

## **DB Section 150 – Control of Work**

**DB150.00 Authority of Agency** - Agency has full authority over the Work and its suspension. Design-Builder shall perform all Work to the complete satisfaction of Agency PM. Agency's determination shall be final on all matters, including, but not limited to the following:

- Quality and acceptability of Materials and workmanship
- Measurement of unit price Work
- Timely and proper prosecution of the Work
- Interpretation of Plans and Specifications
- Payments due under the Contract

Agency's decision is final and, except as provided in **DB General Provisions**, Subsection 180.80 for adjustments of Contract Time, and **DB General Provisions**, Section 199 for claims for additional compensation, may be challenged only through litigation.

Work performed under the Contract will not be considered complete until it has passed Final Inspection by Agency and has been accepted by Agency.

Interim approvals issued by Agency, including but not limited to Third Notification, will not discharge Design-Builder from responsibility for errors in prosecution of the Work, for improper fabrication, for failure to comply with all Contract requirements, or for other deficiencies, the nature of which are within Design-Builder's control.

**DB150.01 Responsibility of Agency** - Agency will develop, direct, manage, and monitor performance of any clean-up/remediation or mitigations plans required for previously-unknown hazardous conditions, or unknown or unanticipated archeological sites, endangered species habitats, cultural artifacts, or biological/environmental conditions encountered on the Project Site, according to **DB General Provisions**, Section 141, and **DB Standard Specifications**, Section 00290.

**DB150.02 Agency Project Manager's Authority and Duties** - Agency has designated a Project Manager as its representative on the Project, with authority to enforce the provisions of the Contract.

Design-Builder shall direct all requests for clarification or interpretation of the Contract, in writing, to Agency PM. Agency PM will respond in writing within a reasonable time.

Contract clarification obtained from persons other than Agency PM will not be binding on Agency.

Agency PM shall have the authority to appoint Inspectors and other personnel as required to assist in the administration of the Contract.

**DB150.03 Responsibility of Design-Builder** - The Contract intent is to provide for design, Quality Management, construction, and completion of the described Work, which requires Design-Builder to do the following without limitation:

- (a) Provide all required Design Services, as set out in the Contract Documents, to complete the Project according to the terms of the Contract.
- (b) Perform all construction Work required to complete the Project according to the terms of the Contract.
- (c) Perform such other Work, including, but not limited to Quality Management, as may be determined by Design-Builder's Design Professionals to be necessary to complete the Project according to the terms of the Contract.
- (d) Prepare and provide Readiness-for-Construction Plans and Specifications necessary to complete the Project as developed, in accordance with all Contract requirements.
- (e) Cooperate with Agency, Utilities and Railroads, and coordinate all Work involving Utilities and Railroads with Agency PM.
- (f) Contact Agency PM for clarification of the Contract. Reduce oral clarification to writing and deliver it promptly to Agency PM for signature confirmation.
- (g) Reduce all oral orders to writing and deliver them promptly to Agency PM for signature confirmation.
- (h) Perform all survey Work under the direction of an appropriate Design Professional and in accordance with **DB Standard Special Provision** 00305. Design Builder shall review data provided by Agency and provide complete field surveys suitable for use in documents prepared for the Contract and meeting applicable requirements of the State Board of Technical Registration.
- (i) Maintain a diary of all Work performed by the survey party. The survey diary shall constitute a Project Record. The survey diary shall contain the date, survey party names, type and location of Work, and Work accomplished. Design Builder shall furnish the originals of the survey diary to Agency PM at the end of the Project in accordance with **DB General Provisions**, Subsection 156.50.

**DB150.05 Cooperative Arrangements** – Design-Builder may enter into a voluntary cooperative arrangement, with Agency for the Work covered by the Contract. Design-Builder may exercise the election to enter into a cooperative arrangement by signing and returning the form provided with the Notice of Award/Notice to Proceed. This form must be returned no later than the time that Design-Builder returns the signed Contract to Agency.

If the cooperative arrangement alternative is selected:

- Within five (5) Calendar Days after receipt of the signed form by Agency, Design-Builder and Agency will identify the Key Personnel who will participate in the orientation workshop. Key Personnel should include Major Subcontractors and other Stakeholders. Agency will arrange the workshop time and location.

- It is intended that the cooperative arrangement will result in agreements that establish an environment of cooperation between the Parties, and will allow all Contract requirements to be achieved effectively and efficiently by both Design-Builder and Agency.
- A definitive working arrangement for Design-Builder and Agency will be developed and, if agreed at the workshop, committed to writing.
- Either Design-Builder or Agency may withdraw from the cooperative arrangement upon written notice to the other. However, no claim or dispute settled or change approved during the existence of the cooperative arrangement shall be revived.
- The sole remedy for nonperformance of the cooperative arrangement shall be the ability to withdraw from the cooperative arrangement, as stated in the paragraph immediately above.

**DB150.20 Inspection** – Design-Builder shall be responsible for Inspection of all Work through its Project Quality Manager and staff in accordance with the procedures set forth in the Quality Plan and **DB General Provisions**, Sections 154, 155, and 156. Project Quality Manager and staff are not authorized to alter or waive any provisions of the Contract.

**(a) Inspection by Agency** –Agency may Inspect all Work and Materials, including Material production, fabrication, and manufacture. Inspection may include Design-Builder's compliance with applicable safety requirements.

Agency's Inspections and tests are for the sole benefit of Agency and do not constitute any of the following:

- Relief of Design-Builder's responsibility for providing adequate Quality Management
- Relief of Design-Builder's responsibility for damage to the Work or damage to or loss of the Materials before Final Acceptance
- Interim or Final Acceptance of the Work or Materials
- Waiver of any Contract obligation or relief from performance of the Contract in accordance with its terms

**(b) Access; Uncovering of Work** - All Materials and each part or detail of the Work shall be subject to Inspection by Agency representatives. Agency PM and staff shall be allowed full access and shall be furnished with necessary information and assistance by Design-Builder to make a complete and detailed Inspection.

If Agency PM requests it, Design-Builder, at any time before Final Acceptance, shall remove or uncover such portions of the finished Work as may be directed. After examination, Design-Builder shall restore said portions of the Work to the standard required by **Design-Builder Specifications**. If the Work thus exposed or examined proves to be in compliance with all Contract requirements, the uncovering or removing and the replacing of the covering or making good of the parts removed may be paid for as Extra Work. But, if the Work so exposed or examined proves not to be in compliance with all Contract requirements, or if Design-Builder failed to document its Work or complete and/or document its Quality Management activities related to the Work, the uncovering or removing and the replacing of the covering or making good of the parts removed will be at Design-Builder's expense. Design-Builder shall remove and replace concrete foundation for Pavement or

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cement concrete Pavement rejected as a result of core tests at Design-Builder's sole expense.

Design-Builder shall provide at least a 24-hours' notice, or such other notice to which the Parties have agreed, before beginning Work on any item and before resumption of Work on an item after an extended break in the Work.

When a unit of government, political subdivision, Utility, or Railroad is to pay a portion of the cost of the Work covered by this Contract, Design-Builder shall provide reasonable access to such Entities for purposes of inspecting the Work. Such inspection shall in no sense make the unit of government, political subdivision, Utility, or Railroad a party to this Contract, and shall in no way interfere with the rights of either Party hereunder.

**(c) Removal of Unacceptable or Unauthorized Work** - All Work that does not conform to all Contract requirements shall be considered unacceptable unless otherwise determined Accepted by Agency.

Unacceptable Work, whether caused by poor workmanship, defective Materials, damage through carelessness, or any other cause found to exist prior to Final Acceptance, shall be removed immediately and replaced at Design-Builder's expense in an acceptable manner irrespective of the presence of, or lack of, an Agency representative at the time the Work was originally completed. This clause shall have full effect regardless of the fact that the defective Work may have been done or the defective Materials used with the full knowledge of Agency's representative. The fact that Agency representative, including Agency PM, may have previously overlooked such defective Work shall not constitute Final Acceptance of any part of it.

For Work that does not conform to the requirements of the Contract, but is Accepted by Agency, Agency will Accept the Materials or Work as suitable for the intended purpose, adjust the amount paid to account for diminished cost to Design-Builder or diminished value to Agency, document the adjustment, and provide written documentation to Design-Builder regarding the basis of the adjustment.

**(d) Inspection Facilities** – Design-Builder shall furnish walkways, railings, ladders, tunnels, platforms and other facilities necessary to permit Agency to have safe access to the Work to be inspected. Design-Builder shall require producers and fabricators to provide safe inspection access as requested by Agency.

**(e) Sampling** – Design-Builder shall furnish Agency with samples of Materials that Agency will test. All of Design-Builder's costs related to this required sampling are incidental.

**(f) Inspection by Third Parties** – Where third parties have the right to inspect the Work, Design-Builder shall coordinate with Agency and shall provide safe inspection access.

#### **DB150.40 Cooperation, Management, and Superintendence by Design-Builder**

**(a) Design-Build Management Personnel** - Design-Builder shall furnish all required management personnel, as specified in the Contract Documents and in **DB Special Provisions**, SP 150.40(a).

**(b) Replacement of Design-Build Management Personnel** - If Agency discovers information that leads Agency to reasonably believe a person selected by Design-Builder is unqualified, does not perform satisfactory Work, or whose conduct interferes with the progress of the Work, Design-Builder shall replace such person upon the request of Agency. Design-Builder shall provide Agency at least 15 Calendar Days prior written notice of the proposed replacement and request Agency's authorization, which shall not be unreasonably withheld by Agency.

**(c) Cooperation with Agency** - Design-Builder shall cooperate with Agency personnel in prosecution of the Project as follows:

(1) Design-Builder shall keep at a central location available within the Project Site one (1) complete set of Contract Documents at all times. At each Work Location when Work is being performed, Design-Builder's Construction Manager, or a delegated subordinate, shall possess one (1) complete set of Contract Documents.

(2) Design-Builder shall cooperate in good faith with Agency, Inspectors, and other contractors in performance of the Work.

(3) Design-Builder shall provide access, facilities and assistance to Agency in establishing such lines, grades and points as Agency requires.

(4) Design-Builder shall carefully protect and preserve Agency's marks and stakes.

(5) Design-Builder shall provide all assistance reasonably required by Agency to obtain information regarding the nature, quantity, and quality of any part of the Work.

(6) Design-Builder shall allow Agency reasonable access to the Project Records at all times. To the extent permitted by public records laws, Agency will make reasonable efforts to honor Design-Builder's request for protection of confidential information.

(7) Design-Builder shall furnish Agency all data necessary to determine the actual cost of all, or any part, of the Work.

(8) Design-Builder shall diligently pursue progress of the Work according to the Baseline Progress Schedule requirements.

(9) Design-Builder shall coordinate and control all Work required under the Contract, including without limitation the Work performed by Subcontractors.

**(d) Replacement of Design-Builder's Consultants and Subcontractors** - If Agency discovers information that leads Agency to reasonably believe a consultant, Subcontractor or Major Subcontractor is unqualified to perform the Work; Design-Builder shall replace such Major Subcontractor, Subcontractor, or consultant upon the request of Agency.

Design-Builder shall provide Agency at least 15 Calendar Days' prior written notice of the proposed replacement and request Agency's authorization, which shall not be unreasonably withheld by Agency.

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**(e) Use of Consultants** – When indicated by Special Provision, Design-Builder is advised that the availability of Agency personnel on a Project is limited and Agency may hire consultants to perform some of its responsibilities for Material testing, Material weighing and checking, and/or surveying. Design-Builder shall provide Agency with a written notification that such personnel are needed a minimum of 72 hours before performing Work requiring Material testing, Material weighing and checking, and/or surveying. If Design-Builder suspends Work for more than three (3) days on Work items requiring Material testing, Material weighing and checking, and/or surveying by Agency, Design-Builder shall again provide notice as set forth above.

Agency will not be responsible for delays occasioned by Design-Builder's failure to provide the written notice. Design-Builder shall provide such notice whether or not the Agency hires a consultant to perform the required services.

**DB150.55 Cooperation with Other Contractors** - Agency reserves the right to perform other work on or near the Project Site, including without limitation any Materials site, with forces other than those of Design-Builder. If such work takes place within or next to the Project Site, Design-Builder shall have the following obligations:

- (a)** Design-Builder shall coordinate Work with all other contractors or forces.
- (b)** Design-Builder shall cooperate in good faith with all other contractors or forces.
- (c)** Design-Builder shall perform the Work set forth in the Contract in a way that will minimize interference and delay for all forces involved.
- (d)** Design-Builder shall place and dispose of the Materials being used so as not to interfere with the operations of other forces.
- (e)** Design-Builder shall join the Work with that of other forces in a manner acceptable to Agency, and shall perform it in the accepted sequence with the work of the other forces.

Agency will resolve any disagreements that may arise among Design-Builder and other work forces, or between Design-Builder and Agency. Agency's decision in these matters is final.

When the schedules for the Work of Design-Builder and the work of other forces overlap, Agency will require that each contractor involved submit a current, realistic Baseline Progress Schedule to Agency. Before Agency accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, Agency will determine acceptable schedules.

Design-Builder waives any right it may have to make claims against Agency for any damages or claims that may arise because of inconvenience, delay, or loss due solely to the presence of other contractors working on the Project Site.

If the Contract gives notice of work to be performed by other forces that may affect Design-Builder's Work under the Contract, Design-Builder shall include any costs associated with coordination of the Work in the appropriate Price Item or as a portion of a Price Item.

In an emergency, contractor most immediately able to respond may repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

**DB150.60 Construction Equipment Restrictions**

**(a) Load and Speed Restrictions for Construction Vehicles and Equipment** – Design-Builder shall comply with legal mass (weight) and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site.

Design-Builder shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions, unless applicable Laws or Agency-Supplied Specifications provide otherwise:

(1) Design-Builder shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on subgrades and aggregate bases.

(2) Design-Builder shall restrict masses (weights) to legal loads, and shall travel at speeds of no more than 45 mph or the posted construction speed, whichever is less, on treated bases, pavement, or wearing Courses.

(3) Design-Builder shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of Agency. Design-Builder shall make any such request in writing, describing the loading details and the arrangement, movement, and position of the Equipment on the Structure. Design-Builder shall comply with any restrictions or conditions included in Agency's written permission.

(4) No existing weight restrictions applicable to Work Locations at the time construction Work begins thereon can be changed, suspended, or disregarded without the express written authorization of the Agency.

**(b) Protection of Buried Items** - Design-Builder shall use temporary fill or other methods to avoid overload of pipes, box culverts, and other items and Structures that are covered, or to be covered, by fill or backfill.

**(c) Responsibility for Damages** - Design-Builder shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. Agency's permission to cross Bridges and other Structures according to Subsection 150.60(a) will not relieve Design-Builder from responsibility for load-caused damages.

**DB150.70 Detrimental Operations** - Design-Builder shall avoid operations whose methods, conditions, or timing may injure people or damage property or the Work. Damage may include without limitation, staining surfaces with mud or asphalt. When damage to Agency-owned or controlled property occurs, Agency will determine if it is to be corrected by repair, replacement, or compensatory payment by Design-Builder. If compensatory payment is required, Agency will determine the amount. Compensatory payment may be deducted from monies due or to become due to Design-Builder under the Contract.

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**DB150.75 Protection and Maintenance of Work During Construction** - Design-Builder shall protect and maintain the Work during construction and until Third Notification has been issued. For the purposes of this Subsection, “maintenance” shall include measures to prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. Design-Builder shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

If the Contract requires the placement of a Course upon a previously-constructed Course or Subgrade, Design-Builder shall maintain the previous Course or Subgrade during all construction operations.

Design-Builder shall include costs of protecting and maintaining the Work during construction in the Price Items for the various Price Centers. Design-Builder will not be paid an additional amount for this Work, unless otherwise specified.

Agency will immediately notify Design-Builder of Design-Builder’s noncompliance with this Subsection 150.75. If Design-Builder fails to remedy unsatisfactory protection or maintenance within 24 hours after receipt of such notice, Agency may proceed immediately to remedy the deficiency, and deduct the entire cost from monies due or to become due Design-Builder under the Contract.

**DB150.80 Removal of Unacceptable and Unauthorized Work** - Design-Builder shall correct or remove unacceptable or unauthorized work, as directed by Agency in writing, at Design-Builder’s sole expense. Design-Builder shall replace such work with Work and Materials conforming to the requirements of the Contract.

For the purposes of this Subsection, “unauthorized work” shall include without limitation the following:

- Work that extends beyond lines shown on the Plans or otherwise authorized by Agency
- Work that is contrary to Agency’s instructions
- Work that is conducted without Agency’s written authorization

Agency will not pay Design-Builder for unauthorized or unacceptable work. Agency may issue a written order for the correction or removal of such work at Design-Builder’s expense.

If, when ordered by Agency, Design-Builder fails to correct or remove unacceptable or unauthorized work, Agency may have the correction, or removal and replacement, done by other forces and deduct the entire cost from monies due or to become due Design-Builder under the Contract.

**DB150.90 Final Inspection**

**(a) On-Site Work** - Agency will inspect each Work Location and the construction Work performed therein at a time close to the completion of On-Site Work.

When all On-Site Work at any Work Location has been completed, including but not limited to Change Order Work and Extra Work, except plant establishment and Punch-List Items, Agency will issue Interim Second Notification for that Work.

Within 15 Calendar Days after Agency receives Design-Builder's written notification that all Punch-List Items related to On-Site Work at a Work Location have been completed, Agency will review the Project and notify Design-Builder that all Punch-List Items for that Work Location are complete or give written instruction regarding incomplete or unsatisfactory Punch-List Items.

**(b) All Contract Work Except Plant Establishment and Punch-List Items** - Agency will issue Final Second Notification when Design-Builder has satisfactorily completed all Work, including the submittal of all Design Documents, except plant establishment and Punch-List Items.

Within 15 Calendar Days after Agency receives Design-Builder's written notification that all Punch-List Items related to all Work for the Project have been completed, Agency will review the Punch-List Items and notify Design-Builder that all Punch-List Items are complete or give written instruction regarding incomplete or unsatisfactory Punch-List Items.

**(c) All Contract Work** - Agency will issue the Third Notification when Design-Builder has satisfactorily accomplished all of the following:

- (1) Design-Builder has completed all On-Site Work required under the Contract;
- (2) Design-Builder has submitted all required Design Documents, certifications, bills, forms, warranties, and other documents, including all Quality Management documentation; and
- (3) Design-Builder has delivered to Agency a complete listing of all required warranties, if any.

**DB150.91 Post-Construction Review** - Design-Builder shall attend a post-construction review meeting, to be held by Agency no sooner than 15 Calendar Days after issuance of Final Second Notification. The time and place of this meeting will be announced by Agency at least 15 Calendar Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects. Design-Builder's attendance at the post-construction review meeting is mandatory.

**DB150.95 Final Acceptance** - After Agency issues Third Notification to Design-Builder, Agency will issue final payment and acknowledge Final Acceptance. Agency will notify Design-Builder in writing of the date of Final Acceptance within seven (7) Calendar Days after final payment or as soon thereafter as is practicable.

**DB150.96 Maintenance Warranties and Guarantees** - Prior to Third Notification, Design-Builder shall transfer to Agency all unexpired manufacturers' warranties and guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees shall recite that they are enforceable by Agency.

**DB150.97 Responsibility for Materials and Workmanship**

**(a)** Design-Builder shall perform the Work according to Readiness-for-Construction Plans and Specifications and other Contract requirements.

**(b)** Whether before or after Final Acceptance, Design-Builder shall be responsible for each of the following:

**(1)** Correcting or repairing any defects in, or damage to, the Work that results from the use of improper materials or workmanship;

**(2)** Replacing, in its entirety, the Work affected by the use of improper materials or workmanship; and

**(3)** Correcting or repairing any Work, Materials, Structures, existing surfacings, pavement, Utilities, or sites, including, without limitation, Wetlands, damaged or disturbed in that correction, repair, or replacement.