ ~~Address.~~ **Ensure compliance with** all environmental issues, such as Section 404 permits, wetland delineation, endangered species consultation requirements, or archeological and historic site impacts. Obtain all permits and clearances in advance.

~~7.7.7.9.~~ **Contractor Responsibility.** If the Contractor initiates changes to the Contract and the Department approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agencies.

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## 8. AGRICULTURAL IRRIGATION

Regulate the sequence of work and make provisions as necessary to provide for agricultural irrigation or drainage during the work. Meet with the service provider or ~~land owner~~**landowner** to determine the proper time and sequence when irrigation demands will permit shutting ~~-~~off water flows to perform work.

Unless otherwise ~~provided~~shown on the plans, the work performed ~~under~~in accordance with this Article will not be measured or paid for directly, but will be subsidiary to pertinent Items.

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**9. SANITARY PROVISIONS**

Provide and maintain adequate, neat, and sanitary toilet accommodations for employees, including State employees, in compliance with the requirements and regulations of the Texas Department of State Health Services or other authorities having jurisdiction.

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**10. ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY NOISE**

Minimize noise throughout all phases of the Contract. Exercise particular and special efforts to avoid the creation of unnecessary noise impact on adjacent noise-sensitive receptors in the placement of non-mobile equipment, such as air compressors, generators, ~~and pumps, etc.~~ Place mobile and stationary equipment to cause the least disruption ~~of~~to normal adjacent activities.

All equipment associated with the work must be equipped with components to suppress excessive noise, and these components must be maintained in their original operating condition considering normal depreciation. Noise-attenuation devices installed by the manufacturer, such as mufflers, engine covers, ~~and~~ insulation, ~~etc.~~ must not be removed ~~nor~~or rendered ineffectual ~~nor~~ or be permitted to remain off the equipment while the equipment is in use.

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**11. USING EXPLOSIVES**

Do not endanger life or property. When required by the plans or requested, provide a written blasting plan. The Department retains the right to reject the blasting plan. Store all explosives securely, and clearly mark all storage places with "DANGER — EXPLOSIVES." Store, handle, and use explosives and highly flammable material in compliance with federal, state, and local laws, ordinances, and regulations. Assume liability for property damage, injury, or death resulting from the use of explosives.

Give at least ~~a~~ 48-hr. advance notice to the appropriate railroad representative before doing any blasting work involving the use of electric blasting caps within 200 ft. of any railroad track.

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**12. RESPONSIBILITY FOR HAZARDOUS MATERIALS**

Comply with the requirements of Article 6.10., "Hazardous Materials."~~;~~ Indemnify and save harmless the State and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property arising from the generation or disposition of hazardous materials introduced by the Contractor on any work done by the Contractor on State-owned or controlled sites. Indemnify and save harmless the State and its representatives from any liability or responsibility arising out of the Contractor's generation or disposition of any hazardous materials obtained, processed, stored, ~~or~~ shipped, ~~etc.~~, on sites not owned or controlled by the State. Reimburse the State for all payments, fees, or restitution the State is required to make as a result of the Contractor's actions.

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**13. RESTORING SURFACES OPENED BY PERMISSION**

Do not authorize anyone to make an opening in the highway for utilities, drainage, or any other reason without written permission from the Engineer. Repair all openings as directed. Payment for repair of surfaces opened by permission will be made in ~~accordance~~conformance with pertinent Items or in accordance with Article 4.4., "Changes in the Work." Costs associated with openings made with Contractor authorization but without Department approval will not be paid.

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**14. PROTECTING ADJACENT PROPERTY**

Protect adjacent property from damage. If any damage results from an act or omission on the part of or on behalf of the Contractor, take corrective action to restore the damaged property to a condition similar or equal to that existing before the damage was done.

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**15. RESPONSIBILITY FOR DAMAGE CLAIMS**

Indemnify and save harmless the State and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act. Indemnify and save harmless the State and assume responsibility for all damages and injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on the Contractor's part in the manner or method of executing the work; from failure to properly execute the work; or from defective work or material.

Pipelines and other underground installations that may or may not be shown on the plans may be located within the right of way. Indemnify and save harmless the State from any suits or claims resulting from damage by the Contractor's operations to any pipeline or underground installation. Make available the scheduled sequence of work to the respective utility owners so that they may coordinate and schedule adjustments of their utilities that conflict with the proposed work.

If the Contractor asserts any claim or brings any type of legal action (including an original action, third-party action, or cross-claim) against any member of the Commission or individual employee of the Department for any cause of action or claim for alleged negligence arising from the Contract, the Contractor will be ineligible to bid on any proposed Contract with the Department during the pendency of the claim or legal action.

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**16. HAULING AND LOADS ON ROADWAYS AND STRUCTURES**

Comply with federal and state laws concerning legal gross and axle weights. Except for the designated Interstate system, vehicles with a valid yearly overweight tolerance permit may haul materials to the work locations at the permitted load. Provide copies of the yearly overweight tolerance permits to the Engineer upon request. Construction equipment is not exempt from oversize or overweight permitting requirements on roadways open to the traveling public.

Protect existing bridges and other structures that will remain in use by the traveling public during and after the completion of the Contract. Construction traffic on roadways, bridges, and culverts within the limits of the work, including any structures under construction that will remain in service during and after completion of the Contract, is subject to legal size and weight limitations.

Additional temporary fill may be required by the Engineer for hauling purposes for the protection of certain structures. This additional fill will not be paid for directly, but will be subsidiary to pertinent Items.

Replace or restore to original condition any structure damaged by the Contractor's operations.

The Engineer may allow equipment with oversize or non-divisible overweight loads to operate without a permit within the work locations on pavement structures not open to the traveling public. Submit Contractor-proposed changes to traffic control plans for approval, in accordance with Item 502, "~~Barricades, Signs, and Traffic Handling.~~" The following ~~sections~~ **Sections** further address overweight allowances. The Department will make available to the Contractor any available plans and material reports for existing structures.

- 16.1. **Overweight Construction Traffic Crossing Structures.** The Engineer may allow crossing of a structure not open to the public within the work locations, when divisible or non-divisible loads exceed legal weight limitations, including limits for load-posted bridges. Obtain written permission to make these crossings. Submit for approval a structural analysis by a licensed professional engineer indicating that the excessive

loads should be allowed. Provide a manufacturer's certificate of equipment weight that includes the weight distribution on the various axles and any additional parts, such as counterweights, the configuration of the axles, or other information necessary for the analysis. Submit the structural analysis and supporting documentation sufficiently in advance of the move to allow for review by the Engineer. Permission may be granted if the Engineer finds that no damage or overstresses ~~in excess of exceeding~~ those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

Schedule loads so that only one vehicle is on any span or continuous unit at any time. Use barricades, fences, or other positive methods to prevent other vehicular access to structures at any time the overweight load is on any span or continuous unit.

- 16.2. **Construction Equipment Operating on Structures.** Cranes and other construction equipment used to perform construction operations that exceed legal weight limits may be allowed on structures. Before any operation that may require placement of equipment on a structure, submit for approval a detailed structural analysis prepared by a licensed professional engineer.

Submit the structural analysis and supporting documentation sufficiently in advance of the use to allow for review by the Engineer. Include all axle loads and configurations, spacing of tracks or wheels, tire loads, outrigger placements, center of gravity, equipment weight, and predicted loads on tires and outriggers for all planned movements, swings, or boom reaches. The analysis must demonstrate that no overstresses ~~will occur in excess of exceeding~~ those normally allowed for occasional overweight loads will occur.

- 16.3. **Loads on Structures.** Do not store or stockpile material on bridge structures without written permission. If required, submit a structural analysis and supporting documentation by a licensed professional engineer for review by the Engineer. Permission may be granted if the Engineer finds that no damage or overstresses ~~in excess of exceeding~~ those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

- 16.4. **Hauling Divisible Overweight Loads on Pavement Within ~~the~~ Work Locations.** The Engineer may allow divisible overweight loads on pavement structures within the work locations not open to the traveling public. Obtain written approval before hauling the overweight loads. Include calculations to demonstrate that there will be no damage or overstress to the pavement structure.

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## 17. CONTRACTOR'S RESPONSIBILITY FOR WORK

Until final acceptance of the Contract, take every precaution against injury or damage to any part of the work by the action of the elements or by any other cause, whether arising from the execution or from the non-execution of the work. Protect all materials to be used in the work at all times, including periods of suspension.

When any roadway or portion of the roadway is in suitable condition for travel, it may be opened to traffic as directed. Opening of the roadway to traffic does not constitute final acceptance.

Repair damage to all work until final acceptance. Repair damage to existing facilities in accordance with the Contract or as directed by the Engineer. Repair damage to existing facilities or work caused by Contractor operations at the Contractor's expense. Repair work for damage that was not due to the Contractor's operations will not be paid for except as provided below.

- 17.1. **Reimbursable Repair.** Except for damage to appurtenances listed in Section 7.17.2.1., "Unreimbursed Repair," the Contractor will be reimbursed for repair of damage caused by:
- motor vehicle, watercraft, aircraft, or railroad-train incident;
  - vandalism; or
  - Acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena of nature.

**17.2. Appurtenances.**

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.

17.2.2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7.17.1, "Reimbursable Repair."

17.3. **Roadways and Structures.** Until final acceptance, the Contractor is responsible for all work constructed under the Contract. The Department will not reimburse the Contractor for repair work to new construction, unless the failure or damage is due to one of the causes listed in Section 7.17.1., "Reimbursable Repair."

The Department will be responsible for the cost for repair of damage to existing roadways and structures not caused by the Contractor's operations.

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.

17.5.1. **Isolated Work Locations.** For isolated work locations, when all work is completed, including work ~~for~~ in accordance with Article 5.11., "Final Cleanup," the Engineer may relieve the Contractor from responsibility for maintenance.

17.5.2. **Work Except for Vegetative Establishment and Test Periods.** When all work for all or isolated work locations has been completed, including work ~~for~~ in accordance with Article 5.11., "Final Cleanup," with the exception of vegetative establishment and maintenance periods and test and performance periods, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work.

17.5.3. **Work Suspension.** When all work is suspended for an extended period of time, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work during the period of suspension.



- 17.5.4. **When Directed by the Engineer.** The Engineer may relieve the Contractor from the responsibility for maintenance when directed.
- 17.6. **Basis of Payment.** When reimbursement for repair work is allowed and performed, payment will be made in ~~accordance~~ conformance with pertinent Items or in accordance with Article 4.4., "Changes in the Work."

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## 18. ELECTRICAL REQUIREMENTS

### 18.1. Definitions.

#### 18.1.1. **Electrical Work.** Electrical work is work performed for:

- Item 610, "Roadway Illumination Assemblies,"
- Item 614, "High Mast Illumination Assemblies,"
- Item 616, "Performance Testing of Lighting Systems,"
- Item 617, "Temporary Roadway Illumination,"
- Item 618, "Conduit,"
- Item 620, "Electrical Conductors,"
- Item 621, "Tray Cable,"
- ~~Item 622, "Duct Cable,"~~
- Item 628, "Electrical Services,"
- Item 680, "Highway Traffic Signals,"
- Item 681, "Temporary Traffic Signals,"
- Item 684, "Traffic Signal Cables,"
- Item 685, "Roadside Flashing Beacon Assemblies,"
- Special Specification, "Duct Cable."
- other Items that involve either the distribution of electrical power greater than 50 volts or the installation of conduit and duct banks,
- the installation of conduit and wiring associated with Item 624, "Ground Boxes" and Item 656, "Foundations for Traffic Control Devices," and
- the installation of the conduit system for communication and fiber optic cable.

Electrical work does not include the installation of communications or fiber optic cable, or the connections for low-voltage and inherently power-limited circuits, such as electronic or communications equipment. Assembly and placement of poles, structures, cabinets, enclosures, manholes, or other hardware will not be considered electrical work ~~as long as if~~ no wiring, wiring ~~connections~~ connection, or conduit work is done at the time of assembly and placement.

#### 18.1.2. **Specialized Electrical Work.** Specialized electrical work is work that includes the electrical service and feeders, sub-feeders, branch circuits, controls, raceways, and enclosures for the following:

- pump stations,
- moveable bridges,
- ferry slips,
- motor control centers,
- facilities required ~~under~~ in accordance with Item 504, "Field Office and Laboratory,"
- rest area or other public buildings,
- weigh-in-motion stations,
- electrical services larger than 200 amps,
- electrical services with main or branch circuit breaker sizes not shown in the Contract, and
- any ~~three~~ three-phase electrical power.

#### 18.1.3. **Certified Person.** A certified person is a person who has passed the test from the Department's course TRF450, "TxDOT Roadway ~~Illumination~~ Illuminations and Electrical Installations," or other courses as



approved by the Traffic ~~Operations~~Safety Division. Submit a current and valid TRF certification upon request. Texas A&M Engineering Extension Service (TEEX) certifications for “TxDOT Electrical Systems” course will not be accepted.

18.1.4.

**Licensed Electrician.** A licensed electrician is a person with a current and valid unrestricted master electrical license, or unrestricted journeyman electrical license ~~that, who~~ is supervised or directed by an unrestricted master electrician. An unrestricted master electrician need not be on the work locations at all times while electrical work is being done, but the unrestricted master electrician must approve work performed by the unrestricted journeyman. Licensed electrician requirements by city ordinances do not apply to on ~~state~~State system work.

The unrestricted journeyman and unrestricted master ~~electrical~~electrician licenses must be issued by the Texas Department of Licensing and Regulation or by a city in Texas with a population of 50,000 or greater that issues licenses based on passing a written test and demonstrating experience.

The Engineer may accept other states’ electrical licenses. Submit documentation of the requirements for obtaining that license. Acceptance of the license will be based on sufficient evidence that the license was issued based on:

- passing a test based on the NEC ~~similar to~~like that used by Texas licensing officials, and
- sufficient electrical experience commensurate with general standards for an unrestricted master and unrestricted journeyman electrician in the State of Texas.

18.2.

**Work Requirements.** The qualifications required to perform electrical work and specialized electrical work are ~~listed~~shown in Table 21.

**Table 21**  
**Work Requirements**

Type of Work	Qualifications to Perform Work
Electrical work with plans	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Electrical work without plans	Licensed electrician or workers directly supervised by a licensed electrician
Specialized electrical work	Licensed electrician or workers directly supervised by a licensed electrician
Replace lamps, starting aids, and changing fixtures	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Conduit in precast section with approved working drawings	Inspection by licensed electrician or certified person
Conduit in cast-in-place section	Inspection by licensed electrician or certified person
All other electrical work (e.g., troubleshooting, repairs, <u>and</u> component replacement, <del>etc.</del> )	Licensed electrician or workers directly supervised by a licensed electrician

“Directly supervised by a licensed electrician” means that a licensed electrician is physically present during all electrical work. “Directly supervised by a licensed electrician or certified person” means that a licensed electrician or certified person is physically present during all electrical work.

A non-certified person may install conduit in cast-in-place concrete sections if the work is verified by a certified person before concrete placement.

When ~~the plans specify~~ IMSA certification is specified on the plans, the requirements ~~of~~shown in Table 21 will still apply to the installation of the conduit, ground boxes, electrical services, pole grounding, and electrical conductors installed underin accordance with Item 620, ~~“Electrical Conductors.”~~

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## 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~~yr. 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.

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## 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 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.~~ final payment will reflect the entire sum due, less any sums previously paid. **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.

## Item 8

### Prosecution and Progress



#### 1. PROSECUTION OF WORK

Begin work within 30 calendar days (7 calendar days for routine maintenance Contracts) after the authorization date to begin work. Prosecute the work continuously to completion within the working days specified. Unless otherwise shown on the plans, work may be prosecuted in concurrent phases if no changes are required to the traffic control plan or if a revised traffic control plan is approved. Notify the Engineer at least 24 hr. before beginning work or before beginning any new operation. Do not start new operations to the detriment of work already begun. Minimize interference to traffic.

For Contracts with callout work and work orders, begin work in the right of way within the specified time and continuously prosecute the work until completion.

#### 2. SUBCONTRACTING

Do not sublet any portion of a construction Contract without the Engineer's written approval. A subcontract does not relieve any responsibility under the Contract and bonds. Ensure that all subcontracted work complies with all governing labor provisions.

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Commission, Department, or any federal agency.

For federally funded contracts, ensure the required federal documents are physically attached to each subcontract agreement, including all tiered subcontract agreements.

For all DBE subcontracts, including all tiered DBE subcontracts, submit a copy of the executed subcontract agreement.

Upon request, submit a copy of the executed non-DBE subcontracts, including all tiered non-DBE subcontracts.

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 Enterprise** or **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;

- 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.

- 2.2. **State-Funded Maintenance Contracts.** The requirements for performing work with the Contractor's own organization as stated in Section 8.2.1.1, "Construction Contracts and Federally Funded Maintenance Contracts" do not apply to wholly State-funded maintenance Contracts.
- 2.3. **Payments to Subcontractors.** Report payments for DBE subcontracts, including tiered DBE subcontracts, in the manner as prescribed by the Department by the 20th day of each month.
- 2.3.1. ~~2.3.1~~ **Payment Records.** Make payment and related records, including but not limited to copies of ~~cancelled~~canceled checks, available for inspection by the Department. Retain payment records for a period of 3 ~~years~~yr. following the completion of the Contract.
- 2.4. **Payrolls.** Comply with Article 7.19., "Payrolls."

### 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. **Working Day Charges.** Working days will be charged in accordance with Section 8.3.1.4., "Standard Workweek," unless otherwise shown on the plans. Working days will be computed and charged in accordance with one of the following:
- 3.1.1. **Five-Day Workweek.** Working days will be charged Monday ~~through~~ – Friday, excluding national holidays, regardless of weather conditions or material availability. The Contractor has the option of working on Saturdays. Provide sufficient advance notice to the Engineer when scheduling work on Saturdays. Work on Sundays and national holidays will 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 national holiday, and weather and 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.

- 3.1.2. **Six-Day Workweek.** Working days will be charged Monday ~~through~~ Saturday, excluding national holidays, regardless of weather conditions or material availability. Work on Sundays and national holidays will 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 Sunday or a national 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.
- 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 will 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.
- 3.1.5. **Calendar Day.** Working days will be charged Sunday ~~through~~ Saturday, including all holidays, regardless of weather conditions, material availability, or other conditions not under the control of the Contractor.
- 3.1.6. **Other.** Working days will be charged as shown on the plans.
- 3.2. **Restricted Work Hours.** Restrictions on Contractor work hours and the related definition for working day charges are as prescribed in this Article unless otherwise shown on the plans.
- 3.3. **Nighttime Work.** Nighttime work is allowed only when shown on the plans or directed or allowed by the Engineer. Nighttime work is defined as work performed from 30 min. after sunset to 30 min. before sunrise.
- 3.3.1. **Five-, Six-, and Seven-Day Workweeks.** Nighttime work that extends past midnight will be assigned to the following day for the purposes of approval for allowing work on Sundays or national holidays.
- 3.3.2. **Standard Workweek.**
- 3.3.2.1. **Nighttime Work Only.** When nighttime work is allowed or required and daytime work is not allowed, working day charges will be made when weather and 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. for the nighttime period, as defined in Section 8.3.3., "Nighttime Work," unless otherwise shown in the Contract.
- 3.3.2.2. **Nighttime Work and Daytime Work Requiring Inspector.** When nighttime work is performed or required and daytime work is allowed, working day charges will be made when weather and 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. for the nighttime period, as defined in Section 8.3.3., "Nighttime Work," or for a continuous period of at least 7 hr. for the alternative daytime period unless otherwise shown in the Contract. Only one day will be charged for each 24-hr. ~~time~~ period. When the Engineer agrees to restrict work hours to the nighttime period only, working day charges will be in accordance with Section 8.3.3.2.1., "Nighttime Work Only."

- 3.4. **Time Statements.** The Engineer will furnish the Contractor a monthly time statement. Review the monthly time statement for correctness. Report protests in writing, no later than 30 calendar days after receipt of the time statement, providing a detailed explanation for each day protested. Not filing a protest within 30 calendar days will indicate acceptance of the working day charges, and future consideration of that statement will not be permitted.

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#### 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 day 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.

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#### 5. PROJECT SCHEDULES

Prepare, maintain, and submit project schedules ~~for the work to be performed under this Contract.~~ Project schedules are used to convey the Contractor's intended work plan to the Department. ~~Prepare project schedules with a level of effort sufficient for the work being performed.~~

The work performed under this Article will not be measured or paid for directly, but will be subsidiary to pertinent Items.

- 5.1. **Project Scheduler.** Designate an individual who will develop and maintain the progress schedule. The project scheduler will be prepared to discuss, in detail, the proposed sequence of work and methods of operation, and how that information will be communicated through the progress schedule at the preconstruction meeting. This individual will also attend the project meetings and make site visits to prepare, develop, and maintain the progress schedules.
- 5.2. **Progress Schedule.** Before starting work, prepare and submit a progress schedule based on the sequence of work and traffic control plan shown in the Contract. Prepare the progress schedule as a bar chart or critical path method (CPM) as shown on the plans. Include all planned work activities and sequences and show Contract completion within the number of working days specified. Incorporate major material procurements, known utility relocations, and other activities that may affect the completion of the Contract in the progress schedule. Show a beginning date, ending date, and duration in whole working days for each activity. Do not use activities exceeding 20 working days, unless agreed upon with the Engineer. Show an estimated production rate per working day for each work activity, unless otherwise agreed upon with the Engineer.
- 5.3. **Schedule Format.** Format all project schedules ~~according to~~ in accordance with the following:
- ~~begin~~Begin the project schedule on the date of the start of Contract time or start of activities affecting work on the project;
  - ~~show~~Show the sequence and interdependence of activities required for complete performance of the work. If using a CPM schedule, show a predecessor and a successor for each activity, ~~and~~;
  - ~~ensure~~Ensure all work sequences are logical and show a coordinated plan of the work.
- CPM schedules must also ~~include~~:
- clearly and accurately identify the critical path as the longest continuous path;
  - provide a legend for all abbreviations, run date, data date, project start date, and project completion date in the title block of each schedule submittal; and
  - ~~through the use of~~using calendars, incorporate seasonal weather conditions into the schedule for work (e.g., earthwork, concrete paving, structures, asphalt, and drainage, ~~etc.~~) that may be influenced by

temperature or precipitation. Also, incorporate non-work periods such as holidays, weekends, or other non-work days as identified in the Contract.

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~~ Unless 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.

5.5.2.2.1. **Review.** Within 15 calendar days of receipt of the schedule, the Engineer will evaluate, and inform the Contractor if the schedule has been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so, within 10 calendar days. The Engineer's review and acceptance of the project schedule is for conformance to the requirements of the Contract documents only and does not relieve the Contractor of any responsibility for meeting the interim milestone dates (if specified) or the Contract completion date. Review and acceptance does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the project schedule. If the Contractor fails to define any element of work, activity, or logic and the Engineer's review does not detect this omission or error, the Contractor is responsible for correcting the error or omission.

Submit an acceptable baseline schedule before the 90th calendar day from the work start date unless the time for submission is extended by the Engineer.



5.5.2.3. **Progress Schedule.** Maintain and submit the projectprogress 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.

The project schedule must be revised when changes in construction phasing and sequencing occur or other changes that cause deviation from the original project schedule occur. Any revisions to the schedule must be listed in the monthly update narrative with the purpose of the revision and description of the impact on the project schedule's critical path and project completion date. Create the schedule revision using the latest update before the start of the revision.

Monthly updating of the project schedule will include updating of:

- the actual start dates for activities started,
- the actual finish dates for activities completed,
- the percentage of work completed and remaining duration for each activity started but not yet completed, and
- the calendars to show days actual work was performed on the various work activities.

The cut-off/cutoff day for recording monthly progress will be the last day of each month. Submit the updated project schedule no later than the 20th calendar day of the following month. The Engineer will evaluate the updated schedule within 5 calendar days of receipt and inform the Contractor if it has or has not been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so, within 5 calendar days.

Provide a brief narrative in a bulleted statement format for major items that have impacted the schedule. Notify the Engineer if resource-leveling is being used.

5.5.2.3.1. **Project Schedule Summary Report (PSSR).** When shown on the plans, provide the PSSR instead of the narrative required in Section 8.5.5.2.3., "Progress Schedule." The PSSR includes a listing of major items that have impacted the schedule as well as and a summary of progress in days ahead or behind schedule. Include an explanation of the project progress for the period represented on the form provided by the Department.

5.5.3. **Notice of Potential Time Impact.** Submit a notice of potential time impact when a Contract time extension or adjustment of milestone dates may be justified or when directed.

Failure to provide this notice in the timeframes outlined specified above will compromise the Department's ability to mitigate the impacts, and the Contractor forfeits the right to request a time extension or adjustment of milestone dates unless the circumstances are such that the Contractor could not reasonably have had knowledge of the impact at the time.

5.5.4. **Time Impact Analysis.** When directed, provide a time impact analysis. A time impact analysis is an evaluation of the effects of impacts on the project. A time impact analysis consists of the following steps:

- **Step 1.** Establish the status of the project immediately before the impact.
- **Step 2.** Predict the effect of the impact on the schedule update used in Step 1.
- **Step 3.** Track the effects of the impact on the schedule during its occurrence.

- **Step 4.** Establish the status of the project after the impact's effect has ended and provide details identifying any mitigating actions or circumstances used to keep the project ongoing during the impact period.

Determine the time impact by comparing the status of the work before the impact (Step 1) to the prediction of the effect of the impact (Step 2), if requested, and to actual effects of the impact once it is complete (Step 4). Unless otherwise approved by the Engineer, ~~steps~~Steps 1, 3, and 4, must be completed before consideration of a Contract time extension or adjustment of a milestone date will be provided. Time extensions will ~~only~~ be considered only when delays that affect milestone dates or the Contract completion date are beyond the Contractor's control. Submit Step 4 no later than 15 calendar days after the impact's effects have ended or when all the information on the effect has been realized.

Submit one electronic backup copy of the complete time impact analysis and a copy of the full project schedule incorporating the time impact analysis. If the project schedule is revised after the submittal of a time impact analysis, but before its approval, indicate in writing the need for any modification to the time impact analysis.

The Engineer will review the time impact analysis upon completion of ~~step~~Step 4. If this review detects revisions or changes to the schedule that had not been performed and identified in a narrative, the Engineer may reject the time impact analysis. If the Engineer is in agreement with the time impact analysis, a change order may be issued to grant additional working days, or to adjust interim milestones. Once a change order has been executed, incorporate the time impact analysis into the project schedule. The time impact analysis may also be used to support the settlement of disputes and claims. Compensation related to the time impact analysis may be provided at the completion of the analysis or the completion of the project to determine the true role the impact played on the final completion.

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## 6. FAILURE TO COMPLETE WORK ON TIME

The time established for the completion of the work is an essential element of the Contract. If the Contractor fails to complete the work within the number of working days specified, working days will continue to be charged. Failure to complete the Contract, callout work, or a work order within the number of working days specified, including any approved additional working days, will result in liquidated damages for each working day charged over the number of working days specified. The dollar amount specified in the Contract will be deducted from any money due or to become due the Contractor for each working day the Contract, callout work, or work order remains incomplete. This amount will be assessed not as a penalty but as liquidated damages. The amount assessed for non-site-specific Contracts will be based on the estimated amount for each work order unless otherwise shown in the Contract. The amount assessed for each callout will be as specified in the Contract.

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## 7. DEFAULT OF CONTRACT

7.1. **Declaration of Default.** The Engineer may declare the Contractor to be in default of the Contract if the Contractor:

- fails to begin the work within the number of days specified;
- fails to prosecute the work to assure completion within the number of days specified;
- is uncooperative, disruptive, or threatening;
- fails to perform the work in accordance with the Contract requirements;
- neglects or refuses to remove and replace rejected materials or unacceptable work;
- discontinues the prosecution of the work without the Engineer's approval;
- makes an unauthorized assignment;
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so;
- fails to conduct the work in an acceptable manner; or
- commits fraud or other unfixable conduct as determined by the Department.

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."

The Department will determine the method used for the completion of the remaining work as follows:

- For Contracts without performance bonds, the Department will determine the most expeditious and efficient way to complete the work, and recover damages from the Contractor.
- For Contracts with performance bonds, the Department will require the Contractor's Surety to complete the remaining work in accordance with the terms of the original Contract. A completing Contractor will be considered a subcontractor of the Surety. The Department reserves the right to approve or reject proposed subcontractors. Work may resume after the Department receives and approves Certificates of Insurance as required in Section 3.4.3., "Insurance." Certificates of Insurance may be issued in the name of the completing Contractor. The Surety is responsible for making every effort to expedite the resumption of work and completion of the Contract. The Department may complete the work using any or all materials at the work locations that it deems suitable and acceptable. Any costs incurred by the Department for the completion of the work under the Contract will be the responsibility of the Surety.

From the time of notification of the default until work resumes (either by the Surety or the Department), the Department will maintain traffic control devices and will do any other work it deems necessary, unless otherwise agreed upon by the Department and the Surety. All costs associated with this work will be deducted from money due to the Surety.

The Department will hold all money earned but not disbursed by the date of default. Upon resumption of the work after the default, all payments will be made to the Surety. All costs and charges incurred by the Department ~~as a result of~~ resulting from the default, including the cost of completing the work under the Contract, costs of maintaining traffic control devices, costs for other work deemed necessary, and any applicable liquidated damages or disincentives will be deducted from money due the Contractor for completed work. If these costs exceed the sum that would have been payable under the Contract, the Surety will be liable and pay the Department the balance of these costs in excess of the Contract price. In case the costs incurred by the Department are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, the Department will be entitled to retain the difference.

Comply with Article 8.2., Subcontracting, and abide by the DBE commitments previously approved by the Department. Section 8.2.1., "Construction Contracts and Federally Funded Maintenance Contracts," is waived.

No markups as defined in Article 9.7., "Payment for Extra Work and Force Account Method," will be allowed for the Surety.

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.

~~The Construction Division will determine if the Contractor has been wrongfully defaulted and will proceed with one of the following actions:~~

- ~~■ In the event that the Construction Division determines the default is proper, the default will remain in accordance with Section 8.7.1., "Declaration of Default." If the Contractor is in disagreement, the Contractor may file a claim in accordance with Article 4.7., "Dispute or Claims Procedure."~~
- ~~■ In the event that the Construction Division determines it was a wrongful default, the Construction Division will terminate the Contract in the best interest of the State or the public in accordance with Article 8.8., "Termination of Contract."~~

## 8. TERMINATION OF CONTRACT

The Department may terminate the Contract in whole or in part whenever:

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

8.1. **Procedures and Submittals.** The Department will provide written notice to the Contractor of termination specifying the extent of the termination and the effective date. Upon notice, immediately proceed in accordance with the following:

- stop work as specified in the notice,
- place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete a critical portion of the Contract, as approved by the Engineer,
- terminate all subcontracts to the extent they relate to the work terminated,
- complete performance of the work not terminated,
- settle all outstanding liabilities and termination settlement proposals resulting from the termination of the Contract,
- create an inventory report, including all acceptable materials and products obtained for the Contract that have not been incorporated in the work that was terminated (include in the inventory report a description, quantity, location, source, cost, and payment status for each of the acceptable materials and products), and
- take any action necessary, or that the Engineer may direct, for the protection and preservation of the materials and products related to the Contract that are in the possession of the Contractor and in which the Department has or may acquire an interest.

8.2. **Settlement Provisions.** Within 60 calendar days of the date of the notice of termination, submit a final termination settlement proposal, unless otherwise approved. The Engineer will prepare a change order that reduces the affected quantities of work and adds acceptable costs for termination. No claim for loss of anticipated profits will be considered. The Department will pay reasonable and verifiable termination costs, including:

- all work completed at the unit bid price and partial payment for incomplete work,
- the percentage of Item 500, "Mobilization," equivalent to the percentage of work complete or actual cost that can be supported by cost records, whichever is greater,
- expenses necessary for the preparation of termination settlement proposals and support data;
- the termination and settlement of subcontracts,
- storage, transportation, restocking, and other costs incurred necessary for the preservation, protection, or disposition of the termination inventory, and
- other expenses acceptable to the Department.

# Item 9

## Measurement and Payment



### 1. MEASUREMENT OF QUANTITIES

The Engineer will measure all completed work using United States standard measures, unless otherwise specified.

- 1.1. **Linear Measurement.** Unless otherwise specified, all longitudinal measurements for surface areas will be made along the actual surface of the roadway and not horizontally. No deduction will be made for structures in the roadway ~~having~~with an area of 9 sq. ft. or less. For all transverse measurements for areas of base courses, surface courses, and pavements, the dimensions to be used in calculating the pay areas will be the neat dimensions and will not exceed those shown on the plans, unless otherwise directed.

- 1.2. **Volume Measurement.** Transport materials measured for payment by volume in approved hauling vehicles. Display a unique identification mark on each vehicle. Furnish information necessary to calculate the volume capacity of each vehicle. The Engineer may require verification of volume through weight measurement. Use body shapes that allow the capacity to be verified. Load and level the load to the equipment's approved capacity. Loads not hauled in approved vehicles may be rejected.

- 1.3. **Weight Measurement.** Transport materials measured for payment by weight or truck measure in approved hauling vehicles. Furnish certified measurements, tare weights, and legal gross weight calculations for all haul units. Affix a permanent, legible number on the truck and on the trailer to correspond with the certified information. Furnish certified weights of loaded haul units transporting material if requested.

The material will be measured at the point of delivery. The cost of supplying these volume and weight capacities is subsidiary to the pertinent Item. For measurement by the ton, in the field, provide measurements in accordance with Item 520, "Weighing and Measuring Equipment," except for Items where ton measurements are measured by standard tables.

The Engineer may reject loads and suspend hauling operations for overloading.

- 1.3.1. **Hauling on Routes Accessible to the Traveling Public.** For payment purposes on haul routes accessible to the traveling public, ~~the net weight of the load will be calculated as follows:~~
- If the gross vehicle weight is less than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
  - If the gross vehicle weight is more than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.

- 1.3.2. **Hauling on Routes Not Accessible to the Traveling Public.** For payment purposes on haul routes that are not accessible to the traveling public where advance permission is obtained in writing from the Engineer:
- If the gross vehicle weight is less than the maximum allowed by the Engineer, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
  - If the gross vehicle weight is more than the maximum allowed by the Engineer, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.

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## 2. PLANS QUANTITY MEASUREMENT

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

If the quantity measured as outlined under "Measurement" varies by more than 5% (or as stipulated under "Measurement" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract, an adjustment may be made to the quantity of authorized work done for payment purposes.

When quantities are revised by a change in design approved by the Department, by change order, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 5% variance will apply to the new plans quantity.

If the total Contract quantity multiplied by the unit bid price for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the Engineer and Contractor agree in writing to fix the final quantity as a plans quantity.

For Contracts with callout work and work orders, plans quantity measurement requirements are not applicable.

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## 3. ADJUSTMENT OF QUANTITIES

The party to the Contract requesting the adjustment will provide field measurements and calculations showing the revised quantity. When approved, this revised quantity will constitute the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 4.4., "Changes in the Work."

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## 4. SCOPE OF PAYMENT

Payment of the Contract unit price is full compensation for all materials, equipment, labor, tools, and supplies necessary to complete the Item of work under the Contract. Until final acceptance in accordance with Article 5.12., "Final Acceptance," assume liability for completing the work according to the plans and specifications and any loss or damage arising from the performance of the work or from the action of the elements, infringement of patent, trademark, or copyright, except as provided elsewhere in the Contract.

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

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## 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.



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## 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.

For Contracts with callout work and work orders, payment for MOH will only be made for materials authorized for purchase by the work order or by written approval of the Engineer.

If the request is acceptable, the Engineer will include payment for MOH in a progress payment. Payment for MOH does not constitute acceptance of the materials. Payment will not exceed the actual cost of the material as established by invoice, or the total cost for the associated item less reasonable placement costs, whichever is less. Materials for which the Contractor does not have a paid invoice within 60 days will not be eligible for payment and will be removed from the estimate. Payment may be limited to a portion of the invoice cost or unit price if shown elsewhere in the Contract. Payment for precast products fabricated or constructed by the Contractor for which invoices or freight bills are not available may be made based on statements of actual cost.

Submit the request on forms provided by the Department. These forms may be electronically reproduced, provided they are in the same format and contain all the required information and certifications. Continue to submit monthly MOH forms until the total value of MOH is \$0.

By submitting a request for MOH payment, the Contractor expressly authorizes the Department to audit MOH records, and to perform process reviews of the record-keeping system. If the Department determines noncompliance with any of the requirements of this provision, the Department may exclude payment for any or all MOH for the duration of the Contract.

Maintain all records relating to MOH payment until final acceptance. Provide these records to the Engineer upon request.

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

Payment for extra work directed, performed, and accepted will be made in accordance with Article 4.4., "Changes in the Work." Payment for extra work may be established by agreed unit prices or by Force Account Method.

Agreed unit prices are unit prices that include markups and are comparable to recent bid prices for the same character of work. These unit prices may be established without additional breakdown justification.

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. **Markups.** Payment for extra work may include markups as compensation for the use of small tools, overhead expense, and profit.
- 7.1.1. **Labor.** Compensation will be made for payroll rates for each hour that the labor and foremen or others approved by the Engineer are actually engaged in the work. In no case will the rate of wages be less than the minimum shown in the Contract for a particular category. An additional 25% of this sum will be paid as compensation for overhead, superintendence, profit, and small tools.
- 7.1.2. **Insurance and Taxes.** An additional 55% of the labor cost, excluding the 25% compensation provided in Section 9.7.1.1., "Labor," will be paid as compensation for labor insurance and labor taxes including the cost of premiums on non-project-specific liability (excluding vehicular) insurance, workers compensation insurance, Social Security, unemployment insurance taxes, and fringe benefits.
- 7.1.3. **Materials.** Compensation will be made for materials associated with the work based on actual delivered invoice costs, less any discount. An additional 25% of this sum will be paid as compensation for overhead and profit.
- 7.1.4. **Equipment.** Payment will be made for the established equipment hourly rates for each hour that the equipment is involved in the work. An additional 15% of this sum will be paid as compensation for overhead and profit not included in the rates.
- Transportation cost for mobilizing equipment will be included if the equipment is mobilized from an off-site location.
- 7.1.4.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment, use the FHWA rental rates found in the Rental Rate Blue Book Equipment Watch multiplied by the regional adjustment factor and the rate adjustment factor to establish hourly rates. Use the rates in effect for each section of the Rental Rate Blue Book Equipment Watch at the time of use.
- If a rate has not been established for a particular piece of equipment in the Rental Rate Blue Book Equipment Watch, the Engineer will allow a reasonable hourly rate. This price will include operating costs.
- Payment for equipment will be made for the actual hours used in the work. The Department reserves the right to withhold payment for low production or lack of progress. Payment will not be made for time lost for equipment breakdowns, time spent to repair equipment, or time after equipment is no longer needed.
- If equipment is used intermittently while dedicated solely to the work, payment will be made for the duration the equipment is assigned to the work but no more than 8 hr. will be paid during a 24-hr. day, nor more than 40 hr. per week, nor more than 176 hr. per month, except when time is computed using a 6-day or 7-day workweek. When using a 6-day workweek, no more than 8 hr. will be paid during a 24-hr. day, nor more than 48 hr. per week, nor more than 211 hr. per month. When using a 7-day workweek, no more than 8 hr. will be paid during a 24-hr. day, nor more than 56 hr. per week, nor more than 246 hr. per month.
- 7.1.4.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor, payment will be made at the invoice daily rental rate for each day the equipment is needed for the work. The Department reserves the right to limit the daily rate to comparable FHWA rental rates found in the Rental Rate Blue Book Equipment Watch multiplied by the regional adjustment factor and the rate

adjustment factor. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs, and servicing, the ~~Rental Rate Blue Book~~ Equipment Watch hourly operating cost for each hour the equipment is operated will be added.

When the invoice specifies equipment operators as a component of the equipment rental, payment will be made at the invoice rate for each operator for each day the equipment is needed for the work.

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.

7.1.4.3.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor:  
 ■ Standby will be paid at the invoice daily rental rate, excluding operating cost, which includes fuel, lubricants, repairs, and servicing. The Department reserves the right to limit the daily standby rate to comparable FHWA rental rates found in ~~the Rental Rate Blue Book~~ Equipment Watch multiplied by the regional adjustment factor and the rate adjustment factor.  
 ■ Standby will be paid for equipment operators when included on the invoice and equipment operators are actually on standby.  
 ■ 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.

7.1.8. **Bond Cost.** An additional 1% of the total compensation provided in Article 9.7., "Payment for Extra Work and Force Account Method," will be paid for the increase in bond.

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## 8. RETAINAGE

The Department will not withhold retainage on the Contractor. The Contractor may withhold retainage on subcontractors in accordance with state and federal regulations.

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## 9. PAYMENT PROVISIONS FOR SUBCONTRACTORS

For the purposes of this Article only, the term subcontractor includes suppliers, and the term work includes materials provided by suppliers at a location approved by the Department.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

Pay subcontractors for work performed within 10 days after receiving payment from the Department.

Pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all ~~of~~ the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the Contract and the Department, and
- the work done by the subcontractor has been inspected, approved, and paid by the Department.

Provide a certification of prompt payment to certify that all subcontractors and suppliers were paid from the previous ~~months~~ month's payments and retainage was released for those whose work is complete. Submit the certification in the manner prescribed by the Department each month and the month following the month when final acceptance occurred.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for the work as defined in Article 7.17., "Contractor's Responsibility for Work."

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**10.****FINAL PAYMENT**

When the Contract has been completed, all work has been approved, final acceptance has been made in accordance with Article 5.12., "Final Acceptance," and Contractor submittals have been received, the Engineer will prepare a final estimate for payment showing the total quantity of work completed and the money owed the Contractor. The final payment will reflect the entire sum due, less any sums previously paid.

## Item 10

# Maintenance ~~and~~ / Traffic Materials Contracts



ITEM 10 APPLIES TO MAINTENANCE MATERIALS **CONTRACTS** (MMC) AND TRAFFIC MATERIALS CONTRACTS (TMC) WITH NO FEDERAL FUNDS BEING USED. ITEMS 1–9 DO NOT APPLY TO MMC AND TMC CONTRACTS.

### 1. ABBREVIATIONS AND DEFINITIONS

1.1. **Applicability.** Wherever the following terms are used in these specifications or other Contract documents, the intent and meaning will be interpreted as shown below.

#### 1.2. Abbreviations.

AASHTO	American Association of State Highway and Transportation Officials
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
CFR	Code of Federal Regulations
DMS	Departmental <del>Material</del> Materials Specification
EPA	<del>United States</del> U.S. Environmental Protection Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
MPL	Material Producer List
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NRM	Nonhazardous Recyclable Material
<del>NTPEP</del>	<del>National Transportation Product Evaluation Program</del>
OSHA	Occupational Safety <del>&amp;</del> and Health Administration, U.S. Department of Labor
PS&E	Plans, Specifications, and Estimates
QA	Quality Assurance
QC	Quality Control
SBE	Small Business Enterprise
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
USC	United States Code

#### 1.3. Definitions.

1.3.1. **Actual Cost.** Contractor's actual cost to provide material, including labor, equipment, and project overhead necessary for the work.

1.3.2. **Addendum.** Change in proposal forms developed between advertising and bid submittal deadline.

1.3.3. **Advertisement.** The public announcement required by law inviting bids for work to be performed or materials to be furnished.

1.3.4. **Affiliates.** Two or more Bidders are affiliated if they share common officers, directors, or stockholders; a family member of an officer, director, or stockholder of one Bidder serves in a similar capacity in another of the Bidders; an individual who has an interest in, or controls a part of, one Bidder either directly or indirectly also has an interest in, or controls a part of, another of the Bidders; the Bidders are so closely connected or associated that one of the Bidders, either directly or indirectly, controls or has the power to control another Bidder; one Bidder controls or has the power to control another Bidder; or the Bidders are closely allied

through an established course of dealings including, but not limited to the lending of financial assistance. Refer to 43 TAC §9.12(g), "Affiliated Entities."

- 1.3.5. **Anticipated Profit.** Profit for work not performed.
- 1.3.6. **Apparent Low Bidder.** The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Department.
- 1.3.7. **Award.** The Commission's acceptance of a Contractor's bid for a proposed Contract that authorizes the Department to enter into a Contract.
- 1.3.8. **Bid.** The offer from the Bidder for performing the work described in the proposal.
- 1.3.9. **Bid Bond.** The security executed by the Contractor and the Surety furnished to the Department to guarantee payment of liquidated damages if the Contractor fails to enter into an awarded Contract.
- 1.3.10. **Bid Error.** A mathematical mistake made by a Bidder in the unit price entered into the proposal.
- 1.3.11. **Bidder.** An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed Contract.
- 1.3.12. **Bidders Questionnaire.** A prequalification form that reflects detailed equipment and experience data but waives audited financial data.
- 1.3.13. **Callout Work.** A type of Contract that requires a Contractor's response on an as-needed basis through issuance of a work order.
- 1.3.14. **Certificate of Insurance.** A form approved by the Department covering insurance requirements stated in the Contract.
- 1.3.15. **Change Order.** Written order to the Contractor detailing changes to the specified work, item quantities, or any other modification to the Contract.
- 1.3.16. **Commission.** The Texas Transportation Commission or authorized representative.
- 1.3.17. **Confidential Questionnaire.** A prequalification form that reflects detailed financial and experience data.
- 1.3.18. **Contract.** The agreement between the Department and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- 1.3.19. **Contract Documents.** Elements of the Contract including, but not limited to the plans, specifications incorporated by reference, special provisions, special specifications, bid bond, change orders, and supplemental agreements.
- 1.3.20. **Contract Term.** The number of calendar days until the ~~contract~~Contract terminates or the date the ~~contract~~Contract terminates, unless extended by mutual agreement.
- 1.3.21. **Contractor.** The individual, partnership, limited liability company, corporation, or joint venture and all principals and representatives with which the Contract is made by the Department. For MMC and TMC ~~contracts~~Contracts and these specifications, the contracted material supplier is considered a Contractor.
- 1.3.22. **Debar (Debarment).** ~~Action taken by the Department or federal government pursuant to regulation that prohibits a person or company~~Disqualification of an entity from bidding on or entering into a Contract, ~~or with the Department, from participating as a subcontractor under a Contract with the Department, and from participating as a~~ supplier of materials or equipment ~~to be used in a highway improvement Contract as~~

~~defined in Transportation Code, Chapter 223, Subchapter A, under a Contract with the Department. Refer to 43 TAC §10.2, "Definitions."~~

- 1.3.23. **Department.** The Texas Department of Transportation (TxDOT).
- 1.3.24. **Departmental Materials Specifications.** Reference specifications for various materials published by the Materials and Tests Division.
- 1.3.25. **Electronic Vault.** The Department's bidding system where electronic bids are stored before bid opening.
- ~~1.3.26.1.1.1. **Escalation Ladder.** A process to determine issue resolution during the course of the Contract.~~
- ~~1.3.27.1.3.26. **Engineer.** The Chief Engineer of the Department or the authorized representative of the Chief Engineer.~~
- ~~1.3.27. **Escalation Ladder.** A process to determine issue resolution during the course of the Contract.~~
- 1.3.28. **Expedited Work Order.** A work order requiring material to be delivered within 48 hr.
- 1.3.29. **Family Member.** A family member of an individual is the individual's parent, parent's spouse, ~~step-parent,~~ ~~step-parent's~~ ~~stepparent,~~ ~~stepparent's~~ spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse. –Refer to 43 TAC § 9.12(g), "Affiliated Entities."
- 1.3.30. **Hazardous Materials or Waste.** Hazardous materials or waste include but are not limited to explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable state and federal regulations.
- ~~1.3.31. **In Writing.** Communication memorialized, including written or electronic documentation by email or letter only.~~
- ~~1.3.31.1.3.32. **Independent Assurance Tests.** Tests used to evaluate the sampling and testing techniques and equipment used in the acceptance program. The tests are performed by the Department and are not used for acceptance purposes.~~
- ~~1.3.32.1.3.33. **Inspector.** The person assigned by the Engineer to inspect for compliance with the Contract and the materials used.~~
- ~~1.3.33. **In Writing.** Communication memorialized to include written or electronic documentation via email or letter only.~~
- 1.3.34. **Joint Venture.** Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid proposal.
- 1.3.35. **Letting.** The receipt, opening, tabulation, and determination of the apparent low Bidder.
- 1.3.36. **Letting Official.** The Executive Director or any Department employee empowered by the Executive Director to officially receive bids and close the receipt of bids at a letting.
- 1.3.37. **Licensed Professional Engineer.** A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas; also referred to as a Professional Engineer.
- 1.3.38. **Maintenance Materials Contract.** A type of Contract for the purchase of roadway materials.



- 1.3.39. **Material Producer List.** Department maintained list of approved products, materials, laboratories, service providers, manufacturers, and producers.
- 1.3.40. **Materially Unbalanced Bid.** A bid that generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the State.
- 1.3.41. **Materials Contract.** A Contract entered under Transportation Code, Chapter§ 223, Subchapter A, 001(b)(2) and (3), for roadway materials, traffic control devices, or safety devices. These ~~contracts~~Contracts are designated as “MMC” and “TMC” for Maintenance Materials Contracts or Traffic Materials contractsContracts, respectively.
- 1.3.42. **Materials Supplier’s Questionnaire.** A prequalification form that reflects basic information, such as company contact, signature authority, and other requirements, but waives financial, equipment, and experience data.
- 1.3.43. **Mathematically Unbalanced Bid.** A bid containing bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder’s anticipated profit, overhead costs, and other indirect costs.
- 1.3.44. **National Holidays.** January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, December 24, and December 25.
- 1.3.45. **Nonhazardous Recyclable Material.** A material recovered or diverted from the nonhazardous waste stream for the purposes of reuse or recycling in the manufacture of products that may otherwise be produced using raw or virgin materials.
- 1.3.46. **Nonresident Bidder.** A Bidder whose principal place of business is not in Texas. This includes a Bidder whose ultimate parent company or majority owner does not have its principal place of business in Texas.
- 1.3.47. **Nonresponsive Proposal.** A proposal that does not meet the criteria for acceptance contained in the proposal form.
- 1.3.48. **Notification.** Either written or oral instruction to the Contractor. Voice mail is oral notification.
- 1.3.49. **Plans.** The drawings approved by the Engineer, including true reproductions of the drawings that may show the location, character, dimensions, and details of the work and are a part of the Contract. Documents may include drawings or digital files.
- 1.3.50. **Power of Attorney for Bid Bonds.** An instrument under corporate seal appointing an attorney in fact to act on behalf of a Surety in signing bonds.
- 1.3.51. **Prequalification.** The process for determining a Contractor’s eligibility to bid work.
- 1.3.52. **Prequalification Statement.** The forms on which required information is furnished concerning the Contractor’s ability to perform and finance the work.
- 1.3.53. **Producer Price Index (PPI).** As defined by the USU.S. Bureau of Labor Statistics, program measures the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services.
- 1.3.54. **Proposal.** The offer from the Bidder submitted on the prescribed form, including addenda issued, giving unit bid prices for performing the work described in the plans and Specificationsspecifications.
- 1.3.55. **Proposal Form.** The form printed and sent to the Bidder by the Department or printed by the Bidder from the Department’s bidding system.

- 1.3.56. **Proposal Guaranty.** The security furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.
- 1.3.57. **Quality Assurance- (QA).** Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.
- 1.3.58. **Quality Control- (QC).** Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.
- 1.3.59. **Referee Tests.** Tests requested to resolve differences between Contractor and Engineer test results. The referee laboratory is the Materials and Tests Division.
- 1.3.60. **Regular Item.** A bid item contained in a proposal.
- 1.3.61. **Responsive Bid.** A proposal that meets all requirements of the proposal form for acceptance.
- 1.3.62. **Roadside.** The areas between the outside edges of the shoulders and the right of way boundaries.
- 1.3.63. **Special Provisions.** Additions or revisions to these standard specifications or special specifications.
- 1.3.64. **Special Specifications.** Supplemental specifications applicable to the Contract not covered by these standard specifications.
- 1.3.65. **Specifications.** Directives or requirements issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the Contract. References to DMSs, ASTM or AASHTO specifications, or Department bulletins and manuals, imply the latest standard or tentative standard in effect on the date of the proposal. The Engineer will consider incorporation of subsequent changes to these documents in accordance with Article 10.4, "Scope of Work."
- 1.3.66. **State.** The State of Texas.
- 1.3.67. **State Holiday.** A holiday authorized by the State Legislature excluding optional ~~state~~State holidays and not listed in Section 10.1.3.44., "National Holidays." A list of ~~state~~State holidays can be found on the Department's website.
- 1.3.68. **Subsidiary.** Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.
- 1.3.69. **Supplier's Agent.** The representative of the Contractor who is available at all times and able to receive instructions from the Engineer or authorized Department representatives and to act for the Contractor.
- 1.3.70. **Suspension.** Action taken by the Department or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a supplier of materials or equipment used in a highway improvement Contract as defined in Transportation Code, Chapter 223, Subchapter A.
- 1.3.71. **Traffic Materials Contract.** A type of Contract for the purchase of traffic control and safety devices.
- 1.3.72. **Verification Tests.** Tests used to verify accuracy of QC and QA and mixture design testing.
- 1.3.73. **Wholly-Owned Subsidiary.** A legal entity owned entirely by the Contractor.
- 1.3.74. **Work.** The furnishing of all approved materials necessary for the successful completion of the Contract.

- 1.3.75. **Work Authorization.** A letter issued to the Contractor by the Department to notify when calendar day charges are beginning on the Contract. This letter of notification could be tied with the issuance of the first work order.
- 1.3.76. **Work Order.** Written notice to the Contractor to provide a specified quantity of materials in accordance with the Contract. The work order may contain other specific instructions for the Contractor. A work order is part of the Contract.
- 1.3.77. **Work Order Time.** Time (days) specified in the Contract for the completion of all deliveries specified in a work order. The time begins with the date of the work order.
- 1.3.78. **Written Notice.** Written notice is considered to have been duly given if delivered in person to the individual or member to whom it is intended or if sent by regular, registered, or certified mail and delivered to the last known business address; sent by facsimile to the last known phone number; or sent by ~~e-mail~~ to the last known address. The date of the letter will serve as the beginning day of notice. Unclaimed mail or failure to provide current contact information will not be considered a failure to provide written notice.

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## 2. INSTRUCTIONS TO BIDDERS

- 2.1. **Introduction.** Instructions to the Contractor in these ~~Specifications~~ specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be “the Contractor.” The Department’s responsibilities are generally written in passive voice, indicative mood. Phrases such as “as approved,” “unless otherwise approved,” “upon approval,” “as directed,” “as verified,” “as ordered,” and “as determined” refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.
- 2.2. **Eligibility of Bidders.** Obtain a prequalification form from the Department’s website. A Bidder may choose to be prequalified by submitting either a Confidential Questionnaire (CQ), a Bidder’s Questionnaire (BQ), or a Materials Supplier’s Questionnaire (MQ). Submit the appropriate questionnaire at least 10 calendar days before the last day of the bid opening for the District or statewide letting. Comply with all technical prequalification requirements in the proposal. Once prequalified, a Bidders eligibility is valid for a period of ~~4~~ one year. Bidding capacity and available bidding capacity does not apply to MMC and TMC contracts.
- Reference 43 TAC §§ 9.11, “Definitions,” and 9.12, “Qualification of Bidders.”
- 2.2.1. **Confidential Questionnaire (CQ).** Submit a CQ and an audited financial statement for approval. Once prequalified, a Bidder’s eligibility is valid for a period of 1 yr. from the balance sheet statement date.
- 2.2.2. **Bidder’s Questionnaire (BQ).** Bidders prequalified with a BQ are only eligible to bid on projects identified as being waived from the requirements of Section 10.2.2.1., “Confidential Questionnaire (CQ).” Materials Contract proposals are designated with a “MW” on the Proposal Request Form. Submit a BQ for approval. Once prequalified, a Bidder’s eligibility is valid for a period of 1 yr. from the date the BQ was received by the Department.
- 2.2.3. **Materials Supplier’s Questionnaire (MQ).** ~~A prequalification form, prescribed by the Department, that gathers information, such as company contact, signature authority, and other requirements, to allow a person to bid on a materials contract, i.e., for maintenance materials, traffic control devices, or safety devices.~~ Bidders that submit only an MQ are eligible to bid only on a materials contract. Moreover, bidding capacity does not apply for a materials contract. An uncompleted materials contract does not affect the bidding capacity or available bidding capacity of a Bidder who submits a CQ or a BQ.
- 2.3. **Issuing Proposal Forms.** The Department will issue a proposal form to a prequalified Bidder as prescribed in Section 10.2.2. “Eligibility of Bidders.” 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.

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,
- the Bidder has not fulfilled the requirements for prequalification,
- 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,
- 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,
- the Bidder is ineligible to bid on any proposed Contract in accordance with [ArticleSection 10.7.8.](#), "Responsibility for Damage Claims,"
- the Bidder is prohibited from participating in the ~~contract~~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, 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 Section 10.2.14., "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."

2.4. **Interpreting Estimated Quantities.** The quantities listed ~~in~~on the proposal form are approximate and will be used for the comparison of bids. Payments will be made for the work performed in ~~conformance~~accordance with the Contract.

2.5. **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.

Oral explanations, instructions, or consideration for Contractor-proposed changes in the proposal form given during the bidding process are not binding. Only requirements included in the proposal form, associated specifications, plans, and Department-issued addenda are binding. Request explanations of documents in adequate time to allow the Department to reply before the bid opening.

Immediately notify the Department of any error, omission, or ambiguity discovered in any part of the proposal form and Contract documents. The Department will issue addenda when appropriate.

2.6. **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.

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

- certifications were not acknowledged,
- a regular item ~~is~~ left blank,
- the proposal form submitted had the incorrect number of items,
- the Bidder did not acknowledge all addenda, or
- additionally, for printed bids:

- the blank spaces for each item as required ~~in~~ 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 ~~in~~ on the bid form.

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

2.7. **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 proposal form was submitted for the same 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, ~~"Qualification of Bidders,"~~
- the Bidder was not authorized to receive a proposal form under Section 10.2.3., "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,
- a typed proposal form does not contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" ~~in~~ on the proposal form,
- the Bidder did not meet the requirements of the technical qualification, or
- the Bidder failed to participate in the Department of Homeland Security (DHS) E-Verify system as specified in Section 10.2.14-., ~~"Department of Homeland Security (DHS) E-Verify System."~~

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

2.8. **Electronic Bid.** 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.

2.8.1. **Proposal Form.** Use the electronic proposal form in the Department's bidding system. 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.

2.8.2. **Proposal Guaranty.** 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.

For a ~~joint venture JV~~, the bond must be in the name of all ~~joint venture JV~~ 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 of Department vendor ~~ID~~ identification numbers of the Bidder or Bidders.

2.8.3. **Submittal of Bid.** Submit the bid to the vault using the Department's bidding system.

2.8.4. **Revising the Proposal Form.** 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.

2.8.5. **Withdrawing a Bid.** 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.

If a bidder is unable to withdraw an electronic bid using the Department's bidding system, a written request may be submitted. A written request must be signed and submitted to the Letting Official conducting the letting with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint-ventureJV, the Department will accept a request from any person authorized to bind a party to the joint-ventureJV. 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.

2.9. **Printed Bid.**

2.9.1. **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.

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-ventureJV, provide the complete and correct name of all Bidders submitting the bid. In the case of a joint-ventureJV, the person signing the proposal form must be authorized to bind all joint-ventureJV participants.

2.9.2. **Proposal Guaranty.** Provide a proposal guaranty in the amount indicated on the proposal form. Use either a guaranty check or a printed bid bond. An electronic bid bond may be used as the guaranty. Ensure the electronic bid bond meets the requirements of Section 10.2.8.2., "Proposal Guaranty," and submit the electronic bid bond with the printed bid.

2.9.2.1. **Guaranty Check.** When utilizedused, make the check payable to the Texas Transportation Commission or the Texas Department of Transportation. The check must be a cashier's check, money order, or teller's check drawn by or on a state or national bank, or a state or federally chartered credit union (collectively referred to as "bank"). The check must be dated on or before the date of the bid opening. Postdated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument, except in the case of a teller's check, and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument; it be drawn by a bank and on a bank; it be payable at or through a bank. The Department will not accept personal checks, certified checks, or other types of money orders.

2.9.2.2. **Bid Bond.** When a bond is utilizedused, use the bid bond form provided by the Department. Submit the bid bond in the amount specified with the powers of attorney dated and attached. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety. As an alternative for joint-ventureJV Bidders, each of the BiddersBidder may submit a separate bid bond completed as outlined in this Section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with state law.

2.9.3. **Submittal of Bid.** Place the completed proposal form and the proposal guaranty in a sealed envelope marked to indicate the contents.

When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the Bidder's responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by that time of opening regardless of the method chosen for delivery.



- 2.9.4. **Revising the Proposal Form.** Make desired changes to the proposal form in ink, initial each change made, and submit the proposal to the Letting Official. Correction fluid or tape will be considered a change to the bid and requires the initials of the Bidder. The Department will not ~~make revisions to revise~~ a bid on behalf of a Bidder.
- 2.9.5. **Withdrawing a Bid.** Submit to the Letting Official conducting the letting a written request to withdraw a bid before the time and date set for the opening. The Department will not accept oral requests. A written request must be signed and submitted to the Letting Official conducting the letting, with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture a JV, the Department will accept a request from any person authorized to bind a party to the joint venture JV. 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.
- 2.10. **Opening and Reading of Bids.** At the time, date, and location specified in the official advertisement, the Letting Official will publicly open and read bids.
- 2.11. **Tabulating Bids.**
- 2.11.1. **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 10.2.11.5., "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.
- 2.11.2. **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 electronic bid will be used to determine the total bid amount. If the electronic bid is incomplete or nonresponsive, the 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.
- 2.11.3. **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 10.2.11.5., "Consideration of Unit Prices." Bids less than five-hundredths one-tenth of a cent (~~\$0.0005~~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.
- 2.11.4. **Interpretation of Unit Prices.** The Department will make a documented determination of the unit bid price if a unit bid price is illegible. The Department's determination will be final.
- 2.11.5. **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 \$0.00001 will be tabulated as one-tenth of a cent (~~\$(0.001)~~). The Department will consider proposals wherein which unit bid prices have been left blank incomplete and nonresponsive.
- ~~2.11.5.1. **"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.~~



~~2.11.5.2.2.11.5.1.~~ **Home State Bidding Preference.** For the purpose of determining the apparent low Bidder on proposed Contracts, the Department will select the option that results in the greatest bidding preference to the resident Bidder.

~~2.11.5.2.2.11.5.1.1.~~ **Reverse Application of Non-Resident Bidder's Home State Bidding Preference.** The total bid amount will be based upon the reverse application of the non-resident Bidder's home state bidding preference, if any. This will also apply to another state's preference for a Bidder that offers materials grown, produced, processed, or manufactured in that state.

Any reverse application of the home state bidding preference ~~would~~will be the greater of the following:

- the amount by which a resident Bidder would be required to underbid the non-resident Bidder to obtain a comparable contract in the state in which the non-resident's principle place of business is located; or
- the amount by which a resident Bidder would be required to underbid the non-resident Bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the Contract will be performed.

~~2.11.5.2.2.11.5.1.2.~~ **Texas Home State Bidding Preference.** A Bidder will be considered the apparent low Bidder if the Bidder's home office is located in this state and their bid does not exceed an amount equal to 105% of the apparent low bid received from a Bidder whose home office is not located in this state. This will not apply to a Bidder from a bordering state whose state does not give a preference to a Bidder in a manner similar to this Section.

2.12. **Consideration of Bid Errors.** The Department will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

- a written notification is submitted to the Department within ~~five~~5 business days after the date the bid is opened; and
- the submittal identifies the items of work involved and includes bidding documentation. The Department may request clarification of submitted documentation.

The Department will evaluate the claim of a bid error by the apparent low Bidder by considering the following:

- the bid error relates to a material item of work,
- the bid error amount is a significant portion of the total bid,
- the bid error occurred despite the exercise of ordinary care, and
- the delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Department will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is re-let. Rejection of bids due to the Contractor's bid error may result in the application of remedial actions by the Department.

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

2.13. **Tie Bids.** If the official total bid amount for two or more Bidders is equal and those bids are the lowest submitted, each tie Bidder will be given an opportunity to withdraw their bid. If two or more tie Bidders do not withdraw their bids, the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than two Bidders. If all tie Bidders request to withdraw their bids, no withdrawals will be allowed and the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than two Bidders. The Letting Official will preside over the proceedings.

2.14. **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.

If the apparent low Bidder does not appear ~~on~~in the DHS E-Verify system before award, the ~~Department will notify the Contractor that they~~ must submit documentation showing that they are compliant within ~~five~~5

calendar days after ~~the date the notification was sent~~ bid opening. A Contractor ~~who~~ that fails to comply or respond within the deadline will be declared ~~non-responsive~~. ~~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~~ 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~~ 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.

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### 3. AWARD AND EXECUTION OF CONTRACT

3.1. **Award of Contract.** The Commission or 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.

3.1.1. **Award.** The Commission or original award authority will award the Contract to the low Bidder as determined ~~by~~ in accordance with Section 10.2.11., "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 less than \$300,000,
- the low Bidder withdraws ~~its~~ 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.

3.1.2. **Rejection.** The Commission or 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 Section 10.2.12., "Consideration of Bid Errors," or
- rejection of the Contract is in the best interest of the State.

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

- 3.2. **Rescinding of Award.** The Commission or original award authority reserves the right to cancel the award of any Contract before ~~contract~~Contract execution with no compensation due when the cancellation is in the best interest of the State. The Department will return the proposal guaranty to the Contractor.
- 3.3. **Execution of Contract.** Provide the following within 15 days after written notification of award of the Contract.
  - 3.3.1. **Contract.** Execute the Contract as prescribed by the Department.
  - 3.3.2. **Insurance.** Refer to Section 10.3.7, "Beginning of Work."

Once work begins, 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 1, 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 1. 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 1  
Insurance Requirements**

Type of Insurance	Amount of Coverage
Commercial <del>General Liability</del> <u>insurancegeneral liability insurance</u>	Not <del>Less Than</del> less than: \$600,000 each occurrence
Business <del>Automobile Policy</del> <u>automobile policy</u>	Not <del>Less Than</del> less than: \$600,000 combined single limit
Workers' <del>Compensation</del> <u>compensation</u>	Not <del>Less Than</del> less than: Statutory

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers' compensation insurance. Pay all deductibles stated in the policy.

The ~~Workers' Compensation~~workers' compensation policy must include a waiver of subrogation endorsement in favor of the Department.

The work performed under this Section will not be measured or paid for directly but will be subsidiary to pertinent Items.

- 3.3.3. **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.
- 3.4. **Failure to Enter Contract.** If the Contractor fails to comply with all ~~of~~the requirements in Section 10.3.3., "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 and may result in the application of remedial actions by the Department.

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

- 3.5. **Approval and Execution of Contract.** The Contract will be approved and signed under authority of the Commission.

3.6. **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.

3.7. **Beginning of Work.** Do not begin work until authorized in writing by the Engineer. 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.

For Contracts with callout work and work orders, the purchase of materials before a work order is issued or without prior written approval of the Engineer is at the Contractor's risk, and the Department is not obligated for the cost of the materials or work to acquire the materials.

3.8. **Assignment of Contract.** Do not assign, sell, transfer, or otherwise dispose of the Contract or any portion of the rights, title, or interest (including claims) without the approval of the Commission or original award authority. The Department must deem any proposed assignment justified and legally acceptable before the assignment can take place.

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#### 4. SCOPE OF WORK

4.1. **Contract Intent.** The intent of the Contract is to describe the completed work to be performed. Furnish materials, supplies, and other incidentals necessary for the proper delivery of the materials in ~~conformance~~accordance with Contract documents.

4.2. **Coordination Call.** Before starting work, schedule and participate in a coordination call or virtual meeting with the Engineer or designated representative to establish points of contact for communication, an issue escalation ladder, delivery location details, and other Contract requirements. Work with the Engineer to resolve or escalate all issues.

4.2.1. **Issue Resolution Process.** An issue is any aspect of the Contract where parties of the Contract do not agree. The individuals identified at the lowest level of the issue escalation ladder will initiate the issue resolution process by escalating any issue that remains unresolved within the ~~time frame~~timeframe outlined in the issue escalation ladder.

Work with the Engineer or designated representative to resolve all issues during the course of the Contract. Refer to Section 10.4.5., "Dispute or Claims Procedure," for all unresolved issues.

4.3. **Changes in the Work.** The Engineer reserves the right to make changes in the Contract including addition, reduction, or elimination of quantities and alterations needed to complete the Contract. Perform the work as altered. If no unit price exists, this will be considered extra work and the Contract will be amended by a change order. The Department does not guarantee a specific volume to be purchased. No minimum compensation to the Contractor is guaranteed. Quantities indicated for each Item in the Contract are estimates only and are based on the previous usage. These estimates should not be construed as a minimum or maximum quantity to be ordered.

If a delivery location changes by more than ~~five miles~~5 mi., either party can request an adjustment to the Contract for changes in freight trucking cost.

4.3.1. **Contract Extensions.** When mutually agreed in writing, the Engineer may extend the Contract if the Contractor has satisfactorily fulfilled the terms and conditions of the Contract. The extension may be for a period ~~of time~~ not to exceed the original Contract time and may include additional quantities up to the original bid quantities plus any quantities added by change order. Unit prices may be adjusted, with the extension, to reflect the current Federal Producer Price Index (PPI) published by the Bureau of Labor Statistics (BLS), Region VI, Washington, DC 20212. The extension will meet the terms and conditions of the original Contract. When mutually agreed, execute the extension ~~before~~prior to the end of the term of the existing, or previously extended, Contract. Prosecute the original Contract and the extension consecutively. The extension will be

allowed once for any Contract greater than 6 mo. in duration not to exceed 12 mo. and twice for any Contract duration 6 mo. or less.

- 4.4. **Requests for Additional Compensation and Damages.** Notify the Engineer in writing of any intent to request additional compensation once there is knowledge of the basis for the request. An assessment of damages is not required to be part of this notice but is desirable. The intent of the written notice requirement is to provide the Engineer an opportunity to evaluate the request and to keep an accurate account of the actual costs that may arise. Minimize impacts and costs.

If written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before performing the work. Notice of the request and the documentation of the costs will not be construed as proof or substantiation of the validity of the request. Submit the request in enough detail to enable the Engineer to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and 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.

- 4.5. **Dispute or Claims Procedure.** The dispute resolution policy promotes a cooperative attitude between the Engineer and 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 have 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.~~

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 43 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 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.

~~Contractor may file~~File a claim after completion of the Contract or when required for orderly performance of the Contract. 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 ~~1 yr. after~~ the date of final acceptance of the Contract. It is the Contractor's responsibility to submit requests in a timely manner.

## 5. CONTROL OF THE WORK

- 5.1. **Authority of Engineer.** The Engineer has the authority to observe, test, inspect, approve, and accept the materials ~~-(either in writing or orally)~~. The Engineer decides all questions about the quality and acceptability of materials, Contract interpretations, 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 is in accordance with the Contract requirements at that time. This payment does not eliminate the Contractor's responsibilities for the work as defined in Section 10.5.4., "Work Order 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 will pursue and document actions against the Contractor as warranted to address Contract performance issues. Contract remedies include, but are not limited to, the following:

- requiring the Contractor to remove and replace defective material, or reducing payment for defective material,
- 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, "~~Liquidated Damages,~~"
- withholding estimates, and
- declaring the Contractor to be in default of the Contract.

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.

- 5.2. **Coordination of Plans, Specifications and Special Provisions.** The specifications, accompanying plans, special provisions, change orders, and supplemental agreements are intended to work together and be interpreted as a whole.

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

Notify the Engineer or designated representative promptly of any omissions, errors, or discrepancies ~~discovered upon discovery~~ so ~~that~~ necessary corrections and interpretations can be made. Failure to promptly notify the Engineer ~~of discovered omissions, errors, or discrepancies~~ will constitute a waiver of all ~~Contract~~ claims ~~against the Department~~ for misunderstandings or ambiguities that result from the errors, omissions, or discrepancies ~~discovered~~.

- 5.3. **Inspection.** Inspectors are authorized representatives of the Engineer. Inspectors are authorized to examine all materials furnished, including preparation, fabrication, and material manufacture. Inspectors inform the Contractor of failures to meet Contract requirements. Inspectors may reject materials. Inspectors cannot alter, add, or waive Contract provisions or issue instructions contrary to the Contract. Inspection or lack of inspection will not relieve the Contractor from obligation to provide materials or perform the work in ~~conformance~~ accordance with the Contract.
- 5.4. **Work Order Final Acceptance.** The Engineer or designated representative will determine if all material was provided and met Contract specifications according to the work orders issued on the ~~Contracts~~ Contract. Work Order Final Acceptance relieves the Contractor from further Work Order responsibilities.

- 5.5. **Contract Termination.** The Contract terminates upon the latter of ~~1)~~ fulfillment of all Work Orders; or ~~2)~~ on the termination date or after passage of the calendar days shown in the proposal, unless extended by mutual agreement.

## 6. CONTROL OF MATERIALS

- 6.1. **Source Control.** Use only materials that meet Contract requirements. Unless otherwise specified or approved, provide new materials. Secure the Engineer's approval of the proposed source of materials to be used before their delivery if requested.

- 6.1.1. **Buy America.** Comply with the latest provisions of Buy America ~~as listed at~~ in accordance with 23 CFR § 635.410. Use steel or iron materials manufactured in the United States except when:
- the cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater,
  - the Contract contains an alternate item for a foreign source steel or iron product and the Contract is awarded based on the alternate item, or
  - the materials are temporarily installed.

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

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

- 6.1.2. **Buy Texas.** Provide 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.

- 6.2. **Acceptance or Rejection of Defective Material.** When ~~work fails~~ **materials fail** to meet the Contract requirements but ~~is~~ **are** still adequate to serve the purpose, the Engineer will decide the extent to which the materials will be accepted and remain. The Engineer will document the basis of acceptance and may adjust the Contract price. When materials fail to meet ~~contract~~ **Contract** requirements and ~~is~~ **are** inadequate to serve the purpose, ~~it~~ **they** will be considered defective. Correct, or remove and replace the materials at the Contractor's expense as directed. ~~Reimburse the Department for cost incurred if additional sampling and testing~~ **is** ~~are~~ required by a change of source.

Materials not meeting Contract requirements will be rejected, unless the Engineer approves corrective actions. Upon rejection, immediately remove and replace rejected materials.

The Department has the authority to remove or replace defective materials. Cost for the removal may be deducted from any money due or to become due to the Contractor.

- 6.3. **Manufacturer Warranties.** Transfer to the Department warranties and guarantees required by the Contract or received as part of normal trade practice.
- 6.4. **Sampling, Testing, and Inspection.** Refer to the ~~Material Special Specification~~ **material special specification** for more information. The material requirements and standard test methods in effect at the time the proposed Contract is advertised govern. Unless otherwise ~~noted~~ **specified**, the Department will perform testing at its expense. If requested, provide a complete written statement of the origin, composition, and manufacture of materials.



Material that has been tested and approved at a supply source or staging area may be inspected or tested within 30 days upon delivery and rejected if it does not meet Contract requirements. Copies of test results are available upon request. Do not supply material that, after approval, becomes unfit for use.

- 6.5. **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,
- ensure the Engineer has full access to all parts of the plant used to manufacture or 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.

- 6.6. **Hazardous Materials.** Comply with the requirements of [Section Article 10.7.6.](#), "Responsibility for Hazardous Materials."

Use materials that are free of hazardous materials. Notify the Engineer immediately if materials are suspected to contain hazardous materials. If materials delivered or provided 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 contain hazardous materials. The work required to comply with this [sectionSection](#) will be at the Contractor's expense if materials are found to contain hazardous materials. Work order day charges will not be suspended and extensions of work order day charges 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.

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## 7. LEGAL RELATIONS AND RESPONSIBILITIES

- 7.1. **Ethics.** Honor the Department's ethics policy. The Department's ethics policy has been established in accordance with 43 TAC Chapter 10. A complete copy of the Department's ethics policy can be found on the Department's website.

By entering into Contract, the Contractor certifies that the Contractor has read and understands the Department's ethics policy.

Failure to honor this policy may result in action by the Department, which includes but is not limited to verbal warning, removal of project personnel, termination of the Contract, and sanctions under the [Texas Administrative CodeTAC](#).

- 7.2. **Laws to be Observed.** Comply with all federal, state, and local laws, ordinances, and regulations that affect the performance of the work. The Contractor is not required to comply with city electrical ordinances not included in this Contract. Indemnify and save harmless the State and its representatives against any claim arising from violation by the Contractor of any law, ordinance, or regulation.

This Contract is between the Department and the Contractor only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

- 7.3. **Permits, Licenses, and Taxes.** Procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of work, except for permits provided by the Department.
- 7.4. **Patented Devices, Material, and Processes.** Indemnify and save harmless the State from any claims for infringement from the Contractor's use of any patented design, device, material, process, trademark, or copyright selected by the Contractor and used in connection with the work. Indemnify and save harmless the State against any costs, expenses, or damages that it may be obliged to pay, by reason of this infringement, at any time during the prosecution or after the completion of the work.
- 7.5. **Personal Liability of Public Officials.** Department employees are agents and representatives of the State and will incur no liability, personal or otherwise, in carrying out the provisions of the Contract or in exercising any power or authority granted under the Contract.
- 7.6. **Responsibility for Hazardous Materials.** Comply with the requirements of ~~Section~~ Article 10.6.6., "Hazardous Materials." Indemnify and save harmless the State and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property arising from the generation or disposition of hazardous materials introduced by the Contractor on any work done by the Contractor on State-owned or controlled sites. Indemnify and save harmless the State and its representatives from any liability or responsibility arising out of the Contractor's generation or disposition of any hazardous materials obtained, processed, stored, ~~or shipped, etc.,~~ on sites not owned or controlled by the State. Reimburse the State for all payments, fees, or restitution the State is required to make as a result of the Contractor's actions.
- 7.7. **Protecting Adjacent Property.** Protect adjacent property from damage. If any damage results from an act or omission on the part of or on behalf of the Contractor, take corrective action to restore the damaged property to a condition similar or equal to that existing before the damage was done.
- 7.8. **Responsibility for Damage Claims.** Indemnify and save harmless the State and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act. Indemnify and save harmless the State and assume responsibility for all damages and injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on the Contractor's part in the manner or method of executing the work; from failure to properly execute the work; or from defective work or material.
- If the Contractor asserts any claim or brings any type of legal action (including an original action, third-party action, or cross-claim) against any member of the Commission or individual employee of the Department for any cause of action or claim for alleged negligence arising from the Contract, the Contractor will be ineligible to bid on any proposed Contract with the Department during the pendency of the claim or legal action.
- 7.9. **Hauling and Loads on Roadways and Structures.** Comply with federal and state laws concerning legal gross and axle weights.

#### 7.10. Security Incidents.

- 7.10.1. **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.

7.10.2. **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 or their suppliers.

## 8. PROSECUTION AND PROGRESS

8.1. **Prosecution of Work.** The Contract term begins at the issuance of a Work Order or 30 calendar days from the execution date, whichever comes first. When work orders are issued, provide approved materials within the specified time. Restrictions on delivery times will be as shown on the plans.

8.2. **Contract Term.** Contract term will be the calendar days shown in the plans. Calendar days will be charged Sunday ~~through~~ Saturday, including all holidays, regardless of weather conditions, material availability, or other conditions not under the control of the Contractor.

8.3. **Work Orders.** -There will be a minimum of ~~seven~~7 working days allowed to deliver material as of the date of the work order except for Expedited Work Orders (EWO). The actual number of days allowed for delivery of materials will be shown in the ~~Contract~~contract and work order; however, anything less than ~~seven~~7 working days in the ~~Contract~~contract or work order (except for an EWO) is not allowed.

8.3.1. **Delivery of Materials.** Materials will be delivered Monday ~~through~~ Friday, excluding national or state holidays, if weather or other conditions permit the performance of the manufacturing and delivery of materials for a continuous period of ~~seven hr.~~7 hours between 7 A.M. and 5 P.M.

8.4. **Shipping.** All shipping will be Freight on Board destination. Material prices with delivery by railcar or by truck must include all shipping and handling fees, including but not limited to fees for any equipment necessary to offload material, unless specifically allowed for in the ~~Contract~~Contract's general notes.

If a delay is foreseen, ~~the~~ Contractor will give written notice to the Department and must keep the Department advised at all times of order status. Default in promised delivery (without written acceptance of reasons) or failure to meet specifications authorizes the Department to purchase materials elsewhere and charge any increased costs for the materials, including the cost of re-soliciting, to the Contractor.

8.5. **Issuance of Expedited Work Order.** Expedited Work Order (EWO) will only contain bid items identified as "expedited" in the Contract. An EWO completion time will be 48 hr. or less as shown in the Contract. The time begins when the Department contacts the Contractor with an EWO. A Contractor must accept the work order within 2 hr. from initial contact of the Department, or the Department will obtain the material through another source. The Department could seek damages for any costs exceeding the EWO cost.

8.5.1. **Expedited Work Orders Delivery of Materials.** EWO delivery days include Sunday ~~through~~ Saturday.

8.6. **Late Delivery Damages.** The time and date established for the completion of each work order is an essential element of the Contract. The Department will coordinate with the Contractor as shown in the Contract for specific materials. In the case of conflict, ~~see~~reference Section 10.5.2., "Coordination of Plans, Specifications, and Special Provisions," for governing language.

If the Contractor fails to complete a work order within the number of working days specified, working days will continue to be charged. Failure to complete a work order within the number of working days specified, including any approved additional working days, will result in actual damages being charged as follows.

- For roadway operations, any materials specified in the work order will be considered late unless the Department agrees to a new time and date offered by the Contractor no less than 48 hr. ~~before~~prior to the work order's time and date of delivery. Actual damages incurred will be deducted from the monthly payment and calculations will be provided upon request. If advanced notice is not approved and the Department ~~has to obtain~~obtains material through another source, the Department could seek damages for any costs exceeding the Contract bid ~~items.~~item(s).
- For deliveries of stockpile materials, any materials specified in the work order will be considered late unless the Department agrees to a new time and date offered by the ~~contractor~~Contractor no less than

24 hr. ~~before~~prior to the work order's time and date of delivery. If advanced notice is not approved and the Department ~~has to obtain~~obtains material through another source, the Department could seek damages for any costs exceeding the Contract bid ~~items~~item(s).

The Department may suspend damages when weather impacts the delivery of the materials.

Providing material that does not meet specification requirements does not constitute delivery, and applicable damages may continue to accrue until the Contractor delivers materials in full compliance with the specifications to the designated delivery location. The Department reserves the right to require replacement materials or a refund if materials not meeting specifications are discovered after the payment has been made.

## 8.7. **Default of Contract.**

8.7.1. **Declaration of Default.** The Engineer may declare the Contractor to be in default of the Contract if the Contractor:

- fails to complete a work order within the number of days specified;
- is uncooperative, disruptive, or threatening;
- fails to perform the work in ~~conformance~~accordance with the Contract requirements;
- neglects or refuses to remove and replace rejected materials or unacceptable work;
- discontinues the prosecution of the work without the Engineer's approval;
- makes an unauthorized assignment;
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so;
- fails to conduct the work in an acceptable manner; or
- commits fraud or other unfixable conduct as determined by the Department.

If any of these conditions occur, the Engineer will give notice in writing to the Contractor 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 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. Calendar day charges will continue until completion of the Contract. A default may result in the application of remedial ~~actions~~action by the Department.

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

The Department may suspend work in accordance with Section 10.8.1., "Prosecution of Work," to investigate apparent fraud or other unfixable conduct before defaulting the Contractor. The Contractor may be subject to sanctions under the TAC.

The Department will determine the most expeditious and efficient way to obtain the material and recover damages from the Contractor. The Department will hold all money earned but not disbursed by the date of default. All costs and charges incurred by the Department ~~as a result of~~resulting from the default, including the cost of completing the work under the Contract, costs for other work deemed necessary, and any applicable liquidated damages will be deducted from money due the Contractor for completed work. In case the costs incurred by the Department are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, the Department will be entitled to retain the difference.

8.7.2. **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 Section 10.8.8., "Termination of Contract."

- 8.8. **Termination of Contract.** The Department may terminate the Contract in whole or in part whenever:
- the Contractor is prevented from proceeding with the work as a direct result of an executive order of the President of the United States or the Governor of the State,
  - the Contractor is prevented from proceeding with the work due to a national emergency, or when the work to be performed under the Contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment, or labor as the result of an order or a proclamation of the President of the United States,
  - the Contractor is prevented from proceeding with the work due to an order of any federal authority,
  - the Contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining court order where the issuance of the restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor, or
  - the Department determines that termination of the Contract is in the best interest of the State or the public.
- 8.8.1. **Procedures and Submittals.** The Department will provide written notice to the Contractor of termination specifying the extent of the termination and the effective date. Upon notice, immediately proceed in accordance with the following:
- stop work as specified in the notice,
  - place no further orders for materials,
  - complete performance of the work not terminated, and
  - settle all outstanding liabilities and termination settlement proposals resulting from the termination of the Contract.
- 8.8.2. **Settlement Provisions.** The Engineer will prepare a change order that reduces the affected quantities of work and adds acceptable costs for termination. No claim for loss of anticipated profits will be considered. The Department will pay reasonable and verifiable termination costs including:
- all work completed at the unit bid price,
  - expenses necessary for the preparation of termination settlement proposals and support data, and
  - other expenses acceptable to the Department.

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## 9. MEASUREMENT AND PAYMENT

- 9.1. **Measurement of Quantities.** The Engineer or designated representative will measure all completed work orders using United States standard measures, unless otherwise specified.
- 9.1.1. **Hauling on Routes Accessible to the Traveling Public.** For payment purposes on haul routes accessible to the traveling public:
- ~~if~~ the gross vehicle weight is less than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight, ~~of~~.
  - ~~if~~ the gross vehicle weight is more than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.
- 9.1.2. **Hauling on Routes Not Accessible to the Traveling Public.** For payment purposes on haul routes that are not accessible to the traveling public where advance permission is obtained in writing from the Engineer:
- ~~if~~ the gross vehicle weight is less than the maximum allowed by the Engineer, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight, ~~of~~.

- ~~iff~~ the gross vehicle weight is more than the maximum allowed by the Engineer, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.

9.2. **Scope of Payment.** Payment of the Contract unit price is full compensation for providing all approved materials under the Contract. Until final acceptance in accordance with Section 10.5.4., "Work Order Final Acceptance," the Contractor assumes liability for completing all work orders in ~~conformance~~accordance with material specifications.

9.3. **Progress Payments.** The Engineer will prepare a monthly estimate of the quantities of approved materials received. Payment of the monthly estimate is determined at the Contract item prices less any withholdings or deductions in ~~conformance~~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 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.

9.4. **Payment for Extra Work.** Payment for extra work directed, performed, and accepted will be made in accordance with Section 10.4.3., "Changes in the Work." Payment for extra work will be established by agreed unit prices. Agreed unit prices are unit prices that include markups and are comparable to recent bid prices for the same materials.

9.5. **Demurrage.** Demurrage is defined as a delay in delivery of material caused by the Department. Trucks may be held for up to 2 hr. at the jobsite at no additional expense to the Department. The Contractor's driver will report to the Engineer or designated representative at the time of arrival at the final delivery location and obtain a signature documenting the date and time. If not possible to obtain a signature, photographic documentation of the delivery location gate or marked roadway location with time and date stamp could be used. Written documentation of arrival will be used when calculating demurrage charges and included on an invoice submitted to the managing office. The demurrage charge will be invoiced in 15-min. increments, rounded down to the nearest whole increment. The Contractor has the option to provide documentation to charge a Demurrage Rate per truck per 15-min. increment. Documentation supporting the demurrage rate per truck will be required. Notify the Engineer or designated representative with any concerns or questions about demurrage charges.

9.6. **Return, Cancellation, and Restocking Fee.** The Department may request that the Contractor accept return of merchandise that meets specifications and has already been delivered, or that ~~the~~ Contractor cancel an order ~~before~~prior to delivery. If the Contractor does not agree to the Department's request, both parties must attempt to resolve the matter. The Contractor may request a reasonable restocking charge, and the Department may pay a restocking charge (no more than 10% of the cost of the item, unless the Contractor can justify a higher cost for materials that are designed specifically for the work order) if determined that the charge is justifiable. However, the Department will not pay restocking or other fees for cancellations requested ~~before~~prior to shipment by the Contractor unless the material is a product specific design.

9.7. **Retainage.** The Department will not withhold retainage on the Contractor.

- 9.8. **Payment Provisions for Suppliers.** These requirements apply to all tiers of suppliers. Incorporate the provisions of this Section into all material purchase agreements.

Pay suppliers for work performed within 10 days after receiving payment from the Department.

Pay any retainage on a supplier's work within 10 days after satisfactory completion of all ~~of~~ the supplier's work.

For the purpose of this Section, satisfactory completion is accomplished when:

- the supplier has fulfilled the Contract requirements of both the Department and the subcontract for the work, including the submittal of all information required by the Contract and the Department, and
- the work done by the supplier has been inspected, approved, and paid by the Department.

Provide a certification of prompt payment to certify that all suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. Submit the certification in the manner prescribed by the Department each month and the month following the month when final acceptance occurred.

- 9.9. **Work Order Final Payments.** Each work order will be reconciled for final quantities and final payment as they are completed.