

Chapter 35 - Termination and Breach of Contract

35-1 Termination of Contract

Section 00180.90 enables ODOT to terminate a contract. The authority to terminate a contract, however, rests only with the Transportation Commission.

When termination becomes necessary, it must be done promptly and efficiently. The necessary actions must be properly coordinated among the Project Manager, Area Manager, Construction Section, Technical Services Manager, Legal Counsel, and the Deputy Director.

ODOT can terminate the Contract for either of the following reasons:

1. Termination for Convenience. ODOT may terminate the Contract for convenience when, through no fault of the Contractor, it is necessary or in the public interest to do so. The Contractor and its surety cannot avoid this type of termination.
2. Termination for Default. ODOT can terminate the Contract for default for any of the reasons listed in the contract. When such action is initiated, ODOT must give the Contractor 10 calendar days' notice of the termination. The Contractor may avoid termination if it or its surety reaches agreement with the Engineer on needed corrective action and implements the needed action.

ODOT must also terminate the Contract if the prime Contractor is placed on the Construction Contractors Board listing of firms not qualified to hold or participate in public improvement contracts. If this happens, the Project Manager must suspend work, arrange for public forces to maintain traffic control devices, and immediately initiate termination proceedings.

When ODOT terminates a contract, it will pay the Contractor, according to 00195.70, for work performed and certain costs incurred.

When the need for termination occurs, the Contract Administration Engineer, with the recommendation of and information provided by the Project Manager and Area Manager, will work with Legal Counsel and others to prepare two letters for the Deputy Director:

1. A letter to the Oregon Transportation Commission requesting approval to terminate the contract.
2. A letter to the Contractor informing it of ODOT's intent to terminate the contract.

When the Contract is terminated, the Project Manager must work with the Contract Administration Engineer to assure that the Contractor receives proper payment for work accomplished. As directed by the Contract Administration engineer, the Project Manager may request that the Region Assurance Specialist verify any quantities included in that payment.

If ODOT and the Contractor's surety agree to allow the surety to finish the contract work, the Project Manager must administer the contract and make payments through the surety and its replacement contractor.

35-2 Breach of Contract

ODOT also may find the Contractor to be in breach of contract if the Contractor has willfully failed or refused to perform according to the terms of the contract or to the orders of the Engineer. Although the Contractor has breached the contract, ODOT may determine that the breach does not warrant that the contract be terminated.

In those cases, upon recommendation by the State Construction & Materials Engineer with input from the Project Manager and Area Manager, the Deputy Director will send a letter to the Contractor citing the finding of breach. ODOT may revoke bidding privileges if a contractor receives multiple breaches.

The Project Manager must also address the number of breach letters when completing the required Prime Contractor Performance Evaluation. See the Contractor Performance Evaluation section (34) of this Manual.

Such a finding of breach by ODOT is also a serious action, but it may help the Project Manager to get a project back on track. Contact the Contract Administration Engineer if you have questions.