

## SECTION 80

### PROSECUTION AND PROGRESS

**80-01 SUBCONTRACTING OF CONTRACT.** TxDOT will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Engineer.

Should the Contractor elect to assign his contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of TxDOT, and shall be consummated only on the written approval of TxDOT. In case of approval, the Contractor shall file copies of all subcontracts with the Engineer.

If a Storm Water Pollution Prevention Plan (SW3P) is included in this project, no subcontractor who is to implement any measure identified on the SW3P, will be approved for work until the subcontractor has submitted a signed copy of the certification statement described in **Part II, D.6 of the Texas Pollutant Elimination Discharge System General Permit TXR 150000** no later than 48 hours prior to beginning work and the General Provision, "Certification of NPDES Permit." If an approved subcontractor does not comply with the provisions of the permit, approval may be revoked.

**80-02 NOTICE TO PROCEED.** The notice to proceed shall state the date on which it is expected the Contractor will begin the construction and from which date contract time will be charged. The Contractor shall begin the work to be performed under the contract not later than the effective date given by TxDOT in the written notice to proceed, but in any event, the Contractor shall notify the Engineer at least 48 hours in advance of the time actual construction operations will begin.

**80-03 PROSECUTION AND PROGRESS.** Unless otherwise specified, the Contractor shall submit his progress schedule for the Engineer's approval within 10 calendar or work days after the effective date of the notice to proceed. The Contractor's progress schedule, when approved by the Engineer, may be used to establish major construction operations and to check on the progress of the work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the bid.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Engineer's request, submit a revised schedule for completion of the work within the contract time and modify his operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the work be discontinued for any reason, the Contractor shall notify the Engineer at least 48 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the notice to proceed is issued by TxDOT.

**80-04 LIMITATION OF OPERATIONS.** The Contractor shall control his operations and the operations of his subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft in the AIR OPERATIONS AREAS of the airport.

When the work requires the Contractor to conduct his operations within an AIR OPERATIONS AREA of the airport, the work shall be coordinated with airport management (through the Engineer) at least 48 hours prior to commencement of such work. The Contractor shall not close an AIR OPERATIONS AREA until so authorized by the Engineer and until the necessary temporary marking and associated lighting is in place as provided in the subsection titled BARRICADES, WARNING SIGNS, AND HAZARD MARKINGS of Section 70.

When the contract work requires the Contractor to work within an AIR OPERATIONS AREA of the airport on an intermittent basis (intermittent opening and closing of the AIR OPERATIONS AREA), the Contractor shall maintain constant communications as specified; immediately obey all instructions to vacate the AOA; immediately obey all instructions to resume work in such AOA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AOA until the satisfactory conditions are provided only as indicated on the plans.

**80-05 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT.** The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

All equipment that is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless the Engineer authorizes others. If the Contractor desires to use a method or type of equipment other than specified in the contract, he may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and

equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the contract items involved or in contract time as a result of authorizing a change in methods or equipment under this subsection.

**80-06 TEMPORARY SUSPENSION OF THE WORK.** The Engineer shall have the authority to suspend the work wholly, or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Engineer, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the Engineer's order to suspend work to the effective date of the Engineer's order to resume the work. Claims for such compensation shall be filed with the Engineer within the time period stated in the Engineer's order to resume work. The Contractor shall submit with his claim information substantiating the amount shown on the claim. The Engineer will forward the Contractor's claim to TxDOT for consideration. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the contract, plans, or specifications.

If it should become necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction or become damaged in any way. He shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the airport.

**80-07 DETERMINATION AND EXTENSION OF CONTRACT TIME.** The number of calendar or working days allowed for completion of the work shall be stated in the bid and contract and shall be known as the CONTRACT TIME.

Should the contract time require extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

CONTRACT TIME based on WORKING DAYS shall be calculated weekly by the Engineer. The Engineer will furnish the Contractor a copy of his weekly statement of the number of working days charged against the contract time during the week and the number of working days currently specified for completion of the contract (the original contract time plus the number of working days, if any, that have been included in approved CHANGE ORDERS or SUPPLEMENTAL AGREEMENTS covering EXTRA WORK).

The Engineer shall base his weekly statement of contract time charged on the following considerations:

- a. No time shall be charged for days on which the Contractor is unable to proceed with the principal item of work under construction at the time for at least 6 hours with the normal work force employed on such principal item. Should the normal work force be on a double-shift, 12 hours shall be used. Should the normal work force be on a triple-shift, 18 hours shall apply. Conditions beyond the Contractor's control such as strikes, lockouts, unusual delays in transportation, temporary suspension of the principal item of work under construction or temporary suspension of the entire work which have been ordered by the Engineer for reasons not the fault of the Contractor, shall not be charged against the contract time.
- b. The Engineer will not make charges against the contract time prior to the effective date of the notice to proceed.
- c. The Engineer will begin charges against the contract time on the first working day after the effective date of the notice to proceed.
- d. The Engineer will not make charges against the contract time after the date of final acceptance as defined in the subsection titled FINAL ACCEPTANCE of Section 50.
- e. The Contractor will be allowed 1 week in which to file a written protest setting forth his objections to the Engineer's weekly statement. If no objection is filed within such specified time, the weekly statement shall be considered as acceptable to the Contractor.

The contract time (stated in the bid) is based on the originally estimated quantities as described in the subsection titled INTERPRETATION OF ESTIMATED BID QUANTITIES of Section 20. Should the satisfactory completion of the contract require performance of work in greater quantities than those estimated in the bid, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the bid. Such increase in contract time shall not consider either the cost of work or the extension of contract time that has been covered by change order or supplemental agreement and shall be made at the time of final payment.

CONTRACT TIME based on CALENDAR DAYS shall consist of the number of calendar days stated in the contract counting from the effective date of the notice to proceed and including all Saturdays, Sundays, holidays, and non-work days. All calendar days elapsing between the effective dates of the Engineer's orders to suspend and resume all work, due to causes not the fault of the Contractor shall be excluded.

At the time of final payment, the contract time shall be increased in the same proportion as the cost of the actually completed quantity bears to the cost of the originally estimated quantities in the bid. Such increase in the contract time shall not consider either cost of work or the extension of contract time that has been covered by a change order or supplemental agreement. Charges against the contract time will cease as of the date of final acceptance.

When the contract time is a specified completion date, it shall be the date on which all

contract work shall be substantially completed.

If the Contractor finds it impossible for reasons beyond his control to complete the work within the contract time as specified, or as extended in accordance with the provisions of this subsection, he may, at any time prior to the expiration of the contract time as extended, make a written request to the Engineer for an extension of time setting forth the reasons which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect, the same as though it was the original time for completion.

**80-08 FAILURE TO COMPLETE ON TIME.** For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in the subsection titled DETERMINATION AND EXTENSION OF CONTRACT TIME of this Section) the sum specified in the contract and bid as liquidated damages will be deducted from any money due or to become due the Contractor or his surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages that will be incurred by TxDOT should the Contractor fail to complete the work in the time provided in his contract. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of TxDOT of any of its rights under the contract.

**80-09 ABANDONMENT OF WORK OR DEFAULT OF CONTRACT.** The Engineer, with the approval of TxDOT, may declare the Contractor to be in default of the Contract if the Contractor:

- a. fails to begin the work within the number of days specified
- b. fails to prosecute the work to assure completion within the number of days specified
- c. fails to perform the work in accordance with the Contract requirements
- d. neglects or refuses to remove and replace rejected materials or unacceptable work
- e. discontinues the prosecution of the work without the Engineer's approval
- f. makes an unauthorized assignment
- g. fails to resume work that has been discontinued within a reasonable number of days after notice to do so
- h. is uncooperative, disruptive or threatening or

- i. fails to conduct the work in an acceptable manner.

If any of these conditions occur, the Engineer will give notice in writing to the Contractor and the Surety of the intent to declare the Contractor in default. If the Contractor does not proceed as directed within 10 days after the notice, TxDOT may upon written notice declare the Contractor to be in default of the Contract. TxDOT will also provide written notice of default to the Surety. Working day charges will continue until completion of the Contract. The Contractor may also be subject to sanctions under the TAC. TxDOT will determine the method used for the completion of the remaining work as follows:

1. **Contracts without Performance Bonds.** TxDOT will determine the most expeditious and efficient way to complete the work, and recover damages from the Contractor.
2. **Contracts with Performance Bonds.** TxDOT will, without violating the Contract, demand that the Contractor's Surety complete the remaining work in accordance with the terms of the original Contract. A completing Contractor will be considered a subcontractor of the Surety. TxDOT reserves the right to approve or reject proposed subcontractors. Work may resume after TxDOT receives and approves certificates of insurance as required in Provision 30-10 "Certificate of Insurance." Certificates of insurance may be issued in the name of the completing Contractor. The Surety is responsible for making every effort to expedite the resumption of work and completion of the Contract. TxDOT may complete the work using any or all materials at the work locations that it deems suitable and acceptable. Any costs incurred by TxDOT for the completion of the work under the Contract will be the responsibility of the Surety. From the time of notification of the default until work resumes (either by the Surety or TxDOT).

TxDOT will maintain traffic control devices and will do any other work it deems necessary, unless otherwise agreed upon by TxDOT and the Surety. All costs associated with this work will be deducted from money due to the Surety. TxDOT will hold all money earned but not disbursed by the date of default. Upon resumption of the work after the default, all payments will be made to the Surety. All costs and charges incurred by TxDOT as a result of the default, including the cost of completing the work under the Contract, costs of maintaining traffic control devices, costs for other work deemed necessary, and any applicable liquidated damages or disincentives will be deducted from money due the Contractor for completed work. If these costs exceed the sum that would have been payable under the Contract, the Surety will be liable and pay TxDOT the balance of these costs in excess of the Contract price. In case the costs incurred by TxDOT are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, TxDOT will be entitled to retain the difference. TxDOT approval of all subcontractors continues to be required. DBE/HUBs must continue to be used in accordance with the commitments previously approved by TxDOT. 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 the public as provided in Provision 80-10, "Termination of Contract."

**80-10 TERMINATION OF CONTRACT.** TxDOT may terminate the Contract in whole or in part whenever:

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

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

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

interest.

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

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

**END OF SECTION 80**