

CONSTRUCTION PROCEDURES HANDBOOK

SECTION IV	SUBSECTION D	DATE
CONSTRUCTION CHANGES	DEFAULT AND TERMINATION OF CONTRACT	08/16/2022

INITIATION OF PROCEDURE

The RE will initiate the procedure to be followed for Default and Termination of Contract as indicated in the Standard Specifications for Road and Bridge Subsection 108.14.

RE STEPS

- 1) Discuss with the RE, the FM the PM and the RCE the reasons for notifying the Contractor of a possible default. Notification of possible default should only be reserved for instances where all other efforts to achieve compliance have been exhausted.
- 2) After receiving concurrence from the FM, the PM, and RCE, prepare the Notice of Possible Default letter and have it reviewed and approved by the FM and RCE. Once approved, send the letter via certified mail (return receipt requested) with a copy to the Surety Company, also by certified mail (return receipt requested). Indicate in the letter the specific subsection(s) of the specifications not complied with, which provide(s) the basis for notifying the Contractor of a possible default. The letter must outline methods of correction and specify a time period of 10 days for the correction(s) to be made.
 - a. If the Contractor complies with the initial directive, no further action is required.
 - b. If the Contractor does not comply, proceed to step 3.
 - c. If the Contractor complies and after a period of time reverts back to a status of non-compliance for the same violation(s), proceed to step 3.
- 3) Prepare a memorandum to the RCE recommending that the Contractor be declared in default giving specific reason(s) for such action. Provide a complete package of all correspondence and information pertaining to the default, including all actions taken to date. Provide a copy to the FM and the PM. For Federally Funded Projects, provide a complete package to the FHWA. Mark the package in bold letters: **ATTN.: DEFAULT AND TERMINATION**. Make arrangements to deliver the package no later than the following day exclusive of Saturdays, Sundays and Holidays.

RCE STEPS

- 1) Within three days, review the RE's recommendations for declaring the Contractor in default. If not in concurrence, notify the RE and the PM in writing. Specify what actions the RE should take. If in concurrence, proceed to step 2.
- 2) Seek advice and counsel from the DAG's Office, documenting same. If in concurrence, proceed to step 3.
- 3) For Federally funded PoDI Projects, where the Individual Project Plan (IPP) specifies oversight for Default and Termination of Contract, request concurrence from FHWA. Document same and proceed to Step 4.
- 4) Consult with the Director of Construction and Materials and the Assistant

- Commissioner of CPM for concurrence. If in concurrence, proceed to step 4.
- 5) Notify the Contractor of the Department's intent to proceed with default action. Indicate in the letter the cause for the intent to default and demand elimination of such cause. Forward a copy to the Surety Company. Use certified mail (return receipt requested).
 - a. If the Contractor corrects the grounds for default, no further action is required.
 - b. If the Contractor does not comply within 10 days, proceed to step 6.
 - c. If the Contractor complies and after a period of time reverts back to a status of non-compliance for the same violation(s), proceed to step 6.
 - 6) Consult with the Director of Construction and Materials, the PM and Assistant Commissioner of CPM and if there is concurrence prepare a Department Action (AD-12). Forward the AD-12 with related documentation and recommendation to the Director of Construction and Materials and the Bureau of Construction Services Procurement and the FHWA if their concurrence was required in step 3.

DIRECTOR OF CONSTRUCTION AND MATERIALS

Review the Default and Termination with the Director of Project Management and if in concurrence, sign the default request and forward to the Assistant Commissioner of CPM. If there is not concurrence, return the action to the RCE with an explanation or direction on how to proceed.

ASSISTANT COMMISSIONER OF CPM

Review the action. If in concurrence, sign and forward to the Department Secretary.

RCE

Upon receipt of the executed AD-12, prepare letters to the Contractor and Surety Company notifying both that the Contractor has been declared in default of contract. Send copies to the RE, FM, PM, Attorney General's Office and the FHWA for Federally Funded Projects.

BUREAU OF CONSTRUCTION SERVICES PROCUREMENT

Upon notification of default, proceed with Policy/Procedure 316 Debarment, Suspension, and Disqualification of a Contractor.