



Texas Water Development Board  
Supplemental Contract Conditions and  
Instructions for Construction Services  
for  
Water Supply and Infrastructure Grants

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**Forms and Guidance:**

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB's Financial Assistance web site at:

<http://www.twdb.texas.gov/financial/instructions/index.asp>

Search by either the document number or name.

## I. INSTRUCTIONS TO APPLICANT

### 1. Applicability

These Supplemental Conditions contain provisions that are worded to comply with statutes and regulations that apply only to projects associated with Water Supply and Infrastructure Grants (WSIG) appropriated from House Bill 500, passed during the 89<sup>th</sup> Legislative Session.

#### NOTES:

- Tex. Water Code § 17.183 does not apply to the WSIG; however, the U.S. Iron Steel (USIS) provisions in Texas Government Code, Chapter 2252, Subchapter G may apply to certain projects funded through the WSIG. See [TWDB-1105](#) for more information regarding USIS requirements.

### 2. Use of Conditions

The language and conditions listed under **Section II: Instructions to Bidders** are to be included in the instructions to bidders for construction services. The provisions listed under **Section III: Supplemental Contract Conditions** shall be included in their entirety with the other general and special conditions typically included in the construction contract documents by the Engineer<sup>1</sup>.

### 3. Modifications to Provisions

The Applicant may need to modify certain provisions to better align with the other provisions of the construction contract; however, everything herein must be included in the contract documents. The Applicant and the Engineer should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of Districts should be aware of statutes relating to their creation and operation that may affect the application of these conditions. **The Applicant should consult the TWDB Project Engineer/Reviewer if a modification to any part of these provisions is needed.**

Section III, Supplemental Condition No. 13 (Archeological Discoveries and Cultural Resources) and Section III Supplemental Condition No. 14 (Threatened and Endangered Species) may be superseded or modified by project-specific environmental conditions established during the environmental review process.

These documents may impose duties and responsibilities on the Engineer that exceed, or fall short of, those the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the Engineer provides for the appropriate scope of services. Otherwise, the Applicant should revise the wording in these special conditions to align with the functions actually delegated.

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<sup>1</sup> Throughout this document “Engineer” is used to mean Design Engineer/Engineer of Record, Prime Engineer, Consulting Engineer, or Owner’s Engineer, depending on the contract type between the Applicant and the Engineer and depending on the phase of the project (i.e., planning, design, or construction).

#### 4. Good Business Practices

There are additional contract provisions that the Applicant and Engineer need to include as a matter of good business practice. It is recommended that provisions addressing the following matters be included in the construction contract:

- (a) Specifying the time frame for completing the construction of the project and the consequences of not completing the construction on time, including liquidated damages.
- (b) Specifying the type, dollar value, and required documentation of insurance the Contractor is to carry. At a minimum, the Contractor should carry workers' compensation, liability and builder's risk insurance that meet the State statutory limits.
- (c) Identifying the responsibility of the Contractor, including warranty of work.
- (d) Price reductions for defective pricing of negotiated costs.
- (e) Differing site conditions - notice requirements and claims procedures regarding site conditions that differ from indicated conditions.
- (f) Specifying maximum time permitted to submit an official Change Order after a field change has been authorized and implemented.
- (g) Covenants against contingent fees - prohibiting contingent fees for securing business.
- (h) Gratuities - prohibitions against offering and accepting gratuities.
- (i) Audit and access to records.
- (j) Suspension of work - conditions under which the Applicant may suspend work.
- (k) Termination - conditions under which the Applicant may terminate the contract.
- (l) Remedies - procedures for resolving disputes.

#### 5. Other Requirements

If applicable, Trench Safety requirements shall comply with [Health and Safety Code Chapter 756, Subchapter C](#), which incorporates the Occupational Safety and Health Administration (OSHA) trench safety standards in effect during the construction period. The Contractor shall use the Owner's geotechnical information to assist in the design of the Trench Safety System.

There may be additional local government requirements, as well as applicable Federal and State statutes and regulations, that are not addressed in these conditions. It is the Applicant's responsibility to ensure that the project and all associated contract provisions comply with the relevant statutes and regulations.

#### 6. Advertisements for Bids

State procurement statutes **require that a contract for bids be published for at least two (2) consecutive weeks**<sup>2</sup>. Failure to follow this requirement may require re-advertising the project (i.e., rebidding). The official advertisement for bids published in the newspaper shall include, at a minimum, the following information:

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<sup>2</sup> From LGC 252.041, Municipalities are required to advertise in a newspaper at least once a week for two consecutive weeks.

- (a) A clear description of goods or services being procured.
- (b) Instructions on how to obtain plans and specifications (P&S), necessary forms, and related information.
- (c) The deadline by which bids must be submitted, including the date and time.
- (d) The address to which bids are to be delivered.
- (e) A statement that the contract is contingent upon release of funds from the TWDB.
- (f) A statement that any contract(s) awarded under this Invitation for Bids (IFB), Request for Proposals (RFP), or Request for Qualifications (RFQ) is expected to be funded, in part, by financial assistance from the TWDB and that neither the State of Texas nor any of its departments, agencies, or employees will be a party to the IFB, RFP, RFQ, or any resulting contract.
- (g) A statement that all contracts awarded are subject to the United States Iron and Steel (USIS) requirements of Texas Government Code, Chapter 2252, Subchapter G.
- (h) Acknowledgement of any special requirements, such as a mandatory pre-bid conference.
- (i) A statement reserving the right to reject any and all bids.

## 7. Bid Proposal

The Bid Proposal form should include the following:

- (a) For lump sum bids, a list of materials used and the associated costs.
- (b) A distinction between eligible and ineligible items.
- (c) If applicable, provisions to address trench safety requirements, including separate per unit pay items for trench excavation safety protection in accordance with [Health and Safety Code Chapter 756, Subchapter C](#), as briefly noted below:
  - i. A separate pay item for special shoring requirements; and
  - ii. A separate pay item for trench excavation safety protection.
- (d) Space for the Contractor to acknowledge receipt of each Addendum issued during the bidding process.

## 8. Bidding Process

The P&S should include an explanation of the procedures governing the bid process. The explanation should address the following:

- (a) Whether a Pre-Bid Conference will be held; whether attendance is optional or mandatory; and the date, time, and location of the conference. If feasible, the pre-bid conference is recommended to be offered both in person and via online platform such as Zoom or Microsoft Teams. The TWDB Project Engineer/Reviewer should be invited to the pre-bid conference.
- (b) The criteria and process for determining responsiveness and responsibility of the bidders.
- (c) The method for determining the successful bidder and contract award (e.g., award to the lowest responsive, responsible bidder, accounting for any multiple parts to bids), including consideration of non-resident bidder reciprocity requirements (TWDB-0459).

- (d) Procedures for withdrawal of a bid due to a material mistake.
- (e) The time period during which bids may be held by the Applicant before contract award (typically 60 or 90 days).
- (f) Acknowledgement of the Applicant's right to reject any and all bids.

## 9. Release of Funds

**Prior** to the TWDB authorization for the Applicant to issue a Notice to Proceed (NTP) and the subsequent release of funds for construction, the Applicant and its Engineer must submit the following bid documents for TWDB review.

### (a) Submittal of Bid Documents for Contingent Award of Contract

The Applicant must submit the following documents to the TWDB Project Engineer/Reviewer:

- (1) Advertisement and affidavit of advertisement.
- (2) Bid tabulation.
- (3) All addenda submitted and approved for the contract.
- (4) Bid proposal of apparent low bidder (or selected bidder, with explanation), including bid bond.
- (5) Site certificate (ED-101).
- (6) Consulting Engineer's recommendation to award letter.
- (7) Description of any bidding irregularities.
- (8) Construction inspection proposal.
- (9) Vendor Compliance with Reciprocity of Non-Resident Bidders Form (TWDB-0459).

### (b) Submittal of Executed Contract Documents

Once the Applicant has issued the contingent Notice of Award for the construction contract, the Applicant must submit:

- A bound copy (single PDF file) of the **fully executed contract documents, including specifications;** and
- A bound copy (single PDF file) of the **Approved Plan Set.**

A complete set of bound executed contract documents should include:

- (1) Front-End Documents, Addenda, Executed Agreement, and Technical Specifications as approved by the TWDB and TCEQ (as applicable).
- (2) Contractor's Certificate of Insurance.
- (3) **If applicable**, the Applicant's Sufficiency of Funds Letter.

After reviewing and approving the executed contract documents, the TWDB will authorize the Applicant to issue an NTP. At this time, the TWDB may begin releasing construction funds in accordance with TWDB policy.

For questions or proposed modifications to these conditions, please contact your TWDB Project Engineer/Reviewer.

## II. INSTRUCTIONS TO BIDDERS

The language and conditions in this section shall be included in the “Instructions to Bidders” portion of the construction contract documents.

### 1. Contingent Award of Contract

This contract is contingent upon the release of funds from the Texas Water Development Board (TWDB). Any contract(s) awarded under this Invitation for Bids is/are expected to be funded, in part, by a loan or grant from the TWDB. Neither the State of Texas, nor any of its departments, agencies, or employees is, or will be, a party to this Invitation for Bids or to any resulting contract.

### 2. U.S. Iron and Steel

Any contract(s) awarded under this Invitation for Bids is/are subject to the United States Iron and Steel (USIS) requirements of Texas Government Code, Chapter 2252, Subchapter G.

The Contractor must complete the Statement of Understanding regarding USIS requirements, located in Section III Supplemental Contract Conditions, Item No. 8. The Statement of Understanding must be signed and dated by the Contractor. Refer to [TWDB-1105](#) – United States Iron and Steel (USIS) Guidance.

### 3. Award of Contract to Nonresident Bidder

A governmental entity may not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident bidder's principal place of business is located.

A **nonresident bidder** is a Contractor whose corporate offices or principal place of business are located outside the State of Texas.

**Source:** Texas Government Code, Chapter 2252, Subchapter A, § 2252.002 – Nonresident Bidders.

The bidder shall complete TWDB-0459, Vendor Compliance with Reciprocity on Non-Resident Bidders, **and submit it with the bid.**

### 4. Summary of Forms Required with Bid Documents

- [TWDB-0459](#), Vendor Compliance with Reciprocity on Non-Resident Bidder

### III. SUPPLEMENTAL CONTRACT CONDITIONS

#### 1. Supersession

The Owner and the Contractor agree that the Texas Water Development Board (TWDB) Supplemental Conditions apply to all work eligible for TWDB assistance to be performed under this contract and these clauses supersede any conflicting provisions contained elsewhere in this contract.

#### 2. Privity of Contract

Funding for this project is expected to be provided, in part, by the TWDB. Neither the State of Texas nor any of its departments, agencies, or employees is, or will be, a party to this contract or to any lower-tier contract.

#### 3. Definitions

- (a) The term "Owner" or "Applicant" means the local entity contracting for the construction services.
- (b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or any other person lawfully acting in that capacity, or an authorized person to perform the functions of such Executive Administrator, or the authorized representative thereof.
- (c) The term "Engineer" means the engineer retained and authorized by the Owner to perform services related to the project.

#### 4. Laws to be Observed

In the performance of the contract, the Contractor must comply with all applicable local, state and federal laws, including, but not limited to, laws relating to labor, safety, minimum wages, and environmental protection. The Contractor shall be familiar with, and shall at all times observe and comply with, all federal, state, and local laws, ordinances and regulations that in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, the TWDB, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

#### 5. Review by Owner and TWDB

- (a) The Owner, the Owner's authorized representatives and agents, and the TWDB must, at all times, have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and any other data and records relevant to this Contract. Provided, however, that all instructions, directives, and approvals related to the execution of the work shall be issued to the Contractor solely by the Owner through its authorized representatives or agents.
- (b) No inspection, observation, or review conducted by the TWDB shall subject the State of Texas, the TWDB, or their representatives to any liability or action for damages.

## 6. Payments Schedule and Cost Breakdown

(a) The Contractor shall, immediately upon execution of the Agreement, submit for the Owner's approval a detailed Progress Schedule setting forth the proposed dates for commencement and completion of each major portion of the Work, the estimated monthly payments anticipated to become due, and the cumulative percentage of completion for each month.

(b) (Applicable only to lump-sum contracts):

### COST BREAKDOWN

The Contractor must submit to the Owner a detailed itemized breakdown of the estimated cost of all work to be performed under the Contract, arranged in such manner as may be required by the Owner or any funding agency. This breakdown shall be submitted promptly upon execution of the Agreement and must be approved by the Owner prior to any payments to the Contractor. Upon approval, the established unit prices shall be used to estimate partial payments.

## 7. Workers' Compensation Insurance Coverage

(As applicable and consistent with Texas Labor Code § 406.096)

(a) The Contractor shall certify in writing that workers' compensation insurance coverage is provided for each employee of the Contractor engaged on the public project.

(b) Each Subcontractor shall provide a written certificate of workers' compensation coverage for its employees to the general Contractor, who shall in turn provide such certificate to the governmental entity.

(c) A Contractor required to maintain workers' compensation coverage may satisfy this requirement through a group plan or other method acceptable to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer whose primary business is not building or construction does not constitute engaging in building or construction.

(e) For the purpose of this section:

(1) "Building or construction" includes:

- i. erecting or preparing to erect a structure, including any building, bridge, roadway, public utility facility, or related appurtenance;
- ii. remodeling, extending, repairing, or demolishing a structure; or
- iii. otherwise improving real property or an appurtenance thereto through similar activities.

(2) "Governmental entity" means the State of Texas or any political subdivision thereof, including a municipality.

## 8. U.S. Iron and Steel

The following statement must be completed by the Contractor and incorporated into the Agreement between the Owner and the Contractor. The statement must appear on a dedicated page within the contract documents and must include the Contractor's signature and date; alternatively, the Contractor may elect to sign and date this page of the TWDB-0553.

### **Contractor Statement of Understanding**

*The Contractor acknowledges to and for the benefit of the Owner ("Purchaser") that it understands the goods and services provided under this Agreement are being funded in whole or in part with monies made available through the Water Supply and Infrastructure Grants appropriated for water supply and infrastructure projects through House Bill 500, passed during the 89<sup>th</sup> Legislative Session. The State of Texas statutory requirements commonly known as "United States Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("United States Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner, that (a) the Contractor has reviewed and understands the United States Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the United States Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the United States Iron and Steel Requirement, as may be requested by the Owner. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the Owner.*

*In the execution of the Contract, the Contractor shall be familiar with and at all times shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations concerned with the use of iron and steel made in the United States which in any manner affect the conduct of the work.*

**Additional guidance regarding the United States Iron and Steel (USIS) and its applicability to this Agreement is provided in the [TWDB-1105](#).**

**The Owner is recommended to receive and maintain documentation demonstrating the Contractor's compliance with the USIS Requirement. Compliance shall be verified by the Owner through the submittal of the TWDB form [TWDB-1105-A](#).**

## 9. Prevailing Wage Rates

The Contract is subject to the provisions of Texas Government Code Chapter 2258 regarding the payment of prevailing wage rates. The Owner shall determine applicable general prevailing rates are in accordance with the statute. The following statutory provisions apply, including but not limited to the sections set forth below:

### § 2258.021. Right to be Paid Prevailing Wage Rates

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
  - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
  - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) For the purpose of this section, a worker is employed on a public work if the worker is employed by a Contractor or Subcontractor in the **execution of a contract** for the public work with the State, a political subdivision of the State, or any officer or public body of the State or a political subdivision of the State.

### § 2258.023. Prevailing Wage Rates to Be Paid by Contractor and Subcontractor; Penalty

- (a) A Contractor awarded a contract by a public body, or a Subcontractor of the Contractor, shall pay not less than the rates determined under Section 2258.022 to each worker employed in the execution of the contract.
- (b) A Contractor or Subcontractor who violates this section shall pay to the State or political subdivision of the state on whose behalf the contract is made a penalty of \$60 for each worker for each calendar day or portion thereof during which the worker is paid less than the stipulated wage rates. A public body awarding a contract shall specify this penalty in the contract.
- (c) A Contractor or Subcontractor does not violate this section if a public body awarding the contract does not determine and specify the prevailing wage rates and specify the rates in the contract as required by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset costs incurred in administering this chapter.
- (e) A municipality may collect a penalty under this section only if its population exceeds 10,000.

### § 2258.024. Records

- (a) A Contractor and each Subcontractor shall maintain records showing:
  - (1) the name and occupation of each worker employed in the construction of the public work; and
  - (2) the actual per diem wages paid to each worker.

- (b) Such records shall be open for inspection at all reasonable hours by the officers and agents of the public body.

### **§ 2258. 025. Payment Greater Than Prevailing Rate Not Prohibited**

Nothing in this chapter prohibits the payment to a worker employed on a public work of an amount greater than the general prevailing per diem rate.

## **10. Payments**

### **(a) Progress Payments**

#### **(1) Preparation of Requisition**

The Contractor shall prepare a requisition for progress payment as of the last day of each payment month and shall submit the requisition, together with the required number of copies, to the Owner or the Engineer for review.

Except as provided in subsection (3), the amount of each progress payment due to the Contractor shall be determined as follows:

- a. Adding to the total value of work completed to date;
- b. Adding the value of materials properly stored on the site; and
- c. Deducting:
  - 1. The amount of all previous payments.

The total value of work completed to date shall be based on actual or estimated quantities of work completed and the unit prices stated in the Agreement, or the approved cost breakdown for lump-sum contracts pursuant to Section 7(b), as adjusted by approved Change Orders. The value of materials properly stored on the site shall be based on estimated quantities and invoice prices.

All invoices shall be made available for inspection by the TWDB.

#### **(2) Care of Work and Materials**

The Contractor shall remain responsible for the care and protection of all materials and work for which payment has been made until final acceptance by the Owner. Progress payments shall not constitute a waiver by the Owner of its rights to require full performance of all terms of the Contract or to require completion of all improvements in strict accordance with the Contract Documents.

### **(b) Withholding Payments**

The Owner may withhold from any payment otherwise due to the Contractor such amounts as the Owner deems necessary to protect its interests. The Owner may also, at its discretion, withhold amounts due from the Contractor to Subcontractors or material suppliers for work performed or material furnished. These provisions are for the sole benefit and protection of the Owner and shall not:

- (1) Require the Owner to resolve claims or disputes between the Contractor and Subcontractors or material suppliers, or
- (2) Require the Owner to withhold funds for their protection unless the Owner elects to do so.

Failure or refusal by the Owner to withhold funds shall not impair the obligations of any surety or sureties under any bonds furnished pursuant to this contract.

(c) Payments Subject to Submission of Certificates.

Each payment to the Contractor shall be subject to submission of all required written certifications, including those from Subcontractors, in accordance with the General and Special Conditions of this Contract.

(d) Final Payment

(1) Release of Claims

Upon satisfactory completion of the work, and as a condition precedent to final payment or termination settlement, the Contractor shall execute and deliver to the Owner a release of all claims arising under or by virtue of this Contract, except for those claims specifically identified and expressly reserved by the Contractor therein. Unless otherwise provided by State law or mutually agreed upon, final payment or termination settlement shall not constitute a waiver of the Owner's claims against the Contractor or the Contractor's sureties under this Contract or under applicable performance and payment bonds.

(2) Preparation of Final Requisition

Following final inspection and acceptance by the Owner, the Contractor shall prepare a requisition for final payment based on carefully measured or computed quantities for each work item at the applicable unit prices stated in the Agreement, or in the approved cost breakdown for lump-sum contracts, as adjusted by approved Change Orders. The final payment due to the Contractor shall be the total amount so computed, less all previous payments.

(3) Any amounts due to the Owner under General and/or Special Conditions relating to "Liquidated Damages" shall be deducted from the final payment due the Contractor.

## **11. Archaeological Discoveries and Cultural Resources**

No activities that may affect properties listed or eligible for listing in the National Register of Historic Places, or properties eligible for designation as a State Archeological Landmark, shall be authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may still encounter unanticipated cultural or archeological resources during construction.

If archeological sites or historic structures are discovered that may qualify for designation as a State Archeological Landmark (pursuant to the criteria in 13 TAC Chapter 26) or may be eligible for listing on the National Register of Historic Places (in accordance with 36 CFR Part 800), the Contractor shall immediately cease operations in the affected area. The Contractor must then notify the Owner, the TWDB, and the Texas Historical Commission at P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276.

The Contractor must take reasonable steps to protect and preserve the discovery until it is inspected by the Owner's representative and the TWDB. The Owner will coordinate with the Texas Historical Commission, and any other relevant agencies to obtain any necessary approvals or permits to allow work to resume. The Contractor shall not resume work in the affected area until authorized by the Owner.

## 12. Threatened and Endangered Species

No activities shall be authorized that are likely to jeopardize the continued existence of a threatened or endangered species, as listed or proposed for listing under the Federal Endangered Species Act (ESA), or the State of Texas Parks and Wildlife Code on threatened, endangered, or state-listed species, or that would destroy or adversely modify the habitat of such species.

If a threatened, endangered, or state-listed species is encountered during construction, the Contractor must immediately cease work in the area of the encounter, avoid disturbing the animal or plant, and notify the TWDB and the Owner. The Owner will then take immediate action in compliance with the ESA and applicable State statutes. This may include reporting the encounter to the TWDB, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining necessary approvals or permits, or implementing other mitigation actions as directed. The Contractor must not resume work in the affected area until authorized by the Owner.

## 13. Hazardous Materials

All materials used in the project shall be free from hazardous substances, except as may be specifically provided for in the specifications.

If the Contractor encounters hazardous materials on sites owned or controlled by the Owner, or in material sources that are suspected of containing hazardous substances (based on visual observation or smell), the Contractor must immediately cease work in the affected area. The Contractor shall take necessary precautions to prevent contact with the materials and must notify the Engineer and the Owner. The Owner will then notify the TWDB and other appropriate authorities, such as local emergency responders, the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency (EPA), and others, depending on the situation.

Unless otherwise directed by the relevant authorities, the Owner will be responsible for testing, removal, or disposal of hazardous materials on sites under the Owner's control. The Owner may suspend work in the affected area, either partially or entirely, during the testing, removal, or disposal operations.

## 14. Changes

*\*Provisions marked with an asterisk below are in accordance with Local Government Code 271.060. Counties and Municipalities may amend the provisions listed, as applicable, to comply with Local Government Code 262.031 (Counties) or 252.048 (Municipalities).*

- (a) The Owner may, at any time and without notice to any surety, issue a written order designated as a “change order” to make changes within the general scope of the contract. Such changes may include, but are not limited to:
  - (1) Modifications to the specifications (including drawings and designs);
  - (2) Changes to the time, method, or manner of performing the work;
  - (3) Adjustments to the quantity of work to be performed or the materials, equipment, or supplies to be furnished.
- (b) \*The total price of the contract may not be increased through a change order unless provision are made for added cost. This can be achieved through the appropriation of current or bond funds for the purpose, the issuance of certificates, or a combination of these methods.
- (c) \*For contracts with an original price of \$1 million or more, the contract price may not be increased by more than 25 percent through change orders. If a contract with an original price of less than \$1 million is modified by change orders, and the total contract value reaches or exceeds \$1 million, subsequent change orders may not increase the revised contract amount by more than 25 percent.
- (d) \*A governing body may authorize an official or employee responsible for purchasing or contract administration to approve change orders involving a price increase or decrease of \$50,000 or less.
- (e) Any change orders involving a price increase must be supported by documentation of the cost components. The TWDB may request that this information be submitted in a format similar to the Cost and Pricing Information form (WRD-277).
- (f) Change orders that involve modifications to the project requiring relocation of components, resizing, or changes to processes may require additional environmental approvals. A map and description of the proposed changes should be submitted to the TWDB Environmental Reviewer for coordination and approval as early as possible to prevent any delays.

## **15. Operation and Maintenance Manuals and Training**

- (a) The Contractor shall obtain the installation, operation, and maintenance manuals from manufacturers and suppliers for all equipment provided under the contract. The Contractor shall submit an electronic copy (e.g., PDF) with bookmarks of each complete manual to the Owner’s Engineer within 90 days of the approval of shop drawings, product data, and samples. These submissions must be made no later than the date each piece of equipment is shipped to the project site or storage location. Upon request, the Contractor shall also submit one hard copy of the manual, properly organized with divider tabs in a binder, to the Owner’s Engineer.
- (b) The Owner shall require their Engineer to promptly review each submitted manual and provide feedback on necessary corrections and revisions. If the Owner’s Engineer rejects the manual, the Contractor must make the required corrections and resubmit the manual until it meets the Owner’s Engineer

approval. The manual must conform to the project's design concept and comply with the information provided in the contract documents. The Owner may charge the Contractor for reviewing the same items more than twice. This procedure shall not be considered grounds for delay.

- (c) The acceptance of manuals by the Owner's Engineer does not relieve the Contractor of any of the obligations or requirements set forth in the contract.
- (d) The Contractor shall provide the services of trained and qualified technicians to verify the final installation of equipment, assist with placing the equipment into operation as needed, and instruct operating personnel on the proper procedures for routine operation and maintenance of the equipment.
- (e) The operations and maintenance manuals specified herein are in addition to any installation, maintenance, or operation instructions required by the Contractor for installation, testing, and startup of the equipment. Each manual must be bound in a folder and clearly labeled to identify the contents and the project to which it applies. The manual shall include, at minimum, the following items:
  - (1) A listing of the manufacturer's identification, including order number, model number, serial number, and location of parts and service centers.
  - (2) A list of recommended spare parts, including part numbers and quantities.
  - (3) A complete list of replacement parts.
  - (4) Performance data and rating tables.
  - (5) Specific instructions for installation, operation, adjustment, and maintenance.
  - (6) Exploded view drawings for major equipment items.
  - (7) Lubrication requirements.
  - (8) Complete equipment wiring diagrams and control schematics with terminal identification.

## **16. As-Built Dimensions and Record Drawings**

- (a) The Contractor shall make daily measurements of facilities under construction and maintain accurate records of the location (both horizontal and vertical) of all facilities.
- (b) Upon completion of each facility, the Contractor must provide the Owner with the following:
  - One set of full-sized direct prints, marked with red pencil to show as-built dimensions and locations of all work (Record Drawings)
  - One full-size electronic set of these drawings in PDF format. At a minimum, the Record Drawings shall include the following:
    - (1) Horizontal and vertical locations of work.
    - (2) Changes in equipment and dimensions due to substitutions.
    - (3) "Nameplate" data on all installed equipment.
    - (4) Deletions, additions, and changes to scope of work.
    - (5) Any other changes made.

## 17. Close-Out Procedures

To close out the construction contract, the following steps must be completed:

(a) Final Site Visit

The TWDB shall conduct a Construction Contract Final Site Visit (FSV) and issue an FSV Report.

(b) The following submittals must be received, reviewed, and accepted by the TWDB:

- (1) The final change order, adjustment of quantities, or a statement confirming that all change orders have been previously submitted and that no additional change orders will be submitted.
- (2) The final pay request from the Contractor.
- (3) A notarized affidavit from the Contractor stating that all bills have been paid.
- (4) Certification by the Owner's Engineer that the work has been completed in accordance with the approved P&S and adheres to sound engineering principles and construction practices.
- (5) Acceptance of the project by the Owner in the form of a written resolution or other formal action.
- (6) A warranty statement from the Contractor specifying the warranty start date (i.e., the project's completion date) and a duration of at least twelve months.
- (7) Confirmation that the Owner has received the Record Drawings from the Contractor.
- (8) Certificate of Compliance with U.S. Iron and Steel Requirements (TWDB-1105A).

(c) Certificate of Approval

Upon completion and acceptance of the items listed in sections (a) and (b), the TWDB shall issue a Certificate of Approval.

## IV. FORMS AND GUIDANCE LIST

The forms and documents referenced throughout this guidance, as well as those listed below, are available on the TWDB website at:

<http://www.twdb.texas.gov/financial/instructions/index.asp>

Search by either the document number or name.

### **Forms:**

- Certificate of Compliance with U.S. Iron and Steel Requirements (TWDB-1105A)
- Site Certificate (ED-101)
- Vendor Compliance with Reciprocity of Non-Resident Bidders (TWDB-0459)

### **Guidance Document:**

- United States Iron and Steel Guidance (TWDB-1105)