

CONSTRUCTION

SUPPORT TIPS
JULY 2019

PREVENTING WRONGFUL DEFAULTS



Wrongful default claims are reviewed based on procedures and substance. Depending on the claim, one and/or both reviews may lead to a wrongful default. The answers to the following questions are key when performing a review:

- Did TxDOT follow proper procedures administering the default?
- Are the purported reasons for the default substantiated?

When the default is determined to be wrongful, TxDOT incurs additional costs of termination that are reasonable and verifiable. This is why following the procedures for initiating and processing contractor defaults is important.

Do:

- ✓ Ask for schedule updates monthly by email.
- ✓ Use the interim evaluations and Project Recovery Plan process as tools prior to initiating the default process. (Recommended)
- ✓ Follow the Construction Contract Administration Manual (CCAM) procedures for Default of Contract (Ch.10.8).
- ✓ List only reasons for potential default found in Section 8.7.1 of 2014 Standard Specifications.
- ✓ Give **reasonable** tasks to accomplish.
- ✓ Have proper backup documentation.
- ✓ Be conscientious of the wording you use in a **10-Day Letter**.
- ✓ Ensure that the Area Engineer or higher signs the 10-Day Letter to the contractor. (Consult with DCO.)
- ✓ Allow the contractor the full 10 days to complete the task(s) and follow up promptly.
- ✓ Follow the escalation ladder at all times.
- ✓ Consult **CST-Construction Support**.

Do not:

- ✗ Default for a task previously complied with. (You must always issue a new 10-Day Letter when reinitiating the default process.)
- ✗ Allow third-party influence to interrupt the default process.
- ✗ Wait to default a contractor, knowing their contract time will expire.
- ✗ Require completion of a significant phase of work, as to insert an extreme milestone, or substantial completion within 10 days. (All work needs to be achievable within 10 days. Reference Contractor's schedule for feasibility.)

All "Do" and "Do not" tips were taken from actual Wrongful Default examples.

Communication with contractors can be frustrating and may be conveyed as harsh language in your 10-Day Letters. Don't worry! The friendly staff at CST-Construction Support is here to help. Give us a call or email us to help guide you through the process.

Helpful Links [CCAM](#) and [Template Letters](#) 