

City of Fresno Department of Public Works. "Section 6-6: Termination of Contract." Standard Specifications. (2021). pp.6-4 - 6-6.

States:

6-6 TERMINATION OF CONTRACT

The Council may, at any time, terminate the contract for the City's convenience and without cause. The Council shall have the right to terminate this contract without cause at any time by giving to Contractor 72 hours written notice thereof. Upon receipt of such notice, Contractor immediately shall terminate performance of the Work and make reasonable efforts to mitigate its losses and damages hereunder; provided, however that in connection with such termination, Contractor shall perform such acts as may be necessary to preserve and protect that part of the Work theretofore performed hereunder.

Upon receipt of a notice of termination pursuant to this section, Contractor shall immediately, (according to instructions from City) proceed with performance of the following duties, regardless of delay in determining or adjusting amounts due under this section:

- a) cease operation as specified in the notice;
- b) place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as otherwise specified in writing by City;
- c) terminate all subcontracts and purchase orders to the extent that City does not elect to assume such subcontracts and purchase orders; and
- d) take actions that may be necessary, or that City may direct in writing, for the protection and preservation of the Work.

In addition to payment for the Work performed prior to the effective date of termination and for any work performed following the date of termination pursuant to City's written request, Contractor shall be entitled to payment for materials timely fabricated off the Site and delivered and stored in accordance with the City's instructions.

Upon such termination without cause, Contractor shall retain all sums of money theretofore paid hereunder to Contractor and provided

- a) that no liens or claims have been filed of record with respect to Work performed hereunder or that all such liens and claims have been satisfied in the manner provided in the Contract Documents and provided further that Contractor has been paid by City for the Work which is the subject of the lien(s) or claim(s) if required to be paid therefore pursuant to the Contract Documents, and
- b) that Contractor delivers to City

1. Contractor's unconditional waiver and release of claims with respect to the

Work performed through the date of termination and paid for by City,

2. Subcontractor and supplier unconditional waiver and release of claims for all subcontracts and supply agreements that have been fully performed on the date of termination, and
3. an assignment to City or to the replacement contractor or City's designee of all subcontracts and purchase orders which City elects to assume by written notice to Contractor,

City shall pay to Contractor (i) all retainages, if any, theretofore retained hereunder by City in respect of the Work properly performed to the date of such termination (other than the retainage relating to portions of the Work performed by Subcontractors whose subcontracts City assumes, which retained amounts under such subcontracts will continue to be paid at the time and in the manner specified in the Contract Documents, (ii) payment for the Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract Documents), (iii) for the direct costs incurred by Contractor in terminating the Work, including out-of-pocket costs incurred by Contractor to third parties for cancelling subcontracts and purchase orders as a result of the termination of this contract authorized in accordance with the provision of this section, and (iv) reasonable demobilization costs, but City shall not otherwise be responsible for damages for lost or anticipated fees and/or profits on Work not performed on account of any termination described in this contract.

City shall not be obligated to reimburse Contractor for any central office overhead in connection with the termination. However, in no event shall the amounts to be paid to Contractor pursuant to the preceding paragraph, when combined with the amounts previously paid to Contractor and the costs thereafter required to be paid by City to complete the Work, exceed the Contract Price. The amounts owing by City to Contractor pursuant to the two immediately preceding sentences shall be as specified in Contractor's final application for payment approved by City.

If City terminates without cause, then City (or a replacement contractor or another designee of City), shall, with respect to all subcontracts and purchase orders which City does not elect to terminate (or cause Contractor to terminate) assume the obligations of Contractor under such subcontracts and purchase orders covering the unperformed parts of the Work and properly entered into in accordance with the contract.

Contractor shall also, upon request, deliver and assign to City or City's designee any and all subcontracts, purchase orders, options and other contracts made by Contractor in performance of the Work, and deliver to City true and correct originals and all copies of the Contract Documents, and of all other materials relating to the Work which belongs to City, together with all papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases, waiver and release of claims, and financial management under the Contract Documents.

Notwithstanding any termination, Contractor shall take such steps as are reasonably

necessary to preserve and protect the Work completed and in progress and to protect materials, supplies, plant and equipment at the Site or in transit. No action taken by City shall prejudice any other rights or remedies of City provided by law or by the contract.

However, Contractor shall remain liable under the warranty provided in the Contract Documents with respect to all of the Work performed by Contractor prior to termination.