

Texas Department of Transportation

Routine Facilities Contract (RFC)

Uniform General Conditions

Article 1 General Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 **Addendum** means a change in proposal forms developed between advertising and bid submittal deadline. Addenda will be issued only by TxDOT and must be acknowledged by a bidder for his proposal to be publicly read.
- 1.2 **Advertisement** means the public announcement for work to be performed or materials to be furnished. The public announcement will be via the Electronic State Business Daily (ESBD) web site operated and maintained by the State acting through the Texas Comptroller of Public Accounts. (<http://esbd.cpa.state.tx.us>)
- 1.3 **Apparent Low Bidder** means the Bidder determined to have the numerically lowest total bid as a result of tabulation of bids by the Department.
- 1.4 **Architect** see **Architect/Engineer (A/E)**.
- 1.5 **Architect/Engineer (A/E)** means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by TxDOT or Contractor to provide professional architectural and/or engineering services and to exercise overall responsibility for the design of a Project or a portion thereof, and to perform contract administration responsibilities as set forth in the Contract Documents.
- 1.6 **Authorization to Begin Work Letter** means the letter issued by TxDOT authorizing the Contractor to begin work in accordance with the provisions of the Contract and establishing the date stated in the Contract for completion of the Work, or establishing the beginning date time charges will commence for computing Contract Time for completion of the Work.
- 1.7 **Award** means the Commission's authorized representative's written acceptance of the Bidder's bid for a proposed Contract that authorizes the Department to enter into a Contract.
- 1.8 **Bid** means the offer of a Bidder for performing the Work described in the Contract Documents including any changes made by addendum.
- 1.9 **Bid Bond** means the security executed by the Bidder and the Surety furnished to the Department to guarantee payment of liquidated damages if the Bidder fails to enter into an awarded Contract.
- 1.10 **Bid Error** means a mathematical mistake made by a Bidder in an item number price entered into the proposal.

- 1.11 **Bid Form** means **Proposal Form**.
- 1.12 **Bidder** means an individual, partnership, limited liability company, corporation or joint venture submitting a bid for a proposed Contract.
- 1.13 **Building Contract** means a contract entered under Transportation Code, Chapter 223, Subchapter A for the construction or maintenance of a Department building or appurtenant facilities and considered to be a Highway Improvement Contract as defined in Texas Administrative Code, § 9.11.
- 1.14 **Business Day** means Monday through Friday, 8 a.m. to 5 p.m. excluding state and federal holidays.
- 1.15 **Calendar Day** means any day including Saturdays, Sundays, and legal holidays.
- 1.16 **Certificate of Insurance** means a form approved by the Department covering insurance requirements stated in the Contract.
- 1.17 **Change Order** means TxDOT's written order to the Contractor detailing changes to the specified Work, item quantities, or any other necessary modification of the Contract, at TxDOT's sole discretion.
- 1.18 **Change Order Proposal** means a Contractor generated document in response to a TxDOT generated Request for Proposal (RFP).
- 1.19 **Claim** means a claim for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the Contract.
- 1.20 **Close-out Documents** means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, as-built record documents, affidavits, and any other documents as may be further defined, identified, and required by the Contract Documents.
- 1.21 **Commission** means the Texas Transportation Commission or authorized representative.
- 1.22 **Company** means the Bidder and/or Contractor.
- 1.23 **Contract** means the entire agreement between the Owner and the Contractor, including all of the Contract Documents, establishing the obligation of the parties for furnishing of materials and performance of the Work prescribed in the Contract Documents.
- 1.24 **Contract Date** means the date when the agreement (Contract) between the Owner and the Contractor becomes effective.
- 1.25 **Contract Documents** means the elements of the agreement (Contract) between the Owner and the Contractor. These include, but are not limited to, Bonds, Insurance, Plans, Shop Drawings, Specifications, Uniform General Conditions, Special Conditions, *Special Provisions*, *Special Specifications*, *Standard Specifications*, Change Orders, Bidding Documents, Advertisement, Bidder's Proposal, and all pre-bid addenda.
- 1.26 **Contractor** means the individual, company, partnership, limited liability company, corporation, or joint venture and all principals and representatives, jointly and severally, that are responsible for performance of a Contract awarded by the

Department. In the event of termination for cause of a Contract with a Performance Bond the Surety becomes the Contractor.

- 1.27 **Contract Sum** means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.28 **Contract Time** means the period of time from the date computation of time charges begin as set forth in the Authorization to Begin Work letter to the date stated in the Contract for completion of the Work, or the number of calendar days allowed in the Contract for completion of the Work, plus any TxDOT approved extensions.
- 1.29 **Day** means a calendar day, unless otherwise specifically stipulated.
- 1.30 **Department** means the Texas Department of Transportation (TxDOT).
- 1.31 **Dispute** means a disagreement between TxDOT and the Contractor or its authorized successor over the interpretation of the Contract Documents.
- 1.32 **Drawings** means the sealed product of the Architect and/or Engineer which graphically depicts the Work.
- 1.33 **Engineer** see **Architect/Engineer (A/E)**.
- 1.34 **Environmental Laws** means Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §9601 et seq.; the Toxic Substance Control Act ("TSCAS"), 15 U.S.C. §2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §9601, et seq.; the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Clean Air Act ("CAA"), 42 U.S.C. §7401 et seq.; M.G.L. c. 21C and c. 21E; Texas Health and Safety Code Chapter 361; Texas Water Code Chapter 26; and any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now in effect, or that may hereafter apply, relating to environmental matters.
- 1.35 **Executive Director** means the executive director of the Texas Department of Transportation.
- 1.36 **Field Facilities Coordinator (FFC)** means the individual identified by TxDOT who will assist the Project Manager (PM) in the administration of the Contract; perform periodic observations of the Work for general compliance with the plans and specifications; be the point of contact for coordination with the end-user for Work being conducted on an operational site; and perform other duties as specifically defined elsewhere in the Contract Documents and/or reflected in the Pre-construction Conference meeting minutes.
- 1.37 **Final Completion** means the date determined and certified by the Architect and/or Engineer, if applicable, and TxDOT on which the Work to the best of their information, knowledge and belief is fully and satisfactorily complete in accordance with the Contract subject to the expiration of all warranty periods or any other overriding provision of the Contract Documents.
- 1.38 **Hazardous Materials** means (i) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous

wastes," "hazardous substances," "oils," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq.; the Toxic Substance Control Act ("TSCAS"), 15 U.S.C. §2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §9601, et seq.; the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Clean Air Act ("CAA"), 42 U.S.C. §7401 et seq.; M.G.L. c. 21C and c. 21E; Texas Health and Safety Code Chapter 361; Texas Water Code Chapter 26; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinance now in effect, or that may hereafter apply, relating to environmental matters (collectively the "Environmental Laws"); and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any environmental law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and (E) asbestos.; and (iii) any materials that, prior to execution of the Contract, were not designated as hazardous materials that, after execution of the Contract, become new hazardous materials subject to regulation under the aforementioned "Environmental Laws" and any applicable federal, state, or local law, regulation or ordinance.

- 1.39 **Letting** means the receipt, opening and determination of the apparent low Bidder.
- 1.40 **Letting Official** means the Executive Director or any Department employee empowered by the Executive Director to officially receive and close the receipt of bids at a letting.
- 1.41 **Manufacturing** for the purposes of the Buy America provision of this Contract means any process that modifies the chemical content, physical shape or size, or finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (rolling, extruding, machining, bending, grinding, drilling, welding, cutting, etc.) and coating (paint, galvanizing, epoxy or any other coating that protects or enhances the value of the material.)
- 1.42 **Owner** means the State of Texas acting through the Texas Department of Transportation (TxDOT).
- 1.43 **Payment Bond** means the security executed by the Contractor and the Surety, furnished to the Department obligating the Surety to guarantee payment of all legal debts of the Contractor pertaining to the Contract.
- 1.44 **Performance Bond** means the security executed on a form provided by TxDOT 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.
- 1.45 **Plans** means Drawings.
- 1.46 **Power of Attorney for Suety Bonds** means an instrument under corporate seal appointing an attorney-in-fact to act on behalf of a Surety in signing bonds.
- 1.47 **Prime Contractor** means Contractor.

- 1.48 **Project** means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.49 **Project Manager (PM)** means the individual identified by TxDOT who will be responsible for the general administration of the Contract; is the single point of contact between TxDOT and the Contractor; conveys all directives on behalf of TxDOT to the Contractor; decides all questions which may arise as to the quality or acceptability of materials furnished, work performed, and interpretations of the plans and specifications when such action is not a contravention of a design decision made by an Architect or Engineer in preparation of the plans and specifications or such action is in conflict with statutes under which the Architect or Engineer is licensed for the protection of the public health or safety; the manner of performance and rate of progress of the Work; and acceptable fulfillment of the Contract on the part of the Contractor unless otherwise specifically defined elsewhere in the Contract Documents.
- 1.50 **Project Site** means the real property on which the demolition, improvements, alternations, etc. as described in the Contract Documents will be implemented.
- 1.51 **Proposal** means the offer of the Bidder submitted on the prescribed form giving a bid price for performing the Work described in the plans and specifications and all addenda issued.
- 1.52 **Proposal Form** means the forms printed by the Bidder from the Department's Plans Online web site or the Electronic State Business Daily (ESBD) web site operated and maintained by the State acting through the Texas Comptroller of Public Accounts.
- 1.53 **Proposal Guaranty** means the security designated in the proposal and furnished by the bidder as a guaranty that the bidder will enter into an awarded contract.
- 1.54 **Request for Proposal (RFP)** means a document generated by TxDOT which informs the Contractor of a proposed change in the Work, and appropriately describes or otherwise documents such proposed change.
- 1.55 **Responsive Bid** means a proposal that meets all requirements of the proposal form for acceptance.
- 1.56 **Routine Facilities Contract (RFC)** means a Contract let through the routine facilities contracting procedure for the construction or maintenance of a Department building or appurtenant facilities.
- 1.57 **Samples** mean representative physical examples of materials, equipment or workmanship, used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.58 **Schedule of Values** means the cost breakdown, in such detail as acceptable to TxDOT, of the materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by TxDOT.
- 1.59 **Shop Drawings** means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.

- 1.60 **Special Conditions** means supplemental additions or revisions to the Uniform General Conditions applicable to the Contract not covered by the Uniform General Conditions. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.61 **Special Provisions** means additions or revisions to standard specifications or special specifications.
- 1.62 **Special Specifications** means supplemental specifications applicable to the Contract not covered by standard specifications.
- 1.63 **Specifications** means the written product of the Architect and/or Engineer, if applicable, that establishes the quality and/or performance of products utilized in the Work and processes/standards to be used, including testing and verification, for compliance.
- 1.64 **Standard Specifications** means the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted November 1, 2014 and updates as posted on TxDOT official website at <http://www.txdot.gov> and relevant to the Project.
- 1.65 **State** means the State of Texas.
- 1.66 **Subcontract** means 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.
- 1.67 **Subcontractor** means an individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets any portion of the Work or provide services, materials or equipment for use in the Work.
- 1.68 **Substantial Completion** means the stage of progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, so that TxDOT employees and the public can safely occupy, utilize, and operate the improvements and all elements of the Work for purposes intended without hindrance or material interference from the Contractor's minor "punchlist items" completion activities or on-going work performance of those portions of the Work not being considered for Substantial Completion. The date of Substantial Completion is the date established by the Contractor and TxDOT as set forth in the Certificate of Substantial Completion issued by TxDOT.
- 1.69 **Supplemental Instruction** means a written order issued by the PM or authorized representative making minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time.
- 1.70 **TxDOT** means the Texas Department of Transportation acting on behalf of the State of Texas.
- 1.71 **Unilateral Change Order (ULCO)** means a Change Order issued by the Department without the agreement of the Contractor.
- 1.72 **Work** means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, or its agents or both, to fulfill the Contractor's obligations under the Contract.

Article 2 Procedures Governing Bidding

2.1 EXAMINING DOCUMENTS AND WORK LOCATIONS

- 2.2.1 Examine the proposal form, plans, and specifications, and specified work locations before submitting a bid for the work. Submitting a bid will be considered evidence that the Bidder has performed the examination. For plans which include data for borings, soil profiles, ground water elevations, and underground utilities the information was obtained for use by 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.
- 2.2.2 Oral explanations, instructions, or consideration of Contractor-proposed changes in the proposal form given during the bidding process are not binding. Only requirements included in the proposal form, associated uniform general conditions, 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.
- 2.2.3 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.

2.2 ELIGIBLE BIDDER

- 2.2.1 To be eligible to bid on a building contract a potential bidder must satisfactorily comply with any financial, experience, technical, or other requirement contained in the governing specifications applicable to the project in accordance with Texas Administrative Code Rule §9.12 (e).

2.3 PREPARING AND SUBMITTING THE BID

- 2.3.1 **Proposal Form.** Prepare the bid on the proposal form provided by the Department. The Department proposal may be obtained electronically at the Plans Online link on TxDOT's official web site <http://www.txdot.gov> or the Electronic State Business Daily (ESBD) web site <http://esbd.cpa.state.tx.us> operated and maintained by the State acting through the Texas Comptroller of Public Accounts.

Execute the proposal form in ink with the complete and correct name of the individual, firm, corporation or combination thereof making the proposal. The person authorized to bind the Bidder or Bidders must sign the proposal. Specify a price in dollars and cents for each bid item and if included each allowance item on the proposal form.

- 2.3.2 **Proposal Guaranty.** Provide a proposal guaranty in the amount indicated on the proposal form. Use either a guaranty check or a printed bid bond. If a proposal guaranty is not required it will state so on the proposal form.
- 2.3.3 **Guaranty Check.** 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 a "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; or drawn by a bank and on a bank; or be payable at or through a bank. The Department will not accept personal checks, certified checks, or other types of money orders.

2.3.4 **Bid Bond.** 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. Retyped copies of the bid bond form will not be accepted. 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 Bidders, each of the Bidders 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.

2.3.5 **Addendum.** Verify if addenda have been issued for the proposed Contract. If addenda have been issued they must be acknowledged on the Addendum Acknowledgment form. Submit the Addendum Acknowledgment form with the proposal.

2.3.6 **HUB Subcontracting Plan.** If a HUB Subcontracting Plan is required it will be so stated on the proposal form. If a HUB Subcontracting Plan is required complete and sign the HUB Subcontracting Plan (HSP) and submit with the proposal.

2.3.7 **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 the time of opening regardless of the method chosen for delivery.

2.3.8 **Revising the Proposal Form.** Make desired changes to the Bidder entered information on 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 a bid on behalf of a Bidder.

2.3.9 **Withdrawing a Bid.** Submit 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 with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In case of joint venture, the Department will accept a request from an person authorized to bind a party to the joint venture. 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.

2.4 OPENING AND READING OF BIDS

2.4.1 **Reading of Bids.** At the time, date, and location specified in the official advertisement, the Letting Official will publicly open and read bids. A bid determined to be nonresponse may or may not be read.

2.4.2 **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 was submitted for the same proposal form by a Bidder or Bidders and one or more of its partners or affiliates,
- the Bidder did not acknowledge or improperly acknowledged all addenda,
- the Bidder is debarred from bidding State contracts,
- the Bidder was prohibited from rebidding a specific proposal form due to failure 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 specification or both on which the bid or Contract is based,
- the Bidder's HUB Subcontracting Plan was determined by the Department to be non-compliant,
- the Bidder did not submit a HUB Subcontracting Plan when it was required to be submitted,
- the proposal guaranty did not comply with the requirements contained in this Article,
- the proposal form was not signed,
- the proposal form was signed by a person who was not authorized to bind the Bidder or Bidders,
- a bid item or allowance item or both are left blank,
- the bid was in a form other than the Department official proposal form,
- the Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the proposal form as determined solely by the Department.

2.5 **CONSIDERATION OF BID ERRORS**

2.5.1 **Consideration.** 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 bidding documentation. The Department may request clarification of submitted documentation.
- 2.5.2 **Evaluation.** The Department will evaluate the claim of an 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 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.
- 2.5.3 **Acceptance.** 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 sanctions by the Department.
- 2.6 **TIE BIDS**
- 2.6.1 **Tie Bids.** If the bid amount for 2 or more Bidders is equal and those bids are the lowest responsive bids submitted, each tie Bidder will be given an opportunity to withdraw their bid. If 2 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 2 Bidders. If all 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 2 Bidders. The Letting Official will preside over the proceedings.
- 2.7 **RETURN OF PROPOSAL GUARANTY**
- 2.7.1 **Proposal Guaranty Check** The proposal guaranty check of all Bidder's except the apparent low Bidder will be returned via U.S. mail to the address specified on the Department's Return Bid Guaranty Check Form by the Bidder.
- 2.7.2 **Bid Bond.** Bid bonds will not be returned.

Article 3 Award and Execution of Contract

- 3.1 **AWARD OF CONTRACT**
- 3.1.1. **Time.** The Commission or designated representative will award, reject, or defer the Contract within 30 days after the opening of the proposal.
- 3.1.2. **Reservations.** The Department reserves the right to reject any or all proposals and to waive technicalities in the best interest of the State.
- 3.1.3. **Award.** The Commission or designated representative will award the Contract to the Bidder with the lowest responsive bid (low Bidder). The Commission or designated representative may award a Contract to the Bidder with the second lowest responsive bid (second lowest Bidder) when the following requirements have been met:

- the Contract is for work with a Department estimated cost to construct of less than \$300,000 and the Contract does not include federal funds,
- the low Bidder withdraws its bid or fails to enter into Contract,
- the second lowest Bidder agrees to perform the work for the amount of the low Bidder,
- the Executive Director or designated representative recommends in writing the award of the Contract to the second lowest Bidder, and
- the Commission or designated representative agrees with the Executive Director or designated representative's recommendation for award to the second lowest Bidder.

3.1.4. **Rejection.** The Commission or designated representative will reject the Contract if:

- the low bid contains a bid error that in the sole determination of the Department satisfies the requirements and criteria in Article 2, or
- rejection of the Contract is in the best interest of the State.

3.2 RESCINDING OF AWARD

3.2.1. **Award Cancel.** The Commission or designated representative reserves the right to cancel the award of any Contract before 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 fifteen (15) days after written notification of award of the Contract. If bonds are not required provide the following within seven (7) days after written notification of award of the Contract.

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

3.3.2. **Bonds.** Tender to TxDOT performance and payment bonds in accordance with Table 1. Execute and date the performance and payment bond in the full amount of the Contract with the powers of attorney. Furnish the payment and performance bond as guaranty for the protection of the claimants and the Department for labor and materials and the faithful performance of the Work in accordance with the Contract Documents.

Each bond shall be executed on TxDOT's form by a corporate surety or sureties authorized to do business in the State of Texas, acceptable to the Department and in compliance with relevant provisions of the Texas Insurance Code. If a Surety upon a bond loses its authority to do business in the State, the Surety's underwriting limitation drops below the required bond amount or the Surety is declared bankrupt or insolvent, the Contractor shall, within fifteen (15) days after occurrence of any of the aforementioned events, furnish a replacement bond at no added cost to the Department. In such event the Work will be suspended until a substitute Surety acceptable to the Department is provided and a non-compensable time extension to the Contract will be granted for the fifteen (15) days or thirty (30) days if an acceptable Surety is not readily provided, whichever is sooner. The

Contractor's inability to find an acceptable Surety within thirty (30) days will be deemed a breach of contract and the Department may, in its sole discretion assess liquidated damages or declare the Contract in default and terminate the Contract.

Table 1
Bonding Requirements

Contract Amount	Required Bonds
Less than \$25,000	None
\$25,000 to \$100,000	Payment
More than \$100,000	Performance and Payment

The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. **IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BONDS IS NOT HONORED BY THE SURETY, THE CONTRATOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURES AS A RESULT.**

- 3.3.3. **Insurance.** Submit a certificate of insurance on the Department's form showing coverages in accordance with Contract requirements.

Insurance must cover the work for the duration of the Contract and must remain in effect until final acceptance. 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. Time charges will not stop for work stoppage due to expired insurance.

Provide the Department with a certificate of insurance verifying the types and amounts of coverage shown in Table 2. TxDOT shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor under the Contract. The Contractor shall assess its own risks and if it deems appropriate or prudent or both, maintain higher limits or broader coverages or both at no additional cost to the Department.

Table 2
Insurance Requirements

Type of Insurance	Amount of Coverage
Commercial General Liability Insurance	Not Less Than: \$1,000,000 each occurrence
Business Automobile Policy	Not Less Than: \$600,000 combined single limit
Workers' Compensation *	Not Less Than: Statutory - Texas
All Risk Builder's Risk Insurance * (Only required for Contracts \$100,000 or greater)	100% of Contract Amount

- * The Workers' Compensation policy must include a waiver of subrogation endorsement in favor of the Department.
- * The All Risk Builder's Risk Insurance policy must name the Department as Loss Payee. Coverage shall include, but not be limited to, loss by fire, storm, extended coverage perils on work and materials intended for use on the project including adjacent structure, and damage resulting from faulty workmanship, materials, or design provided directly or indirectly by the Contractor.

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 of Table 2 either through their own coverage or through the Contractor's coverage.

In the event the Contractor does not provide Workers' Compensation Insurance coverage for each Subcontractor and all sub-tier subcontractors employed on the project the Contractor shall provide the Department with a current Works' Compensation Insurance coverage certificate for each Subcontractor and all sub-tier subcontractors employed on the project in accordance with Texas Labor Code §406 .096(b).

- 3.3.4. **Business Ownership Information.** Submit the names and social security numbers of each individual owning 25% or more of the firm, or firms in the case of a joint venture, on the Department's form.

Provide written notification to the Department immediately upon discovery information provided was erroneous when submitted or has become erroneous by reason of changed circumstances.

3.4 FAILURE TO ENTER CONTRACT

- 3.4.1. **Proposal Guaranty.** If the Contractor fails to comply with all the requirements in the **Execution of Contract** Article, 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 proposal for the same work unless there has been a substantial change in design of the work.

3.5 RETRUN OF PROPOSAL GUARANTY

- 3.5.1. **Guaranty Check.** The proposal guaranty check of the low Bidder will be retained until after the Contract has been rejected or awarded and executed by the Department. The guaranty check will be returned via U.S. mail to the address specified on the Department's Return Bid Guaranty Check Form by the Bidder.
- 3.5.2. **Bid Bond.** Bid bond will not be returned.

3.6 BEGINNING OF WORK

- 3.6.1. **Written Authorization.** Do not start work until receipt of the authorization to begin work letter issued by the Department. Do not start work at the project site until completion of the pre-construction meeting.

3.7 **ASSIGNMENT OF CONTRACT**

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

3.8 **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.

Article 4 Laws Governing Construction

4.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.

4.2 **COMPLIANCE WITH LAWS.** Become familiar with and at all times comply with all applicable State, Federal and Local laws, statutes, ordinances and regulations including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection, antiquities and primitive records preservation, and prevailing wage rates which in any manner affect the conduct of the Work.

4.2.1 **Fees and Permits.** Cooperate with governmental officials at all times where their jurisdiction applies. Make application and pay all fees and provide supporting documentation necessary to secure permits, licenses, certificates, etc. which are required for performance of the Work. TxDOT hereby confirms the Contractor is not required to obtain building permits nor secure inspections by local jurisdictions for Work performed on State property. Any Texas Accessibility Standards (TAS) compliance review and inspection fees will be the responsibility of the Department.

4.2.2 **Change in Laws.** If there is any change between the date the Contract is executed and Final Completion in any applicable legal requirements which require a change in the Work in order to avoid a violation of any such applicable legal requirement, Contractor shall be responsible for changing the Work in order to avoid a violation of such legal requirements. A Change Order shall be executed to adjust the Contract Sum and/or Contract Time, if applicable, as a result of a change in legal requirements. If there is a change in any applicable legal requirement but the Work or portion thereof affected by such change is deemed to be "grandfathered" (i.e., the applicable legal requirement does not require that the Work be changed), such portion of the Work shall nevertheless be deemed to be in compliance with such applicable legal requirements and Contractor shall not be required to change the Work to otherwise comply with such changed legal requirements.

4.3 **ENVIRONMENTAL LAWS.** Conduct activities in compliance with applicable Environmental Laws and regulations and other requirements of the Contract relating to the environment, and its protection at all times.

- 4.3.1 **Hazardous Materials.** Contractor is responsible for all items it brings to site, including Hazardous Materials, and all such items brought to the site by its subcontractors and suppliers, or by other entities subject to direction of the Contractor. Contractor is responsible for the cost of any environmental remediation required resulting from the action or inaction of its employees, subcontractors, suppliers, or by other entities subject to direction of the Contractor.
- Do not incorporate hazardous materials into the Work without prior written approval of TxDOT, and provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 4.4 **WAGE RATES.** Do not pay less than the wage scale of the various classes of labor as set forth in 29 USC Section 206. Published wage rates for the State of Texas and county of the project can be located at <http://www.wdol.gov> (Davis-Bacon Act) pursuant to Chapter 2258, Texas Government Code. The specified wage rates are minimum rates only and no representation is made that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. The Contractor or Subcontractor shall pay overtime wages as required by the Fair Labor Standards Act, 29 United States Code 201, et. seq.
- 4.5 **RECORDS.** In accordance with Texas Government Code, Title 5, Subtitle A, Chapter 552 the Contractor shall make any information created, maintained, or exchanged with the State pursuant to the Contract, (public information) and not otherwise excepted from disclosure under the Texas Public Information Act, available to the State at no additional cost to TxDOT.
- 4.5.1 Contractor and all Subcontractors shall keep, or cause to be kept, copies of weekly payrolls for review by TxDOT for a period of three years after completion of the project in accordance with Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter A, Rule §9.5. As a condition of payment and pursuant to Texas Government Code §2113.102, TxDOT internal audit staff may audit the Contractor and Subcontractor during normal business hours.
- 4.6 **VENUE FOR SUITS.** Venue for any suit arising from this Contract will be in a court of competent jurisdiction in Travis County, Texas.
- 4.7 **LICENSING OF TRADES.** Contractor shall comply with all applicable provisions of state law related to license requirements for professionals, skilled tradesmen, contractors, materialmen, suppliers and or laborers, as necessary to accomplish the Work.
- 4.7.1 **Loss of License.** In the event the Contractor, or one of its Subcontractors or sub-tier contractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract or cause to hire or contract with a licensed provider of the service at no additional cost to TxDOT.
- 4.8 **STATE SALES AND USE TAXES.** TxDOT qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Contractor shall claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts in Title 34 Texas Administrative Code §3.287.

Article 5 General Responsibilities of Owner & Contractor

- 5.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 5.2 **OWNER'S GENERAL RESPONSIBILITIES.** Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number
- 5.2.1 **Preconstruction Conference.** After the issuance of the Authorization to Begin Work Letter but prior to the commencement of time charges a conference will be convened for attendance by the TxDOT Project Manager (PM), Contractor, and others as deemed appropriate by the PM. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the project site, general administration of the Contract, effective communications between the project team members, and address any other item set forth in the preconstruction conference agenda. PM will provide an agenda for the preconstruction conference.
- 5.2.2 **TxDOT Project Manager (PM).** The TxDOT PM:
- will be responsible for the general administration of the Contract;
 - is the single point of contact between TxDOT and the Contractor;
 - will convey all directive on behalf of TxDOT to the Contractor;
 - will decide all questions which may arise as to the quality or acceptability of materials furnished, work performed, and interpretations of the plans and specifications when such action is not a contravention of a design decision made by an Architect or Engineer in preparation of the plans and specifications or such action is in conflict with statutes under which an Architect or Engineer is licensed for the protection of the public health or safety; the manner of performance and rate of progress of the Work and acceptable fulfillment of the Contract on the part of the Contractor,
- unless otherwise specifically defined elsewhere in the Contract Documents or conveyed to the Contractor in writing.
- 5.2.3 **TxDOT Field Facilities Coordinator (FFC).** The TxDOT FFC:
- will assist the PM in the administration of the Contract;
 - will perform periodic observations of the Work for general compliance with the plans and specifications;
 - will be the point of contact for coordination with the end-user for Work being conducted on the operational site;
 - perform other duties as specifically defined in the Contract Documents, reflected in the Pre-construction Conference meeting minutes, or conveyed to the Contractor in writing by the PM.
- 5.2.4 **TxDOT Supplied Materials and Information.** Provide information, equipment, or services under TxDOT's control required by the Contract Documents to be provided to the Contractor with reasonable promptness.

- 5.2.5 **Availability of Lands.** Provide property access license(s) for permanent infrastructure on State property when so required for execution of the Work, unless otherwise required in the Contract Documents.
- 5.2.6 **Limitation on Owner's Duties.** TxDOT and its consultants will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. TxDOT is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. TxDOT is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. TxDOT is not responsible for the acts or omissions of Contractor, or any of its subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work directly or indirectly on behalf of the Contractor.
- 5.2.7 **Site Visits.** Make site visits at intervals and in accordance with notification provisions as provided in the Contract Documents to observe the progress and quality of the various aspects of Contractor's executed Work and report findings. TxDOT retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
- 5.2.8 **Clarifications and Interpretations.** Provide clarifications or interpretations of the plans and specifications when determined by TxDOT to be necessary. The PM or designated representative will provide such clarifications or interpretations consistent with the intent of the plans and specifications with reasonable promptness to the Contractor as Supplemental Instruction (SI) or similar instrument. TxDOT shall respond to request for clarifications or interpretations within fourteen (14) calendar days of receipt of such request. If the services of a TxDOT consultant are required for a clarification or interpretation of a request TxDOT will respond within twenty one (21) calendar days of receipt of such request. Clarifications to the drawings and specifications by TxDOT are not considered changes to the drawings and specifications.
- 5.3 **CONTRACTOR'S GENERAL RESPONSIBILITIES.** Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures
- 5.3.1 **Cooperation of Contractor.** Cooperate with TxDOT, TxDOT representatives, other contractors, utility companies, governmental/regulatory agency representatives, etc. whose work/operations are directly or indirectly impacted by the execution of the Work. At the written request of TxDOT, the Contractor shall immediately remove from the work locations any employee or representative of the Contractor or a subcontractor who, in the option of TxDOT, displays uncooperative behavior or who is disrespectful, disorderly, or otherwise objectionable. These individuals may not be reinstated without the written consent of TxDOT.
- 5.3.2 **Contractor's Superintendent.** Employ a competent superintendent who will be present at the Project Site during the progress of the Work. The superintendent proposed for the project is subject to the approval of the PM.

Approved superintendents may not be changed during the course of the project without the written approval of the PM, unless the superintendent leaves the employ of the Contractor.

- 5.3.3 **Project Administration.** Provide project administration for all subcontractors, sub-tier contractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the PM in accordance with any applicable provision of the Contract Documents.
- 5.3.4 **Communications.** The Contractor will direct all communications to TxDOT through the PM or designated representative(s).
- 5.3.5 **Non-Compliant Work.** Should the PM or designated representative identify Work as non-compliant with the Contract Documents, the PM will communicate the finding to the Contractor and the Contractor will correct such Work at its expense.
- 5.3.6 **Cleaning.** At all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract.
- 5.3.7 **Labor.** Provide competent, suitably qualified personnel to provide any services required to construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times. At the written request of TxDOT, Contractor shall immediately remove from the work locations any employee or representative of the Contractor or a subcontractor who, in the sole opinion of TxDOT, does not perform work in a proper and skillful manner and may not reinstate these individuals without the written consent of TxDOT.
- 5.3.8 **Subcontractors.** Do not substitute Subcontractors without the acceptance of TxDOT and compliance with the conditions of the HUB Subcontracting Plan if applicable. Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the Agreement between the Contractor and the Owner. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with TxDOT only through the Contractor.
- 5.3.9 **Notifications.** Provide written notifications to the PM or designate representative for all observations and inspections of the Work and any other required notifications set forth in the Contract Documents within the time frames specified.
- 5.3.10 **Continuing the Work.** Carry on the Work and adhere to the Progress Schedule during all disputes, disagreements or dispute resolution processes with TxDOT. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as TxDOT and the Contractor may agree in writing
- 5.3.11 **Environment.** Do not cause directly or indirectly pollution of air, soil, and water in, on, or around the Site or improvements through the release or discharge of any Hazardous Materials. At its sole cost and expense take any and all corrective action required by any applicable federal, state, county, municipal, and other laws, codes, ordinances, rules, and regulations to clean up, remove, and abate any and all soil contamination, groundwater contamination, or any

other contamination of the Site caused directly or indirectly by any release or discharge of any Hazardous Materials in, on, under, and around the Site by Contractor and/or Contractor's employees, agents representatives, Subcontractors, invitees, or any other person occupying the Site or any portion thereof by, through, or under the Contractor, excluding TxDOT and its employees, agents, representatives or invitees occupying the Site or any portion thereof.

- 5.3.12 **Indemnity for Environmental Damages.** IF THE CONTRACTOR AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE BRING OR DISPOSE OF ANY HAZARDOUS, TOXIC, OR OTHERWISE HARMFUL SUBSTANCES ONTO THE SITE, THE CONTRACTOR WILL INDEMNIFY, SAVE AND HOLD HARMLESS TXDOT FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, LOSSES AND ALL OTHER DAMAGE AND EXPENSE (INCLUDING COST OF DEFENDING AGAINST THE AFORESAID).

THE CONTRACTOR'S INDEMNITY HEREUNDER INCLUDES, BUT IS NOT LIMITED TO, ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. CONTRACTOR SHALL BEAR THE COSTS FOR REMEDIATION OF ANY RESULTING ENVIRONMENTAL DAMAGES DUE TO THE ACTIVITIES OF THE CONTRACTOR, ITS SUBCONTRACTORS AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. THE CONTRACTOR'S INDEMNITY AND OBLIGATIONS HEREUNDER WILL SURVIVE THE TERMINATION OF THIS CONTRACT.

- 5.3.13 **Utilities.** Be responsible for, unless stated otherwise in the plans and specifications, and bear all costs to extend any required utility service to the site as called for on the plans and specifications. Provide and pay all costs for protection of infrastructure under control of any utility service provider at no additional cost to TxDOT.
- 5.3.14 **Separate Contracts.** Additional Contractor responsibilities when TxDOT awards separate Contracts.
- 5.3.14.1 TxDOT reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.
- 5.3.14.2 TxDOT reserves the right to perform operations related to the Project with TxDOT forces and shall be responsible for any activities performed under separate contract.
- 5.3.14.3 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by Change Order.
- 5.3.15 **Errors, Omissions and Negligent Acts of the Contractor, its Subcontractors and Employees.** Be responsible for errors, omissions and negligent acts of its employees, subcontractors, suppliers and their agents and employees. This shall not be limited by any tier of subcontracting/supplier or "independent" contractor status. TxDOT may, in writing, require the Contractor to remove from the Project any of its employees or Subcontractor employees that the PM or designated representative finds to be careless, incompetent, or otherwise objectionable.

- 5.3.16 **Indemnification of Owner. THE CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, TXDOT, ET ALIA AS SET FORTH IN VARIOUS SECTIONS OF THE CONTRACT DOCUMENTS. IN THE EVENT THE CONTRACTOR AND TXDOT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**
- 5.3.16.1 Provisions of this Indemnification are solely for the benefit of the parties hereto and TxDOT's successor or assignee, if any, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 5.3.16.2 Contractor shall promptly advise TxDOT in writing of any claim or demand against TxDOT or the Contractor known to the Contractor related to or arising out of the Contractor's activities under this Contract.
- 5.3.17 **Contractor's Risk of Performance.** Except as expressly provided in the contract provisions the Contractor shall not be entitled to an increase in the Contract Sum or Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance.

Article 6 Historically Underutilized Business (HUB) Subcontracting Plan (If Required)

- 6.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 6.2 **COMPLIANCE WITH APPROVED HUB SUBCONTRACTING PLAN.** Comply with the HUB Program as follows.
- 6.2.1 Prior to substituting a Subcontractor, promptly notify TxDOT in the event a change is required for any reason to the accepted HUB Subcontracting Plan.
- 6.2.2 Conduct the good faith effort activities required and provide TxDOT with necessary documentation to justify approval of a change to the approved HUB Subcontracting Plan.
- 6.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB Subcontracting Plans as the Contractor and TxDOT may agree to.
- 6.3 **MONTHLY REPORTING.** Submit monthly a current HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report on forms downloaded from the Texas Comptroller of Public Accounts web site www.window.state.tx.us. This report shall include current information for all HUB and Non-HUB subcontractors and HUB suppliers.
- 6.4 **FINAL REPORT.** Monthly reporting shall survive Final Acceptance of the Project. Submit monthly HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report documenting compliance with the HSP until all

HUB and Non-HUB subcontractors and HUB suppliers have been tendered final payment and shall so designate by labeling the report form "FINAL REPORT".

Article 7 Bonds & Insurance

- 7.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 7.2 **BOND INDEMNIFICATION.** The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. **IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**
- 7.3 **FURNISHING BOND INFORMATION.** TxDOT shall furnish a copy of the payment bond to any qualified person who complies with Tex. Gov't Code, §2253.026.
- 7.4 **CLAIMS ON PAYMENT BONDS.** Claims on payment bonds must be sent directly to the Contractor and his Surety in accordance with Texas Government Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to TxDOT may result in loss of their rights against the Contractor and/or his Surety. TxDOT is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 7.5 **PERFORMANCE BOND SURETY'S OBLIGATION.** The Surety for the Performance Bond, if required, shall undertake the obligations of the Contractor in the event of the Contractor's failure to perform pursuant to the Contract or in the event of Contractor's insolvency or bankruptcy.
- 7.6 **INSURANCE REQUIREMENTS.** Carry insurance in the types and amounts indicated in the **Award and Execution of Contract** Article and as otherwise required by the Contract Documents for the duration of the Contract unless specifically stated otherwise. Regardless of approval and issuance of Final Acceptance, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods. TxDOT shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and if it deems appropriate or prudent or both, maintain higher limits or broader coverages or both at no additional cost to TxDOT.
- 7.6.1 **Policy Expiration.** Provide an updated TxDOT certificate of insurance prior to expiration. In the event the Contractor fails to maintain the required insurance all work shall stop until TxDOT receives an acceptable certificate of insurance. Contract Time charges will not be suspended in the event work is stopped due to the failure of the Contractor to maintain the required insurance. Acceptance of the insurance certificate by TxDOT shall not relieve or decrease the liability of the Contractor.

Article 8 Contract Documents

- 8.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 8.2 **DRAWINGS AND SPECIFICATIONS**
- 8.2.1 **Copies Furnished.** Contractor will be furnished, free of charge four (4) complete sets of Drawings and Specifications and any Addenda issued prior to or at the pre-construction conference.. Contractor shall obtain and pay for any additional complete sets of Drawings, Specifications and Addenda.
- 8.2.2 **Ownership of Plans and Specifications.** All Plans, Specifications and copies thereof furnished by TxDOT are, and shall remain, TxDOT's intellectual property. These documents are not to be used on any other project, and shall be returned to TxDOT, upon request, following completion of the Work.
- 8.2.3 **Interrelation of Documents.** The Contract Documents as referenced in the Contract between the Owner and the Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 8.2.4 **Resolution of Conflicts in Documents.** In the event of a conflict between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement shall be the basis of Contractor pricing, and the Contractor shall notify the PM or designated representative for resolution of the issue prior to executing the Work in question.
- 8.2.5 **Contractor's Duty to Review Contract Documents.** In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by TxDOT, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 8.2.6 **Errors and Omissions in Drawings and Specifications.**
- 8.2.6.1 Promptly report to the PM or designated representative the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
- 8.2.6.2 Contractor has no liability for design errors and omissions unless the Contractor knowingly failed to report a recognized problem to TxDOT or the Contractor, its subcontractors, or agents provided the design for the element of Work. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.
- 8.2.6.3 It is recognized that the Contractor is not acting in the capacity of a licensed design professional, unless the Contractor, its subcontractors or agent provide the design for any element of the Work requiring the services of a licensed design professional.

- 8.2.6.4 When the Contractor, its subcontractors or agents provide the design for any element of the Work requiring the services of a licensed design professional the Contractor has responsibility for discrepancies, errors, and omissions in the drawings and specifications provided for that element of the Work.
- 8.3 **Requirements for Record Documents.** Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved Submittals, Contract modifications, and all Project correspondence; keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction; and provide PM or designated representative access to these documents.
- 8.3.1 Failure to maintain such records constitutes cause for denial of a progress payment otherwise due.
- 8.3.2 Prior to requesting Substantial Completion Inspection Contractor shall furnish the PM or designated representative a complete legible set (a legible photocopy is acceptable) of the marked up "As-Constructed" set of plans and specifications maintained at the site. Concurrently with furnishing these record drawings, the Contractor shall furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the PM or designated representative.
- 8.3.3 Once determined acceptable, Contractor shall provide four (4) sets of operating and maintenance manuals, approved submittals, and other record documents as required elsewhere in the Contract Documents. Submission and acceptance of these documents is a condition for the issuance of the Certificate of Substantial Completion by the PM. Any "As-Built" modifications to approved shop drawings which were prepared and issued under the seal of a licensed/registered professional must be reviewed and reissued under the seal of the licensed/registered professional of record.

Article 9 Safety

- 9.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 9.2 **GENERAL.** It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 9.3 **NOTICES.** Contractor shall provide notices as follows:
- 9.3.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may in any way affect them or their facilities, and cooperate with

- them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 9.3.2 Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDS for all materials in use on site throughout the construction phase and make such file available to TxDOT and its agents as requested.
- 9.4 **EMERGENCIES.** In any emergency affecting the safety of persons or property, the Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 9.4.1 Contractor shall have its authorized agents respond immediately upon call at anytime of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 9.4.2 Contractor shall give the PM or designated representative prompt notice of all such events.
- 9.4.3 Should the Contractor fail to respond, TxDOT is authorized to direct other forces to take action as necessary and TxDOT may deduct any cost of remedial action from funds otherwise due the Contractor.
- 9.5 **INJURIES.** In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify the PM or designated representative and other parties as may be directed within twenty-four (24) hours of the event and provide the PM or designated representative an incident report if so requested.
- 9.6 **INENVIRONMENTAL SAFETY.** Upon encountering any potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify the PM or designated representative immediately.
9. 6.1 Contractor shall bind all Subcontractors to the same duty.
9. 6.2 Upon receiving notice of previously unknown hazardous material, the PM will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. As soon as possible upon completion of this investigation, the PM will issue a written report to the Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
9. 6.3 TxDOT may hire third-party contractors to perform any or all such steps.
- 9.7 **TRENCHING SAFETY.** When the project requires excavation which either exceeds a depth of five feet, or results in any worker's upper body being positioned below grade level, the Contractor is required to submit a trenching plan to the PM prior to commencing trenching operations providing the necessary protection to comply with the most current version of OSHA Standards and Interpretations, 29 CFR 1926, Subpart P, "Excavations." The plan

is required to be prepared and sealed by a professional engineer registered in the State of Texas, and employed by the Contractor.

Article 10 Quality Control

- 10.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 10.2 **MATERIALS & WORKMANSHIP.** Contractor shall execute Work in a good and workmanlike manner in accordance with the Contract Documents. Where Contract Documents do not specify quality standards, the Contractor shall complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, the Contractor shall incorporate all new materials and equipment into the Work under the Contract.
- 10.3 **TESTING.**
- 10.3.1 **Contractor Testing.** Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirement of the Contract Documents. This “quality control” testing shall include any particular testing required by the Plans and Specifications and the following general tests:
- 10.3.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 10.3.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 10.3.1.3 Routine, preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 10.3.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 10.3.2 **TxDOT Testing.** TxDOT reserves the right to subject materials and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the PM or designated representative to ensure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such “quality assurance” testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.
- 10.3.2.1 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, a TxDOT testing laboratory, or special consultant as appropriate, acceptable to TxDOT. Results of all tests shall be provided promptly to the PM and the Contractor.
- 10.3.3 **Non-Compliance (Test Results).** Should any of the tests indicate that a material and/or system does not comply with the contract requirements, the burden of proof remains with the Contractor, subject to:

- 10.3.3.1 Contractor selection and submission of the laboratory for TxDOT acceptance.
- 10.3.3.2 Acceptance by TxDOT of the quality and nature of tests.
- 10.3.3.3 All tests or samples or both be taken in the presence of the PM or designated representative.
- 10.3.3.4 If tests confirm that the material/systems, indicated by TxDOT testing to not be in compliance with Contract Documents, are in compliance with Contract Documents, TxDOT will pay the Contractor the cost of the test.
- 10.3.3.5 If tests reveal noncompliance, the Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 10.3.3.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the PM determines appropriate, including complete removal and replacement of non-compliant work or material at no additional cost to TxDOT.
- 10.3.4 **Notice of Testing.** Contractor shall give the PM or designated representative twenty four (24) hours written notice of its readiness and the date arranged so the PM or their designated representative may observe such testing or gathering of test samples.
- 10.3.5 **Test Samples.** Contractor is responsible for providing samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay
- 10.3.6 **Covering Up Work.** If Contractor covers up any Work without providing TxDOT an opportunity to observe the testing, the Contractor shall, if requested by PM, uncover and recover the work at Contractor's expense.
- 10.4 **INSPECTIONS.**
 - 10.4.1 **Access.** Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation or inspection or both of the Work by TxDOT and its agents.
 - 10.4.2 **Notice of Inspection.** Contractor shall provide the PM or designated representative written notice five (5) calendar days or as otherwise mutually agreed, prior to the anticipated need for a cover up inspection. Should the PM or designated representative fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.
 - 10.4.3 **Covering Up Work.** If the Contractor covers up any Work without providing TxDOT an opportunity to inspect, the Contractor shall, if requested by PM or designated representative, uncover and recover the work at Contractor's expense.
 - 10.4.3.1 Should corrections of the Work be required for approval, the Contractor shall not cover up corrected Work until TxDOT indicates approval.

- 10.5 **DEFICIENCIES IN THE WORK.** TxDOT reserves the right to withhold from funds remaining unpaid under the Contract amounts required to pay the costs of, but not limited to, the following:
- 10.5.1 Special site visits required to re-examine a cited deficiency which has not been corrected after a total of two visits.
 - 10.5.2 Special monitoring to ensure compliance with the Contract Documents due to non-performance or poor workmanship.
 - 10.5.3 Assessments of potential damage, resulting from failure of the Contractor to protect the Work.
- 10.6 **SUBMITTALS.**
- 10.6.1 **Contractor's Submittals.** Contractor shall submit in accordance with the Project Schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for compliance with Contract Documents and certify compliance by approval stamp affixed to each copy. Submittal data presented without the Contractor's certification will be returned without review or comment, and any delay resulting from such certification is the Contractor's responsibility.
 - 10.6.1.1 Within twenty-one (21) calendar days of issuance of the Authorization to Begin Work letter, unless otherwise modified by the PM in writing, the Contractor shall submit to the PM, a submittal schedule/register, organized by specification section, listing all items to be furnished for review by the PM or designated representative. The list shall include shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, and all other items identified throughout the specifications.
 - 10.6.1.2 Contractor shall indicate the type of item, contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for review answers from the PM. The submittal register shall be updated at least monthly with actual reviewed dates. Contractor shall schedule submissions at least forty (40) days before reviewed submittal will be required. Contractor shall allow a minimum of twenty one (21) calendar day duration after receipt by the PM for review of each submittal. If re-submittal is required, the Contractor shall allow a minimum of fifteen (15) calendar days for review. Contractor shall submit the updated submittal register with each request for progress payment.

TxDOT may establish alternate routine review procedures and schedules for submittals at the preconstruction conference, elsewhere in the Contract Documents, or as otherwise necessary.
 - 10.6.1.3 Contractor shall coordinate the submittal register with the Work Progress Schedule. Contractor shall not schedule Work requiring a submittal to begin prior to scheduling review of the related submittal. Contractor shall revise and/or update both schedules monthly to ensure consistency and current project data. Provide to the PM the updated submittal register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein, if any; and schedule for inclusion of

procurement activities therein, if any. The submittal register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

- 10.6.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies that they have determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data, have been determined and verified and that each Shop Drawing and Sample has been checked and coordinated with the requirements of the Work and the Contract Documents.
- 10.6.2 **Review of Submittals.** PM or designated representative's review are only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract unless the Contractor informs the PM or designated representative of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains TxDOT's written specific approval of the particular deviation.
- 10.6.3 **Correction and Resubmission.** Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay of submittal review. Contractor shall direct attention in writing to the PM or designated representative, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 10.6.4 **Limits on Shop Drawing Review.** Contractor shall not commence any Work requiring a submittal before review of the submittal. Contractor shall construct all such work in accordance with reviewed submittals and the Contract Documents. Review of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The PM or designated representative's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any review action.
- 10.6.5 **No Substitutions Without Approval.** PM or designated representative may receive and consider the Contractor's request for substitution when the Contractor agrees to reimburse TxDOT for direct and indirect review costs and satisfies 10.6.5.1, 10.6.5.2, and 10.6.5.3 in combination with one or more of the items in 10.6.5.4 through 10.6.5.11 of the following conditions, as determined by TxDOT. If the Contractor does not satisfy these conditions, the PM or designated representative will return the request without action except to record noncompliance with these requirements. TxDOT will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.
- 10.6.5.1 Contract Documents do not require extensive revisions.

- 10.6.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent and do not result in an increase in cost to TxDOT.
 - 10.6.5.3 Request is timely, fully documented, and properly submitted.
 - 10.6.5.4 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
 - 10.6.5.5 Request directly relates to an "or-equal" clause or similar language in the Contract Documents.
 - 10.6.5.6 Request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.
 - 10.6.5.7 Requested substitution offers TxDOT a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities TxDOT must assume.
 - 10.6.5.8 Specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the PM or designated representative can approve the request.
 - 10.6.5.9 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility.
 - 10.6.5.10 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and Contractor certifies they can coordinate the proposed substitution.
 - 10.6.5.11 Specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and Contractor certifies that the proposed substitution provides the required warranty.
- 10.6.6 **Unauthorized Substitutions at Contractor's Risk.** Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. Contractor shall reimburse TxDOT for any increased design or contract administration costs resulting from any unauthorized substitutions.

Article 11 Construction Schedules

- 11.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 11.2 **WORK PROGRESS SCHEDULE.** Contractor shall refer to any Special Condition, any Division 1 Specifications, or preconstruction conference meeting minutes for any alternate or additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit the initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the date of the Authorization to Begin Work Letter to the PM or designated representative. Unless otherwise indicated or directed in writing the Work Progress Schedule shall be a computerized Critical Path Method (CPM) with full reporting capability and in a format and in sufficient detail acceptable to

the PM or designated representative. The initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. The schedule, when accepted by TxDOT, shall be the Baseline Schedule for comparison to actual conditions throughout the contract duration. Failure of the Contractor to provide a Work Progress Schedule as set forth above will be considered sufficient cause for TxDOT to order the work under the Contract to be stopped without suspension of Contract time charges.

- 11.2.1 **Schedule Requirements.** Contractor shall submit in an electronic format acceptable to TxDOT the Work Progress Schedule accepted by TxDOT reflecting accurate and reliable representations of the planned progress of the Work, the Work performed to date, if any, and the Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
 - 11.2.1.1 Contractor shall re-submit initial Schedule as required to address review comments from the PM or designated representative until such Schedule is accepted by TxDOT as the Baseline Schedule.
- 11.2.2 **Schedule Updates.** Contractor shall update the Work Progress Schedule and the Submittal Schedule not less than monthly to reflect progress to date and current plans for completing the Work, and submit an electronic copy of the update to the PM or designated representative. TxDOT has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Progress Schedule logic only with TxDOT's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to the PM or designated representative via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.
- 11.2.3 **Effect of Work Progress Schedule.** The Work Progress Schedule is for the Contractor's use in managing the Work. Submittal of the Schedule, and successive updates or revisions, is for the information of TxDOT and to demonstrate that the Contractor has complied with requirements for planning the Work. TxDOT's acceptance of a schedule, schedule update or revision constitutes TxDOT's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.
 - 11.2.3.1 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute TxDOT's consent or approval, alter the terms of the Contract, does not constitute a change in terms of the contract, or waive either the Contractor's responsibility for timely completion or TxDOT's right to damages for the Contractor's failure to do so. Change Orders are the only method of modifying the completion Date(s) and Contract Time.
- 11.3 **OWNERSHIP OF FLOAT.** Float time contained in the Work Progress Schedule is not for the exclusive benefit of the Contractor or TxDOT, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

Article 12 Contract Time

- 12.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 12.2 **CONTRACT TIME. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time will cause damage to TxDOT and subject the Contractor to Liquidated Damages as provided in the Contract Documents.
- 12.3 **AUTHORIZATION TO BEGIN WORK.** TxDOT will issue an Authorization to Begin Work Letter authorizing the Contractor to begin construction in accordance with the provisions of the Contract and establishing the date stated in the Contract for completion of the Work, or establishing the beginning date time charges will commence for computing Contract Time for completion of the Work.
- 12.4 **COMPLETION OF WORK.** Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.
- 12.4.1 If, in the judgment of TxDOT, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, TxDOT shall so notify the Contractor and Surety, if any.
- 12.4.2 Within ten (10) calendar days after such notice from the PM or designated representative, Contractor shall notify the PM in writing of the specific measures taken and/or planned to facilitate timely completion of the entire work or a separable portion thereof and include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project.
- 12.5 **COMPUTATION OF CONTRACT TIME FOR COMPLETION.** TxDOT will furnish the Contractor a monthly statement on prescribed forms, showing the number of calendar days charged during the month, total number of days allowed in the Contract and the number of days remaining under the Contract. The Contractor will be allowed ten (10) calendar days in which to protest the correctness of the statement with supporting documentation, otherwise the statement will stand.
- 12.6 **MODIFICATION OF THE CONTRACT TIME.**
- 12.6.1 **Extension of Time.** Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in the **Changes** Article. All extensions of time will be granted in calendar days. In no event will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project completion date.
- 12.6.2 **Excusable Delay.** Contractor may be entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:
- 12.6.2.1 Errors, omissions and imperfections in design which TxDOT corrects by means of changes in the drawings and specifications. Clarifications to the

drawings and specifications by TxDOT are not considered changes to the drawings and specifications.

- 12.6.2.2 Unanticipated physical conditions at the Site which with reasonable diligence could not have been discovered by the Contractor prior to the execution of this Contract and the PM corrects by means of changes to the drawings and specifications or for which the PM directs changes in the Work identified in the Contract Documents.
- 12.6.2.3 Changes in the Work that effect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the PM.
- 12.6.2.4 Suspension of Work for convenience of TxDOT, which prevents Contractor from completing the Work within the Contract Time.
- 12.6.3 **Excusable Delay Relief.** In the event of such delays the time relief is the time impact to the critical path as determined by analysis of the Contractor's schedule. If the Contractor and TxDOT cannot agree on the time extension, TxDOT may issue a ULCO for fair and reasonable time extension. In the event that the Contractor incurs additional direct costs because of the delay, they are to be determined pursuant to the provisions of **Changes** Article.
- 12.6.4 **Non-compensable Delay.** Contractor may be entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:
 - 12.6.4.1 "Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are non-compensable delays. When weather conditions at the site prevent work from proceeding, immediately notify the PM or designated representative for confirmation of the conditions. At the end of each calendar month, submit to the PM or designated representative a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Such documentation shall include the impact of any concurrent delay occurring during the "Weather Days" in question.
 - 12.6.4.2 Force Majeure shall mean any delays, hindrances, or suspensions of the Work for (1) unexpected natural events (sometimes called "acts of God"); (2) strikes, labor disputes, labor shortages, or material shortages outside of the Contractor's reasonable control; (3) acts of public enemy; (4) riots; (5) epidemics disabling the labor force; (6) landslides; (7) earthquakes affecting the Project; (8) fires; (9) hurricanes (10) tornadoes; (11) partial or entire failure of public utilities affecting the Project; (12) delays associated with concealed, unknown, or unforeseen conditions associated with the Property which with reasonable diligence could not have been discovered by the Contractor prior to execution of this Contract; (13) delay in issuing any governmental or regulatory permit, license or approval necessary or required for implementation of the Project which with reasonable diligence could not have been avoided by the Contractor; (14) any other similar cause or event not reasonably within the Contractor's / subcontractor's control and not resulting from their errors, omissions or negligent acts.

- 12.6.5 **Non-compensable Delay Relief.** Contractor's sole relief in the event of such Weather Day or Force Majeure or both delays, hindrances, or suspensions of the Work is the time impact to the critical path as determined by analysis of the Contractor's schedule. Upon review and concurrence of the time impact documentation by the PM or designated representative a non-compensable time extension to the Contract Time will be issued by Change Order. In the event the Contractor and TxDOT cannot agree on the time extension, TxDOT may issue a ULCO for fair and reasonable time extension. When such delays, hindrances, or suspensions are the result of the conditions defined under **Termination by Contractor Article**, the Contractor's relief will be governed by the conditions of said Article should the Contract be terminated under said Article.
- 12.6.6 **Concurrent Delay.** When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay.
- 12.6.7 **Other Time Extension Requests.** If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work, weather, or force majeure, they shall give the PM or designated representative written notice, stating the nature of the delay, activities potentially affected, and evidence documenting the cause of delay within five (5) calendar days after the onset of the event or circumstance giving rise to the excusable delay. Clarifications to the drawings and specifications by TxDOT are not considered changes to the drawings and specifications.
- 12.6.7.1 Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule and include with Time Extension Requests a reasonably detailed narrative setting forth:
- 12.6.7.1.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.
 - 12.6.7.1.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in the Contractor's Work Progress Schedule, and any concurrent delays.
 - 12.6.7.1.3 Description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 12.6.7.2 TxDOT will respond, subject to receipt of all required information, to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor.
- 12.6.7.2.1 TxDOT will not grant time extensions for delays that do not affect the Contract Completion Date.
 - 12.6.7.2.2 TxDOT will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt of all required information. If TxDOT cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, TxDOT will notify the Contractor in writing. Unless

otherwise agreed by the Contractor, TxDOT has no more than fifteen (15) additional calendar days to prepare a final response. If TxDOT fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.

- 12.7 **NO DAMAGES FOR DELAY.** Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of TxDOT.
- 12.8 **DUTY TO PERFORM.** No extension of time releases the Contractor or the Surety furnishing a performance or payment bond, if any, from any obligations under the contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 12.9 **FAILURE TO COMPLETE WORK WITHIN THE CONTRACT TIME. TIME IS OF THE ESSENCE FOR THIS CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time will cause damage to TxDOT. These damages are liquidated by agreement of the Contractor and TxDOT, as set forth in the Contract Documents.
- 12.10 **LIQUIDATED DAMAGES.** TxDOT may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Contract Documents.
 - 12.10.1 The amount per day given in the following schedule will be deducted from the money due or to become due to the Contractor, not as a penalty, but as liquidated damages and added expense for engineering and administrative supervision.

PER DAY RATE FOR AMOUNT OF ORIGINAL CONTRACT		
Greater Than	Through	Amount Per Calendar Day
\$0	\$100,000	\$570
\$100,000	\$500,000	\$590

Article 13 Payments

- 13.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 13.2 **SCHEDULE OF VALUES.** Contractor shall submit to the PM or designated representative a Schedule of Values accurately itemizing each line item by material and labor for the various classifications of the Work based on the organization of the specification sections and using the same activity names and terms as the Work Progress Schedule. The Schedule of Values shall include line items for general conditions, fees, TxDOT allowance items and any additional detail as required by the PM or designated representative. The format for the Schedule of Values will be as provided by TxDOT.
 - 13.2.1 The accepted Schedule of Values will be the basis for the progress payment under the Contract. No progress payments will be made prior to receipt of a

Schedule of Values in such detail as acceptable to the PM or designated representative.

- 13.3 **LUMP SUM PAYMENT.** Contractor may elect to receive a single lump sum payment, adjusted as may be required by the requirements of the Contract Documents, for the Work after final acceptance of the Work by TxDOT. In the event of the election of a lump sum payment a Schedule of Values will not be required. Work progress payments will not be made without the Contractor submitting a Schedule of Values acceptable to TxDOT.
- 13.4 **TEXAS IDENTIFICATION NUMBER.** Contractor will be required to secure from the Texas Comptroller of Public Accounts, a Texas Payee Identification Number. The Texas Payee Identification Number must correspond to the person(s) or entity shown on the Contract. A valid Texas Payee Identification Number is required prior to payment being processed for this Contract.
- 13.5 **DEBT TO THE STATE.** If the State Comptroller of Public Accounts is prohibited from issuing a warrant to the Contractor because of a debt or delinquent tax owed to the State of Texas, the State will apply all payment due to the Contractor to the debt or delinquent tax until the debt or delinquent tax is paid in full.
- 13.6 **PROGRESS PAYMENTS.** Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by TxDOT and the Contractor. Payment is not due until receipt by the PM or designated representative of a correct and complete Pay Application in electronic and/or hard copy format. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. TxDOT will not process progress payment applications for Change Order work until all required parties execute the Change Order.
- 13.6.1 **Preliminary Pay Worksheet.** Once each month that a progress payment is to be requested, Contractor shall submit to the PM or designated representative a complete, clean copy of a preliminary pay application such that it is received by the PM or designated representative a minimum of seven (7) calendar days prior to any scheduled monthly work progress meeting, and shall include the following:
- 13.6.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work during the time covered by the application for payment, using the accepted Schedule of Values and approved form.
- 13.6.1.2 Copies of original invoices for any materials or equipment stored on site but not incorporated into the Work for which the Contractor is requesting payment.
- 13.6.1.3 Insurance certificates, invoices and any other documents required by the Contract Documents for materials or equipment stored off-site for which the Contractor is requesting payment.
- 13.6.1.4 TxDOT's Contractor's Application For Payment form reflecting any adjustments to the Contract Sum or Contract Time approved during the period of time covered by the application for payment.

- 13.6.1.5 An updated Work Progress Schedule including the Executive Summary and all required schedule reports.
 - 13.6.1.6 An updated submittal schedule/register, if required.
 - 13.6.1.7 An updated HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report and associated documentation for any modification to the plan authorized during the time covered by the application for payment.
 - 13.6.1.8 Such additional documentation as TxDOT may require as set forth in a Special Condition or elsewhere in the Contract Documents.
- 13.6.2 **Contractor's Application for Progress Payment.** Subject to the Contractor providing a complete preliminary pay application and based on a complete preliminary pay application review, the PM or designated representative may require modifications prior to submittal of the formal application for progress payment. Contractor will submit for approval the formal application for progress payment on the appropriate and completed forms reflecting the required modifications. No invoice is complete unless it fully reflects all required modifications and attaches all required documentation including, but not limited to, the following:
- 13.6.2.1 TxDOT's Contractor's Application For Payment. form must be signed by a corporate officer or a representative duly authorized by the Contractor,
 - 13.6.2.2 Updated Schedule of Values form;
 - 13.6.2.3 Updated Work Progress Schedule;
 - 13.6.2.4 TxDOT's Contractor's Affidavit Of Payments Of Debts and Claims (monthly);
 - 13.6.2.5 HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report;
 - 13.6.2.6 Copies of manufacturer/supplier original invoice price for materials and equipment stored on the site but not incorporated in the Work payment is being requested for; and
 - 13.6.2.7 Copies of warehouse records, receipts and manufactures/suppliers invoices for any materials and equipment stored off site verifying current status of quantities and their disposition.
- 13.7 **OWNER'S DUTY TO PAY.** Owner has no duty to pay the Contractor except on receipt by the PM or designated representative of the following:
- a complete TxDOT Contractor's Application For Payment form certified by the Contractor, PM and designated representatives, as required, and all attachments;
 - the Contractor's updated Work Progress Schedule; and
 - confirmation that the Contractor's as-built documentation at the site is kept current.
- 13.7.1 **Stored Material.** Payment for stored materials and equipment confirmed by the PM or designated representative to be on-site or otherwise properly stored but not incorporated into the Work is limited to the manufacturer/supplier

original invoice price or the scheduled value for the materials or equipment, whichever is less.

- 13.7.2 **Retainage.** TxDOT will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in a Special Condition. Retainage may be managed in conformance with Transportation Code §223.010.
- 13.7.3 **Price Reduction to Cover Loss.** TxDOT may reduce any application for payment, prior to payment to the extent necessary to protect TxDOT from loss on account of actions of the Contractor including, but not limited to:
- 13.7.3.1 Defective or incomplete Work not remedied.
 - 13.7.3.2 Damage to Work of a separate Contractor.
 - 13.7.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.
 - 13.7.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents.
 - 13.7.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the contract sum.
 - 13.7.3.6 Assessment of fines for violations of Prevailing Wage Rate law.
 - 13.7.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.
 - 13.7.3.8 Failure to maintain acceptable storage/protection for stored materials and equipment on-site and off-site.
- 13.7.4 **Final Payment.** For purposes of Tex. Gov't Code § 2251.021 (a) (2), the date the performance of service is complete is the date when the Owner's representative approves the final application for payment.
- 13.8 **OFF-SITE STORAGE.** With prior approval by TxDOT and in the event Contractor elects to store materials or equipment at an off-site location, the Contractor shall abide by the following conditions, unless otherwise agreed to in writing by TxDOT and the Contractor.
- 13.8.1 Provide separate Insurance Coverage adequate not only to cover materials and equipment while in storage, but also in transit from the off-site storage areas to the project site. Copies of duly authenticated Certificates of Insurance, made out to insure TxDOT, must be filed with the Owner's representative.
 - 13.8.2 Inspection by Owner's representative is allowed at any time. TxDOT must be satisfied with the security, control, maintenance, and preservation measures.
 - 13.8.3 Materials and equipment for this project must be physically separated and marked for the project in a sectioned-off area.
 - 13.8.4 TxDOT reserves the right to reject materials and equipment at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements, regardless of any previous progress payment made.
 - 13.8.5 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned

over to TxDOT or TxDOT's agents at a location near the jobsite as directed by the PM or designated representative. The full provisions of PERFORMANCE AND PAYMENT BONDS, if required, on this project cover the materials off-site in every respect as though they were stored on the Project Site.

Article 14 Contract Changes

- 14.1 **MINOR CHANGES.** The Owner will have authority to order minor changes in the Work that do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, i.e. Supplemental Instruction, which the Contractor shall carry out promptly and record on as-built record documents.
- 14.2 **EMERGENCY CHANGE.** Emergency changes to save life or property may be initiated by the Contractor alone (see **Safety** Article) with the claimed cost and/or time of such work to be fully documented as to necessity and detail to TxDOT's satisfaction.
- 14.3 **UNILATERAL CHANGE ORDER.** The Owner, without invalidating the Contract, may order changes in the Work not included in the Contract that are necessary for the completion of the project, and will pay the Contractor a reasonable sum.
- 14.4 **CHANGE ORDERS.** TxDOT, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly, if required. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. Authorization to execute a change order is reserved exclusively to TxDOT and may not be delegated to a private firm under contract with the State.
- 14.4.1 It is recognized by the parties hereto and agreed by them that the specifications and drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the work to be completed to the satisfaction of TxDOT. Accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such specifications and drawings, or any changes in or additions to the specifications and drawings or to the Work ordered by TxDOT, and any resulting delays in the work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, *quantum meruit*, or otherwise. TxDOT shall be liable to Contractor for the sum stated to be due Contractor in any Change Order, approved and signed by both parties. It is agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise that are incident to, arising out of, or resulting directly or indirectly from the work performed by Contractor under such Change Order.
- 14.4.2 No order, oral statement, or direction from TxDOT or any duly appointed representative shall be treated as a change order or entitle the Contractor to an adjustment.

- 14.5 **ADMINISTRATION OF CHANGE ORDER REQUESTS.** All changes in the Contract shall be administered in accordance with TxDOT's procedures.
- 14.5.1 **Routine Change.** Routine changes in the Contract shall be formally initiated by TxDOT with a Request for Proposal form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, PM and/or designated representative concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by the Contractor without a Change Order. Approval of the Contractor's cost proposal by TxDOT, in compliance with TxDOT's signature authorization policy, will be required for authorization to proceed with the work being changed. TxDOT will not be responsible for the cost of work changed without prior approval and the Contractor may be required to remove such work at no cost to TxDOT.
- 14.5.1.1 Contractor shall furnish TxDOT an itemized breakdown, in such detail and form as acceptable to TxDOT, of all costs and supporting information including but not limited to quantities, material / equipment prices, tier subcontracted work performed, labor rates and employer payments, compensable insurance and rental rates for all proposed Change Order work. The itemized breakdown detail shall be the same for any Subcontractor work. Photocopies of Subcontractor and vendor/supplier proposals shall be furnished unless specifically waived in writing by the PM or designated representative. The Contractor shall provide a written response to TxDOT's Request for Proposal within fifteen (15) calendar days of receipt unless the Contractor and TxDOT mutually agree otherwise.
- 14.5.2 **Unexpected Circumstance.** Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization by TxDOT in compliance with TxDOT's signature authorization policy, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing work to proceed. TxDOT reserves the right to issue a ULCO or Supplemental Instruction when in its sole opinion the circumstance which necessitated the change request could have been reasonably detected by the Contractor in fulfilling its duty to review the Contract Documents.
- 14.5.3 **Valuation of Change Order Work.** The value of changes in the Work, either additive or deductive, executed under a Change Order, shall be determined in one of the following ways:
- 14.5.3.1 **Lump Sum.** By acceptance of a lump sum proposal as described by the following paragraphs.
- 14.5.3.1.1 Contractor shall furnish TxDOT an itemized breakdown, in such detail and form as acceptable to TxDOT, of all costs and supporting information including but not limited to quantities, material prices including supplier invoices/quotes, tier subcontracted work performed, labor rates and employer payments, and rental rates. The itemized breakdown detail shall be the same for any Subcontractor work. The Contractor shall

furnish TxDOT the following additional information in the itemized breakdown, including insurance charges and bond charges used in computing the lump sum proposal. The information shall also be provided by any Subcontractor work.

14.5.3.1.2 Cost shall include:

- Labor cost, including the classifications through foremen when engaged in the actual and direct performance of the work, and actual employer payments to or on behalf of workers for health and welfare, pension, vacation, insurance, and any similar charges imposed by law (Social Security Tax, Workers' Compensation) or required by applicable collective bargaining agreements;
- materials, installed permanently in the work or expended in performance thereof;
- rental cost of construction plant and equipment at the work site;
- energy, fuel, and supplies consumed in operation of power-driven equipment;
- additional insurance cost, if any and only cost applicable to insurance limits required by the Contract Documents, directly resulting from the additional Work;
- necessary professional design and consulting fees; revisions of previously finalized shop drawings and/or fabrication drawings, and
- other allowable costs involved with Change Order work, except those costs listed in 14.5.3.1.3.

In lieu of providing information for all employer payments to or on behalf of workers, excluding actual gross wages, the Contractor proposal may use a percentage factor based on methodology acceptable to TxDOT, which shall constitute full compensation for all employer payments other than actual gross wages. The Contractor shall provide complete supporting information for calculation of the percentage factor(s) when so requested by TxDOT.

14.5.3.1.3 Costs shall not include: (These costs shall be considered a part of overhead and profit or markups and no separate allowance will be made therefore)

- Labor for superintendents, assistant superintendents, office personnel (home and field);
- timekeepers and maintenance mechanics at any level of contracting;
- per diem and travel allowances for any of the aforementioned labor classifications;

- pieces of equipment, hand and small tools, or instruments having a new value of \$500.00 or less, whether or not consumed by use;
 - safety programs;
 - scheduling;
 - on site and main offices and operating costs;
 - incidental job burdens;
 - modifications to record drawings;
 - guarantee period cost allowances;
 - punch list allowances, and
 - insurance other than mentioned in 14.5.3.1.2.
- 14.5.3.1.4 For work performed by the Contractor's forces, the maximum allowable percentages for overhead and profit on changes will not exceed:
- fifteen percent (15%) if the total of self-performed work is less than \$10,000;
 - ten percent (10%) if the total of self-performed work is between \$10,000 and \$20,000; and
 - seven and one half percent (7.5%) if the total of self-performed work is over \$20,000 for any specific change priced.
- 14.5.3.1.5 For subcontracted Work each affected Subcontractor shall figure its cost, overhead and profit as described above.
- 14.5.3.1.6 All subcontractor costs shall be combined, and to that total subcontractor cost the Contractor will be allowed to add a maximum mark-up of:
- ten percent (10%) if the total of all subcontracted work is less than \$10,000;
 - seven and one half percent (7.5%) if the total of all subcontracted work is between \$10,000 and \$20,000; and
 - five percent (5%) if the total of all subcontracted work is over \$20,000.
- 14.5.3.1.7 To the total of the above costs, Contractor will be allowed to add Bond cost, if bonds are required, if the change results in an increase in the Bond premium paid by the Contractor. Contractor shall provide written evidence from the Bonding Company of any increase in the Bond premium to TxDOT. Subcontractors shall be allowed to add Bond cost to their total costs if the changed work results in an increase in the Bond premium paid by the Subcontractor, and Contractor's contract with the Subcontractor requires the Subcontractor to maintain a bond for their Work. Contractor shall provide a copy of written evidence from the

Bonding Company for any additional Subcontractor bond cost that is requested for inclusion in the change order.

14.5.3.1.8 On lump sum changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition.

14.5.3.2 **Unit Price.** By acceptance of unit prices agreed upon by TxDOT and the Contractor.

14.5.3.2.1 Unit price is full compensation for all materials, equipment, labor, tools, and supplies necessary to complete the item of work. Unit price includes all markups, overhead, profit, insurance, bond, etc. costs.

14.5.3.3 If a Surety has assumed the responsibilities of the Contract, TxDOT may pay the Surety for the completion contractor's profit and overhead, but it will not pay the Surety any profit or overhead.

14.5.3.4 TxDOT does not accept and will not pay for additional contract cost identified as indirect, consequential, or as damages caused by delay due to Force Majeure or the Contractor.

14.5.4 **Contractor Cost Reduction Proposal.** Contractor may submit a cost reduction proposal for changing the requirements of the Contract Documents. The proposal shall demonstrate that changing the Contract requirements would:

14.5.4.1 Represent an advantage to TxDOT over the specified requirement;

14.5.4.2 Result in a net reduction in the total Contract Sum;

14.5.4.3 Not impact any essential function or characteristic of the Work such as safety, service life, reliability, economy of operation, esthetic, ease of maintenance, and necessary standardize features; and

14.5.4.4 Not detrimentally affect the Contract completion date.

All costs for compliance with these requirements, whether accepted or not, shall be borne by the Contractor.

The determination of TxDOT as to acceptability of the proposal will be final and TxDOT may accept in whole or in part any proposal submitted pursuant to this provision by issuing a Change Order that will identify the proposal on which it is based. The Change order will provide for an equitable adjustment in the Contract Sum in accordance with the provisions herein and will revise any other affected provisions of the Contract Documents.

14.6 CLAIMS FOR ADDITIONAL COSTS

14.6.1 In order for the Contractor to make a valid claim for an increase in the Contract Sum for unforeseen circumstances, Contractor shall give the PM or designated representative written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. Contractor shall not execute any work involving additional cost or time, except in an emergency endangering life or property without an approved Change Order or written authorization issued in accordance with TxDOT's signature authorization policy.

- 14.6.2 If the Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by TxDOT to stop the Work where the Contractor was not at fault, 3) any written order for a minor change in the Work, the Contractor shall make such claim as stated above.
- 14.7 **EXTENSION OF TIME.** All Changes to the Contract Time shall be made by Change Order.

Article 15 Project Completion and Acceptance

15.1 CLOSING INSPECTIONS

- 15.1.1 **Request for Substantial Completion Inspection.** When the Contractor considers the entire Work or part thereof Substantially Complete, it shall notify the PM or designated representative in writing that the Work will be ready for Substantial Completion Inspection on a specific date. Contractor shall include with this written notice:

- Contractor's Punchlist to indicate that it has previously inspected all Work associated with the request for inspection;
- Documentation it has completed or scheduled items required for Substantial Completion to be complete before the specific date requested for the Substantial Completion Inspection.

If any item on the Punchlist is required for Substantial Completion and not complete or scheduled for completion the Contractor shall not request a Substantial Completion Inspection.

If any item on the Punchlist will prevent use of the building for the purposes it is intended to be utilized and not corrected, the Contractor shall not request a Substantial Completion Inspection.

The failure to include any items on the Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

TxDOT will review the list of items and schedule the requested inspection, or inform the Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced, items required to be complete or scheduled for completion are not completed, or conditions are not as represented on the Contractor's list.

- 15.1.2 **Substantial Completion Inspection.** On the date requested by Contractor, or as mutually agreed upon, with consideration of the status of open Punchlist items, the PM or designated representative, Contractor and other TxDOT representatives as determined by TxDOT, will jointly attend the Substantial Completion Inspection, which shall be conducted by the PM or designated representative. If the PM or designated representative determines that the Work is Substantially Complete, the PM will issue a Certificate of Substantial Completion to be signed by the A/E of Record, if required, TxDOT and Contractor, establishing the date of Substantial Completion. If TxDOT determines the Work is not Substantially Complete the Contractor will be so notified. The PM or designated representative will provide with or independent

of this certificate a list of Substantial Completion Punchlist items. The term "Substantial Completion Punchlist" items shall mean details of construction and mechanical and electrical adjustments which are minor in character and do not materially interfere with TxDOT's safe use, enjoyment and operation of the Project or designated portions thereof. If TxDOT elects to occupy the facility upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of TxDOT, without disruption to TxDOT's use of the facility for its intended purposes.

- 15.1.3 Requirements for Substantial Completion.** The Certificate of Substantial Completion for all or a designated portion of the Work will not be issued if the following items are incomplete, unless otherwise agreed to by TxDOT in writing, as they are considered essential elements of the Project and completion of these is a prerequisite for TxDOT's safe use, enjoyment and operation of the project or designated portions thereof.
- 15.1.3.1 Complete and accepted operation and maintenance (O&M) manuals for all installed equipment, systems and like items to include, but not be limited to, submittals, shop drawings, operation and maintenance instructions, wiring diagrams, spare parts lists, test/inspection results/reports and written warranties,
 - 15.1.3.2 Verification that training of designated TxDOT personnel for various items of the Work requiring training as set forth in the Contract Documents is complete, as evidenced by submittal of a copy of the "sign in" sheet for each required training session;
 - 15.1.3.3 A notarized affidavit attesting to TxDOT no hazardous materials were incorporated into the Work unless prior written approval of TxDOT was granted, as verified by attaching a copy of the TxDOT authorization,
 - 15.1.3.4 A notarized certification to TxDOT that all equipment and materials used in fulfillment of their contract responsibilities are non-Asbestos Containing Building Materials (ACBM) in compliance with the Texas Asbestos Health Protection Rules as administered by the Texas Department of State Health Services;
 - 15.1.3.5 Verification, to the satisfaction of the PM or designated representative, that inspections required by any authority having jurisdiction over any element of the Work have been conducted which shall include any registrations as may be required and the issuance of any permits, licenses, certificates, etc. as may be required for any system or equipment, i.e. boilers, elevators, etc., unless specifically stated otherwise in the Plans and Specifications. The Texas Accessibility Standards (TAS) compliance review and inspection will be the responsibility of TxDOT or authorized representative and is not a condition for Substantial Completion;
 - 15.1.3.6 Demonstration, to the satisfaction of the PM or designated representative(s), that all equipment and systems function as required by the Contract Documents, i.e commissioning;
 - 15.1.3.7 Completion of landscaping as set forth in the Contract Documents; and

15.1.3.8 Submittal of all asbestos containing material abatement documentation and/or mold remediation documentation, if asbestos abatement and/or mold remediation is part of the Contract Work.

15.1.4 **Final Completion Inspection.** Contractor shall complete the list of items identified on the Substantial Completion Punchlist within the time frame specified and prior to requesting a Final Completion Inspection. Unless otherwise specified, directed by TxDOT in writing or otherwise agreed in writing by the parties, the Contractor shall complete and/or correct all Substantial Completion Punchlist work within thirty (30) calendar days of the Substantial Completion date. Upon completion of the Substantial Completion Punchlist work, the Contractor shall give written notice to the PM or designated representative that the Work will be ready for Final Inspection on a specific date. Contractor shall include with this written notice:

- copy of the updated Substantial Completion Punchlist indicating resolution of all items;
- original marked-up As-Built drawings reflecting all modifications and changes made to the Work. If the Project is being delivered in phases the original marked-up As-Built drawings shall be delivered at completion of the last phase.

On the date specified or as soon thereafter as is practicable, the PM or designated representative, Contractor and other TxDOT representatives as determined by TxDOT will inspect the Work. The PM or designated representative will submit a Final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

15.1.5 **Substantial Completion Punchlist.** In the event the thirty (30) calendar day time frame or the time frame set forth in the Certificate of Substantial Completion to complete the Substantial Completion Punchlist Work expires and TxDOT has not been provided written notice from the Contractor that the Work is ready for Final Completion Inspection, and as **TIME IS OF THE ESSENCE IN COMPLETION OF THE WORK**, TxDOT will provide the Contractor written notice of a date specific an inspection will be held. The Contractor, PM or designated representative and other TxDOT representatives as determined by TxDOT shall conduct the inspection. If TxDOT determines the Substantial Completion Punchlist Work is not complete and/or corrected, TxDOT shall, without invalidating the Contract, have the right, upon written notice to the Contractor, to complete the Work using duly qualified contractors or TxDOT forces. The Contractor shall reimburse TxDOT for any reasonable costs incurred by TxDOT in completing the Work with offsets and deductions in the Final Payment. This provision does not invalidate any other provision in the Contract Documents available to TxDOT for completion and/or correction of the Work.

15.1.6 **Final Punchlist Inspection.** Contractor shall correct or complete all items on the Final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, the Contractor shall complete this work within seven (7) days of receipt of the Final Punchlist and notify the PM or designated representative in writing stating the disposition of each Final Punchlist item. The PM or designated representative, Contractor and other TxDOT representatives as determined by TxDOT shall promptly inspect the completed

items. When the Final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents, subject to the limitations of the **Effect on Warranty** provision, the PM or designated representative will issue a certificate establishing the date of Final Completion. Final Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.

- 15.1.7 **Final Punchlist.** In the event the Contractor fails to complete the Final Punchlist items within seven (7) days of receipt of the Final Punchlist or as otherwise agreed to in writing by the parties and as **TIME IS OF THE ESSENCE IN COMPLETION OF THE WORK**, TxDOT shall, without invalidating the Contract, have the right, upon written notice to the Contractor, to complete the Final Punchlist Work using duly qualified contractors or TxDOT forces and the Contractor shall reimburse TxDOT for any reasonable costs incurred by TxDOT in completing the Work with offsets and deductions in the Final Payment. This provision does not invalidate any other provision in the Contract Documents available to TxDOT for completion and/or correction of the Work.
- 15.1.8 **Annotation.** Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to limitation(s) as determined by TxDOT.
- 15.1.9 **Purpose of Inspection.** Inspection is for determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike manner, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of TxDOT or other parties to identify Work that does not comply with the Contract Documents, or is defective in operation or workmanship does not constitute a waiver of TxDOT's rights under the Contract or relieve the Contractor of its responsibility for performance or warranties.
- 15.1.10 **Additional Inspections.** The Contract Agreement contemplates three (3) comprehensive inspections: the Substantial Completion Inspection, the Final Completion Inspection, and the Completed Final Punchlist Inspection. The cost to TxDOT of additional inspections resulting from the Work not being ready for one or more of these inspections shall be charged to the Contractor. TxDOT may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, TxDOT will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after the Substantial Completion Inspection is not corrective work for purposes of determining timely completion, or assessing the cost of additional inspections. However, such work shall be subject to all provisions of this Contract.
- 15.1.11 **Phased and Whole Completion.** The contract may provide, or project conditions may warrant, as determined by the PM or designated representative, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to Closing Inspections and Occupancy apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion

certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

- 15.1.12 **Time Charges.** The date Time Charges for the project as a whole terminates will be the date set forth in the Certificate of Substantial Completion for the project issued by TxDOT. When the Work is to be completed in designated elements or portions (phases), time charges for the project will not stop until the date set forth in the Certificate of Substantial Completion for the last phase of the Work issued by TxDOT.
- 15.2 **TXDOT'S RIGHT OF OCCUPANCY.** TxDOT may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should TxDOT wish to use or occupy the Work, or part thereof, at or prior to Substantial Completion, the PM or designated representative will notify the Contractor in writing. Work performed on the premises by third parties on TxDOT's behalf does not constitute occupation or use of the Work by TxDOT for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the convenience of TxDOT so as to not disrupt TxDOT's use of, or access to occupied areas of the project.
- 15.3 **ACCEPTANCE & PAYMENT**
- 15.3.1 **Request for Final Payment.** Following the certified completion of all work, including all punch list items, cleanup, and the delivery and approval of record documents, the Contractor shall submit an Application for Final Payment. The Contractor shall include all sums held as retainage and forward the Application for Final Payment to the PM or designated representative for review and approval. If TxDOT determines that any item remains incomplete, including but not be limited to, maintenance and operation manuals, training, guarantees and warranties, record documents and all other items required by the Contract that have not been submitted to and approved by TxDOT, TxDOT may take no action on the Application for Final Payment and return the Application for Final Payment to the Contractor with a list of missing or incomplete items.
- 15.3.2 **Allowances.** If the Contract Documents contains allowance items, all savings under any of the designated Allowance Items shall accrue to the benefit of TxDOT and the Contract Sum shall be reduced by one hundred percent (100%) of such savings.
- 15.3.3 **Final Payment Documentation.** No Application for Final Payment is complete unless it fully reflects all required modifications and includes all required executed documentation including, but not limited to, the following:
- 15.3.3.1 TxDOT's Contractor's Application For Payment form;
 - 15.3.3.2 Updated Schedule of Values form;
 - 15.3.3.3 TxDOT's Contractor's Affidavit Of Payments Of Debts and Claims (final) form;
 - 15.3.3.4 If requested, documentation establishing payment or satisfaction of all such obligations connected with the work of the Contract, such as receipts, releases and waivers of claims, to the extent and in such form as designated by TxDOT;
 - 15.3.3.5 If required, TxDOT's Consent of Surety Company To Final Payment form;

- 15.3.3.6 If required, a signed TxDOT Change Order making final adjustment to the Contract Sum or Contract Time as may be required for offsets and deductions, allowance items reconciliation, time adjustments, or any other item requiring a change to the Contract;
 - 15.3.3.7 HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report,
 - 15.3.3.8 TxDOT's Buy America Affidavit form.
- 15.3.4 **Offsets and Deductions.** TxDOT may deduct from the Final Payment all sums due from the Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, TxDOT may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, TxDOT will identify each deduction, the amount, and the explanation of the deduction. Such offsets and deductions shall be incorporated via a final Change Order, including Unilateral Change Order as may be applicable.
- 15.3.5 **Final Payment Due.** Final Payment is due and payable by the Owner, subject to all allowable offsets and deductions, on receipt of a complete Application for Final Payment. If the Contractor disputes any amount deducted by the TxDOT, the Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment and the **Dispute Resolution** Article shall apply to unresolved disputes.
- 15.3.6 **Effect of Final Payment (TxDOT).** Final Payment, when accepted by the Contractor, constitutes a waiver of all claims by TxDOT, relating to the condition of the Work except those arising from any one, combination or all of the following:
- 15.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
 - 15.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 15.3.6.3 Terms of any warranties required by the Contract, or implied by law;
 - 15.3.6.4 Claims arising from personal injury or property damage to third parties; and
 - 15.3.6.5 Disputes pending under **Dispute Resolution** Article that have not been resolved.
- 15.3.7 **Effect of Final Payment (Contractor).** Acceptance of Final Payment constitutes a waiver of all claims by the Contractor, except those specifically identified in writing and submitted prior to or at the time of Final Payment and disputes pending under **Dispute Resolution** Article that have not been resolved. Provided, however, that the Contract shall not be deemed fully performed and closed until the expiration of all periods of time provided under the Contract Documents or applicable law for the Contractor to submit a claim or protest a Unilateral Change Order (ULCO).
- 15.3.8 **Effect on Warranty.** Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

Article 16 Warranty & Guarantee

16.1 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE.

- Contractor warrants to TxDOT that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship.
- Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new.
- TxDOT may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by TxDOT or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by TxDOT, at any time, or by any repair or correction of such defect made by TxDOT.
- All warranties must include statements that the warranty is assignable to the end user, subject to Texas laws and that venue for any legal proceedings under the warranty shall be in a court of competent jurisdiction in the county where the warranted item is incorporated into the Project.

16.2 **WARRANTY PERIOD.** Except as may be otherwise specified in the Contract Documents or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work at no cost to TxDOT. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of completion of the relevant phase, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

16.3 **LIMITS ON WARRANTY.** Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

16.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible.

16.3.2 Normal wear and tear under normal usage after acceptance of the Work by TxDOT.

16.4 **EVENTS NOT AFFECTING WARRANTY.** Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

- 16.4.1 Observations by TxDOT and/or designated representatives.
 - 16.4.2 Recommendation or authorization to pay any progress or final payment by PM or designated representative.
 - 16.4.3 Issuance of a certificate of Substantial Completion by TxDOT or any payment by Owner to Contractor under the Contract Documents.
 - 16.4.4 Use or occupancy of the Work or any part thereof by TxDOT.
 - 16.4.5 Any acceptance by TxDOT or any failure to do so.
 - 16.4.6 Any review of a Shop Drawing or sample submittal;
 - 16.4.7 Any inspection, test or approval by others; or
 - 16.4.8 Final payment by the Owner.
- 16.5 **SEPARATE WARRANTIES.** If a particular piece of equipment or component of the Work for which the contract requires a separate warranty is placed in continuous service before Substantial Completion, the Warranty Period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Contractor. The PM or designated representative will certify the date of service commencement in the Substantial Completion Certificate.
- 16.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 16.5.2 Contractor may satisfy any such obligation by obtaining and assigning to TxDOT a complying warranty from a manufacturer, supplier, or Subcontractor, provided the warranty provides for assignment to the end user. Where an assigned warranty is tendered to TxDOT but does not fully comply with the requirements of the Contract, the Contractor remains liable to TxDOT on all elements of the required warranty not provided by the tendered warranty.
 - 16.5.3 A complying warranty from a manufacturer, supplier, or Subcontractor assigned to TxDOT by the Contractor shall be subject to and governed by the laws of the State of Texas.
- 16.6 **CORRECTION OF DEFECTS.** Upon receipt of written notice from TxDOT, or any agent of TxDOT designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to TxDOT and its designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to TxDOT, or if the Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, TxDOT may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.

Article 17 Suspension and Termination

- 17.1 **SUSPENSION OF WORK FOR CAUSE.** TxDOT may, at any time without prior notice, suspend all or any part of the Work, if TxDOT determines it is considered necessary to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which is expected to impair the integrity, usefulness

or longevity of the Work when completed, or for any reason set forth in any other Article of the Uniform General Conditions.

- 17.1.1 TxDOT will give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the work suspended. Upon receipt of such notice, the Contractor shall immediately stop the work so identified. As soon as practicable following the issuance of such a notice, TxDOT will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
 - 17.1.2 If it is confirmed that the cause was within the control of the Contractor, the Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of the Contractor, and the suspension has prevented the Contractor from completing the Work within the Contract Time, the Contractor may be entitled to a Change Order increasing the Contract Sum and/or extending the Contract Time caused by any such suspension of Work.
 - 17.1.3 Suspension of work under this provision will be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension. If TxDOT and the Contractor cannot reach agreement on the validity of any work suspension issued by TxDOT or on Contractor's entitlement to an adjustment to the Contract Sum and/or Contract Time such dispute shall be resolved pursuant to the **Dispute Resolution** Article.
- 17.2 **SUSPENSION OF WORK FOR TXDOT'S CONVENIENCE.** Upon seven (7) calendar days written notice to the Contractor, TxDOT may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. TxDOT will give the Contractor a written notice of suspension for convenience, which sets forth the dates and number of suspension days for the Work, or any portion of it. When such a suspension prevents the Contractor from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by TxDOT at any time on seven (7) calendar days written notice to the Contractor. If TxDOT suspends the Work for its convenience for more than sixty (60) consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of the contract.
- 17.3 **TERMINATION BY TXDOT FOR CAUSE.**
- 17.3.1 TxDOT may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under any of, but not limited to, the following circumstances.
 - 17.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of Work authorized under the Contract, to supply enough properly skilled workmen or proper materials to continue prosecution of the Work,
 - 17.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including the PM or designated representative,

- 17.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to insure its completion within the time, or any approved extension thereof, specified in this Contract,
 - 17.3.1.4 Failure to remedy defective work condemned by the PM or designated representative,
 - 17.3.1.5 Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Tex. Gov't Code Chapter 2251;
 - 17.3.1.6 Persistent endangerment to the safety of labor or of the Work, including display of uncooperative, disruptive or threatening behavior,
 - 17.3.1.7 Failure to resume the Work that has been discontinued within a reasonable number of days after written notice to do so,
 - 17.3.1.8 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract,
 - 17.3.1.9 Any material breach or substantial violation of a provision of the Contract,
 - 17.3.1.10 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 17.3.2 Should TxDOT decide to terminate the employment of the Contractor under any of the provisions of the **Termination by TxDOT For Cause** provision of this Article, it will provide to the Contractor and its Surety, if Surety is required, written notice of the intent to declare the Contractor in default if the Contractor does not proceed as directed within ten (10) days after receipt of the notice.
- 17.3.3 Should the Contractor or its Surety, if Surety is required, after having received notice of intent to declare the Contractor in default, demonstrate to the satisfaction of TxDOT within the time frame set forth in the notice, remedy to the condition(s) upon which the notice was based, the notice shall be rescinded in writing by TxDOT. If so rescinded, the Work may continue without an extension of time or any increase in the Contract Sum related directly or indirectly to the remedy.
- 17.3.4 Failure by TxDOT to exercise the right to terminate in any instance or for any proper reason is not a waiver of the right to do so in any other instance or for any other proper reason.
- 17.3.5 If the Contractor or its Surety, if Surety is required, fails to demonstrate activities to remedy the condition(s) upon which the notice of intent was based, to the satisfaction of TxDOT and within the time frame set forth in the notice following receipt of notice, TxDOT will give written notice to the Contractor and Surety, if Surety is required, declare the Contractor to be in default of the Contract, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor. TxDOT shall also without violating the Contract, demand the Contractor's Surety, if Surety is required, complete the remaining Work in accordance with the terms of the original Contract subject to, but not limited to, the following:
- 17.3.5.1 The Surety, if Surety is required, becomes the Contractor in a takeover;

- 17.3.5.2 A completing Contractor will be considered a subcontractor of the Surety, if Surety is required;
- 17.3.5.3 TxDOT reserves the right to approve or reject proposed subcontractors. HUB's must continue to be used in accordance with the commitments previously approved in the HSP by TxDOT;
- 17.3.5.4 Work may resume after TxDOT receives and approves certificates of insurance as required by the Contract Documents. Certificates of insurance may be issued in the name of the completing Contractor;
- 17.3.5.5 The Surety, if Surety is required, is responsible for making every effort to expedite the resumption of the Work and completion of the Contract;
- 17.3.5.6 The completing Contractor may complete the Work utilizing the materials at the work location it deems suitable and acceptable subject to compliance with the provisions of the Contract Documents;
- 17.3.5.7 Time charges will continue until completion of the Contract;
- 17.3.5.8 Any costs incurred by TxDOT including, but not limited to, the cost of additional A/E services, other consultants, contract administration, liquidated damages, and any work or service of any type made necessary by such default or neglect will be the responsibility of the Surety, if Surety is required. All costs associated with this work will be deducted from money due to the Surety, if Surety is required. If the amount due TxDOT exceeds the sum that would have been payable under the Contract, the Surety, if Surety is required, will be liable and pay TxDOT the balance of these costs in excess of the Contract Sum. This obligation for payment survives the termination of the Contract.
- 17.3.5.9 In the event there is no Surety TxDOT will determine the most expeditious and efficient way to complete the Work, arrange for completion of the Work and deduct the cost thereof, including the cost of any additional Architect/Engineer or any other consultant services made necessary by such default or neglect, from the unpaid Contract sum remaining, in which event no further payment shall be made by the Owner until all costs of completing the Work shall have been paid. If the costs of finishing the Work exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.
- 17.3.6 In termination for cause the Contractor may be subject to sanctions under Title 43 Texas Administrative Code Chapter 9, Subchapter G.
- 17.3.7 The Surety's, if Surety is required, obligation for performance shall survive the termination of the Contract. Should the Surety, if Surety is required, fail to so demonstrate within thirty (30) days following receipt of termination notice to TxDOT's reasonable satisfaction that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, TxDOT may, upon written notice to the Surety, if Surety is required, arrange for completion of the Work and pursue its legal remedies. TxDOT shall file suite for the cost incurred by TxDOT to complete the Work including, but not limited to, the cost of additional A/E services, other consultants, contract administration, and any work or service of any type made necessary by such default, corrections to the Work, or neglect.

- 17.3.7.1 In addition to any rights TxDOT may have against the Surety, if Surety is required, TxDOT reserves the right in termination for cause to take assignment of any and all contracts between the Surety, if Surety is required, and its Subcontractors, vendors and suppliers. The PM or designated representative will promptly notify the Surety, if Surety is required, of the contracts TxDOT elects to assume. Upon receipt of such notice, the Surety, if Surety is required, shall promptly take all steps necessary to effect such assignment.
- 17.3.8 If it is determined, after the Contractor is declared in default, that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of TxDOT as provided for in the Termination for Convenience of TxDOT provision under this Article.
- 17.4 **TERMINATION FOR CONVENIENCE OF TXDOT.** TxDOT reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply.
- 17.4.1 TxDOT will immediately notify the Contractor and the A/E in writing, specifying the reason for and the effective date of contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- 17.4.2 Upon receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract.
- 17.4.2.1 Stop all work.
- 17.4.2.2 Place no further subcontracts or orders for materials or services.
- 17.4.2.3 Terminate all subcontracts.
- 17.4.2.4 Cancel all materials and equipment orders as applicable.
- 17.4.2.5 Take action that is necessary to protect and preserve all property related to this Contract and materials, equipment and other property which is in the possession of the Contractor and for which TxDOT has paid the Contractor.
- 17.4.3 When the Contract is terminated for TxDOT's convenience, the Contractor may recover from the Owner payment for all Work executed, including any additional work required pursuant to the notice of termination, and for any provable loss and reasonable expenses attributable to the Work resulting from such termination, but not for anticipated profits after the date of termination.
- 17.5 **TERMINATION BY CONTRACTOR.** If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the PM or designated representative, terminate the Contract and recover from the Owner payment for all Work previously executed and for any provable loss and reasonable expenses attributable to the Work resulting prior to such termination,

but not for anticipated profits after the date of notice by the Contractor. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.

- 17.6 **SETTLEMENT ON TERMINATION.** When the Contract is terminated for any reason, the Contractor shall, at any time prior to sixty (60) days after the effective date of termination, submit a final termination settlement proposal to TxDOT based upon recoverable costs as provided herein. If the Contractor fails to submit the proposal within the time allowed, TxDOT may determine the amount due to the Contractor because of the termination and the Owner will pay the determined amount to the Contractor. All settlements on termination shall be administered as a Change Order.

Article 18 Dispute Resolution

- 18.1 **CONTRACTOR DISPUTES.** It is the goal of the Department to have a dispute settled at the District / Office / Division, depending on the type of contract, level prior to elevating it to the Contract Claim Committee.
- 18.2 **UNRESOLVED CONTRACTOR DISPUTES.** The Alternate Dispute Resolution Process is authorized under Texas Government Code Chapter 2009. The Alternative Dispute Resolution Process shall be used by TxDOT and the Contractor to attempt to resolve any claim made by the Contractor or TxDOT.
- 18.2.1 **Contractor Claim.** A claim filed by the Contractor shall follow the Contract Claim Procedure as set forth in Texas Administrative Code (TAC) Title 43, Part 1, Chapter 9, Subchapter A, Rule §9.2.
- 18.2.1.1 Only the Contractor (prime contractor) shall submit a claim to begin a claim proceeding.
- 18.2.1.2 The prime contractor agrees to file a claim only after completion of the contract or when required for orderly performance of the contract.
- 18.2.1.3 The prime contractor shall file a claim no later than one year after the earlier of: the date the Department issues notice to the contractor that it is in default, or the date the Department terminates the contract; or the date the Department issues final acceptance of the Project.
- 18.2.1.4 After a claim proceeding has begun the Department may make a counter claim.
- 18.2.1.5 A claim filed by the prime contractor must be considered by the Contract Claim Committee. After a committee decision is issued, the Contractor can file with the Department's executive director a written petition requesting an administrative hearing.
- 18.2.2 **Owner Claim.** TAC 43, §9.2 does not abrogate the Owner's authority to file a claim in a court of competent jurisdiction. The procedure for the Owner to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.
- 18.3 **CONDITION PRECEDENT TO FORMAL ADMINISTRATIVE HEARING.** Compliance by the Contractor with TAC 43, §9.3 Contract Claim Procedure is a condition precedent to the filing of a contested case proceeding under Government Code Chapter 2001.

- 18.4 **CONDITION PRECEDENT TO SEEKING CONSENT TO SUE.** Compliance with the contested case process provided in Government Chapter 2001 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code.
- 18.5 **CONTINUED PERFORMANCE.** The pendency of a claim or claims does not authorize any suspension of performance by the Contractor nor relieve the Contractor from any of its obligations, in whole or in part.
- 18.6 **ACCESS TO DOCUMENTS.** The Contractor agrees that TxDOT and any of its duly authorized representatives shall have access and the right to examine, during normal business hours, any books, documents, papers, and records of the Contractor related to the Project. Further, the Contractor agrees to include this provision in all its subcontracts. The period of access and examination described herein also relates to appeals under the **Dispute Resolution** Article of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract. The period of access and examination shall continue until final disposition of such claims, appeals or litigation.

Article 19 Miscellaneous

- 19.1 **SPECIAL CONDITIONS.** When the Work contemplated by TxDOT is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Special Conditions as described below.
- 19.1.1 Special Conditions shall relate to a particular project, be peculiar to that project, and may alter or expand any of the Uniform General Conditions.
- 19.2 **STANDARD SPECIFICATIONS.** When the Work contemplated by TxDOT requires the use of *Standard Specifications*, as defined in the **Definitions** Article of these Uniform General Conditions, for construction of elements of the Work, the Measurement and Payment sections of each *Standard Specifications* Item Number referenced are modified as described below. The term "TxDOT Item Number" or "Item Number", if used, shall have the same meaning as *Standard Specifications* Item Number.
- 19.2.1 **Measurement.** The Measurement section of the *Standard Specifications* Item Number is voided and the Item will be measured on a percentage of Work completed and materials stored corresponding to the Schedule of Values Work classification under which the Item is included.
- 19.2.2 **Payment.** The Payment section of the *Standard Specifications* Item Number is voided and the payment for the Item will be made on a percentage of Work completed and materials stored corresponding to the Schedule of Values Work classification under which the Item is included.
- 19.3 **PERSONAL LIABILITY OF PUBLIC OFFICIALS.** TxDOT employees are agents and representatives of the State and will incur no liability, personal or power or authority granted under the Contract.
- 19.4 **BUY AMERICA.** Contractor shall comply with the latest provisions of Buy America as listed at 23 CFR 635.410.
- 19.5 **RESPONSIBILITY FOR DAMAGE CLAIMS. THE CONTRACTOR AGREES TO IDEMNIFY AND SAVE HARMLESS THE STATE AND ITS AGENTS AND**

EMPLOYEES FROM ALL SUITES, ACTION 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. INDEMNITY 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, NEGLIGENCE 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 MATERIALS. THE CONTRACTOR SHALL NOT BE RELEASED FROM THESE RESPONSIBILITIES UNTIL ALL CLAIMS HAVE BEEN SETTLED AND SUITABLE EVIDENCE TO THAT EFFECT TENDERED TO THE STATE.

- 19.6 **ASSERTION OF CLAIM.** 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 Commissioner, 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 contract with the Department during the pendency of the claim or legal action.
- 19.6.1 Individual owners of a contracting firm are treated the same as a contractor. Therefore the requirement is met when owners of a contracting firm bring a claim of legal action against a TxDOT employee.

End of Routine Facilities Contract Uniform General Conditions