

## PDB and CMGC FAQ:



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### Question

### Answer

#### GENERAL

How was the industry feedback incorporated into the development of the program and template documents?

INDOT appreciates the industry input provided on the Alternative Delivery Manual and Appendices. In total, there was more than 500 comments received. After reviewing each comment, some comments resulted in revisions to the Alternative Delivery Manual and Appendices. Not all comments resulted in a change, but the common themes from comments were developed into this FAQ to aid in the understanding of INDOT's PDB and CMGC program.

As the program matures, how will INDOT address updates to policy, program documents, and Contract Documents on active projects?

The goal for PDB and CMGC program is to develop and maintain a program environment that fosters collaboration, transparency, accountability, and trust. Currently, the PDB and CMGC delivery methods are in a pilot phase that allows 2 projects per year with legislation expiring (unless extended) on July 1, 2028. During the pilot phase and beyond, INDOT will incorporate lessons learned from each project to improve the program and work towards the goals previously mentioned. INDOT will endeavor to make available redline tracking of changes as the program matures.

#### QUESTIONS RELATED TO THE RFP

What will the procurement process look like and how will the contractor be selected?

PDB and CMGC projects will use single step procurement (RFP only) and use a Qualification Based Selection, with no price consideration. During project procurements there will be opportunities for the proposers to engage with INDOT through pre-Proposal one-on-one meetings and Questions and Responses regarding the RFP. See Section 2 (Procurement Process) of Appendix D (Template Progressive RFP).

Contractor selection is based on the technical proposal score and a post-proposal submittal interview. Developing a compliant proposal does not typically require significant design development which reduces the level of effort and time required for proposal development.

The selection criteria consists of:

- Firm Experience
- Key Personnel
- Project Approach
- Post-proposal submittal interview

See Section 5.3 (Proposal Evaluation) of Exhibit D (Template Progressive RFP).

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The RFP states that questions and responses during the RFP process should not propose adjustments to risk apportionments, terms, and conditions. When will proposers have an opportunity to recommend changes to the risk adjustments, terms, or conditions of the Agreement?

The RFP, PDB Agreement, and CMGC Agreement template documents were developed based in part upon a similar form of contract used by the Kentucky Transportation Cabinet, adapted to include Indiana/INDOT legal and risk positions, and otherwise with the intent of capturing market risk apportionment positions. Additionally, INDOT received and incorporated industry feedback during the development of the template documents.

The templates documents were developed to allow for streamlined procurement without significant deviation from project to project. Note that unlike other forms of alternative project delivery, many construction risks are addressed and finalized post-PDB/CMGC Agreement execution through the Risk Register (see: "What is the function of the Risk Register?" and "All risks not shown in the risk register are the contractor's responsibility. How does an unforeseen site condition item get handled?" below).

A variety of project specific items in the template RFP appear to be incomplete. Is the intent that the RFP is modified for each specific project?

Yes, the intent is to "fill-in" the blanks and make adjustments on a project-specific and delivery approach-specific basis. The template RFP was developed to be compliant with federal and state requirements at the time of drafting. For each project, many sections of the RFP will be substantially the same, unaltered from the template documents. INDOT's counsel must approve any changes to the template documents that are not identified within the templates as subject to modification by the Progressive Contractor and INDOT. Project specifics that are subject to modifications include:

- Project Goals, Description, Schedule, Funding
- Key Personnel
- Restricted Firms
- Prequalification
- Project design considerations (Preconstruction Phase Approach)
- Proposal security amount
- Proposal Evaluation – Distribution of Points

What level of transparency will INDOT provide related to evaluation and selection?

Final scoring will be made available on INDOT's website. Each Proposer that was not selected will be provided, upon request, with a debrief opportunity where INDOT will consider questions related to the procurement process. Additionally, all Technical Proposals will be made available on INDOT website.

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#### QUESTIONS RELATED TO THE PDB/CMGC AGREEMENT

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How do the different Contract Documents interact in the Preconstruction Work Order of Precedence?

The Preconstruction Phase order of precedence is as follows:

- Preconstruction Phase Change Orders;
- The PDB/CMGC Agreement or amendments; and
- Exhibit B (Preconstruction Phase Requirements).

Preconstruction Phase Change Orders may modify one or more of the following:

- The scope of Preconstruction Work;
- The completion date for the Preconstruction Work;
- The “Preconstruction Phase Compensation Cap; and
- Key personnel hourly rates, distribution of hours, and allowable direct costs.

The initial scope of Preconstruction Work is described in Exhibit E (Preconstruction Phase Scope and Compensation Cap) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement). The Preconstruction Work is to be performed in accordance with Exhibit B (Preconstruction Phase Requirements) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).

See Section 1.4.2 (Preconstruction Work Order of Precedence) and Section 2.1 (Preconstruction Phase) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).

How do the different Contract Documents interact in the Construction Work Order of Precedence

The Construction Phase order of precedence is as follows:

- Construction Phase Change Orders;
- The PDB/CMGC Agreement and amendments;
- The project-wide “Construction Phase Amendment” (which generally includes Construction Phase Requirements that apply to all Construction Work);
- Pricing Package Amendment (including Construction Phase Requirements specific to Pricing Package work, and the then-current Risk Register); and
- Standard Specifications

The Construction Phase will begin upon execution of a Construction Phase Amendment and an initial Pricing Package Amendment. Construction Work is authorized by execution of one or more Pricing Package Amendments. The Construction Phase Amendment will include generally applicable project

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	<p>requirements and the Pricing Package Amendment will have design and construction requirements specific to the work authorized by the pricing package amendment.</p> <p>See Section 1.4.3 (Construction Work Order of Precedence) and Section 2.2 (Construction Phase) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement). Section 10 (Construction Phase Amendment) and Section 11 (Pricing Package Amendments) in Exhibit B (Preconstruction Phase Requirements) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>
<p>Can the Preconstruction Phase and the Construction Phase overlap?</p>	<p>Yes, it is possible that the Preconstruction Phase and the Construction Phase overlap if the project is constructed through multiple Pricing Packages. If Preconstruction Phase Work suggests only one Pricing Package, then they will not overlap, but there will be an initial Pricing Package Amendment and the Construction Phase Amendment to capture the requirements and scope of the Construction Work.</p> <p>If the Progressive Contractor proposes a specific portion of Construction Work – but not all – then the project Construction Phase will begin after execution of a Construction Phase Amendment and initial Pricing Package Amendment. The remaining Preconstruction Phase Work will continue until one or more additional Pricing Packages are proposed, overlapping the Preconstruction Phase and the Construction Phase.</p> <p>An anticipated situation where these phases would overlap is if the Project would benefit from earlier procurement of long lead materials, which would be purchased as part of a Pricing Package.</p>
<p>How is the Progressive Contractor compensated during the Preconstruction Phase?</p>	<p>INDOT’s goal is to provide fair compensation for work performed during the Preconstruction Phase based on hourly rates (inclusive of overhead and profit) plus approved direct expenses.</p> <p>Submittal and approval by INDOT’s External Audit Division of hourly rates will typically need to be achieved prior to submittal of a proposal, but such hourly rates are not scored as part of the proposal evaluations. The approved hourly rates will be used to establish the initial “Preconstruction Phase Compensation Cap” prior to execution of the PDB/CMGC Agreement. The Preconstruction Phase Compensation Cap can be modified by a Preconstruction Phase Change Order.</p> <p>See Appendix G (Preconstruction Phase Hourly Rates Policy).</p> <p>See Section 3.7 (Key Personnel Fully-Loaded Hourly Rates) of Appendix D (Template Progressive RFP).</p>

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	<p>See Section 2.1 (Preconstruction Phase) and Section 19 (Payment) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>
<p>Since PDB and CMGC use a qualification-based selection process with no cost proponent, how is the Preconstruction Phase Compensation Cap determined for the execution of the Agreement?</p>	<p>INDOT and the Progressive Contractor will mutually agree to the initial Preconstruction Work and Preconstruction Phase Compensation Cap as described in Section 5.7 (Finalization and Execution of Agreement) of Appendix D (template Progressive RFP). Again, the Preconstruction Phase Compensation Cap can be modified via Preconstruction Phase Change Order. In the case of PDB, both design and construction personnel will be involved to determine an appropriate scope and level of effort during the preconstruction phase.</p>
<p>What happens if the Preconstruction Phase Compensation Cap is reached? Is the Progressive Contractor expected to perform work at risk?</p>	<p>If the Preconstruction Phase Compensation Cap is reached there are a few actions that INDOT, at its discretion, can take, including:</p> <ul style="list-style-type: none"><li>• Increase the Preconstruction Phase Compensation Cap through a Preconstruction Phase Change Order as described in Section 2.1 (Preconstruction Phase) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement)</li><li>• Terminate the PDB/CMGC Agreement as described in Section 25 (Termination for Convenience; Failure to Agree on Construction Phase Amendment or Pricing Package Amendment) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement)</li></ul>
<p>Is a Preconstruction Phase Change Order required for every project?</p>	<p>No. It is possible there will be projects with no Preconstruction Phase Change Orders. However, Preconstruction Phase Change Orders allow for scope adjustments during the Preconstruction Phase which provides a mechanism for flexibility as the Project progresses. It may not be practical for the initial scope to cover the full Preconstruction Phase. Larger, more complex projects are likely to have more Preconstruction Phase Change Orders while smaller less complex projects will likely have fewer. INDOT has intentionally structured flexibility into the program to allow for optimized project delivery based on project specific characteristics.</p>
<p>What is the difference between the Construction Phase Amendment and Pricing Package Amendments?</p>	<p>The Construction Phase Amendment is a single amendment covering the entire Project, and includes primarily administrative and technical requirements that are applicable to all Construction Work, including:</p> <ul style="list-style-type: none"><li>• Final Work Package Plan</li><li>• DBE Performance Plan</li></ul>

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	<ul style="list-style-type: none"><li>• Generally applicable Construction Phase Requirements, for example:<ul style="list-style-type: none"><li>○ Quality Requirements</li><li>○ Schedule Requirements</li></ul></li></ul> <p>INDOT may agree to a single Pricing Package Amendment covering the entire Project or multiple Pricing Package Amendments (each covering only a portion of the Project). Pricing Package Amendments include requirements with regard to the specific scope of Construction Work contemplated in the Pricing Package Amendment, including:</p> <ul style="list-style-type: none"><li>• Pricing Package GMP</li><li>• The then-current Risk Register</li><li>• Estimated cost of additional Construction Work to complete the Project</li><li>• A Schedule of Values allocating the applicable Pricing Package GMP</li><li>• Current Baseline Pricing Package Schedule</li><li>• Design Documents (whether provided by the Progressive Contractor or INDOT's designer (for CMGC projects)</li><li>• Liquidated Damages</li><li>• Increase to the Contract Bond Penal Sum</li><li>• Pricing Package-specific Construction Phase Requirements</li></ul> <p>See 2.2.1 (Construction Phase Amendment) and 2.2.2 (Pricing Package Amendments) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>
<p>Are there template documents for Construction Phase Requirements that will be used on every project?</p>	<p>Template documents for Construction Phase Requirements will be further developed during the first few projects with input from subject matter experts. The template Construction Phase Requirements will be used as a starting point for each project, but modifications should be expected as INDOT learns from each project.</p>
<p>What is the difference between the Preliminary and Final Pricing Package Plan and Pricing Package Amendments?</p>	<p>The purpose of the Preliminary and Final Pricing Package Plan is to document how the Project will be divided into different Pricing Packages, if Construction Work is intended to be priced and authorized through more than one Pricing Package Amendment. The Preliminary Pricing Package Plan will include less detail than the Final Pricing Package Plan. The primary function of the Preliminary Pricing Package Plan is to provide sufficient information to allow INDOT and the Progressive Contractor to manage the pricing process. If the Preliminary Package Plan is agreeable to INDOT, the Progressive Contractor will submit a Final Pricing Package Plan prior to submission of the Construction</p>

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	<p>Phase Agreement. The Final Pricing Package Plan will provide additional details about the division of the Construction Work for the Project into more than one Pricing Package, including estimated costs, schedule, and other information for each Pricing Package. Among other things, this information is intended to provide additional confidence that although the Project is being divided into more than one Pricing Package, it can still be delivered within INDOT's budget.</p>
<p>What is the function of the Risk Register?</p>	<p>The Risk Register allows the Progressive Contractor and INDOT (and its Independent Cost Estimator or "ICE") to identify contingency costs on an event-specific basis and remove those costs from the GMP.</p> <p>Construction Phase risks that are identified, but not mitigated, during the Preconstruction Phase will become Risk Register Events. Risk Register Events will be identified as Department Risks, Provisional Risks, or Contractor Risks. Provisional Risks will have associated provisional sums available following the occurrence of the identified Risk Register Event (which may be capped or uncapped). The Risk Register will describe the trigger events and mitigation strategies for all Risk Register Events. The mitigation strategies can account for cost and time impacts and can include payment terms such as unit prices or lump sums for each Risk Register Event. This partially pre-negotiates the Construction Phase Change Order process to make administration more efficient and avoid disputes during construction.</p> <p>The Risk Register allows for granular and active management of risks, including how the cost of a Risk Register Event will be handled following an occurrence. The then-current Risk Register becomes a part of the PDB/CMGC Agreement through incorporation into a Pricing Package Amendment.</p> <p>See Section 2.3 (Risk Register) of Appendix E (Template CMGC Agreement) and Section 2.4 (Risk Register) Appendix F (Template PDB Agreement).</p>
<p>All risks not shown in the risk register are the contractor's responsibility. How does an unforeseen site condition item get handled?</p>	<p>As a general matter, not all risks not shown in the Risk Register are the responsibility of the Progressive Contractor - the "Relief Events" concept under the CMGC/PDB Agreement (see Section 20.1) provides protection for a set of common risks which by their nature cannot be quantified in advance, and for which contractors will generally be granted protection. See also response to "Why are there fewer force majeure-type circumstances in the commercial terms?" just below.</p> <p>Specifically, regarding unforeseen site conditions, see Section 16 of the CMGC/PDB Agreement templates for requirements related to unforeseen site conditions. More broadly, there are no restrictions to risks that can be discussed for inclusion in the Risk Register, and INDOT will encourage Progressive Contractors to participate in risk management during preconstruction. To the extent the risk of unforeseen site conditions is not fully addressed in the CMGC</p>

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	<p>and PDB Agreement, it may be discussed for inclusion in the Risk Register during the preconstruction phase.</p>
<p>There are a variety of commercial terms that deviate from the requirements included in INDOT's Standard Specifications. What is the reasoning behind these deviations?</p>	<p>Generally, the early Progressive Contractor's involvement in pre-development work (i.e., Preconstruction Phase Work) and the increase in pre-construction design/construction coordination affords the Progressive Contractor greater ability to identify and for INDOT and the Progressive Contractor (with the ICE(s)) to quantify design/construction issues and other Project risks. Accordingly, the deviations reflect these new circumstances. A few examples are provided below:</p> <ul style="list-style-type: none"><li>• PDB and CMGC afford the Progressive Contractor greater flexibility to consider factors beyond pricing in selecting subcontractors, but as a result the Progressive Contractor appropriately assumes labor harmony risk, rather than enjoy the protections of force majeure for strikes.</li><li>• With respect to indemnification, the Progressive Contractor enjoys greater autonomy and a wider scope of responsibility than on a contractor on a standard construction project, and INDOT will necessarily need broader protections from third party claims for contractor acts.</li></ul>
<p>Why are there fewer force majeure-type circumstances in the commercial terms?</p>	<ul style="list-style-type: none"><li>• See (above) discussion on the Risk Register.</li><li>• Risks to performance that cannot be forecasted/predicted, quantified, insured, or generally mitigated will be among the Relief Events.</li><li>• All other risks – including customary design-bid-build type risks – will be identified in the Risk Register.</li><li>• Insurance coverages are minimums and should be calibrated to ensure cost coverage for insurable risks.</li><li>• Accordingly, the PDB/CMGC Agreements incentivize focus and finalization of a comprehensive Risk Register.</li></ul>
<p>There appears to be more expected of the contractor ("Good Industry Practices") and more ways for the contractor to be terminated; why did INDOT deviate from the requirements included in INDOT's Standard Specifications.</p>	<ul style="list-style-type: none"><li>• As discussed above, the early Progressive Contractor's involvement in pre-development work (i.e., Preconstruction Phase Work) and the increase in pre-construction design-construction coordination afford the Progressive Contractor greater ability to identify and price design/construction issues and other project risks</li><li>• Where the Progressive Contractor is responsible for both the design and construction of the project (and has had the opportunity to participate in the development of/agree upon applicable construction specifications), the Progressive Contractor is appropriately required to deliver a functioning project, not merely one that meets specifications.</li></ul>



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### Answer

Question	Answer
	<p>Accordingly, the standard of care needs to reflect this performance-based objective.</p> <ul style="list-style-type: none"><li>• The Progressive Contractor’s ability to identify and price risk during the Preconstruction Phase necessarily comes with an INDOT right to terminate if, based on such pre-development type work INDOT determines the Project will not be feasible or affordable (while still compensating the Progressive Contractor for its Preconstruction Work).</li></ul>
<p>The Utility process is different than INDOT’s Design-Build program. Generally, how do Utilities work in PDB and CMGC?</p>	<ul style="list-style-type: none"><li>• The Progressive Contractor will generally be responsible (a) on PDB projects for performing all utility-related Preconstruction Work and Construction Work; and (b) on CMGC projects for utility-related Preconstruction coordination (and other utility-related Preconstruction Work as agreed between the parties) and all utility-related Construction Work.</li><li>• Utility relocation work during the Construction Phase will be paid for via provisional sums identified in the Risk Register, with each anticipated utility relocation specifically identified with an assigned Provisional Sum (note that utility-related administrative and coordination-type work not specific to a relocation is still to be included in the subject Pricing Package GMP).</li><li>• Risks relating to unidentified utilities and failure to obtain cooperation from utility owners will be managed via the Risk Register.</li><li>• If issues arise regarding utility owner cooperation, then following the processes set forth in the PDB/CMGC Agreement, INDOT is required to take reasonable steps to assist the Progressive Contractor.</li></ul> <p>See Section 9 (Utility Work) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>
<p>How does the project schedule get developed for the Preconstruction Phase and the Construction Phase and how is it used to monitor project progress?</p>	<p>Projects will have multiple schedules including separate schedules for the Preconstruction Phase and each Pricing Package.</p> <p>The Baseline Pricing Package Schedule during the Construction Phase for each Pricing Package will include milestones and completion deadlines and will be subject to adjustment following Relief Events and Provisional or Department Risks identified in the applicable Risk Register.</p> <p>See Section 12.3 (Adherence to Baseline Pricing Package Schedule) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>

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<p>Will subcontractors have the same methods of compensation during the Preconstruction Phase as the Progressive Contractor (i.e., approval of indirect cost rates and profit applied to direct labor rates)?</p>	<p>In many instances, yes. However, the process is intended to be flexible to allow for subcontractors to be paid through the Progressive Contractor as direct expenses, as may be appropriate. The Progressive Contractor will be responsible for passing through applicable payments to subcontractors (to be made consistent with the agreed upon Preconstruction Phase Compensation Cap). Preconstruction subcontracts are subject to INDOT approval.</p>
<p>What will the cost estimating process be for determining a Pricing Package GMP?</p>	<p>For PDB and CMGC projects, INDOT will contract with an ICE that will be responsible for preparing production-based independent estimates and construction schedules, identifying project risk, leading cost estimate reviews, and leading risk workshops.</p> <p>The cost estimating process that will be used to achieve a fair price for the Work included in a Pricing Package will be developed over the first few projects and will require coordination between the designer, ICE, Progressive Contractor, and INDOT. The general framework for the cost estimating process will include multiple Pricing Milestone Estimates (PMEs) where the ICE and the Progressive Contractor develop two separate independent cost estimates for the Construction Work included in a Pricing Package, based on the then current level of design. Quantity reconciliation will be included at each PME to determine how well both estimates are aligned and to determine and facilitate discussion of any differences. This open-book estimating process allows the Progressive Contractor and INDOT to identify contingencies on an event-specific basis and include those contingencies as Risk Register Events that will be included with each Pricing Package Amendment. This facilitates a comparison of raw costs and focuses the parties on managing the price impacts of risk through the Risk Register.</p> <p>See Section 6 (Cost Estimating) of Exhibit B of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>
<p>What happens if a mutually agreed upon GMP is not reached?</p>	<p>If the parties are unable to agree on a GMP or other contractual terms, INDOT may elect to terminate the Agreement. Upon termination, INDOT may elect to re-procure delivery of the project using any available delivery method. If a new procurement is initiated, INDOT may determine the terminated Progressive Contractor is precluded from participating in the re-procurement. The decision to preclude the terminated Progressive Contractor will be made depending on project specific considerations including whether the termination is the result of actions of the Progressive Contractor, the amount of time that has elapsed between the initial procurement and re-procurement, and whether the</p>

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	<p>Progressive Contractor will have an unfair competitive advantage in the re-procurement.</p> <p>Any Preconstruction Phase work product completed will remain property of INDOT.</p> <p>See Section 25 (Termination For Convenience; Failure to Agree on Construction Phase Amendment or Pricing Package Amendment) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</p>
<p>What are the Progressive Contractor's obligations and risks regarding site acquisition, maintenance during construction site safety/security, damages to adjacent parcels, and risk of loss?</p>	<ul style="list-style-type: none"><li>• For both PDB and CMGC projects, the Progressive Contractor and INDOT will jointly identify any necessary Project permanent right-of-way parcels and agree upon responsibility for performing any acquisitions as part of Pricing Package Amendments.</li><li>• Progressive Contractors will be responsible for acquiring any temporary construction interests.</li><li>• Risks relating to right-of-way acquisition will be managed through the Risk Register. See Section 8 (Access &amp; Right-of-Way) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</li><li>• The Progressive Contractor will generally bear risk of loss with respect to the project Site and responsibility for Site maintenance, security, and safety during the Construction Phase. See Section 11.4 (Site Safety and Security; Adjacent Properties) and Section 18 (Title; Risk of Loss) of both Appendix E (Template CMGC Agreement) and Appendix F (Template PDB Agreement).</li></ul>
<p>How will payment and performance security work on PDB/CMGC projects?</p>	<p>The PDB/CMGC Agreement will require placement of project payment and performance bonds, with penal sums beginning at Preconstruction Phase Compensation Cap and increasing equivalent to the amount of each Pricing Package GMP.</p>
<p>How is default/cure handled under the PDB/CMGC agreements?</p>	<p>The PDB/CMGC agreements include default and cure periods consistent with other progressive contracting agreements in the market, which address certain customary default-type events such as bankruptcy affecting the Progressive Contractor. See Section 24.1 (Progressive Contractor Default) for more information.</p>