

Item 4L

Scope of Work

# 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.

# 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 7L 2.2., “Safety Preconstruction Meeting” and the railroad coordination meeting described in Article 5L 8., “Cooperation with Railroads.” Work with the Engineer to resolve or escalate all issues. Execute the project pledge and establish an issue escalation ladder.

## **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.

## **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 timeframe outlined in the issue escalation ladder.

Work with the Engineer to resolve all issues during the course of the Contract. Refer to Article 4L 7., “Dispute or Claims Procedure,” for all unresolved issues.

# Partnering – NOT APPLICABLE

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

Informal partneringdoes 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).

## **Procedures for Partnering Meetings and Format**. Informal partnering is required, unless formal partnering is mutually agreed upon instead of the informal partnering.

## **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.

### **Internal Facilitators**. An Owner or Contractor staff member may be selected as the facilitator at no additional cost to either party.

### **External Facilitators**. A private firm or individual that is independent of the Contractor and the Owner may be selected as the facilitator. Submit the facilitator’s name and estimated fees for approval before contracting with the facilitator.

## **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 Owner 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 on the list. Provide the facilitator with the list of attendees and invite the attendees listed.

The Owner will invite and provide a list of attendees that includes, but is not limited to Owner, TxDOT, other local governments, law enforcement, railroad, and utility representatives.

Participate in additional partnering meetings as mutually agreed upon.

## **Payment**. Expenses for labor, Contractor equipment, or overhead will not be allowed. Markups as prescribed in Article 9L 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 their internal facilitator, including but not limited to meals, travel, and lodging. Owner facilitators may be used at no additional cost.

For formal partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Owner will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Owner 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 Owner will reimburse the Contractor for half of the eligible expenses as approved.

# 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 9L 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,

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.

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

# 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 Owner 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.

# 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.

Compensable damages occur when impacts that are the responsibility of the Owner 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. Notify the Engineer in writing as soon as possible for Contractor damages. The intent is to reimburse the Contractor for actual expenses arising from a compensable impact. No profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual cost. Justification for a higher percentage must be in conformance with the methodology provided by the Owner, 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 Owner for approval.

The Owner 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.

## **Standby Equipment Costs**. Payment will be made in accordance with Section 9L 7.1.4.3., “Standby Equipment Costs.”

## **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.

## **Home Office Overhead**. The Owner will not compensate the Contractor for home office overhead.

# 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 Owner’s 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.

The Owner’s goal is to have a dispute settled by the Engineer before elevating it as a claim to the Owner.

If a dispute cannot be resolved, initiate the Contract claim procedure by submitting a claim to the Owner.

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 Owner is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.”

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 1 yr. after expiration of the warranty period. For all other claims, file the claim no later than 1 yr. after the date the Owner issues notice to the Contractor that they are in default, the date the Owner terminates the Contract, or the date of final acceptance of the Contract. It is the Contractor’s responsibility to submit requests in a timely manner.