

## DB Section 180 - Prosecution and Progress

**DB180.00 Scope** - This section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

**DB180.05 Assignment / Delegation of the Contract** - Unless Agency gives prior written consent, Design-Builder shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including, without limitation, the following:

- The power to execute or perform the Contract
- Any of Design-Builder's right, title, or interest in the Contract
- Any of Design-Builder's Contract duties or obligations

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void. Such Agency consent will not normally be given except for the assignment of funds due under the Contract. If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, such assignment, delegation or disposition shall not relieve Design-Builder or its Surety of any part of their responsibility under the Contract, and Design-Builder shall remain jointly and severally liable under the Contract.

**DB180.06 Assignment of Funds Due Under the Contract** - Assignment of funds due or to become due under the Contract to Design-Builder shall not be permitted unless all of the following conditions are met:

- The assignment request is made on the form provided by Agency
- Design-Builder secures the written consent of Design-Builder's Surety to the assignment
- Agency consents to the assignment

**DB180.10 Responsibility for the Contract** - Design-Builder shall direct and coordinate the operations of its employees, Subcontractors, and agents performing Work and see that Agency's orders are carried out promptly. Design-Builder's failure to direct, supervise, and control its employees, Subcontractors, and agents performing Work will result in one or more of the following actions, as Agency deems appropriate:

- Suspension of the Work
- Withholding of Contract payments, as necessary to protect Agency
- Ordering removal of individuals from the Project Site
- Termination of the Contract

**DB180.15 Agency's Right to do Work at Design-Builder's Expense** - If Design-Builder neglects to prosecute the Work properly or fails to perform any provision of the Contract in a timely manner, Agency may, after two (2) Calendar Days' written notice, correct the deficiencies or perform the Work at Design-Builder's expense. In situations where Agency

reasonably believes there is danger to life or property, Agency may immediately and without notice correct the deficiencies or perform the Work at Design-Builder's expense. Any amounts expended in accordance with this Subsection may be withheld from monies due or to become due to Design-Builder under the Contract.

Action by Agency under this provision will not prejudice any other remedy it may have.

### **DB180.20 Subcontracting Limitations**

**(a) Design-Builder's Organization** - Design-Builder shall perform with its own organization Work amounting to at least 30% of the original Contract Amount. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).

**(b) Own Organization** - For purposes of this Subsection, the term "own organization" includes only employees of Design-Builder, Equipment owned or rented by Design-Builder, incidental rental of operated Equipment, and Materials and Equipment to be incorporated into the Project purchased or produced by Design-Builder.

**(c) Rental of Operated Equipment** - Agency will not permit a Disadvantaged Business Enterprise (DBE) firm to provide services without a subcontract covering all Work to be performed by the DBE firm. For non-DBE firms, the use of Equipment rented with operators will be permitted without a subcontract only when the following requirements are met.

**(1) Written Request** - Design-Builder has submitted to Agency a written request describing the service to be provided, its estimated cost, and the estimated duration.

**(2) Limitations** - The use of Equipment rented with operators is limited to the following services:

- Truck hauling of Materials (if the trucking is by an owner/operator, in addition to the requirements of **DB General Provisions**, Subsection 170.65(e), each truck shall have the name of the owner/operator clearly displayed on the side of the truck).
- Performance of minor, Incidental, short-duration work, if performed under the direct supervision of Design-Builder or a Subcontractor, with Equipment not customarily owned, leased, or operated by a contractor, or with Equipment that is temporarily unavailable to Design-Builder.

**(3) Submittals** - Design-Builder shall provide Agency with a copy of the rental agreement or purchase order covering the service to be provided, together with copies of the data required under **DB General Provisions**, Subsection 170.65(e). Design-Builder shall make certain that the provider of services submits payrolls required under **DB General Provisions**, Section 170, and complies with applicable Contract provisions. The service provider will not be considered a Subcontractor under the Contract, but will be considered an agent of Design-Builder in the performance of the Work.

**(4) Revocation of Consent** - Agency may revoke its approval of services provided through rented, operated Equipment at any time Agency determines that the work is

outside that authorized under Subsection 180.20(c)(2). Unless Design-Builder promptly submits to Agency a subcontract agreement as required under DB180.21, the service provider shall be immediately removed from the Project Site.

### **DB180.21 Subcontracting**

**(a) Submittal of Subcontracts** - Design-Builder shall submit to Agency a duplicate original of each subcontract entered into during the term of the Contract, including any amendments or modifications to those subcontracts, prior to performance of any of the Work covered by the subcontract. When required by Agency PM, the submittal shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. Agency will review Design-Builder's submission to verify compliance with all Contract requirements and confirm the percentage of Work subcontracted.

If the Subcontractor is providing any of the insurance coverages as permitted under **DB General Provisions**, Subsection 170.70(a), a copy of the insurance certificate(s) must be included with the subcontract for Agency for Review and Comment, prior to commencement of Work by Subcontractor. Agency will review the insurance certificate(s) for compliance with the Contract requirements and will respond within 28 Calendar Days after receipt of the certificate(s).

A written request for consent to subcontract any portion of the Contract at any tier utilizing a DBE firm shall be submitted to Agency PM for approval prior to the Subcontractor beginning work on the Project. If a DBE Subcontractor is providing any of the insurance coverages as permitted under **DB General Provisions**, Subsection 170.70(a), a copy of the insurance certificate(s) must be included with subcontract submitted to Agency for approval prior to commencement of Work by Subcontractor. Agency will review the insurance certificate(s) for compliance with the Contract requirements and will respond within 35 Calendar Days after receipt of the request to subcontract (28 Calendar Days to review and approve the certificate(s) of insurance, plus seven (7) Calendar Days to review and approve the subcontract request).

**(b) Submittal of Requests** - Design-Builder must submit Report on Subcontracting forms for each subcontract for any portion of the Contract, at any tier, on Agency's form, available from Agency PM. Design-Builder shall attach a duplicate original subcontract agreement along with any applicable certificate(s) of insurance. Design-Builder must also submit in writing any amendments or modifications proposed to subcontract agreements, at any tier, before the affected Work begins.

**(c) Substitution of Major Subcontractors** - See Subsection 180.35.

**(d) Terms of Subcontracts** - Subcontracts shall provide that Work performed under the subcontract shall be conducted and performed according to the terms of the Contract. All subcontracts, including Design-Builder's with its first-tier Subcontractors and those of the Subcontractors with their subcontractors, and any other lower-tier subcontracts, shall contain a clause or condition that if Design-Builder or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless

DB 180.21(d)

payment is subject to a good-faith dispute as defined in ORS 279C.580. Subcontracts shall include the following terms:

(1) A payment clause that obligates Design-Builder to pay its first-tier Subcontractors for satisfactory performance under their subcontracts within 10 Calendar Days of Design-Builder's receipt of payment from Agency for the subcontracted Work.

(2) An interest clause that obligates Design-Builder, if payment is not made within 30 Calendar Days after receipt of payment from Agency, to pay to the first-tier Subcontractor interest on amounts due in the case of each payment not made in accordance with the payment clause. Design-Builder or first-tier Subcontractor shall not be obligated to pay interest if the only reason that Design-Builder or first-tier Subcontractor did not make payment when payment was due is that Design-Builder or first-tier Subcontractor did not receive payment from Agency when payment was due.

The interest shall be for the period beginning on the Calendar Day after the required payment date and ending on the date on which payment of the amount due is made, and shall be computed at the rate specified in ORS 279C.515(2).

(3) A provision requiring the first-tier Subcontractor to include a payment clause and an interest clause conforming to the standards of ORS 279C.580(3) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Materials supplier. This payment clause shall require Design-Builder to return all retainage withheld from the Subcontractor, whether held by Design-Builder or Agency, as specified in **DB General Provisions**, Subsection 195.50(d).

(4) A provision requiring the Subcontractor to have a Public Works Bond filed with the Construction Contractors Board before entering onto the Project Site or moving Materials, Equipment, or workers onto the Project Site, or performing any Work, unless exempt under the terms of ORS 279C.836.

(5) A provision requiring that the Subcontractor's workers shall be paid not less than the minimum hourly rate of wage established by the Commissioner of the Bureau of Labor and Industries in accordance with ORS 279C.838.

(6) A provision that the Subcontractor shall file or cause its Surety to file certified statements with Agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid to each of its workers performing Work on the Project, and further certifying that none of its workers performing Work on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage established by the Commissioner of the Bureau of Labor and Industries for the Project in accordance with the requirements of ORS 279C.815(2)(b) and ORS 279C.845.

**(e) Design-Builder's Responsibilities** - Design-Builder shall remain solely responsible for administration of the subcontracts, including, but not limited to, the following:

- Performance of subcontracted Work
- Progress of subcontracted Work

- Payments for accepted subcontracted Work
- Disputes and claims for additional compensation regarding subcontracted Work

The subcontract shall not create a contract between Agency and the Subcontractor, shall not convey to the Subcontractor any rights against Agency, and shall not relieve Design-Builder or Design-Builder's Surety of any of their responsibilities under the Contract.

**(f) Failure to Comply** - Failure to comply with this Subsection will be cause for Agency to take action reasonably necessary to obtain compliance. This action may include, but is not limited to, the following:

- Suspension of the Work
- Withholding of Contract payments as necessary to protect Agency
- Termination of the Contract

**DB180.22 Payments to Subcontractors and Agents of Design-Builder** - In making payment to Subcontractors and to its other agents performing Work and furnishing Materials and Equipment to be incorporated into the Project, Design-Builder shall assume all losses resulting from overpayment.

If requested in writing by a first-tier Subcontractor, Design-Builder shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to Agency, or pay document provided by Agency to Design-Builder, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

**DB180.30 Materials, Equipment, and Work Force** - Design-Builder shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute the Work. Design-Builder shall use only Equipment of adequate size and condition to meet the requirements of the Work and Contract Specifications, and to produce a satisfactory quality of Work. Upon receipt of Agency's written order, Design-Builder shall immediately remove, and not use again on the Project without Agency's prior written consent, Equipment that, in Agency's opinion, fails to meet Contract Specifications or produce a satisfactory product or result.

The workforce shall be trained and experienced. Upon receipt of Agency's written order, Design-Builder shall immediately remove from the Project Site, and shall not employ again on the Project without Agency's prior written consent, any supervisor or employee of Design-Builder or its Subcontractors who, in Agency's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If Design-Builder fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment, and personnel for the proper prosecution of the Work, Agency may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or Agency may terminate the Contract for default.

### **DB180.31 Required Materials, Equipment, and Methods**

**(a) General** - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, Design-Builder shall use the Equipment or methods specified unless otherwise authorized by Agency in writing.

**(b) Substitution of Materials and Equipment to be Incorporated into the Project** - After execution of the Contract, Agency will consent to substitution of Materials and Equipment to be incorporated into the Project as follows:

**(1) Reasons for Substitution** - Agency will consider substitution only under one of the following circumstances:

- The proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency, and utility
- Due to reasons beyond the control of Design-Builder, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence

**(2) Submittal of Request** - Design-Builder shall submit requests for substitution to Agency, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

**(c) Substitution of Equipment Specified to Perform Work** - Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, Design-Builder may submit a request to Agency to use Equipment of a different size or type. Provided, such requests shall not constitute Cost-Reduction Proposals under **DB General Provisions**, Subsection 140.70. The request shall conform to all of the following requirements:

- Be in writing and include a full description of the Equipment proposed and its intended use
- Include the reasons for requesting the substitution
- Include evidence, obtained at Design-Builder's expense and satisfactory to Agency, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment

Agency will consider Design-Builder's request and will provide a written response to Design-Builder, either permitting or denying use of the proposed Equipment. Agency's decision is final.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to all of the following:

- There will be no cost to Agency, either in Contract Amount or in Contract Time

- The permission may be withdrawn by Agency at any time if, in Agency's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract
- If permission is withdrawn, Design-Builder shall perform the remaining Work with the originally-specified Equipment
- Design-Builder shall remove and replace noncompliant Work resulting from the use of Design-Builder's proposed Equipment, or otherwise correct it as Agency directs, at no additional compensation or Contract Time

**(d) Substitution of Methods** - Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, Design-Builder may submit a request for a change by following the provisions of **DB General Provisions**, Subsection 140.70.

**DB180.32 Alternative Materials, Equipment, and Methods** - Whenever the Contract authorizes certain alternative Materials, Equipment, or methods of construction for Design-Builder's use to perform portions of the Work, and leaves the selection to Design-Builder, Agency does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

Design-Builder shall employ only those alternatives that can be used to satisfactorily perform the Work. No additional compensation will be paid for corrective work necessitated by Design-Builder's use of an inappropriate alternative.

### **DB180.35 Key Personnel and Major Subcontractors**

**(a) Key Personnel** - Design-Builder represents that the Key Personnel identified in the Design-Build Agreement meet the applicable minimum qualifications specified in this Subsection. Design-Builder commits to assign the Key Personnel to perform in the capacities identified therein, and represents that the identified Key Personnel shall be available to the extent within Design-Builder's control for the duration of the Contract. Design-Builder commits to undertake all reasonable efforts to provide the Key Personnel on a full time basis for all periods necessary to fulfill Design-Builder's Contract obligations.

#### **(1) Key Personnel Qualifications**

**a. Project Principal** - Shall have demonstrated experience in construction and management of construction on Highway projects with similar size, type of work, complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

**b. Project Manager** - Shall be Design-Builder's representative and single point of contact for the duration of the Contract. Shall have demonstrated experience in construction and management of construction on Highway projects and on projects with similar size; complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

**c. Project Quality Manager** - Shall be an Oregon-registered professional engineer and have demonstrated experience in Highway design and/or construction with at

DB 180.35(a)(1)c.

least five (5) years' experience in Quality Management, including Quality Assurance/Quality Control activities, including preparation and implementation of Quality Plans and procedures for design and/or construction. Should have experience with Agency's Quality Assurance system and documentation, Bridge construction, and Highway paving.

**d. Construction Manager** - Shall have demonstrated experience in construction and management of construction on Highway projects and on projects with similar size, complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

**e. Design Manager** - Shall be an Oregon-registered professional engineer who is an employee of the Designer. Shall have demonstrated experience in managing design for multi-disciplinary Highway projects with similar scope and complexity as this Project. Should have experience with Bridge replacement of Bridges of similar size and type as those involved in this Project.

**f. Design Quality Manager** - Shall be an Oregon-registered professional engineer with a minimum of five (5) years' experience in Quality Management, including Quality Control/Quality Assurance activities, on large Highway design projects with similar scope and complexity as this Project.

**g. Construction Quality Manager** - Shall have a minimum of five (5) years' experience in Quality Management, activities (including management of construction Quality Control programs) on large Highway construction projects that have incorporated the type of construction that is included in this Project.

**h. Safety Manager** - Shall be a Work Zone Safety Supervisor as certified by the American Traffic Safety Service Association or any agency or firm certification program approved by Agency. Shall have a minimum of five (5) years' experience in a Work Zone safety technician or supervisor capacity on large Highway construction projects.

**i. Environmental Manager** - Shall have at least a B.S. or B.A. degree and demonstrated experience in environmental compliance on large Highway construction projects. Shall have experience in managing others in environmental compliance activities. Should have experience with Highway engineering drawings and concepts and working cooperatively and effectively with design engineers and construction staff.

**j. Public Information Manager** - Shall have at least a B.S. or B.A. degree and demonstrated experience related to the areas of responsibility outlined in **DB General Provisions**, Subsection 141.52, Public Information. The Public Information Manager shall be an individual that is capable and qualified through education and/or experience of providing guidance to Design-Builder on outreach and information needs associated with the Project. Shall have demonstrated community outreach, public involvement, communication, record-keeping, and decision-making skills. Shall have experience in managing others in public information activities and experience with major Highway projects. Should have

experience with Highway engineering drawings and concepts DB 180.35(a)(4) cooperatively and effectively with design engineers and construction staff.

**k. Paving Manager** - Shall have demonstrated experience in paving and management of paving work on Highway projects similar to this Project, involving the same or similar environmental/weather conditions as are anticipated on this Project, and involving construction staging and phasing.

**l. Lead Traffic-Control Design Engineer (TCDE)** - Shall be registered in Oregon and shall have demonstrated experience in traffic management on projects of similar scope, nature and complexity as this Project. The TCDE shall be familiar with the MUTCD and with Oregon Laws and Standards. The TCDE must complete the required training and certification related to the development of TMPs and TCPs.

**m. Traffic Control Supervisor (TCS)** - Shall possess a current, valid certificate verifying training as a TCS by one of the following:

- American Traffic Safety Services Association (ATSSA) - requires proof of completion of second day of Oregon State TCS Certification Class
- Oregon State TCS Certification Class
- Other training course approved by ODOT

The TCS shall have completed the above certification within three (3) years of commencement of the Work.

**n. Other Key Personnel** - Agency PM may designate other positions as Key Personnel or change the designation of some of the positions as needed at any time during the term of the Contract.

The Project Manager, the Design Manager, the Lead Bridge Design Engineer, the Construction Manager, and the Lead Traffic Control Design Engineer shall be capable of reading and thoroughly understanding all Plans and Specifications, and shall be thoroughly experienced in performing and supervising the type of Work depicted in the Plans and Specifications.

**(2) Key Personnel to be Located in Project Vicinity** - Key Personnel shall be located in the Project vicinity for the duration of the Contract, except that the Project Principal and Project Quality Manager shall be available and present as necessary to fulfill their Project responsibilities.

**(3) Temporary Absence of Key Personnel** - If any of the Key Personnel shall have a scheduled absence from the Project Site for more than 48 hours, Design-Builder shall inform Agency PM in writing seven (7) Calendar Days in advance of an "acting" to represent the absent Key Personnel.

**(4) Directory of Key Personnel** - Within 15 Calendar Days after NTP, Design-Builder shall submit to Agency PM a directory and organizational chart showing all of its Key Personnel. The directory shall be updated throughout the Contract as changes occur. The directory shall include the names, titles, areas of responsibility, office address and location, office telephone and facsimile numbers, and cellular and/or pager numbers of

DB 180.35(a)(4) el. Design-Builder shall provide information sufficient for Agency to contact any of the Key Personnel on a 24-hour basis for the duration of the Contract.

Agency PM shall provide a directory of Agency's Project staff to Design-Builder.

**(b) Major Subcontractors** - Design-Builder represents that the Major Subcontractors identified in the Design-Build Agreement are duly qualified, available, and have committed the necessary workforce, Equipment, and capital to properly and timely perform the Work for which they have been contracted.

**(c) Substitution of Key Personnel and Major Subcontractors** - Design-Builder shall not substitute Key Personnel and Major Subcontractors. Notwithstanding the procedures set out herein, Agency will have no obligation to consider or approve a request to substitute, but may, in its sole discretion, do so.

**(1) Proposed Replacements** - To seek to add, delete, or substitute any Key Personnel or a Major Subcontractor, Design-Builder must submit to Agency PM a request at least 30 Calendar Days in advance of any desired replacement.

**(2) Required Information** - Design-Builder shall submit with any request for substitution (a) the name and qualifications of the proposed replacement Key Personnel or Major Subcontractor; (b) the same selection evaluation information as was specified for inclusion in the SOQ and Proposal; and (c) the reason for the proposed change. If Agency elects to consider the request, Agency, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify Design-Builder of its determination whether or not to allow the substitution within fourteen (14) Calendar Days of the original request. Failure of Agency to respond within the response period shall indicate Agency's election to not consider the request.

**(3) Agency Written Consent Required** - Agency, in its sole discretion, will determine whether or not to consider or authorize the replacement of any Key Personnel or Major Subcontractors, which decision shall be final. Any authorization will be in writing, and Design-Builder shall not change Key Personnel or Major Subcontractors except upon receipt of such written consent from Agency PM. Agency PM may require additional explanation from Design-Builder as to the reason for the replacement.

#### **DB180.40 Limitation of Operations**

**(a) In General** - Design-Builder shall comply with all Contract provisions and shall perform its Work in accordance with the following:

- Conduct the Work at all times so as to cause the least interference with traffic
- Not begin Work that may allow damage to Work already started

**(b) On-Site Work** - Design-Builder shall not begin On-Site Work until Design-Builder has completed the following:

- Received Notice to Proceed
- Received Review and Comment on the Safety Plan
- Received Review and Comment on the Baseline Progress Schedule

- Received Acceptance of the Quality Plan or Acceptance of a partial Quality Plan covering the portion of the Work to be performed
- Received Review and Comment on the Traffic Control Plan
- Received Review and Comment on the Pollution Control Plan
- Received Review and Comment on the Erosion and Sediment Control Plan
- Met with Agency at the required pre-construction conference
- Safety Manager has been appointed and has commenced duties
- Confirmed that all Subcontractors have the required Public Works Bonds on file with the Construction Contractors Board

**DB180.41 Monthly Progress Submittals** - Design-Builder shall submit each of the following to Agency PM with Design-Builder's Pay Request.

**(a) Baseline Progress Schedule**

**(1)** Design-Builder shall prepare and submit to Agency PM for Review and Comment an updated Baseline Progress Schedule in both hard copy and electronic format acceptable to Agency. The Baseline Progress Schedule shall show the order in which Design-Builder proposes to carry on the Work, the date on which it will start the major items of Work (including, but not limited to, excavation, drainage, paving, Structures, mobilization, soil erosion, and sediment control) and the critical features of such Work (including procurement of Materials, plant, and Equipment), and the contemplated dates for completing the same. The schedule shall be in a suitable scale to indicate graphically the total percentage of Work scheduled to be completed at any time. The Baseline Progress Schedule shall include, at a minimum, the following items:

- Major Work items and activities to be performed
- Seasonal weather limitations
- Phase duration or milestone events, as applicable

When preparing the Baseline Progress Schedule, identifying Price Centers, and preparing related documents, Design-Builder may make minor adjustments to the Work Location limits to more accurately represent its approach to designing and constructing the Project, subject to Agency's Review and Comment. Once Work has commenced, Design-Builder may not make adjustments to the Work Location limits.

**(2)** Design-Builder's Project Manager shall submit the updated Baseline Progress Schedule to the Project Quality Manager. The Project Quality Manager shall independently review the updated Baseline Progress Schedule for Agency, and upon completion shall certify to Agency that the actual progress to date shown on the updated Baseline Progress Schedule accurately represents completed quantities of Work, and that the planned Work complies with all Contract requirements and restrictions. Further, the Project Quality Manager shall disclose and discuss all excessive leads, lags, assigned constraints, retained logic, and all other schedule aspects of interest. The Project Quality Manager shall submit the updated Baseline Progress Schedule to Agency PM, along with its certification and disclosure reports. The Project Quality Manager shall facilitate resolution of all questions and comments on the updated Baseline Progress Schedule from Agency.

**(3)** The purpose of this scheduling requirement is to ensure adequate planning and execution of the Work and to evaluate the progress of the Work. Review and Comment by Agency shall not be construed to imply approval of any particular method or sequence of construction or to relieve Design-Builder of providing sufficient Materials, Equipment, and labor to guarantee completion of the Project in accordance with all Contract requirements. Review and Comment shall not be construed to modify or amend the Contract, Interim Completion Dates, or the Contract Completion Date. The updated Baseline Progress Schedule may be utilized to facilitate Agency's QA activities.

**(4)** Design-Builder shall perform ongoing review of the updated Baseline Progress Schedule and progress of the Work. At the end of each progress estimate period, but not less often than once a month, Design-Builder shall prepare an updated Baseline Progress Schedule and submit it to the Project Quality Manager. The Project Quality Manager shall independently review the updated Baseline Progress Schedule for Agency, and upon completion shall certify to Agency that the actual progress to date shown on the updated Baseline Progress Schedule accurately represents completed quantities of Work, and that the planned Work complies with all Contract requirements and restrictions. Further, the Project Quality Manager shall disclose and discuss all excessive leads, lags, assigned constraints, retained logic and all other schedule aspects of interest. The Project Quality Manager shall submit the updated Baseline Progress Schedule in both hard copy and electronic format acceptable to Agency PM, along with its certification and disclosure reports. The Project Quality Manager shall facilitate resolution of all questions and comments on the updated Baseline Progress Schedule from Agency.

**(5)** If, in the opinion of Agency, the specified Work falls behind the Baseline Progress Schedule, Design-Builder shall take such actions as are necessary to improve its progress. If Design-Builder is behind schedule any month, it shall indicate what measures it will take in the next 30 Calendar Days to put the Work back on schedule so as to meet Interim Completion Dates and the Contract Completion Date. Design-Builder shall not be entitled to any additional compensation on account of the requirement to put the Work back on schedule unless provided for in other provisions of the Contract. In preparing the revised Baseline Progress Schedule, Design-Builder shall consider increasing its workforce, construction plant and Equipment, or number of work shifts. If Agency finds the proposed Baseline Progress Schedule revision not acceptable, Agency PM may require Design-Builder to submit a new revision.

**(6)** The Baseline Progress Schedule and updates will be reviewed by Agency and Design-Builder at least monthly.

**(7)** Design-Builder shall employ and supply a sufficient force of workers, Materials, and Equipment and shall prosecute the Work with such diligence so as to (a) maintain the rate of progress indicated on the Baseline Progress Schedule, (b) prevent Work stoppage, and (c) ensure completion of the Project within the Contract Time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely Design-Builder's obligation and shall not be charged to Agency unless provided for in other provisions of the Contract.

**(8)** Design-Builder shall furnish weekly Work schedules indicating the number of personnel, kind of Equipment, and location and nature of the Work to be performed.

**(9)** If Design-Builder fails to submit a Baseline Progress Schedule or any revision or update when required, Agency may suspend payment.

**(b) Monthly Progress Reports** - Design-Builder shall submit a Monthly Progress Report, consisting of the following:

- A progress narrative
- Quality certifications
- A safety report
- A monthly Baseline Progress Schedule update
- A Change Order status report
- A monthly subcontract report
- An updated Contract Submittals List
- A summary of planned or unplanned Hazardous Materials and contaminated substance activities

**(c) Progress Narrative** - Design-Builder shall prepare and submit a monthly progress narrative. The progress narrative shall summarize all of the following information:

- Activity and progress for the Contract, including design and construction, and identification of the start and completion dates of Work on any Price Centers
- Achievement of any Milestones
- Quality Management efforts, including results of any Design Reviews and/or quality audits
- Problems/issues that arose during the period and remaining problems/issues to be resolved
- Resolution of problems/issues raised in previous progress reports or resolved during the period
- Critical schedule issues and proposed resolutions, proposal of actions planned to correct any negative float and explanation of potential delays and/or problems and their estimated impact on performance
- Issues which may need Agency's attention or action for the next month, including Design Reviews

**(d) Change Order Status Report** - Design-Builder shall submit a report of outstanding Change Order requests containing all of the following:

- Design-Builder's and Agency's Change Order identification numbers and/or coding
- The issue title
- A brief description of the change
- Any outstanding issues to be resolved
- The estimated cost and time implications
- The projected resolution date

DB 180.41(e)

**(e) Subcontract Report** - As part of the Monthly Progress Report, Design-Builder shall submit a Subcontractor Paid Summary Report (subcontract report) providing Agency with an updated list of Subcontractors (design and construction, at all tiers, including labor only). Design-Builder shall specifically identify DBEs in the report. The location where each Subcontractor worked shall also be shown.

Design-Builder shall also report the results of all procurements completed in the previous month, including those procured competitively and by other means. Design-Builder shall indicate for each the type of Work or product procured, and size of the procurement (in dollars), the names of firms competing for the subcontract, and the name of the successful Subcontractor.

The report shall indicate the total number of Subcontractors and the total dollar value of all subcontracts awarded to date. The report shall show the total number of subcontracts, regardless of tier, and all of the following:

- The original subcontract amount
- The value of any modification to date
- Payments made to date
- Tier of the subcontractor
- Appropriate signatures

**(f) Contract Submittals List** - Within 30 Calendar Days of NTP, Design-Builder shall prepare and submit a Contract Submittals List covering all submittals required during the first six (6) months of the Contract. Thereafter, Design-Builder shall submit monthly updates with the Monthly Progress Report. The updated list shall show the record of submittals made to date and shall show the submittals due over the next three-month period.

**(g) Summary of Hazardous Materials Activity** - Design-Builder shall submit a monthly summary of planned or unplanned activities related to Hazardous Materials.

**(h) Quality Certifications** - The Project Quality Manager shall independently review the submittals for Agency, and upon completion shall certify to Agency that the information is accurate and complete. Additionally, the Project Quality Manager shall certify that all Work shown as complete for the previous progress estimate period, including that of the Design Professionals, subcontractors at all tiers, suppliers, and fabricators, has been checked and/or inspected by the Project Quality Managers' quality staff, and that all Work complies with all Contract requirements.

The Project Quality Manager shall also certify to Agency that the Quality Plan and all measures, protocols, and procedures provided therein, are functioning properly and are being followed, and that Quality Management is functioning independently from the Work production.

## **DB180.42 Meetings and Conferences**

**(a) Design Mobilization Meeting** - Design-Builder's Project Manager shall consult with Agency PM and shall arrange and lead a design mobilization prior to Design-Builder's initiating Design Services.

The agenda shall be developed in consultation between Agency PM and Design-Builder and prepared by Design-Builder, and shall include, at a minimum, all of the following:

- Design development and Design Review process
- Description and breakdown of Design Units
- Design development and Design Review schedules
- Design Quality Management

**(b) Pre-Design Meeting** - A maximum of 15 Calendar Days prior to beginning Design Services, unless otherwise authorized in writing by Agency, Design-Builder shall meet with Agency at a time mutually agreed upon. Among other matters, the purpose of the meeting will be to establish the level of detail to be required for measuring progress with regard to those design Price Items referenced in **DB General Provisions**, Subsection 190.10(a).

**(c) Pre-Construction Conference** - A maximum of 15 Calendar Days prior to beginning construction, unless otherwise authorized in writing by Agency, Design-Builder shall meet with Agency for a pre-construction conference at a time mutually agreed upon. Among other matters, the purpose of the meeting will be to establish the level of detail to be required for measuring progress with regard to construction Price Items, in accordance with the provisions of **DB General Provisions**, Section 190.

Before meeting with Agency for the pre-construction conference, Design-Builder shall hold a group Utility scheduling meeting with representatives from the Utility companies involved with the Project. Design-Builder shall incorporate the Utilities' time needs into Design-Builder's Baseline Progress Schedule submitted at the pre-construction conference.

**(d) Other Meetings** - Other meetings shall include, but not be limited to, those referenced in **DB General Provisions**, Subsection 190.10.

**DB180.43 Commencement and Performance of Work** - From the time of commencement of the Work to the end of Contract Time, Design-Builder shall perform its Work in the following manner:

- Provide adequate Materials, Equipment, labor, and supervision to perform the Work
- Perform the Work as vigorously and as continuously as conditions permit and according to a Baseline Progress Schedule that ensures completion within the Contract Time or the adjusted Contract Time
- Not voluntarily suspend or slow down operations without prior written authorization from Agency

**DB180.44 Notice to Proceed (NTP)** - Notice To Proceed (NTP) will be issued within five (5) Calendar Days of the date the Contract is executed by Agency.

Should Agency fail to issue the NTP within such five (5) Calendar Day period, Design-Builder may apply for an adjustment of Contract Time according to **DB General Provisions**, Subsection 180.80(c). Agency will issue a First Notification acknowledging the date Work commenced on the Project.

### **DB180.50 Contract Time to Complete Work**

**(a) Completion Dates** - Interim Completion Dates (if any) and the Contract Completion Date are specified in **DB Special Provisions**, SP180.50(f). If an earlier Interim Completion Date or Contract Completion Date is proposed by the selected Design-Builder, and accepted by Agency, then the earlier Interim Completion Date or Contract Completion Date, as applicable, shall become the baseline completion date(s) and shall be incorporated into the **DB Agreement**, Article 4.2.

**(b) Recording Contract Time** - All Contract Time will be recorded and charged to the nearest one-half day.

For Calendar Day completion times, Agency will furnish Design-Builder a weekly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding week and the number of Calendar Days remaining prior to the established completion date.

For Contracts with fixed completion dates, Agency will furnish Design-Builder a weekly statement of Contract Time charges only after expiration of the Contract Time. The statement will show the number of days of liquidated damages that have been assessed, if any.

These statements will include any exclusions from, or adjustments to, Contract Time.

**(c) Exclusions From Contract Time** - Regardless of the way Contract Time is expressed in the Contract, and subject to the conditions stated in Subsection 180.80(d), certain days will not be charged against Contract Time. These exclusions will be allowed when Design-Builder is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature
- Acts of sabotage or terrorism
- Court orders enjoining prosecution of the Work for reasons other than Design-Builder's failure or neglect
- Strikes, labor disputes, or freight embargoes that, despite Design-Builder's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations ("strikes" and "labor disputes" may include union action against Design-Builder, a Subcontractor, a Materials supplier, or Agency)
- Suspension of the Work by written order of Agency for reasons other than Design-Builder's failure or neglect

**(d) End of Contract Time** - When Design-Builder believes that all Work except for plant establishment and Punch-List Items have been completed, Design-Builder may request in writing that Agency conduct an inspection to determine whether the Work is complete. Upon determining that all Work, except for plant establishment and Punch-List Items, has been completed, Agency will issue Final Second Notification.

The Second Notification will list the following:

- The date the time charges stopped

- Final Trimming and Clean-Up tasks
- Minor corrective Work not involving additional payment to be completed
- Submittals, including without limitation all required Design Documents, certifications, bills, forms, warranties, certificates of insurance, and other documents required to be provided to Agency before Third Notification will be issued

Design-Builder shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame proposed by Design-Builder and authorized by Agency.

**(e) Time Calculation Protest** - In the event Design-Builder disputes the accuracy of the statement of Contract Time charges, it shall immediately contact Agency and attempt to resolve the dispute. If the dispute cannot be resolved informally, Design-Builder shall submit a formal written protest to Agency within seven (7) Calendar Days of the date Agency mailed or delivered the statement. Failure to submit a formal written protest within the seven (7) Calendar Day period constitutes Design-Builder's approval of the time charges or adjusted time charges itemized in the statement, and its waiver of any right to thereafter dispute the accuracy of the statement.

**DB180.60 Notice of Delay** - Design-Builder shall notify Agency of any delay that will likely prevent completion of any On-Site Work by the applicable Interim Completion Date(s) or of all Work by the Contract Completion Date specified in the **DB Agreement**, Article 4.2. The notice shall be in writing and is required to be submitted within seven (7) Calendar Days of when Design-Builder knew or should have known of the delay. The notice shall include, to the extent available, all of the following:

- The reasons or causes for the delay
- The estimated duration of the delay and the estimated resulting cumulative delay in completion of all On-Site Work
- Except for Subsection 180.50(c) and Subsection 180.65 delays, whether or not Design-Builder expects to request an adjustment of Contract Time due to the delay
- Whether or not Design-Builder expects to request additional compensation due to the delay (Except for Subsection 180.50(c) and Subsection 180.65 delays, failure to include this information shall constitute waiver of Design-Builder's right to later make such a request.)

Agency is not required to respond to a notice of delay.

**DB180.65 Right of Way and Access Delays** - Right of Way and Access delays will be taken into consideration in adjusting Contract Time and in authorizing additional compensation if the performance of the Work is delayed because of Agency's failure to make any of the following available to Design-Builder:

- Necessary Rights-of-Way
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for Design-Builder's use
- Access to, or rights of occupancy of, buildings and other properties Design-Builder is required to enter or to disturb pursuant to Contract requirements

DB 180.65

If the ending date of an anticipated delay is stated in the **DB Special Provisions**, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

### **DB180.70 Suspension of Work**

**(a) General** - Agency may suspend the Work, or any part of the Work, for any of the following causes:

- Failure of Design-Builder to correct unsafe conditions
- Failure of Design-Builder to carry out any provision of the Contract
- Failure of Design-Builder to carry out orders issued by Agency or any regulatory Authority
- Existence of conditions unsuitable to proper or safe performance of the Work
- Lapse or failure to file the necessary Bonds or lapse or failure to provide or maintain the required insurance coverages
- Any reason considered by Agency to be in the public interest

**(b) Design-Builder's Responsibilities During and After Suspension** - During periods of suspension of the Work, Design-Builder shall continue to be responsible for protecting and maintaining the Work.

**(c) Resumption of Work** - When Work has been suspended by Agency for any reason or discontinued by Design-Builder for any reason, Design-Builder shall not resume Work without Agency's written authorization. If the prosecution of the Work has been discontinued, Design-Builder shall notify Agency PM, in writing, at least 48 hours in advance of anticipated resumption of Work.

When Work is resumed after suspension or discontinuance, unless otherwise specified in the Contract, Design-Builder shall perform the following at no additional compensation:

- Replace or repair Work, and Materials and Equipment to be incorporated into the Project, that were lost or damaged because of the temporary use of the Project Site by the public
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by Agency

**(d) Compensation and Allowances for Suspension** - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than Design-Builder's failure or neglect.

### **DB180.80 Adjustment of Contract Time**

**(a) General** - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of Design-Builder, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time." Except as provided in Subsection 180.65 and **DB General Provisions**, Subsection 195.40, an adjustment of Contract Time shall be

Design-Builder's only remedy for any delay arising from causes beyond the control of Design-Builder.

**(b) Design-Builder's Request Not Required** - Agency may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. Agency may also increase Contract Time in the event of ROW and Access delays and those delays due to causes beyond Design-Builder's control specified in Subsection 180.50(c). Agency will promptly inform Design-Builder of adjustments made to Contract Time pursuant to this Subsection and will include the reasons for adjustment.

If Agency anticipates delay during performance of the Contract, and specifies its expected duration in the **DB Special Provisions**, Agency will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

**(c) Design-Builder's Request Required** - In the event Design-Builder believes that additional Contract Time is due, Design-Builder shall submit to Agency a timely request for adjustment of Contract Time. Agency will not consider untimely requests. Agency regards as timely only those requests for adjustment of Contract Time that comply with the following requirements:

- The required Notice of Delay was timely submitted
- The request includes an updated Baseline Progress Schedule
- The request is not otherwise deemed waived and is submitted within 21 Calendar Days after the date of Final Second Notification, if Final Second Notification has been issued

Agency will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Baseline Progress Schedule. Agency will not authorize, nor will Agency pay, acceleration costs incurred by Design-Builder prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

Design-Builder's request for adjustment of Contract Time shall be submitted to Agency on a form provided by, or in a format acceptable to, Agency, and shall include a copy of the written notice of delay. The request shall include the following, without limitation:

- Consent of Design-Builder's Surety if the request totals more than 30 Calendar Days of additional Contract Time
- Sufficient detail for Agency to evaluate the asserted justification for the amount of additional Contract Time requested
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days
- A schedule analysis based on the current Baseline Progress Schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion

**(d) Bases for Adjustment of Contract Time**

**(1)** In the adjustment of Contract Time, Agency will consider causes that include, but are not limited to, the following:

- Delay in execution of the Contract due to Agency's fault
- Delay in commencement of the Work due to Agency's failure to issue NTP within the required time
- Errors in information provided by Agency upon which Design-Builder was entitled to rely under the terms of the Contract
- Performance of Extra Work
- Failure of Agency or Entities acting for Agency to act promptly in carrying out Contract duties and obligations
- Acts or omissions of Agency or Entities acting for Agency that result in unreasonable delay referenced in **DB General Provisions**, Section 195
- Causes excluded from Contract Time under this Section
- Right of Way and Access delays referenced in this Section

**(2)** Agency will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract
- Delays that do not affect any Interim Completion Date or the Contract Completion Date
- Delays that affect Design-Builder's planned early completion, but that do not affect the specified or adjusted Contract Time
- Shortage or inadequacy of Materials, Equipment, or labor
- Late delivery of Materials and Equipment to be incorporated into the Project, except under those conditions referenced in Subsection 180.50(a)
- Reasonably predictable weather conditions
- Other matters within Design-Builder's control or Contract responsibility

**(e) Consideration and Response by Agency** - Agency will only consider a Design-Builder's request for adjustment of Contract Time submitted in accordance with the requirements of this Subsection. Agency may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

Agency may adjust Contract Time for causes not specifically identified by Design-Builder in its request.

Agency will review a properly-submitted request for Contract Time adjustment and within a reasonable time will advise Design-Builder of Agency's findings. Unless Design-Builder submits a timely written request to Agency for a meeting to review the findings, the findings shall become Agency's final decision 10 Calendar Days after they are mailed to Design-Builder. If a review meeting is requested, Agency's final decision on Contract Time adjustment will be issued promptly following the meeting.

The dispute resolution provisions of **DB General Provisions**, Section 199, do not apply to adjustment of Contract Time unless additional compensation, other than return of liquidated damages, is also requested for the same reasons or causes.

### **DB180.85 Failure to Complete on Time; Liquidated Damages**

**(a) Time is of the Essence** - Time is of the essence in Design-Builder's performance of the Contract. Delays in Design-Builder's performance of the Work may inconvenience the traveling public, interfere with business and commerce, and increase cost to Agency. It is essential and in the public interest that Design-Builder prosecute the Work vigorously to Contract completion.

Agency does not waive any rights under the Contract by permitting Design-Builder to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

**(b) Liquidated Damages** - Agency will sustain damage if the Work required to be completed by the Interim Completion Date(s) or the Contract Completion Date is not completed by the specified dates. However, the Parties agree that it is unduly burdensome and difficult for Agency to demonstrate the exact dollar value of such damages. Therefore Agency has identified in **DB Special Provisions**, SP180.85(b), an amount that Design-Builder acknowledges represents a reasonable approximation of the actual damages Agency will suffer for each Calendar Day Design-Builder expends performing any portions of the specified Work, except plant establishment or Punch-List Items, after the associated Interim Completion Date, or Design-Builder expends performing any portions of the specified Work, except plant establishment or Punch-List Items, after the Contract Completion Date. Design-Builder agrees to pay to Agency, not as a penalty, but as liquidated damages, the amount(s) specified.

Payment by Design-Builder of liquidated damages does not release Design-Builder from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by Agency constitute a waiver of Agency's right to collect any additional damages it may sustain by reason of Design-Builder's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by Agency due to Design-Builder's failure to complete the Work on time.

If the Contract is terminated for default, and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages shall be assessed against Design-Builder for the duration of time reasonably required to complete the Work.

**DB180.86 Excellence Award Fees** - Excellence award fees, together with the applicable evaluation process and criteria and the amount available for award, are identified in **DB Special Provisions**, SP180.86. Agency's decision whether or not to make any award available for the Project, as well as the amount awarded, if any, shall be within Agency's sole discretion, and shall not be subject to dispute, appeal, or protest.

## **DB180.90 Termination of Contract and Substituted Performance**

**(a) Termination for Default** - Termination of the Contract for default may result if Design-Builder does any of the following:

- Violates any material provision of the Contract
- Disregards applicable Laws or Agency's instructions
- Refuses or fails to supply enough Materials, Equipment, or skilled workers for prosecution of the Work in compliance with the Contract
- Fails to make prompt payment to Subcontractors
- Makes an unauthorized general assignment for the benefit of Design-Builder's creditors
- Has a receiver appointed because of Design-Builder's insolvency
- Is adjudged bankrupt and the court consents to the Contract termination
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions

If the Contract is terminated by Agency, upon demand Design-Builder and Design-Builder's Surety shall provide Agency with immediate and peaceful possession of the Project Site and of all Materials and Equipment to be incorporated into the Project, whether located on and off the Project Site, for which Design-Builder received progress payments.

If the Contract is terminated for default, neither Design-Builder nor its Surety shall be relieved of or entitled to the following:

- Relieved of liability for damages or losses suffered by Agency because of Design-Builder's breach of Contract.
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made in accordance with the terms of **DB General Provisions**, Section 195, except that Agency will be entitled to withhold sufficient funds to cover costs incurred by Agency as a result of the termination. Final payment to Design-Builder will be made in accordance with the provisions of **DB General Provisions**, Section 195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

**(b) Substituted Performance** - In accordance with Agency's procedures, and upon Agency's determination that sufficient cause exists, Agency, without prejudice to any of its other rights or remedies and after giving Design-Builder and Design-Builder's Surety 10 Calendar Days' written notice, may take any of the following actions:

- Terminate the Contract
- Substitute Design-Builder with another Entity to complete the Contract
- Take possession of the Project Site
- Take possession of Materials on the Project Site

- Take possession of Materials not on the Project Site, for which Design-Builder received payment
- Take possession of Equipment on the Project Site that is to be incorporated into the Project
- Take possession of Equipment not on the Project Site that is to be incorporated into the Project and for which Design-Builder received payment
- Finish the Work by whatever method Agency deems expedient

If, within the 10-Calendar-Day notice period provided above, Design-Builder and/or its Surety corrects the basis for declaration of default to the satisfaction of Agency, or if Design-Builder's Surety submits a proposal for correction that is acceptable to Agency, the Contract will not be terminated.

**(c) Termination for Public Convenience** - Agency may terminate the Contract in whole or in part whenever Agency determines that termination of the Contract is in the best interest of the public.

Agency will provide Design-Builder and Design-Builder's Surety seven (7) Calendar Days' written notice of termination for public convenience. After such notice, Design-Builder and Design-Builder's Surety shall provide Agency with immediate and peaceful possession of the Project Site and of Materials and Equipment to be incorporated into the Project, whether located on and off the Project Site, for which Design-Builder received payment.

