

Subpart D: Compensation and Payment

13. Compensation and Payments

13.1. Type of Contract; Lump Sum Price

This Contract is a design-build contract, with a total Lump Sum Price equal to \$1,272,275,929.

13.2. Contract Price

- a. The “Contract Price” is the maximum total amount payable by the CTA to the Contractor for completion of the Work, as such amount may be payable and adjusted over time in accordance with the terms of this Contract. The Contract Price will at all times be the sum of:
 - i. the “Base Lump Sum Price” set out in the Price Proposal, as such amount may be adjusted in accordance with Section 13.2.b; and
 - ii. the amount of each Allowance set out in in the Price Proposal, as each such amount may be adjusted in accordance with Section 13.2.b.

As of the Contract Date, the Contract Price is equal to the Lump Sum Price.

- b. The Contract Price may be adjusted only through an adjustment to one or more of the components referenced above by a Change Order approved by the Chicago Transit Board.

13.3. Invoicing and Payment

- a. Subject to this Section 13.3, the Contractor will submit “Applications for Payment” as described and in accordance with Sub Part 2.1.8 of Part 2, and the CTA will pay for Work performed on the basis of such Submittals.
- b. Any undisputed, final and approved invoices will be paid within 30 days. If payment of any undisputed, final and approved amount in an invoice is not made within such 30 day period, an interest penalty of 1% of any amount approved and unpaid will be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made (the same rate of interest will apply to unpaid amounts due and owing from the Contractor to CTA).

- c. With respect to any Stored Material that has been delivered but not yet installed, the Contractor will be entitled to bill for such Stored Material as and to the extent allowed in accordance with Sub Part 2.1.8.4. of Part 2.
- d. With respect to payment for Work to be made from Allowances, the Contractor will submit an “Allowance Expenditure Authorization” and an “Allowance Payment Request” as described in and in accordance with Sub Part 2.1.10 of Part 2, and the CTA will pay for Work performed on the basis of such submittals.
- e. As a condition to any **Eligible Steel Price Adjustment**, including any payment to the Contractor with respect to an Eligible Steel Price Increase:
 - i. the Contractor must provide the CTA with a copy of each invoice for Eligible Steel issued by the supplier or mill, indicating the date of invoicing, price, quantity, type and weight of such Eligible Steel, together with the Contractor’s calculation of any Eligible Steel Price Adjustment. Each such invoice must be provided promptly and in all events prior to any request for payment with respect to such Eligible Steel which is subject to the provisions of Sub Part 2.1.8 of Part 2, Contract Payments;
 - ii. payment to the Contractor for Eligible Steel Price Increases will be made by CTA either:
 - A. through the payment of an amount equal to the Eligible Steel Price Increase from the Owner’s Contingency Allowance authorized by the CTA under Section 13.3.d and Part 2; or
 - B. following a Change Order approved by the Chicago Transit Board increasing the Contract Price in a like amount;
 - iii. with respect to any Eligible Steel Price Decrease the CTA will be entitled to:
 - A. set-off such amount pursuant to Section 14; and
 - B. decrease the Contract Price pursuant to a Change Order approved by the Chicago Transit Board in an amount equal to such Eligible Steel Price Decrease, except to the extent such amount was previously the subject of set-off under clause A. above; and

- iv. Contractor agrees it will not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the intent of this Section 13.3.e, including by:
 - A. intentionally delaying or accelerating any order for Eligible Steel;
 - B. incorporating additional Eligible Steel in its design; or
 - C. removing Eligible Steel from its design;

in each case to maximize Eligible Steel Price Increases and/or minimize Eligible Steel Price Decreases.

- f. Upon achievement of Final Completion, the Contractor will be entitled to invoice for its share of any remaining balance in the Shared Contingency Allowance in accordance with Sub Part 3.2.3 of Part 3.

13.4. Withholding Payment

The CTA may withhold payment from the Contractor, in whole or in part, if:

- a. a part of the Work to which such payment relates constitutes Nonconforming Work or has Defects, with such withheld payment to only be with respect to such part of the Work, including the cost to correct such Nonconforming Work or Defect or other Losses which the Contractor may be liable to the CTA under the Contract with respect to such Nonconforming Work or Defect, all as reasonably determined by the Chief Infrastructure Officer;
- b. the Chief Infrastructure Officer reasonably determines that:
 - i. the Contractor has fallen behind the Schedule; and
 - ii. the Contractor does not have an approved Schedule Recovery Plan, or if it does have an approved Schedule Recovery Plan, that it is not proceeding as described thereunder;

with such withheld payment to only be with respect to (x) any liquidated damages that in the Chief Infrastructure Officer's judgment may accrue in a future payment period, or (y) such portion of the payment not due to a Subcontractor pursuant to Section 24.6;

and absolute discretion, including the right to refrain from giving, or to impose conditions on, such consent, approval or like assent, which discretionary decision regarding any consent, approval or like assent will be final and binding and not subject to the Dispute Resolution Procedure other than with respect to:

- a. a good faith dispute concerning whether the consent, approval or like assent was discretionary; or
- b. a breach of the implied covenant of good faith and fair dealing.

“Dispute” means any between the CTA and the Contractor arising out of or in connection with this Contract, including any dispute concerning an adjustment to Contract Price or Contract Time or any other form of relief claimed by a Party.

“Dispute Resolution Panel” means the dispute resolution panel to be established pursuant to Section 48.

“Dispute Resolution Procedures” means the procedures set out in Section 48.4.

“Diversity and Workforce Coordinator” means the person appointed pursuant to Section 27.7, or authorized representative.

“Earned Value” means the value of Work performed in a billing period and all prior billing periods for each element of work permitted by the Schedule of Values.

“Eligible Steel” means any structural steel members or reinforcing steel members permanently incorporated into the Project which function as an integral part of the structural system and which qualify as structural or reinforcing steel under the IDOT Special Provision for Steel Cost Adjustment dated April 17, 2015; for clarity, this includes permanent casings, reinforcing bars, mesh reinforcement, and beams, girders, or other structural shapes providing a similar function to beams or girders, but excludes all rail, other track materials (OTM), and fasteners.

“Eligible Steel Price Adjustment” means with respect to the relevant invoice, the product of the Eligible Steel Price Decrease or Eligible Steel Price Increase, as applicable, multiplied by the quantity of Eligible Steel (in CWT) that is the subject of such invoice under Section 13.3.e.

“Eligible Steel Price Decrease” means, with respect to the relevant invoice under Section 13.3.e:

$$(BaseIndex \times 0.95) - CurrentIndex$$

Where:

CurrentIndex = the value of the Eligible Steel Price Index for the monthly publication date immediately prior to the date of the relevant invoice under Section 13.3.e; and

BaseIndex = \$53.75 per CWT, being the value of the Eligible Steel Price Index on July 1, 2018,

provided, that if the Eligible Steel Price Decrease is negative, it will equal \$0.

“Eligible Steel Price Increase” means, with respect to the relevant invoice under Section 13.3.e:

$CurrentIndex - (BaseIndex \times 1.10)$

Where:

CurrentIndex = the value of the Eligible Steel Price Index for the monthly publication date immediately prior to the date of the relevant invoice under Section 13.3.e; and

BaseIndex = \$53.75 per CWT, being the value of the Eligible Steel Price Index on July 1, 2018,

provided, that if the Eligible Steel Price Increase is negative, it will equal \$0.

“Eligible Steel Price Index” means the “STEEL \$/CWT” published monthly by IDOT for its Special Provision for Steel Cost Adjustment dated April 17, 2015 at: <http://www.idot.illinois.gov/doing-business/procurements/construction-services/construction-bulletins/transportation-bulletin/price-indices>, or, if such index is no longer published, or its method of calculation changes, any successor index as reasonably determined by the CTA.

“Environmental Approvals” means any Permit or other written authorization for the Project and/or the Work, including written changes, amendments modification reevaluations or reauthorizations to any Environmental Approval.

“Environmental Impairment” means any of the following:

- a. any subsurface conditions that evidence or exhibit (visually or otherwise) contamination by Hazardous Material;
- b. any underground storage tanks or evidence of any contamination that may be associated with or caused by any underground storage tanks;
- c. any utility conduits or drains that evidence or exhibit (visually or otherwise) contamination by Hazardous Materials; and