

~~**6-4 DEFAULT BY THE CONTRACTOR.** If the Contractor fails to begin delivery of material and equipment, to commence the Work within the time specified, to maintain the rate of delivery of material, to execute the Work in the manner and at such locations as specified, or fails to maintain the Work schedule which will insure the Agency's interest, or , if the Contractor is not carrying out the intent of the Contract, the Agency may serve written notice upon the Contractor and the Surety on its Faithful Performance Bond demanding satisfactory compliance with the Contract.~~

~~The Contract may be canceled by the Board without liability for damage, when in the Board's opinion the Contractor is not complying in good faith, has become insolvent, or has assigned or subcontracted any part of the Work without the Board's consent. In the event of such cancellation, the Contractor will be paid the actual amount due based on Contract Unit Prices or lump sums bid and the quantity of the Work completed at the time of cancellation, less damages caused to the Agency by acts of the Contractor. The Contractor, in having tendered a Bid, shall be deemed to have waived any and all claims for damages because of cancellation of Contract for any such reason. If the Agency declares the Contract canceled for any of the above reasons, written notice to that effect shall be served upon the Surety. The Surety shall, within 5 days, assume control and perform the Work as successor to the Contractor.~~

~~If the Surety assumes any part of the Work, it shall take the Contractor's place in all respects for that part, and shall be paid by the Agency for all work performed by it in accordance with the Contract. If the Surety assumes the entire Contract, all money due the Contractor at the time of its default shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.~~

~~If the Surety does not assume control and perform the Work within 5 days after receiving notice of cancellation, or fails to continue to comply, the Agency may exclude the Surety from the premises. The Agency may then take possession of all material and equipment and complete the Work by Agency forces, by letting the unfinished Work to another Contractor, or by a combination of such methods. In any event, the cost of completing the Work shall be charged against the Contractor and its Surety and may be deducted from any money due or becoming due from the Agency. If the sums due under the Contract are insufficient for completion, the Contractor or Surety shall pay to the Agency within 5 days after the completion, all costs in excess of the sums due.~~

~~The provisions of this subsection shall be in addition to all other rights and remedies available to the Agency under law.~~

6-4 TERMINATION OF THE CONTRACT FOR DEFAULT.

6.4.1 General. If, prior to the acceptance of the Work, the Contractor:

- a) becomes insolvent, assigns its assets for the benefit of its creditors, is unable to pay its debts as they become due, or is otherwise financially unable to complete the Work,

- b) abandons the Work by failing to report to the Work site and diligently prosecute the Work to completion,
- c) disregards written instructions from the Agency or materially violates provisions of the Contract Documents,
- d) fails to prosecute the Work according to the schedule approved by the Engineer,
- e) disregards laws or regulations of any public body having jurisdiction, or
- f) commits continuous or repeated violations of regulatory or statutory safety requirements, then

the Agency will consider the Contractor in default of the Contract.

Notices, and other written communications regarding default between the Contractor, the Agency, and the Surety shall be transmitted in accordance with 2-12.

6-4.2 Notice to Cure. The Agency will issue a written notice to cure the default to the Contractor and its Surety. The Contractor shall commence satisfactory corrective actions within 5 Working Days after receipt.

6-4.3 Notice of Termination for Default. If the Contractor fails to commence satisfactory corrective action within 5 Working Days after receipt of the notice to cure, or to diligently continue satisfactory and timely correction of the default thereafter, then the Agency will consider the Contractor in default of the Contract and:

- a) will terminate the Contractor's right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety,
- b) may use any materials, equipment, tools or other facilities furnished by the Contractor to secure and maintain the Work site, and
- c) may furnish labor, equipment, and materials the Agency deems necessary to secure and maintain the Work site.

The provisions of this subsection shall be in addition to all other legal rights and remedies available to the Agency.

6-4.4 Responsibilities of the Surety. Upon receipt of the written notice of termination for default, the Surety shall immediately assume all rights, obligations and liabilities of the Contractor under the Contract. If the Surety fails to protect and maintain the Work site, the Agency may do so, and may recover all costs incurred. The Surety shall notify the Agency that it is assuming all rights, obligations and liabilities of the Contractor under the Contract and all money that is due, or would become due, to the Contractor shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

Within 15 Working Days of receipt of the written notice of termination for default, the Surety shall submit to the Agency a written plan detailing the course of action it intends to take to remedy the default. The Agency will review the plan and notify the Surety if the plan is satisfactory. If the Surety fails to submit a satisfactory plan, or if the Surety fails to maintain progress according to the plan accepted by the Agency, the Agency may,

upon 48 hours written notice, exclude the Surety from the premises, take possession of all material and equipment, and complete the Work in any way the Agency deems to be expedient. The cost of completing the Work by the Agency shall be charged against the Surety and may be deducted from any monies due, or which would become due, the Surety. If the amounts due under the Contract are insufficient for completion, the Surety shall pay to the Agency, within 30 days after the Agency submits an invoice, all costs in excess of the remaining Contract Price.

6-4.5 Payment. The Surety will be paid for completion of the Work in accordance with 9-3 less the value of damages caused to the Agency by acts of the Contractor.

~~—**6-5 TERMINATION OF CONTRACT.** The Board may terminate the Contract at its own discretion or when conditions encountered during the Work make it impossible or impracticable to proceed, or when the Agency is prevented from proceeding with the Contract by act of God, by law, or by official action of a public authority.~~

6-5 TERMINATION OF THE CONTRACT FOR CONVENIENCE. The Board may terminate the Contract if it becomes impossible or impracticable to proceed, because of conditions or events beyond the control of the Agency.

The Agency will issue a written notice of termination for convenience in accordance with 2-12. Upon receipt, the Contractor shall immediately cease work, except work the Contractor is directed to complete by the Engineer or required to complete for public safety and convenience. The Contractor shall immediately notify Subcontractors and suppliers to immediately cease their work.

The Contractor will be paid without duplication for:

- a) work completed in accordance with the Contract Documents prior to the effective date of termination for convenience;
- b) reasonable costs incurred in settlement of terminated contracts with Subcontractors, suppliers and others; and
- c) reasonable expenses directly attributable to termination.

The Contractor shall submit a final termination settlement proposal to the Agency no later than 90 days from the effective date of termination, unless extended, in writing, by the Agency upon written request by the Contractor.

If the Contractor fails to submit a proposal, the Agency may determine the amount, if any, due the Contractor as a result of the termination. The Agency will pay the Contractor the amount it determines to be reasonable. If the Contractor disagrees with the amount determined by the Agency as being reasonable, the Contractor shall provide notice to the Agency within 30 days of receipt of payment. Any amount due shall be as later determined by arbitration, if the Agency and the Contractor agree thereto, or as fixed in a court of law.