

# **Division 1    General Requirements**

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## **1-01    Definitions and Terms**

### **1-01.1    General**

The following abbreviations and terms are defined here as they are used in Contract documents and Specifications. When used in the Proposal Form to denote items of Work and units of measurements, abbreviations are defined to mean the full expression.

### **1-01.2    Abbreviations**

#### **1-01.2(1)    Associations and Miscellaneous**

These abbreviations are used in Plans and Specifications as defined here:

AAA	American Arbitration Association
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMS	Aerospace Material Specification
ANLA	American Nursery and Landscape Association
ANSI	American National Standards Institute
APA	American Plywood Association
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance Association
ARTBA	American Road & Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials International
AWPA	American Wood Protection Association
AWS	American Welding Society
AWWA	American Water Works Association
CFR	Code of Federal Regulations
CSWGP	National Pollution Discharge System Construction Stormwater General Permit
DMCS	Diversity Management Compliance System
DIPRA	Ductile Iron Pipe Research Association
ECY	Washington State Department of Ecology
EI	Edison Electric Institute
EPA	Environmental Protection Agency
ESAL	Equivalent Single Axle Loads
FHWA	Federal Highway Administration
FOP	Field Operating Procedure

IA	Irrigation Association
ICEA	Insulated Cable Engineers Association
ICRI	International Repair Institute
IEEE	Institute of Electrical and Electronics Engineers
ITE	Institute of Transportation Engineers
IES	Illumination Engineering Society
IMSA	International Municipal Signal Association
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NRMCA	National Ready Mix Concrete Association
OMWBE	Office of Minority and Women's Business Enterprises
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
PPI	Plastic Pipe Institute
PTI	Post Tensioning Institute
PCI	Precast/Prestressed Concrete Institute
QPL	Qualified Products List
RAM	Request for Approval of Material
RCW	Revised Code of Washington (Laws of the State)
SAE	Society of Automotive Engineers
SEPA	State Environmental Policy Act
SOP	Standard Operating Procedure
SSPC	Society of Protective Coatings
UL	Underwriters Laboratories
WAC	Washington Administrative Code
WAQTC	Western Alliance for Quality Transportation Construction
WCLIB	West Coast Lumber Inspection Bureau
WISHA	Washington Industrial Safety and Health Administration
WSDOT	Washington State Department of Transportation
WWPA	Western Wood Products Association

### 1-01.2(2) Items of Work and Units of Measurement

Plans and Specifications may include common engineering and construction abbreviations. Many such abbreviations need no definition. But when the following abbreviations are used, they will only mean:

Agg.	Aggregate
Al.	Aluminum
BST	Bituminous Surface Treatment
Cl.	Class
Cfm	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Comb.	Combination
Conc.	Concrete

CPA	Compaction Price Adjustment
CPF	Composite Pay Factor
Crib.	Cribbing
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
gph	Gallon per Hour
gpm	Gallon per Minute
Hund.	Hundred
HMA	Hot Mix Asphalt
In.	Inch
Incl.	Including
JMCAF	Job Mix Compliance Price Adjustment
JMF	Job Mix Formula
lb	Pound(s)
LF or Lin. Ft.	Linear Foot (Feet)
LS	Lump Sum
M	Thousand
MBM	Thousand Feet Board Measure
MUTS	Minimum Ultimate Tensile Strength
PCPS	Precast Prestressed
Pres.	Pressure
psf	Pounds per Square Foot
psi	Pounds per Square inch
PVC	Polyvinyl Chloride
RAP	Recycled Asphalt Pavement
Reg.	Regulator
Reinf.	Reinforced, Reinforcing
Sec.	Section
St.	Steel
Str.	Structural
sy or sq. yd.	Square Yard(s)
Th.	Thick or Thickness
Tr.	Treatment
Va	Air Voids
VFA	Voids Filled with Asphalt
VMA	Voids in Mineral Aggregate

### 1-01.3 Definitions

**Addendum** – A written or graphic document, issued to all Bidders and identified as an Addendum prior to Bid opening, which modifies or supplements the Bid Documents and becomes a part of the Contract.

**Auxiliary Lane** – The part of the Roadway next to Traveled Ways for parking, speed changes, turning, weaving, truck climbing, or for anything that adds to through traffic movement.

**Award** – The formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

**Bid, Proposal** – The offer of a Bidder on a properly completed Proposal Form to perform the Contract.

**Bidder** – An individual, partnership, firm, corporation, or joint venture, submitting a Proposal or Bid. When required by law or otherwise the individual, partnership, firm, corporation, or joint venture shall be prequalified.

**Bid Documents** – The component parts of the proposed Contract which may include, but are not limited to, the Proposal Form, the proposed Contract Provisions, the proposed Contract Plans, Addenda, and for projects with Contracting Agency subsurface investigations; the Summary of Geotechnical Conditions and subsurface boring logs (if any).

**Bridge Approach Embankments** – An embankment beneath a Structure and extending 100 feet beyond a Structure's end (at Subgrade elevation for the full embankment width) plus an access ramp on a 10:1 slope to the original ground elevation. Also, any embankment that replaces unsuitable foundation soil beneath the Bridge Approach Embankment.

**Call for Bids (Advertisement for Bids)** – The published public notice soliciting Proposals or Bids for Work stating, among other things, the time, place, and date for receiving and opening the Bids.

**Certified Claim** - A written claim filed by the Contractor pursuant to the terms, conditions and requirements of Section 1-09.11(2), after exhausting all the means provided to resolve a dispute, including the use of a Disputes Review Board if one was established.

**Cold Weather Protection Period** – A period of time 7 days from the day of concrete placement or the duration of the cure period, whichever is longer.

**Commission, Washington State Transportation Commission** – The appointive body having authority over state transportation matters as provided by law.

**Completion Dates** – Substantial Completion Date is the day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, all the initial plantings are completed and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

Physical Completion Date is the day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

Completion Date is the day all the Work specified in the Contract is completed and all the obligations of the Contractor under the Contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date.

**Contract** – The written agreement between the Contracting Agency and the Contractor. It describes, among other things:

1. What work will be done, and by when;
2. Who provides labor and materials; and
3. How Contractors will be paid.

The Contract includes the Contract (agreement) Form, Bidder's completed Proposal Form, Contract Provisions, Contract Plans, *Standard Specifications*, *Standard Plans*, Addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any).

**Contract Bond** – The approved form of security furnished by the Contractor and the Contractor's Surety as required by the Contract, that guarantees performance of all the Work required by the Contract and payment to anyone who provides supplies or labor for the performance of the Work.

**Contract Form (Agreement Form)** – The form provided by the Contracting Agency that requires the authorized signatures of the Contractor and the Contracting Agency to result in formal execution of the Contract.

**Contracting Agency** – Agency of Government that is responsible for the execution and administration of the Contract.

**Contractor** – The individual, partnership, firm, corporation, or joint venture, Contracting with the Contracting Agency to do prescribed Work.

**Contract Plans** – A publication addressing the Work required for an individual project. At the time of the call for Bids, the Contract Plans may include, but are not limited to, the following: a vicinity map, a summary of quantities, structure notes, signing information, traffic control plans, and detailed drawings; all for a specific individual project. At the time of the Contract execution date, the Contract Plans include all Addenda.

**Contract Provisions** – A publication addressing the Work required for an individual project. At the time of the call for Bids, the Contract Provisions may include, for a specific individual project, the Special Provisions, a listing of the applicable *Standard Plans*, the prevailing minimum hourly wage rates, and an informational Proposal Form with the listing of Bid items. The proposed Contract Provisions may also include, for a specific individual project, the Required Contract Provisions Federal-aid Construction Contracts, and various required certifications or declarations. At the time of the Contract execution date, the Contract Provisions include the proposed Contract Provisions and include all Addenda, a copy of the Contract Form, and a copy of the Proposal Form with the Contract prices and extensions.

**Department, Department of Transportation** – The State Agency authorized by law to administer transportation-related work.

**Engineer** – The Contracting Agency's representative who directly supervises the engineering and administration of a construction Contract.

**Federal Highway Administration** – The Federal Agency authorized to approve plans and contracts for Federal-Aid Highway projects. They also inspect such projects to ensure Contract compliance.

**Freeway** - A divided highway that has a minimum of two lanes in each direction with full control of access.

**Frontage Road** – A local street or road usually next to an arterial Highway that serves abutting property and adjacent areas and controls access.

**Highway** – A public way for vehicles, including the entire Right of Way.

**Inspector** – The Engineer's representative who inspects Contract performance in detail.

**Laboratory** – The laboratories of the Contracting Agency, or other laboratories the Contracting Agency authorizes to test Work, soils, and materials.

**Pathway, Trail** – A public way primarily for the purposes of non-motorized travel outside the Traveled Way and physically separated from the Roadway by an open space or barrier.

**Plans** – The Contract Plans or *Standard Plans* which show location, character, and dimensions of prescribed Work including layouts, profiles, cross-sections, and other details.

**Project Engineer** – Same as Engineer.

**Proposal Form** – The form provided to Bidders by the Contracting Agency for submittal of a Proposal or Bid to the Contracting Agency for a specific project. The form includes the item number, estimated plan quantity, and item description of the Bid items along with blank spaces to be completed by the Bidder for the unit prices, extensions, the total Bid amount, signatures, date, acknowledgment of Addenda, and the Bidder's address. The required certifications and declarations are part of the form.

**Railroad Company** – The entity(ies) that own railroads or light rail track, trains, right of way, or equipment that is either within the project limits or is in any way affected by the Contractor's Work. When the Contract does not identify these entities, it shall be the Contractor's responsibility to do so.

**Reference Information** – Information provided to the Contractor by the Contracting Agency that is not part of the Contract.

**Right of Way** – Land, property, or property interest, usually in a strip, acquired for or devoted to transportation purposes.

**Roadbed** – The graded part of the Roadway within top and side slopes, prepared as a foundation for the pavement structure and Shoulders.

**Roadside** – The area outside the traveled way.

**Roadway** – The portion of the Right of Way within the outside limits of the side slopes.

**Secretary, Secretary of Transportation** – The chief executive officer of the Department and other authorized representatives.

**Shoulder** – The part of the Roadway next to the Traveled Way or Auxiliary Lanes. It provides lateral support of base and surface courses and is an emergency stopping area for vehicles.

**Sensitive Area** – Natural features, which may be previously altered by human activity, that are present on or adjacent to the project location and protected, managed, or regulated by local, tribal, state, or federal agencies.

**Special Provisions** – Supplemental Specifications and modifications to the Standard Specifications that apply to an individual project.

**Specifications** – Provisions and requirements for the prescribed Work.

**Standard Plans** – A manual of specific plans or drawings adopted by the Contracting Agency which show frequently recurring components of Work that have been standardized for use.

**State** – The state of Washington acting through its representatives.

**Structures** – Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, service pipes, sewers, underdrains, foundation drains, and other features found during Work that the Contract may or may not classify as a Structure.

**Subgrade** – The top surface of the Roadbed on which subbase, base, surfacing, pavement, or layers of similar materials are placed.

**Substructure** – The part of the Structure *below*:

1. The bottom of the grout pad for the simple and continuous span bearing, or
2. The bottom of the girder or bottom slab soffit, or
3. Arch skewbacks and construction joints at the top of vertical abutment members or rigid frame piers.

Substructures include endwalls, wingwalls, barrier and railing attached to the wingwalls, and cantilever barriers and railings.

**Superstructure** – The part of the Structure *above*:

1. The bottom of the grout pad for the simple and continuous span bearing, or
2. The bottom of the block supporting the girder, or
3. Arch skewbacks and construction joints at the top of vertical abutment members or rigid frame piers.

Longitudinal limits of the Superstructure extend from end to end of the Structure in accordance with the following criteria:

1. From the face of end diaphragm abutting the bridge approach embankment for end piers without expansion joints, or
2. From the end pier expansion joint for bridges with end pier expansion joints

Superstructures include, but are not limited to, the bottom slab and webs of box girders, the bridge deck and diaphragms of all bridges, and the sidewalks when shown on the bridge deck. The Superstructure also includes the girders, expansion joints, bearings, barrier, and railing attached to the Superstructure when such Superstructure components are not otherwise covered by separate unit measured or lump sum bid items.

Superstructures do not include endwalls, wingwalls, barrier and railing attached to the wingwalls, and cantilever barriers and railings unless supported by the Superstructure.

**Surety** – A company that is bound with the Contractor to ensure performance of the Contract, payment of all obligations pertaining to the Work, and fulfillment of such other conditions as are specified in the Contract, Contract Bond, or otherwise required by law.

**Traveled Way** – That part of the Roadway made for vehicle travel excluding Shoulders and Auxiliary Lanes.

**Work** – The provision of all labor, materials, tools, equipment, and everything needed to successfully complete a project according to the Contract.

**Working Drawings** – Drawings, plans, diagrams, or supplementary data or calculations, including a schedule of submittal dates for Working Drawings where specified, which the Contractor must submit to the Engineer.

**Written Determination** – The official position of the Engineer, in writing, on items including entitlement, instructions, or interpretations. The Written Determination shall be evidenced by a letter or email originating from the Engineer.

**WSDOT Form** – Forms developed and maintained by WSDOT that are required or available for use on a project. These forms can be downloaded from the forms catalogue at: [www.wsdot.wa.gov/forms/pdfforms.html](http://www.wsdot.wa.gov/forms/pdfforms.html)

**1-01.4 Interpretations**

In the Contract Documents, where appropriate:

1. The singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to.
2. The words “including,” “included,” “includes,” and “include” are deemed to be followed by the words “without limitation” or “but not limited to.”
3. Words defined in Section 1-01.3 apply to all Sections. Words defined in a Section are intended to be used for interpretations within the Section and shall take precedence over the definition in Section 1-01.3. Words not otherwise defined which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.
4. Words of gender used herein include each other gender where appropriate.
5. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.
6. The titles or headings of the Sections and Subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.
7. References to subcontractors of a given tier shall be interpreted to mean the tier in relation to the Contractor. For example, first tier subcontractors all hold a contract directly with the Contractor, known as a first-tier subcontract. Second tier subcontractors all hold a contract with a first-tier subcontractor, known as a second-tier subcontract, and so on.

**1-02 Bid Procedures and Conditions****1-02.1 Prequalification of Bidders**

The Contracting Agency will provide a Bid Proposal Form only after a prospective Bidder submits a "Standard Questionnaire and Financial Statement". This questionnaire enables the Contracting Agency to decide whether or not the Bidder is qualified to perform Highway, road, or other public work. The questionnaire shall be sworn to before a person authorized to take oaths.

On the basis of this questionnaire, the Contracting Agency will either specify the type and amount of Work it considers the prospective Bidder prequalified to perform or advise the prospective Bidder of the reasons they failed to be prequalified. To remain prequalified, the Bidder must submit an updated questionnaire once a year and supplements whenever required by the Contracting Agency.

A submittal deadline applies to prospective Bidders not prequalified or from whom a supplemental questionnaire is due. To receive consideration for issuance of a Bid Proposal Form on a specific project, the questionnaire (or supplement) must be received by the Prequalification Engineer no less than 15 days prior to the scheduled Bid opening.

The Contracting Agency may withdraw a Bidder's prequalification or reduce its amount if:

1. The extent of other work the Bidder has under Contract (Contracting Agency or otherwise) justifies such action, or
2. Past or present work on a Contracting Agency Contract has been less than satisfactory.

If a Bidder's questionnaire does not contain sufficient information, the Contracting Agency may refuse to provide a Bid Proposal Form and disregard any Bid submitted. After opening Bids, the Contracting Agency may decide that a prequalified Bidder is not responsible and may refuse to accept the Bid on that basis. Such a refusal will be conclusive unless the Bidder appeals within five days to the Superior Court of Thurston County. Appeals shall be heard within ten days after filed and shall provide at least five days' notice to the Contracting Agency.

The Bidder shall ensure that the combination of the Bid amount and other Contract work with the Contracting Agency does not exceed the prequalification amount. If this combination does exceed the prequalification amount, the Contracting Agency may determine the Bidder to be not responsible and refuse to Award a Contract.

Two or more prospective Bidders may, in a joint venture, prequalify and Bid jointly on a single Contract. Each shall have filed a "Standard Questionnaire and Financial Statement". Together they shall also file a standard form of "Individual Project Statement of Joint Venture" and a joint venture agreement in a form acceptable to the Contracting Agency.

To Bid jointly on a continuous joint venture on more than one Contract, two or more prospective Bidders shall submit:

1. A "Standard Questionnaire and Financial Statement" compiled for the joint venture;
2. A "Standard Questionnaire and Financial Statement" for each member (if the Contracting Agency has no copy on file); and
3. A copy of the "Joint Venture Agreement" signed by each member of the joint venture and naming each person authorized to sign documents on its behalf. (If any member is a corporation, a corporate resolution shall accompany the agreement. This resolution shall authorize the joint venture agreement and name the officer(s) authorized to sign the joint venture agreement or Contract on behalf of the corporation.)

The Contracting Agency will treat the continuing joint venture as a new firm and decide its prequalification on that basis.

All joint ventures and each of its members are subject to Section 1-02.14.

### 1-02.2 Plans and Specifications

The Contracting Agency will place review copies of the Plans and Specifications on file in the offices of:

1. All Regional Administrators of the Department;
2. The County Engineer of the county in which the Work is located; and
3. These plans service offices of the Associated General Contractors of America: Seattle, Spokane, and Tacoma, Washington.

Prospective Bidders may purchase Plans and Specifications from the Department of Transportation for the fee indicated in the call for Bids. For more information, see <https://wsdot.wa.gov/business-wsdot/how-do-business-us/public-works-contracts/how-bid-contract>. The fee shall accompany each request for Plans. Checks shall be payable to the State of Washington, Department of Transportation.

After Award of the Contract, the Plans and Specifications will be issued without charge on the following basis:

To Contractor	No. of Sets	Basis of Distribution
Reduced Plans (11" by 17") and Special Provision	10	Furnished automatically upon Award.
Additional reduced Plans (11" by 17") and Special Provision	10	Furnished only upon request for projects with more than 100 plan sheets.
Large Plans (22" by 34")	1	Furnished only upon request.

To Subcontractors and Suppliers	No. of Sets	Basis of Distribution
Reduced Plans (11" by 17") and accompanying Special Provisions	1	Furnished only upon request by the Contractor for an approved subcontractor or material supplier.

Additional Plans may be purchased by payment of the current rates.

### 1-02.3 Estimated Quantities

The quantities shown in the Proposal Form and the Contract Forms are estimates and are stated only for Bid comparison purposes. The Contracting Agency does not warrant expressly or by implication, that the actual quantities of Work will correspond with those estimates. Payment will be made on the basis of the actual quantities of each item of Work completed in accordance with the Contract requirements.

### 1-02.4 Examination of Plans, Specifications, and Site of Work

#### 1-02.4(1) General

The Bidder shall carefully examine the Bid Documents as defined in Section 1-01.3. Submittal of a Bid shall be conclusive evidence that the Bidder has made these examinations and understands all requirements for the performance of the completed Work. The Bidder further warrants, agrees, and acknowledges by submitting a Bid that it:

1. Has taken steps reasonably necessary to ascertain the nature and location of the Work;
2. Has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:
  - a. Conditions bearing upon acquisition, transportation, disposal, handling, and storage of materials;

- b. The availability of labor, materials, water, electric power, and roads;
  - c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
  - d. The conformation and condition of the ground;
  - e. The character of equipment and facilities needed preliminary to and during Work performance; and
  - f. The site biological hazards and associated physical hazards.
3. Has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work site (including material sites) as well as from the Bid Documents and other information made a part of this Contract; and
  4. Has satisfied itself as to the adequacy of time allowed for the completion of the physical Work on the Contract.

Failure of the Bidder to take the actions described and acknowledged in this clause shall not relieve the Bidder from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or from proceeding to successfully perform the Work without additional expense to the Contracting Agency.

The Bidder agrees that the Contracting Agency shall not be liable to it on claims for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the Bidder's failure to investigate and familiarize itself sufficiently with the conditions under which the Contract is to be performed.

The Bidder shall be familiar and comply with all Federal, State, tribal, and local laws, ordinances, and regulations which might affect those engaged in the Work. The Contracting Agency will not consider a plea of misunderstanding or ignorance of such requirements.

Bid prices shall reflect what the Bidder anticipates to be the cost of completing the Work, including methods, materials, labor, and equipment. Except as the Contract may provide, the Bidder shall receive no payment for costs that exceed those in the Bid prices.

Prospective Bidders are advised that projects with Work on or adjacent to water may require insurance coverage in compliance with:

1. The Longshoremen's and Harbor Worker's Compensation Act (administered by U.S. Department of Labor), or
2. The State Industrial Insurance (administered by the Washington State Department of Labor and Industries), or
3. Both.

The Contractor shall bear all cost for such insurance as provided in Section 1-07.10.

No Claim shall be allowed because of ambiguity in the Contract if:

1. The Bidder discovers an ambiguity but fails to notify the Contracting Agency, or
2. The Bidder failed to discover a patent ambiguity that would be discovered by a reasonably prudent contractor in preparing its Bid.

Prospective Bidders desiring an explanation or interpretation of the Bid Documents, shall request the explanation or interpretation in writing by 5:00 PM on the fourth business day preceding the bid opening to allow a written reply to reach all prospective Bidders before the submission of their Bids. Oral explanations, interpretations, or instructions given by anyone before the Award of a Contract will not be binding on the Contracting Agency. Information given a prospective Bidder concerning the Bid Documents will be furnished to all prospective Bidders as an Addendum if that information is deemed by the Contracting

Agency to be necessary in submitting Bids or if the Contracting Agency concludes that the lack of the information would be prejudicial to other prospective Bidders.

Information provided by the Contracting Agency for inspection by the Bidders as Reference Information will be made available for inspection at the location specified in the Special Provisions. The availability of Reference Information from the Contracting Agency shall not relieve the Bidder or the Contractor from risks or their duty to make examinations and investigations as required by this section or other responsibility under the Contract or as may be required by law.

Prospective Bidders are advised that the Contracting Agency may include a partially completed Washington State Department of Ecology (Ecology) Transfer of Coverage (Ecology form ECY 020-87a) for the Construction Stormwater General Permit (CSWGP) as part of the Bid Documents. When the Contracting Agency requires the transfer of coverage of the CSWGP to the Contractor, an informational copy of the Transfer of Coverage and the associated CSWGP will be included in the appendices. As a condition of Section 1-03.3, the Contractor is required to complete sections I, III, and VIII of the Transfer of Coverage and return the form to the Contracting Agency.

The Contracting Agency is responsible for compliance with the CSWGP until the end of day that the Contract is executed. Beginning on the day after the Contract is executed, the Contractor shall assume complete legal responsibility for compliance with the CSWGP and full implementation of all conditions of the CSWGP as they apply to the Contract Work.

#### **1-02.4(2) Subsurface Information**

If the Contracting Agency has made a subsurface investigation of the site of the Work, the subsurface information obtained by the Contracting Agency will be made available for inspection by the Bidders as Reference Information. Geotechnical reports and memoranda shall not be considered a part of the contract unless specifically identified as contractual in the Special Provisions. The Summary of Geotechnical Conditions, as an appendix to the Special Provisions, shall be considered as part of the Contract. The boring logs and associated data, as an appendix to the Special Provisions, shall be considered as part of the Contract. The Contracting Agency makes no representation or warranty expressed or implied that:

1. The Bidders' interpretations from the Contract and Reference Information are correct,
2. Moisture conditions and indicated water tables will not vary from those found at the time the subsurface information was collected, and
3. The ground and subsurface conditions at the location of the subsurface information has not been physically disturbed or altered after the subsurface information was obtained.

The Contracting Agency specifically makes no representations, guarantees, or warranties as to the condition, materials, or proportions of the materials between the specific borings regardless of any subsurface information the Contracting Agency may make available to the prospective Bidders.

The availability of subsurface information from the Contracting Agency shall not relieve the Bidder or the Contractor from risks or of their duty to make examinations and investigations as required by Section 1-02.4(1) or other responsibility under the Contract or as may be required by law.

#### **1-02.5 Proposal Forms**

Bidders are authorized to access an electronic Proposal Form for submittal via AASHTOWare Project Bids™ software "BidExpress®". At the request of a Bidder, the Contracting Agency will provide a physical Proposal Form for any project on which the Bidder is eligible to Bid.

The Proposal Form will identify the project and its location and describe the Work. It will also list estimated quantities, units of measurement, the items of Work, and the materials to be furnished at the unit Bid prices. The Bidder shall complete spaces on the Proposal Form that call for unit prices, extensions, the total Bid amount, signatures, date, acknowledgment of Addenda, and the Bidder's address. The required certifications are included as part of the Proposal Form.

#### **1-02.6 Preparation of Proposal**

The Contracting Agency will accept only those Proposals properly executed on the physical forms it provides, or electronic forms that the Bidder has been authorized to access. Unless it approves in writing, the Contracting Agency will not accept Proposals on forms attached to the Plans and stamped "Informational".

All prices shall be in legible figures (not words) written in ink or typed, and expressed in U.S. dollars and cents. The Proposal shall include:

1. A unit price for each item (omitting digits more than two places to the right of the decimal point),
2. An extension for each unit price (omitting digits more than two places to the right of the decimal point), and
3. The total Contract price (the sum of all extensions).

In the space provided on the signature sheet, the Bidder shall confirm that all Addenda have been received.

The Bidder shall submit with the Bid a list of:

1. Subcontractors who will perform the work of structural steel installation, rebar installation, heating, ventilation, air conditioning, and plumbing as described in RCW 18.106 and electrical as described in RCW 19.28, and
2. The Work those subcontractors will perform on the Contract as described in RCW 39.30.060.
3. Shall not list more than one subcontractor for each category of work identified, except, when subcontractors vary with Bid alternates, in which case the Bidder shall identify which subcontractor will be used for which alternate.

If no subcontractor is listed, the Bidder acknowledges that it does not intend to use any subcontractor to perform those items of work.

The Bidder shall submit with their Bid a completed Contractor Certification Wage Law Compliance form (WSDOT Form 272-009). Failure to return this certification as part of the Bid Proposal package will make this Bid Nonresponsive and ineligible for Award. A Contractor Certification of Wage Law Compliance form is included in the Proposal Forms.

Proposals of corporations shall be signed by the officer or officers having authority to sign them. If a Bidder is a copartnership, the Proposal shall be signed by an authorized member of the copartnership. When the Bidder is a joint venture, the Proposal shall be signed by one or more individuals as authorized by the Joint Venture.

#### **1-02.7 Bid Deposit**

A deposit of at least 5 percent of the total Bid shall accompany each Bid. This deposit may be cash, certified check, cashier's check, or a proposal bond (Surety bond). For projects that are selected by the Contracting Agency to be Bid electronically, the proposal bond may be in either a physical format, or an electronic format via Surety2000.com or Insurevision.com and BidExpress®. When a physical Bid deposit or proposal bond is furnished to accompany an electronic Proposal Form, the Bid deposit shall be received by the Contracting Agency at the location specified for receipt of Bids prior to the time set for receipt of Bids. Proposal bonds shall be on a form acceptable to the Contracting Agency and shall be signed by the Bidder and the Surety. A proposal bond shall not be

conditioned in any way to modify the minimum 5 percent required. The Surety shall: (1) be registered with the Washington State Insurance Commissioner, and (2) appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner.

The failure to furnish a Bid deposit of a minimum of 5 percent with the Bid or as a physical supplement to the electronic Proposal Form shall make the Bid nonresponsive and shall cause the Bid to be rejected by the Contracting Agency.

### **1-02.8 Noncollusion Declaration and Lobbying Certification**

#### **1-02.8(1) Noncollusion Declaration**

When required by Section 112(c) Title 23, United States Code, a declaration shall be provided certifying that the Bidder has not taken part in collusion or other action that would restrain competitive Bidding.

The Code of Federal Regulations 23 CFR 635.112(f)(1) requires that: "Each Bidder shall file a sworn or unsworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the Bid, certifying that such persons, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in collusion, or otherwise taken action in restraint of free competitive Bidding in connection with the submitted Bid. Failure to submit the sworn or unsworn statement as part of the Bid Proposal package will make the Bid nonresponsive and not eligible for Award consideration". In addition, 23 CFR 635.112(f)(1) requires that the Contracting Agency provide the form for the declaration to prospective Bidders and that the declaration shall be executed by such persons, firm, association, or corporation under penalty of perjury under the laws of the United States.

Therefore, by including the Non-collusion Declaration as part of the signed bid Proposal, the Bidder is deemed to have certified and agreed to the requirements of the Declaration.

#### **1-02.8(2) Lobbying Certification**

Section 319 of Public Law 101-121 prohibits payment of Federal Funds for contract lobbying by the Contractor and any subcontractor whose contract exceeds \$100,000. A Certification for Federal-Aid Contracts (WSDOT Form 272-040) is provided in the Proposal Form for Contracts exceeding \$100,000 to address this requirement.

By signing the proposal, the Bidder will be deemed to have signed and agreed to the conditions and requirements of the Certification for Federal-Aid Contracts.

The Contractor shall ensure that a Certification for Federal-Aid Contracts (WSDOT Form 272-040) is included in every contract with any subcontractor whose contract exceeds \$100,000. By signing the contract any subcontractor will be deemed to have signed and agreed to the conditions and requirements of the Certification for Federal-Aid Contracts. The Contractor shall keep evidence in their files that such subcontractor has committed to this requirement.

Section 319 of Public Law 101-121 also provides that, if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit to the Contracting Agency the current version of Standard Form LLL, DISCLOSURE OF LOBBYING ACTIVITIES, in accordance with the instructions on the form. All subcontractors whose contract exceeds \$100,000 shall disclose in the same manner as the Contractor, except that, Standard Form LLL shall be submitted to the Contractor for processing to the Contracting Agency. Standard Form LLL is available for download at [www.gsa.gov/reference/forms](http://www.gsa.gov/reference/forms).

Audits will be conducted to ensure compliance with this section.

**1-02.9 Delivery of Proposal**

For projects scheduled for Bid opening in Olympia, the Proposal shall be sealed and submitted in the envelope provided with it to the address provided below or shall be submitted electronically via AASHTOWare Project Bids™ software “BidExpress®”. The Bidder shall fill in all blanks on this envelope to ensure proper handling and delivery. Bids are to be received no later than until 11:00:59 A.M. Pacific time on the date of Bid opening:

Washington State Department of Transportation  
Room 2D20  
310 Maple Park Avenue SE  
Olympia WA 98501-2361

For projects scheduled for Bid opening in other locations, the Proposal shall be sealed and submitted in the envelope provided with it at the location and time identified in the Special Provisions. The Bidder shall fill in all blanks on this envelope to ensure proper handling and delivery.

Proposals that are received as required will be publicly opened and read as specified in Section 1-02.12. The Contracting Agency will not open or consider a Proposal when the Proposal or Bid deposit is received after the time specified for receipt of Proposals or received in a location other than that specified for receipt of Proposals unless an emergency or unanticipated event interrupts normal work processes of the Contracting Agency so that Proposals cannot be received.

If an emergency or unanticipated event interrupts normal work processes of the Contracting Agency so that Proposals cannot be received at the office designated for receipt of bids as specified in Section 1-02.12 the time specified for receipt of the Proposal will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the normal work processes of the Contracting Agency resume.

When a Bid deposit is furnished in a physical format as specified in Section 1-02.7 the Bid deposit shall be submitted in a sealed envelope marked as “BID SUPPLEMENT” and with the Bidder’s company name, project title, and Bid date.

**1-02.10 Withdrawing, Revising, or Supplementing Proposal**

After submitting a physical Bid Proposal to the Contracting Agency, the Bidder may withdraw, revise, or supplement it if:

1. The Bidder submits a written request signed by an authorized person, and
2. The Contracting Agency receives the request before the time set for receipt of Proposals.

The original physical Bid Proposal may be supplemented or revised and resubmitted as the official Bid Proposal if the Contracting Agency receives it before the time set for receipt of Proposals. Faxed Bid revisions and supplements will be accepted only if they are submitted in accordance with the “Example Format for Facsimile Bid Changes” instructions posted on the WSDOT website at <https://wsdot.wa.gov/business-wsdot/how-do-business-us/public-works-contracts/alerts-bulletins>.

Unless specifically allowed in the Contract, emailed requests to withdraw, revise, or supplement a Proposal are not acceptable. The Contracting Agency is not responsible for delayed, partial, failed, illegible, or partially legible FAX document transmissions, and such documents may be rejected as incomplete at the Bidder’s risk.

**The Contracting Agency will not accept requests to revise or withdraw electronic Bid Proposals. Such requests shall be furnished directly to BidExpress® and in accordance with their terms and conditions.**

### 1-02.11 Combination and Multiple Proposals

A project may be organized for Bidding and construction by various methods to enable proposals to be submitted for combined projects or for the construction method specified. The Contracting Agency reserves the right to Award combined or separate Bids or by such other method deemed most advantageous to the Contracting Agency. Only those combined Bids specifically prescribed in the project Special Provisions will be accepted. If contracts are Awarded for combinations of projects, separate contracts will be written for each project included in the combination.

A Bidder submitting more than one Proposal at a letting may attach one of the following statements to each Proposal:

"We prefer to be Awarded not more than (Number) Contracts for projects for which we have submitted Bids at this letting;" or

"We prefer to be Awarded Contracts of a total value of not more than \$\_\_\_\_ for projects for which we have submitted Bids at this letting".

Such attachments will not make the Proposals irregular. The Contracting Agency will Award each Contract to the lowest responsible Bidder but will consider such attachment in determining the responsibility of the Bidder to perform each Contract for which a statement has been attached.

### 1-02.12 Public Opening of Proposals

Proposals will be opened and publicly read at the time indicated in the call for Bids unless the Bid opening has been delayed or canceled. Bidders, their authorized agents, and other interested parties are invited to be present.

If an emergency or unanticipated event interrupts normal work processes of the Contracting Agency so that Proposals cannot be opened at the time indicated in the call for Bids the time specified for opening of Proposals will be deemed to be extended to the same time of day on the first workday on which the normal work processes of the Contracting Agency resume.

### 1-02.13 Irregular Proposals

1. A Proposal will be considered irregular and may be rejected if:
  - a. The Bidder is not prequalified;
  - b. The Bidder adds provisions reserving the right to reject or accept the Award, or enter into the Contract;
  - c. A price per unit cannot be determined from the Bid Proposal;
  - d. The Proposal form is not properly executed;
  - e. The Bidder fails to submit or properly complete a Subcontractor list (WSDOT Form 271-015), if applicable, as required in Section 1-02.6;
  - f. The Bidder fails to submit or properly complete a Disadvantaged Business Enterprise Utilization Certification (WSDOT Form 272-056), if applicable, as required in Section 1-02.6;
  - g. The Bidder fails to submit Written Confirmations (WSDOT Form 422-031) from each DBE firm listed on the Bidder's completed Disadvantaged Business Enterprise Utilization Certification that they are in agreement with the Bidder's DBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;

- h. The Bidder fails to submit Disadvantaged Business Enterprise Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award in accordance with Section 1-07.11;
  - i. The Bidder fails to submit a DBE Bid Item Breakdown (WSDOT Form 272-054), if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
  - j. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation;
  - k. The Bidder fails to submit an SVB Plan (WSDOT Form #226-018) if applicable, as required in Section 1-02.6;
  - l. The Bidder fails to submit Written Confirmations (WSDOT Form #226-017) from each SVBE firm listed on the Bidder's completed SVB Plan that they are in agreement with the Bidder's SVBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;
  - m. The Bidder fails to submit SVBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award in accordance with Section 1-07.11.
2. A Proposal may be considered irregular and may be rejected if:
- a. The Proposal does not include a unit price for every Bid item;
  - b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency;
  - c. The authorized Proposal Form furnished by the Contracting Agency is not used or is altered;
  - d. The completed Proposal form contains unauthorized additions, deletions, alternate Bids, or conditions;
  - e. Receipt of Addenda is not acknowledged;
  - f. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or
  - g. If Proposal form entries are not made in ink.

#### **1-02.14 Disqualification of Bidders**

A Bidder may be deemed not responsible and the Proposal rejected if:

1. More than one Proposal is submitted for the same project from a Bidder under the same or different names;
2. Evidence of collusion exists with any other Bidder. Participants in collusion will be restricted from submitting further Bids;
3. A Bidder is not prequalified for the Work or to the full extent of the Bid;
4. An unsatisfactory performance record exists based on past or current Contracting Agency Work;
5. There is uncompleted work (Contracting Agency or otherwise) which might hinder or prevent the prompt completion of the Work Bid upon;
6. The Bidder failed to settle bills for labor or materials on past or current Contracts;

7. The Bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract;
8. The Bidder is unable, financially or otherwise, to perform the Work;
9. A Bidder is not authorized to do business in the state of Washington; or
10. There are other reasons deemed proper by the Contracting Agency.

#### **1-02.15 Pre-Award Information**

Before Awarding a Contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible Bidder:

1. A complete statement of the origin, composition, and manufacture of any or all materials to be used;
2. Samples of these materials for quality and fitness tests;
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the Work;
4. A breakdown of costs assigned to any Bid item;
5. Attendance at a conference with the Engineer or representatives of the Engineer;  
or
6. Any other information or action taken that is deemed necessary to ensure that the Bidder is the lowest responsible Bidder.

## 1-03 Award and Execution of Contract

### 1-03.1 Consideration of Bids

After opening and reading Proposals, the Contracting Agency will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any Bid item, the price per unit will control. The total of extensions, corrected where necessary, will be used by the Contracting Agency for Award purposes and to fix the amount of the Contract Bond.

The right is reserved by the Contracting Agency to waive informalities in the bidding, accept a Proposal of the lowest responsible Bidder, reject any or all Bids, republish the call for Bids, revise or cancel the Work, or require the Work to be done in another way if the best interest of the Contracting Agency is served.

A Bidder who wishes to claim error after the Bids have been publicly opened and read as required by RCW 47.28.090 shall promptly notify the Contracting Agency that an error occurred. The Bidder shall submit a notarized affidavit or declaration under penalty of perjury signed by the Bidder and accompanied by the work sheets used in the preparation of the Bid, requesting relief from the responsibilities of Award. The affidavit or declaration shall describe the specific error(s) and certify that the work sheets are the ones used in preparing the Bid.

The affidavit or declaration shall be submitted no later than 5:00 p.m. on the first business day after Bid opening or the claim will not be considered. The Contracting Agency will review the affidavit or declaration and the certified work sheets to determine the validity of the claimed error and if the error is of the kind for which the law allows relief from forfeiture of the Bid deposit. If the Contracting Agency concurs in the claim of error and determines that the error is of the kind that allows relief from forfeiture, the Bidder will be relieved of responsibility and the Bid deposit of the Bidder will be returned. If the Contracting Agency does not concur in the error or determines that the error is not the kind for which the law allows relief, the Contracting Agency may Award the Contract and if the Bidder refuses to execute the Contract, the Bidder's Bid deposit shall be forfeited as required by RCW 47.28.100.

#### 1-03.1(1) Identical Bid Totals

After opening Bids, if two or more lowest responsive Bid totals are exactly equal, then the tie-breaker will be determined by drawing as described in this section. Two or more slips of paper will be marked as follows: one marked "Winner" and the other(s) marked "unsuccessful". The slips will be folded to make the marking unseen. The slips will be placed inside a box. One authorized representative of each Bidder shall draw a slip from the box. Bidders shall draw in alphabetic order by the name of the firm as registered with the Washington State Department of Licensing. The slips shall be unfolded and the firm with the slip marked "Winner" will be determined to be the successful Bidder and eligible for Award of the Contract. Only those Bidders who submitted a Bid total that is exactly equal to the lowest responsive Bid are eligible to draw.

### 1-03.2 Award of Contract

Normally, Contract Award or Bid rejection will occur within 45 calendar days after Bid opening. If the lowest responsible Bidder and the Contracting Agency agree, this deadline may be extended. If they cannot agree on an extension by the 45 calendar day deadline, the Contracting Agency reserves the right to Award the Contract to the next lowest responsible Bidder or reject all Bids. The Contracting Agency will notify the successful Bidder of the Contract Award in writing.

### 1-03.3 Execution of Contract

Within 3 calendar days of Award date (not including Saturdays, Sundays and Holidays), the successful Bidder shall provide the information necessary to execute the Contract electronically to the Contracting Agency. The Bidder shall send the contact information, including the full name, email address, and phone number, for the authorized signer and bonding agent to the Contracting Agency at CAPS@wsdot.wa.gov.

Within 20 calendar days after the Award date, the successful Bidder shall return the signed Contracting Agency-prepared Contract, an insurance certification as required by Section 1-07.18, a satisfactory bond as required by law and Section 1-03.4, the Transfer of Coverage form for the Construction Stormwater General Permit with sections I, III, and VIII completed when provided, and shall be registered as a contractor in the state of Washington.

Until the Contracting Agency executes a Contract, no Proposal shall bind the Contracting Agency, nor shall any Work begin within the project limits or within Contracting Agency-furnished sites. The Contractor shall bear all risks for Work begun outside such areas and for all materials ordered before the Contract is executed by the Contracting Agency.

If the Bidder experiences circumstances beyond their control that prevents return of the Contract documents within 20 calendar days after the Award date, the Contracting Agency may grant up to a maximum of 20 additional calendar days for return of the documents, provided the Contracting Agency deems the circumstances warrant it.

### 1-03.4 Contract Bond

The successful Bidder shall provide an executed Contract Bond for the full Contract amount. This Contract Bond shall:

1. Be on a Contracting Agency-furnished form;
2. Be signed by an approved Surety (or Sureties) that:
  - a. Is registered with the Washington State Insurance Commissioner; and
  - b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time;
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the project under titles 50, 51, and rcw 47.; and
5. Guarantee that the Surety shall indemnify, defend, and protect the Contracting Agency against all claims of direct or indirect loss resulting from the failure:
  - a. Of the Contractor (or the employees or subcontractors) to faithfully perform the Contract; or
  - b. Of the Contractor (or the subcontractors) to pay all laborers, mechanics, all subcontractors, material persons, and all other persons who provides supplies or provisions for carrying out the Work.

The Contracting Agency may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever the Contracting Agency deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional Surety to cover all remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

**1-03.5 Failure to Execute Contract**

Failure to return the insurance certification and bond with the signed Contract as required in Section 1-03.3, or failure to provide Disadvantaged Business Enterprise information if required in the Contract, or failure or refusal to sign the Contract, or failure to register as a contractor in the state of Washington, or failure to return the completed Transfer of Coverage for the Construction Stormwater General Permit to the Contracting Agency when provided shall result in forfeiture of the proposal bond or deposit of this Bidder. If this should occur, the Contracting Agency may then Award the Contract to the second lowest responsible Bidder or reject all remaining Bids. If the second lowest responsible Bidder fails to return the required documents as stated above within the time provided after Award, the Contract may then be Awarded successively in a like manner to the remaining lowest responsible Bidders until the above requirements are met or the remaining Proposals are rejected.

**1-03.6 Return of Bid Deposit**

When Proposals have been examined and corrected as necessary, proposal bonds and deposits accompanying Proposals ineligible for further consideration will be returned. All other proposal bonds and deposits will be held until the Contract has been properly executed. When the Contract has been properly executed, all remaining deposits or bonds, except those subject to forfeiture, will be returned.

**1-03.7 Judicial Review**

All decisions made by the Contracting Agency regarding the Award and execution of the Contract or Bid rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Such review, if any, shall be timely filed in the Superior Court of Thurston County, Washington.

## 1-04 Scope of the Work

### 1-04.1 Intent of the Contract

The intent of the Contract is to prescribe a complete Work. Omissions from the Contract of details of Work that are necessary to carry out the intent of the Contract shall not relieve the Contractor from performing the omitted Work.

#### 1-04.1(1) Bid Items Included in the Proposal

The Contractor shall provide all labor, materials, tools, equipment, transportation, supplies, and incidentals required to complete all Work for the items included in the Proposal.

#### 1-04.1(2) Bid Items Not Included in the Proposal

When the Contract specifies Work that has no Bid item, and the Work is not specified as being included with or incidental to other Bid items, an equitable adjustment will be made in accordance with Section 1-04.4 unless that Work is customarily considered as incidental to other items.

### 1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda

The complete Contract includes these parts: the Contract Form, Bidder's completed Proposal Form, Contract Plans, Contract Provisions, Standard Specifications, *Standard Plans*, Addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). These parts complement each other in describing a complete Work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide all Work or materials clearly implied in the Contract even if the Contract does not mention it specifically.

Any inconsistency in the parts of the Contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 3, 4, 5, and 6; 2 presiding over 3, 4, 5, and 6; and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Standard Specifications, and
6. *Standard Plans*.

On the Contract Plans, Working Drawings, and *Standard Plans*, figured dimensions shall take precedence over scaled dimensions.

This order of precedence shall not apply when Work is required by one part of the Contract but omitted from another part or parts of the Contract. The Work required in one part must be furnished even if not mentioned in other parts of the Contract.

Whenever reference is made in these Specifications or the Special Provisions to codes, rules, specifications, and standards, the reference shall be construed to mean the code, rule, specification, or standard that is in effect on the Bid advertisement date, unless otherwise stated or as required by law.

If any part of the Contract requires Work that does not include a description for how the Work is to be performed, the Work shall be performed in accordance with standard trade practice(s). For purposes of the Contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the Work.

In case of ambiguities or disputes over interpreting the Contract, the Engineer's decision will be final as provided in Section 1-05.1.

### 1-04.3 Reference Information

Reference Information provided to the Contractor is not part of the Contract. The Contracting Agency does not guarantee the accuracy of the Reference Information and is not responsible for the content of the Reference Information in any manner. Any use of Reference Information by the Contractor is done solely at the Contractor's risk.

### 1-04.4 Changes

The Engineer reserves the right to make, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the Work as altered. Among others, these changes and alterations may include:

1. Deleting any part of the Work.
2. Increasing or decreasing quantities.
3. Altering Specifications, designs, or both.
4. Altering the way the Work is to be done.
5. Adding new Work.
6. Altering facilities, equipment, materials, services, or sites, provided by the Contracting Agency.
7. Ordering the Contractor to speed up or delay the Work.

The Engineer will issue a written change order for changes unless the remainder of this section provides otherwise.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable. If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract. The term *significant change* shall be construed to apply only to the following circumstances:

- A. When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- B. When an item of Work, as defined elsewhere in the Contract, is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. For the purpose of this Section, an item of Work will be defined as any item that qualifies for adjustment under the provisions of Section 1-04.6.

For item 1, an equitable adjustment for deleted Work will be made as provided in Section 1-09.4.

For item 2, if the actual quantity of an item, exclusive of added or deleted amounts included in agreed change orders, increases or decreases by more than 25 percent from the original Plan quantity, the unit Contract prices for that item may be adjusted in accordance with Section 1-04.6.

For all changes except item 1 (deleted Work) or item 2 (increasing or decreasing quantities), the Engineer will determine if the change should be paid for at unit Contract price(s). If the Engineer determines that the change increased or decreased the Contractor's costs or time to do any of the Work including unchanged Work, the Engineer will make an equitable adjustment to the Contract. The equitable adjustment

will be by agreement with the Contractor. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4 and adjust the time as the Engineer deems appropriate. Extensions of time will be evaluated in accordance with Section 1-08.8. The Engineer's decision concerning equitable adjustment and extension of time shall be final as provided in Section 1-05.1.

The Contractor shall proceed with the Work upon receiving:

1. An executed change order, or
2. An oral or written order from the Engineer before receiving the executed change order.

Within 14 calendar days of delivery of the change order the contractor shall endorse and return the change order, request an extension of time for endorsement or respond in accordance with Section 1-04.5. The Contracting Agency may unilaterally process the change order if the Contractor fails to comply with these requirements or when the Contractor protests in accordance with Section 1-04.5. Changes normally noted on field stakes or variations from estimated quantities, except as provided in subparagraph A or B above, will not require a written change order. These changes shall be made at the unit prices that apply. The Contractor shall respond immediately to changes shown on field stakes without waiting for further notice.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) not responding within the allotted time, or (3) not protesting in accordance with Section 1-04.5. A change order that is not protested in accordance with Section 1-04.5 shall be full payment and final settlement of all claims for Contract time and for all costs of any kind, including costs of delays, related to Work either covered or affected by the change.

The Contractor shall obtain written consent of the Surety or Sureties if the Engineer requests such consent.

Change Orders will be transmitted electronically to the Contractor for signature. The Contractor shall apply all signatures electronically using the software provided by the Contracting Agency. Within 21 days of execution of the Contract, the Contractor shall submit a Type 1 Working Drawing consisting of the names, email addresses, and text-message capable phone numbers for the authorized change order signers and shall bear the name, phone number and email of the officer providing this authorization. Delegation of authority to sign Change Orders shall be by the officer authorized to sign the Contract in accordance with Section 1-02.1.

#### **1-04.4(1) Minor Changes**

Payments or credits for changes amounting to \$25,000 or less may be made under the Bid item "Minor Change". At the discretion of the Contracting Agency, this procedure for Minor Changes may be used in lieu of the more formal procedure as outlined in Section 1-04.4, Changes.

The Contractor will be provided a copy of the completed order for Minor Change. The agreement for the Minor Change will be documented by signature of the Contractor, or notation of verbal agreement. If the Contractor is in disagreement with anything required by the order for Minor Change, the Contractor may protest the order as provided in Section 1-04.5.

Payments or credits will be determined in accordance with Section 1-09.4. For the purpose of providing a common Proposal for all Bidders, the Contracting Agency has entered an amount for "Minor Change" in the Proposal to become a part of the total Bid by the Contractor.

**1-04.4(2) Value Engineering Change Proposal (VECP)****1-04.4(2)A General**

A VECP is a Contractor proposed change to the Contract Provisions that will accomplish the project's functional requirements in a manner that is equal to or better than the requirements in the Contract. The VECP may be: (1) at a less cost or time, or (2) either no cost savings or a minor increase in cost with a reduction in Contract time. The net savings or added costs to the Contract Work are shared by the Contractor and Contracting Agency.

The Contractor may submit a VECP for changing the Plans, Specifications, or other requirements of the Contract. The Engineer's decision to accept or reject all or part of the proposal is final and not subject to arbitration under the arbitration clause or otherwise subject to litigation.

The VECP shall meet all of the following:

1. Not adversely affect the long term life cycle costs.
2. Not adversely impact the ability to perform maintenance.
3. Provide the required safety and appearance.
4. Provide substitution for deleted or reduced Condition of Award Work, Apprentice Utilization and Training.

VECPs that provide a time reduction shall meet the following requirements:

1. Time saving is a direct result of the VECP.
2. Liquidated damages penalties are not used to calculate savings.
3. Administrative/overhead cost savings experienced by either the Contractor or Contracting Agency as a result of time reduction accrue to each party and are not used to calculate savings.

**1-04.4(2)B VECP Savings****1-04.4(2)B1 Proposal Savings**

The incentive payment to the Contractor shall be one-half of the net savings of the proposal calculated as follows:

1.  $(\text{gross cost of deleted work}) - (\text{gross cost of added work}) = (\text{gross savings})$
2.  $(\text{gross savings}) - (\text{Contractor's engineering costs}) - (\text{Contracting Agency's costs}) = (\text{net savings})$
3.  $(\text{net savings}) / 2 = (\text{incentive pay})$

The Contracting Agency's costs shall be the actual consultant costs billed to the Contracting Agency and in-house costs. Costs for personnel assigned to the Engineer's office shall not be included.

**1-04.4(2)B2 Added Costs to Achieve Time Savings**

The cost to achieve the time savings shall be calculated as follows:

1.  $(\text{cost of added work}) + (\text{Contractor's engineering costs} - \text{Contracting Agency's engineering costs}) = (\text{cost to achieve time savings})$
2.  $(\text{cost to achieve time savings}) / 2 = (\text{Contracting Agency's share of added cost})$

If the timesaving proposal also involves deleting work and, as a result, creates a savings for the Contracting Agency, then the Contractor shall also receive one-half of the savings realized through the deletion.

**1-04.4(2)C VECP Approval****1-04.4(2)C1 Concept Approval**

The Contractor shall submit a written proposal to the Engineer for consideration. The proposal shall contain the following information:

1. An explanation outlining the benefit provided by the change(s).
2. A narrative description of the proposed change(s). If applicable, the discussion shall include a demonstration of functional equivalency or a description of how the proposal meets the original contract scope of work.
3. A cost discussion estimating the net savings. Savings estimates will generally follow the outline below under the section, "Proposal Savings".
4. A statement providing the Contracting Agency with the right to use all or any part of the proposal on future projects without future obligation or compensation.
5. A statement acknowledging and agreeing that the Engineer's decision to accept or reject all or part of the proposal is final and not subject to arbitration under the arbitration clause or otherwise be subject to claims or disputes.
6. A statement giving the dates the Engineer must make a decision to accept or reject the conceptual proposal, the date that approval to proceed must be received, and the date the work must begin in order to not delay the contract. If the Contracting Agency does not approve the VECP by the date specified by the Contractor in their proposal the VECP will be deemed rejected.
7. The submittal will include an analysis on other Work that may have costs that changed as a result of the VECP. Traffic control and erosion control shall both be included in addition to other impacted Work.

After review of the proposal, the Engineer will respond in writing with acceptance or rejection of the concept. This acceptance shall not be construed as authority to proceed with changes to contract work. Concept approval allows the Contractor to proceed with the Work needed to develop final plans and other information to receive formal approval and to support preparation of a change order.

**1-04.4(2)C2 Formal Approval**

The Contractor's submittal to the Engineer for formal approval shall include the following:

1. Deleted Work – Include the calculated quantities of unit price Work to be deleted. Include the proposed partial prices for portions of lump sum Work deleted. For deletion of force account items include the time and material estimates.
2. Added Work – Include the calculated quantities of unit price Work to be added, either by original unit Contract prices or by new, negotiated unit prices. For new items of Work include the quantities and proposed prices.
3. Contractor's Engineering Costs – Submit the labor costs for the engineering to develop the proposal; costs for Contractor employees utilized in contract operations on a regular basis shall not be included.
4. Schedule Analysis – If the VECP is related to time savings, the Contractor shall submit a partial progress schedule showing the changed Work. The submittal shall also include a discussion comparing the partial progress schedule with the approved progress schedule for the project.
5. Working Drawings – Type 3 Working Drawings shall be submitted; those drawings which require engineering shall be a Type 3E.

Formal approval of the proposal will be documented by issuance of a change order. The VECP change order will contain the following statements which the Contractor agrees to by signing the change order:

1. The Contractor accepts design risk of all features, both temporary and permanent, of the changed Work.
2. The Contractor accepts risk of constructability of the changed Work.
3. The Contractor provides the Contracting Agency with the right to use all or any part of the proposal on future projects without further obligation or compensation.

VECP change orders will contain separate pay items for the items that are applicable to the Proposal. These are as follows:

1. Deleted Work.
2. Added Work.
3. The Contractor's engineering costs, reimbursed at 100 percent of the Contractor's cost.
4. Incentive payment to the Contractor.

When added Work costs exceed Deleted Work costs, but time savings make a viable proposal, then items 3 and 4 above are replaced with the following:

3. The Contracting Agency's share of added cost to achieve time savings.
4. The Contractor's share of savings from deleted Work.

#### **1-04.4(2)C3 Authority to Proceed with Changed Work**

The authority for the Contractor to proceed with the VECP Work will be provided by one of the following options:

1. Execution of the VECP change order, or
2. At the Contractor's request the Contracting Agency may provide approval by letter from the Engineer for the Work to proceed prior to execution of a change order. All of the risk for proceeding with the VECP shall be the responsibility of the Contractor. Additionally, the following criteria are required to have been met:
  - a. Concept approval has been granted by the Contracting Agency.
  - b. All design reviews and approvals have been completed, including plans and specifications.
  - c. The Contractor has guaranteed, in writing, the minimum savings to the Contracting Agency.

#### **1-04.5 Procedure, Protest, and Dispute by the Contractor**

If in disagreement with anything required in a change order, or the Engineer's Written Determination or decision that the Contractor believes they are entitled to an increase in the Contract price or time, the Contractor shall:

1. Give a signed written notice of protest to the Engineer or the Engineer's field Inspectors within 14 calendar days of receiving a change order or an Engineer's Written Determination.
2. Supplement the written protest within 14 calendar days, or an extension of time as agreed by the Engineer in writing, with a written statement and supporting documents providing the following:
  - a. The date and nature of the protested order, direction, instruction, interpretation or determination;

- b. A full discussion of the circumstances that caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Plans and Contract Provisions referenced to support the protest;
- c. The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined; and
- d. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

If the Engineer determines, in writing, the supplemental information is insufficient to evaluate the protest or fails to include all required information, the Contractor may be allowed one correction of the supplemental information. The corrected supplemental information, when requested by the Engineer, shall be submitted within 14 calendar days or as specified by the Engineer, in writing.

Throughout the protested Work, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Engineer access to these and all other records related to the protested Work as determined by the Engineer.

The Engineer will evaluate all protests provided the procedures in this section are followed. If the Engineer determines that a protest has merits, the Engineer will adjust payment for Work or time by an equitable adjustment in accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with Section 1-08.8. No adjustment will be made for a protest without merit.

If the Engineer determines that the protest is without merit, that determination and the reasons for it will be provided in writing to the Contractor. The determination will be provided within 21 calendar days after receipt of the Contractor's supplemental written statement (including any additional information requested by the Engineer to support a continuing protest) described in item 2 above.

If the Contractor does not accept the Engineer's determination then the Contractor shall pursue the dispute and claims procedures set forth in Section 1-04.5(1). In spite of a protest or dispute, the Contractor shall proceed promptly with the Work as the Engineer orders.

By failing to follow the procedures of Sections 1-04.5, the Contractor completely waives any claims for protested Work.

#### **1-04.5(1) Disputes**

When protests occur during a Contract, the Contractor shall first pursue resolution through the Engineer as outlined in Section 1-04.5. Unless noted otherwise in the specifications, compliance with all the requirements of Section 1-04.5 is a Condition Precedent to initiating any action pursuant to this Section.

If the negotiations using the procedures outlined in Section 1-04.5 fail to provide satisfactory resolution of the protest, then the Contractor shall provide the Engineer with written notification of dispute stating that the Contractor will continue to pursue the dispute in accordance with the provisions of this Section. The written notification shall be provided within 14 calendar days after receipt of the Engineer's determination of merit that the Contractor's protest is without merit pursuant to Section 1-04.5.

When the Proposal Form includes the Bid item "Disputes Review Board", unresolved protests shall be subject to the provisions of Section 1-04.5(1)A. Either party, Engineer or Contractor, may refer a matter in dispute to the Disputes Review Board (DRB or Board). Compliance with the requirements of Section 1-04.5(1)A is a Condition Precedent to any further right of the Contractor to pursue the dispute either by certified claim or litigation/arbitration.

When the Proposal Form does not include the Bid item "Disputes Review Board", the Contractor's written notice of dispute noted above shall indicate whether the Contractor is requesting to resolve the dispute through the use of a Disputes Review Board as outlined in Section 1-04.5(1)A, or will submit a formal certified claim directly to the Engineer pursuant to Section 1-09.11(2). If the Contractor requests a DRB, the Engineer will notify the Contractor in writing within 7 calendar days of receipt of the request whether the request is acceptable. If both parties to the dispute agree to use a DRB, then a pay item "Disputes Review Board" shall be added to the Contract by change order and the dispute will be subject to the provisions of Section 1-04.5(1)A. If the parties do not mutually agree to establish a DRB or the Contractor does not request a DRB in its written notice of dispute, the Contractor shall comply with the formal certified claim process outlined in Section 1-09.11(2).

Regardless of any protest or dispute, the Contractor shall proceed promptly with the Work as the Engineer orders and the Contracting Agency will continue to pay for all undisputed amounts.

#### **1-04.5(1)A Disputes Review Board**

The procedures set forth in Section 1-04.5(1)A shall apply only when a DRB has been created in accordance with Section 1-04.5(1).

##### **1-04.5(1)A1 Disputes Review Board - General**

In order to assist in the resolution of dispute(s) between the Contracting Agency and the Contractor arising out of the Work of this Contract, a Disputes Review Board will consider disputes referred to it and furnish written recommendations to the Contracting Agency and Contractor to assist in resolution of the dispute(s). The purpose of the Board response to such issues is to provide nonbinding findings and recommendations designed to expose the disputing parties to an independent view of the dispute.

##### **1-04.5(1)A2 Disputes Eligible for Consideration by the DRB**

The Board will consider and provide written recommendations concerning the following disputes:

1. Interpretation of the Contract.
2. Entitlement to additional compensation and/or time for completion.
3. Other subjects mutually agreed by the Contracting Agency and Contractor to be a Board issue.

##### **1-04.5(1)A3 Board Member Qualifications**

The following definitions apply for the purpose of setting forth experience and disclosure requirements for Board members.

Financial ties – Any ownership interest, loans, receivables, or payables.

Party directly involved – The Contracting Agency or Contractor of this Contract.

Party indirectly involved – The firms associated with the Contractor on this Contract, including joint venture partners, subcontractors of all tiers, and suppliers; and firms associated with the Contractor or the Contracting Agency on this Contract, such as designers, architects, engineers, or other professional service firms or consultants.

The Board members shall:

1. Be experienced in the interpretation of construction contract documents.
2. Have attended training by the Dispute Resolution Board Foundation in dispute resolution within the last five years.
3. Be experienced in construction Contract dispute resolution for an owner or Contractor at the level of having responsibility and authority to settle disputes.

4. Discharge their responsibilities impartially and independently, considering the facts and conditions related to the matters under consideration in strict compliance with the provisions of the Contract.
5. Not be a current employee of any Party directly or indirectly involved.
6. Not have been an employee of any Party directly or indirectly involved with the Project within a period of one year of the Contract Execution date.
7. Not have a financial interest in the Contract except for payments for services on the Board.

#### **1-04.5(1)A4 Board Member Ongoing Responsibilities**

While serving as a Board member on this project:

1. No member will participate in any discussion contemplating the creation of an agreement or making an agreement with any party directly or indirectly involved in the Contract regarding employment or fee-based consulting services, or any other business arrangement after the Contract is completed.
2. No Board member will officially give any advice to either party. The individual members will act in a completely independent manner and will have no consulting or business connections with either party, except for payments for services on the Board.
3. During routine meetings of the Board as well as during formal hearings, Board members should refrain from expressing opinions on the merits of statements on matters under dispute or potential dispute. Opinions of Board members expressed in private sessions with other Board members should be kept strictly confidential.
4. The Board shall comply with the terms of the Contract and enforce such terms consistent with the laws of the State of Washington. Board members shall not supplant or otherwise interfere with the respective rights, authorities, duties and obligations of the Parties as defined in the Contract. In making its recommendations, the Board shall not make a recommendation that ignores, disregards, or undermines the intention, requirements, or allocation of risk, established by the Contract.
5. Disclosure of potential conflicts of interest is a continuing obligation of all Board members throughout the life of the Contract.

#### **1-04.5(1)A5 Establishment of the Board**

Process to establish the Board:

1. The Contracting Agency and Contractor shall meet prior to the first chargeable Contract working day to jointly select three prospective Board members.
2. The Contracting Agency and the Contractor shall provide to the Board nominees a list of the firms directly and indirectly involved with the Project, including, but not limited to designers, architects, engineers, professional service firms, consultants, JV partners, subcontractors and suppliers, along with a listing of key personnel of each.
3. Board nominees shall provide to the Contractor and Contracting Agency the following information:
  - a. Resume showing:
    - i. Full name and contact information.
    - ii. Experience qualifying the person as a Board member.
    - iii. Previous DRB participation, if any. List each DRB assignment separately, indicating the name and location of the project, approximate dates of DRB service, name of Contracting Agency, name of Contractor, names of the other Board members and the approximate number of disputes heard. When

previous DRB experience is extensive, the list may be truncated at the prospective Board member's discretion.

- b. Disclosure statement addressing the following:
  - i. Previous or current direct employment by one of the parties directly or indirectly involved.
  - ii. Previous or current engagement as a consultant to any party directly or indirectly involved - by the prospective Board member or by the firm to which the prospective Board member is directly employed.
  - iii. Previous, current, or future financial ties to any of the parties directly or indirectly involved.
  - iv. Previous or current personal or professional relationships with a key member of any party directly or indirectly involved.
  - v. Previous and current service as a Board member on projects where any of the parties directly or indirectly involved in this Contract were also involved.
  - vi. Any prior involvement in this project.

The Contracting Agency and the Contractor shall have three weeks to solicit and receive information from the three prospective candidates, and another two weeks to review and jointly agree on the final selection of the three members to serve on the Board. In the event that any of the three members cannot be agreed upon, the process shall be repeated for the positions not agreed upon until all positions are filled.

4. The Contracting Agency, the Contractor, and the Board shall execute the Three-Party Agreement not later than the first Board meeting (WSDOT Form 134-091).
5. The Board members shall determine amongst themselves who will act as the Board Chair.

#### **Use of the Contracting Agency/AGC Pool of DRB Candidates**

The qualifications of some potential DRB members have been reviewed and deemed potentially acceptable by both the Washington State Department of Transportation and the Associated General Contractors of Washington. This list of potential DRB members is available at <https://wsdot.wa.gov/business/construction/dispute-review-boards>, and their resumes are available upon request from the Deputy State Construction Engineer. Nevertheless, either party may propose a DRB member or members that are not on the WSDOT/AGC Pool list. In either case, every potential Board member must comply with the requirements of Section 1-04.5(1)A3, 1-04.5(1)A4, and 1-04.5(1)A5, and every Board member must be deemed acceptable by both the Contracting Agency and the Contractor.

#### **Replacement or Termination of a DRB Member**

Should a Board member need to be replaced, the replacement member will be appointed using the procedures in Section 1-04.5(1)A5. The appointment of a replacement Board member will begin promptly upon determination of the need for replacement and shall be completed within 20 working days.

Service of a Board member may be terminated at any time with not less than five calendar days' notice as follows:

1. By Mutual agreement between the Contracting Agency and the Contractor.
2. By agreement of the other two Board members.
3. By resignation of the member.

Termination of a member will be followed by selection of a replacement as specified above.

**1-04.5(1)A6 DRB Procedures – General**

The Board, Contracting Agency, and Contractor may mutually develop rules of operation of the Board that supplement the Three Party Agreement. Such supplemental rules must be in writing and accepted by the Board, Contracting Agency, and Contractor.

It is expressly understood that the Board members are to act impartially and independently in the consideration of facts and conditions surrounding disputes presented by the Contracting Agency or the Contractor and that the recommendations concerning disputes are advisory.

The Contracting Agency will furnish to the Board documents which are or may become pertinent to the activities of the Board. The Contracting Agency shall furnish the following services and items:

1. **Contract-Related Documents:** The Contracting Agency will furnish the Board three copies of the Contract documents, including change orders, written instructions issued by the Contracting Agency to the Contractor, correspondence, or other documents pertinent to the performance of the Contract, and therefore, necessary to the Board's work.
2. **Coordination and Services:** The Contracting Agency will, in cooperation with the Contractor, coordinate the operations of the Board. The Contracting Agency will arrange or provide conference facilities at or near the job site and copying services.

The Contractor shall furnish to the Board three sets of documents, which are or may become pertinent to the activities of the Board, except documents furnished by Contracting Agency. Pertinent documents may include any drawings or sketches, calculations, procedures, schedules, estimates, correspondence, or other documents that are created in the planning or the performance of the Contract work. Copies of all documents provided to the Board must also be furnished to the Contracting Agency.

**1-04.5(1)A7 Regular Board Meetings**

All regular Board meetings are expected to be held at or near the job site. The frequency of regular meetings will be set by mutual agreement of the Board, the Contracting Agency and the Contractor, consistent with the construction activities and the matters under the Contract. Each regular meeting is expected to consist of a round table discussion and a field inspection of the work. A member of the Contracting Agency and Contractor are expected to jointly facilitate the round table discussion. Round table discussion attendees are expected to include selected personnel from the Contracting Agency and the Contractor. The agenda for each meeting will be set by the Board and may include the following elements:

1. Meeting opened by Chair of the Board.
2. Remarks by the Contracting Agency's representative.
3. By the Contractor: a description of work accomplished since the last meeting, the current status of the work schedule, and a forecast for the coming period.
4. By the Contractor: An outline and description of potential problems.
5. By the Contracting Agency's Project Engineer: An outline and description of the status of the work, including an assessment of potential problems (if any), from the Contracting Agency's point of view.
6. A brief description, by the Contractor or the Contracting Agency, of potential claims or disputes, which have surfaced since the last meeting.
7. A summary, by the Contractor, the Contracting Agency or the Board, of the status of past disputes and claims.
8. A construction site visit. The Board must be accompanied by both Contracting Agency and Contractor personnel.

**1-04.5(1)A8 Standard Procedure for Consideration of Disputes****Dispute Referral**

The dispute referral shall be made in writing to the Board Chair with a copy concurrently provided to the other Board members and the other party.

1. The dispute referral shall concisely define the nature and specifics of the dispute that is proposed to be considered by the Board and the scope of the recommendation requested. This referral is not expected to contain a mutually agreed upon statement of the dispute.
2. The Board Chair shall confer with the parties to establish a briefing schedule for delivering prehearing submittals/rebuttals, and a date, time, and location for convening the Board hearing.

**Pre-Hearing Submittal**

1. The Contracting Agency and the Contractor shall each prepare a pre-hearing submittal and transmit both a hard copy and an electronic copy of it to all three members of the Board and the other party. The pre-hearing submittal, comprising a position paper with such backup data as is referenced in the position paper, shall be tabbed, indexed, and the pages consecutively numbered.
2. Both position papers shall, at a minimum, contain the following:
  - a. A mutually agreed upon joint statement of the dispute and the scope of the desired report being requested of the Board, placed at the beginning of the papers. The language of this joint statement shall summarize in a few sentences the nature of the dispute. If the parties are unable to agree on the wording of the joint statement of dispute, each party's position paper shall contain both statements, and identify the party authoring each statement.
  - b. The basis and justification for the party's position, with reference to Contract language and other supporting documents for each element of the dispute. In order to minimize duplication and repetitiveness, the parties may identify a common set of documents that will be referred to by both parties, and submit them in a separate package.
3. If requested by the Board or either party, the Contracting Agency and the Contractor shall each prepare and submit a rebuttal paper in response the position paper of the other party.
4. The number of copies, distribution requirements, and time for submittal will be established by the Board and communicated to the parties by the Chair.

**Board Hearings**

1. The Contracting Agency will arrange for or provide hearing facilities at or near the site.
2. Attendance:
  - a. The Contracting Agency and the Contractor will have a representative at all hearings.
  - b. The Contracting Agency and Contractor shall both limit attendance at the hearing to personnel directly involved in the dispute and participants in the good-faith negotiations that were conducted prior to submittal to the Board except as noted below.

- c. At least 14 calendar days before the hearing, each party shall provide a list of proposed attendees to the Board and to the other party. In the event of a disagreement, the Board shall make the final determination as to who attends the hearing.
    - d. Attorneys shall not attend Board hearings except as provided below:
      - i. Attorneys are identified as such on the list of proposed attendees.
      - ii. All parties desiring their attorney present are able to do so.
      - iii. Attorneys shall not participate in the hearing, unless the scope and extent of Attorney participation is mutually agreed to by the Contracting Agency, Contractor and the Board at least 7 calendar days before the hearing.
    - e. At Board hearings regarding disputes involving a subcontractor, the Contractor shall require and ensure that each subcontractor involved in the dispute have present an authorized representative with actual knowledge of the facts underlying the subcontractor disputes.
  3. A party furnishing written evidence or documentation of any kind to the Board must furnish copies of such information to the other party and the Board a minimum of 21 calendar days prior to the date the Board sets to convene the hearing for the dispute, unless otherwise mutually agreed to by the parties and the Board. Either party shall produce such additional evidence as the Board may deem necessary and furnish copies to the other party prior to submittal to the Board.
  4. The conduct of the hearing shall be established by the Board and be generally consistent with the following guidelines:
    - a. The party who referred the dispute to the Board shall present first, followed by the other party.
    - b. To assure each party a full and adequate opportunity to present their position, both parties shall be allowed successive rebuttals and to rebut the opposing party's position until, in the Board's opinion, all aspects of the dispute have been fully and fairly covered.
    - c. The Board shall be fully prepared to, and may at any time, ask questions, request clarifications, or ask for additional data, documents, and/or job records.
    - d. Either party may request that the Board direct a question to, or request a clarification from the other party. The Board shall determine at what point in the proceedings such requests may be made and if they will be granted. In general, the Board will not allow one party to be questioned directly by the other party.
    - e. In difficult or complex cases, additional hearings may be necessary to facilitate full consideration and understanding of the dispute.
    - f. The Board, in its discretion, may allow introduction of arguments, exhibits, handouts, or documentary evidence that were not included in that party's pre-hearing position paper or rebuttal and have not been previously submitted to the other party. In such cases the other party will be granted time to review and prepare a rebuttal to the new material, which may require a continuation of the hearing.
  5. After the hearing is concluded, the Board shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract provisions, facts, and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.

**Failure to Prepare a Pre-Hearing Submittal or Attend a Board Hearing**

1. In the event that either party fails to deliver a pre-hearing submittal by the date established by the Board, the Board shall, at its discretion, determine whether the hearing shall proceed as originally scheduled, or allow additional time for the submittal and/or reschedule the hearing. On the final date and time established for the hearing, the Board shall proceed with the hearing utilizing the information that has been submitted.
2. In the event that representatives of either the Contracting Agency or the Contractor fail to appear at the appointed time of a Board hearing, the Board shall postpone the hearing until such time as representatives from both parties are available to proceed with the hearing.

**Use of Outside Experts**

1. By the Contracting Agency or the Contractor:
  - a. A party intending to offer an outside expert's analysis at the hearing shall notify the other party and the Board in writing no less than 30 calendar days prior to the due date for delivering the pre-hearing submittal, and provide the following disclosure:
    - i. The expert's name and a general statement of the area of the dispute that will be covered by his or her testimony.
    - ii. A statement prepared by the proposed expert which addresses the requirements of Section 1-04.5(1)A5, item 3(b).
    - iii. A statement prepared by the proposed expert which identifies the experience and training which qualifies them as an expert.
  - b. Upon receipt of the above disclosure, the other party shall have the opportunity to secure the services of an outside expert to address or respond to those issues that may be raised by the other party's outside expert. The notification and disclosure requirement shall be the same as that specified above, except the time requirement is 21 calendar days.
  - c. In the event that either the Contracting Agency or the Contractor fail to notify the other party of their intent to provide an outside expert; the Board, in its discretion, may allow introduction of the outside experts arguments, exhibits, handouts, or documentary evidence that were not included in that party's pre-hearing position paper or rebuttal and have not been previously submitted to the other party. In such cases the other party will be granted time to review and prepare a rebuttal to the new material, which may require a continuation of the hearing.
2. By the Board:
  - a. When requested by the Board and subject to approval of the parties, outside experts may be needed to assist the Board. In such cases, the outside expert shall in no way be deemed authorized to usurp the Board's authority to issue the Board recommendations. Such authority shall remain vested solely in the Board.
  - b. Prior to arranging for outside experts, the Board shall obtain prior approval from the Contracting Agency and the Contractor by providing:
    - i. A statement explaining why the expert assistance is needed.
    - ii. An estimate of the cost of the expert assistance.
    - iii. The expert's name and a general statement of the area of expertise they will provide.

- iv. A statement prepared by the proposed expert which addresses the requirements of Section 1-04.5(1)A5, item 3(b).
- v. A statement prepared by the proposed expert which identifies the experience and training which qualifies them as an expert.
- vi. A confidentiality statement, consistent with the confidentiality obligations of the Board described in the Three Party Agreement, executed by the proposed expert.

### **DRB Report**

1. The Board's recommendations for resolution of a dispute will be formalized in a written report signed by all Board members. The recommendations shall be based on the Contract Provisions and the facts and circumstances involved in the dispute. The report should include a description of the dispute, statements of each party's position, findings as to the facts of the dispute, discussion and rationale for the recommendation(s), and the recommendation(s). The report shall be submitted concurrently to the parties, as soon as possible after completion of the hearing as agreed by all parties.
2. If the Board cannot arrive at a unanimous report, the Board shall prepare minority findings and recommendations, which, together with the majority findings and recommendations shall comprise the DRB report. The minority report shall identify the issues of disagreement, along with the reasons for disagreement.
3. Clarification:
  - a. Either party may request clarification of a report within 14 calendar days following receipt of the report. Within a reasonable period of time, the Board shall provide written clarification to both parties.
  - b. Requests for clarification shall be submitted in writing simultaneously to the Board and the other party.
4. Reconsideration:
  - a. Either party may request reconsideration of a report, provided:
    - i. The request is made within 14 calendar days following receipt of the report, and
    - ii. New information is obtained or developed that was not known at the time of the hearing or, in the party's opinion, the Board misunderstood or failed to consider pertinent facts of the dispute.
  - b. Within a reasonable time, the Board shall provide written reconsideration to both parties.
  - c. Requests for reconsideration shall be submitted in writing simultaneously to the Board and the other party.
  - d. The Board will give the party not requesting reconsideration the option of submitting a rebuttal to any information that is the basis of the request for reconsideration.

### **Acceptance of Board Recommendations**

Within 30 calendar days of receiving the Board recommendations or within 14 calendar days of receiving the Board's written clarification and/or reconsideration, both the Contracting Agency and the Contractor shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

If the Board's assistance does not lead to resolution of the dispute, the Contractor must file a claim according to Section 1-09.11(2) before seeking any form of judicial relief.

In the event the Board's recommendations do not lead to resolution of the dispute, the Board's recommendation consisting solely of the Board's written report and all written minority reports, along with the Board's written clarifications and written responses to requests for reconsideration, if any, will be admissible in any subsequent dispute resolution proceedings including, but not limited to litigation/arbitration. The aforementioned list of documentation shall be considered all-inclusive.

#### **1-04.5(1)A9 Vacant**

#### **1-04.5(1)A10 Payment for the DRB Processes**

1. The Contractor and Contracting Agency shall each bear their respective in-house costs.
2. The Contracting Agency and Contractor shall share equally in the cost of the Board's services and all operating expenses of the Board. The Board members' compensation shall be in accordance with the Three Party Agreement. After the Contractor and Contracting Agency review invoices from the Board and other operating expenses of the Board, the Contractor shall make full payment for all Board Members and Board operating expenses. The Contracting Agency will reimburse the Contractor for 50% of such payments, under the pay item "Disputes Review Board".
3. The Contractor and the Contracting Agency shall equally bear the cost of the services of the outside expert hired to advise the Board. Outside experts hired to advise the Board shall Contract directly with the Contractor after concurrence from the Board and approval from the Contracting Agency. Invoices for these services shall be submitted by the expert to both the Contractor and Contracting Agency for approval by both parties. The Contractor shall pay approved invoices in full, and the Contracting Agency will reimburse the Contractor for 50% of such payments, under the Bid item "Disputes Review Board".
4. The cost for securing outside expert services for the Contracting Agency or the Contractor shall be borne by the party securing such services.
5. The Contracting Agency, through the Engineer, will provide administrative services, such as conference facilities and copying services, to the Board and the Contracting Agency will bear the costs for these services.

#### **1-04.5(1)A11 Indemnification of DRB Members**

The Contracting Agency and Contractor shall indemnify and hold harmless the Board Members from and against all claims, damages, losses and expenses, including but not limited to attorney's fees arising out of and resulting from the actions and recommendations of the Board.

#### **1-04.6 Variation in Estimated Quantities**

Payment to the Contractor will be made only for the actual quantities of Work performed and accepted in conformance with the Contract. When the accepted quantity of Work performed under a unit item varies from the original Proposal quantity, payment will be at the unit Contract price for all Work unless the total accepted quantity of the Contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original Proposal quantity. In that case, payment for Contract Work may be adjusted as described herein.

The adjusted final quantity shall be determined by starting with the final accepted quantity measured after all Work under an item has been completed. From this amount, subtract any quantities included in additive change orders accepted by both parties. Then,

to the resulting amount, add any quantities included in deductive change orders accepted by both parties. The final result of this calculation shall become the adjusted final quantity and the basis for comparison to the original Proposal quantity.

1. **Increased Quantities** – Either party to the Contract will be entitled to renegotiate the price for that portion of the adjusted final quantity in excess of 1.25 times the original Proposal quantity. The price for excessive increased quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the Engineer based upon the actual costs to perform the Work, including reasonable markup for overhead and profit.
2. **Decreased Quantities** – Either party to the Contract will be entitled to an equitable adjustment if the adjusted final quantity of Work performed is less than 75 percent of the original Bid quantity. The equitable adjustment shall be based upon and limited to three factors:
  - a. Any increase or decrease in unit costs of labor, materials or equipment, utilized for Work actually performed, resulting solely from the reduction in quantity;
  - b. Changes in production rates or methods of performing Work actually done to the extent that the nature of the Work actually performed differs from the nature of the Work included in the original plan; and
  - c. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from the units representing the difference between the adjusted final quantity and 75 percent of the original Plan quantity.

The following limitations shall apply to renegotiated prices for increases and/or equitable adjustments for decreases:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement (referred to in Section 1-09.6) that is in effect at the time the Work is performed.
2. No payment will be made for extended or unabsorbed home office overhead and field overhead expenses to the extent that there is an unbalanced allocation of such expenses among the Contract Bid items.
3. No payment for consequential damages or loss of anticipated profits will be allowed because of any variance in quantities from those originally shown in the Proposal form, Contract Provisions, and Contract Plans.
4. The total payment (including the adjustment amount and unit prices for Work performed) for any item that experiences an equitable adjustment for decreased quantity shall not exceed 75 percent of the amount originally Bid for the item.

If the adjusted final quantity of any item does not vary from the quantity shown in the Proposal by more than 25 percent, then the Contractor and the Contracting Agency agree that all Work under that item will be performed at the original Contract unit price.

When ordered by the Engineer, the Contractor shall proceed with the Work pending determination of the cost or time adjustment for the variation in quantities.

The Contractor and the Contracting Agency agree that there will be no cost adjustment for decreases if the Contracting Agency has entered the amount for the item in the Proposal form only to provide a common Proposal for Bidders.

#### **1-04.7 Differing Site Conditions (Changed Conditions)**

During the progress of the Work, if preexisting subsurface or latent physical conditions are encountered at the site, differing materially from those indicated in the Contract, or if preexisting unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, are encountered at the site, the party discovering such conditions shall

promptly notify the other party in writing of the specific differing site conditions before they are disturbed and before the affected Work is performed.

Upon written notification, the Engineer will investigate the conditions to determine if conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will provide the Contractor a Written Determination whether an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

The equitable adjustment will be by agreement with the Contractor. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with Section 1-08.8.

If the Engineer determines that different site conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final as provided in Section 1-05.1.

If there is a decrease in the costs or time required to perform the Work, failure of the Contractor to notify the Engineer of the differing site conditions shall not affect the Contracting Agency's right to make an adjustment in the costs or time.

If the Contractor does not agree with the Engineer's Written Determination, the Contractor shall pursue the protest procedures in accordance with Section 1-04.5.

No claim by the Contractor shall be allowed unless the Contractor has followed the procedures provided in Sections 1-04.5 and 1-09.11.

#### **1-04.8 Progress Estimates and Payments**

Engineer-issued progress estimates or payments for any part of the Work shall not be used as evidence of performance or quantities. Progress estimates serve only as basis for partial payments. The Engineer may revise progress estimates any time before final acceptance. If the Engineer deems it proper to do so, changes may be made in progress estimates and in the final estimate.

#### **1-04.9 Use of Buildings or Structures**

The Engineer will decide whether any building or Structure on the Right of Way may remain during the Work and whether the Contractor may use such a building or Structure.

#### **1-04.10 Use of Materials Found on the Project**

With the Engineer's written approval, the Contractor may use on the project: stone, gravel, sand, other materials from on-site excavation, or timbers removed in the course of the Work. Approval will not be granted if:

1. The excavated materials or timber fail to meet Contract requirements;
2. The excavated materials or timber are required for other use under the Contract;
3. The excavated materials are required for use as Selected Materials under Section 2-03.3(10); or
4. Such use is not in the best interests of the Contracting Agency as determined by the Engineer, whose decision shall be final as provided in Section 1-05.1.

Any material disturbed by, but not used in, the Work shall be disposed of as provided elsewhere in the Contract or as ordered by the Engineer in accordance with Section 1-04.4.

**1-04.11 Final Cleanup**

The Contractor shall perform final cleanup as provided in this section to the Engineer's satisfaction. The Engineer will not establish the Physical Completion Date until this is done. The Right of Way, material sites, and all ground the Contractor occupied to do the Work shall be left neat and presentable. The Contractor shall:

1. Remove all rubbish, surplus materials, discarded materials, falsework, temporary structures, equipment, and debris; and
2. Deposit in embankments, or remove from the project, all unneeded, oversized rock left from grading, surfacing, or paving.

The Contractor shall not remove warning, regulatory, or guide signs unless the Engineer approves.

**1-05 Control of Work****1-05.1 Authority of the Engineer**

The Engineer shall be satisfied that all the Work is being done in accordance with the requirements of the Contract. The Contract and Specifications give the Engineer authority over the Work. Whenever it is so provided in this Contract, the decision of the Engineer shall be final: provided, however, that if a written protest is brought within the time allowed in the Contract, challenging the Engineer's Written Determination or decision, the protest addressing that Written Determination or decision shall be addressed in accordance with the procedures set forth in Section 1-04.5.

The Engineer's decisions will be final on all questions including the following:

1. Quality and acceptability of materials and Work,
2. Measurement of unit price Work,
3. Acceptability of rates of progress on the Work,
4. Interpretation of Plans and Specifications,
5. Determination as to the existence of changed or differing site conditions,
6. Fulfillment of the Contract by the Contractor,
7. Payments under the Contract including equitable adjustment,
8. Suspension(s) of Work,
9. Termination of the Contract for default or public convenience,
10. Determination as to unworkable days, and
11. Approval of Working Drawings.

The Engineer represents the Contracting Agency with full authority to enforce Contract requirements. If the Contractor fails to respond promptly to the requirements of the Contract or orders from the Engineer:

1. The Engineer may use Contracting Agency resources, other contractors, or other means to accomplish the Work; and
2. The Contracting Agency will not be obligated to pay the Contractor and will deduct from the Contractor's payments all costs that result from any other means used to carry out the Contract requirements or Engineer's orders.

At the Contractor's risk, the Engineer may suspend all or part of the Work according to Section 1-08.6.

Nothing in these Specifications or in the Contract requires the Engineer to provide the Contractor with direction or advice on how to do the Work. If the Engineer approves or recommends methods or manners for doing the Work or producing materials, the approval or recommendation shall not:

1. Guarantee that following the method or manner will result in compliance with the Contract,
2. Relieve the Contractor of any risks or obligations under the Contract, or
3. Create a Contracting Agency liability.

**1-05.1(1) Oral Orders**

When an oral order, including directions, instructions, interpretations, and determinations are issued by the Engineer, the Contracting Agency will send a Written Determination to the Contractor within 3 calendar days thereafter. If the Engineer determines that a change to the Contract is warranted, a written change order will be processed in accordance with Section 1-04.4. If the Contractor disagrees with the Written Determination, the Contractor may protest in accordance with Section 1-04.5.

When the Contractor believes they have received an oral order, the Contractor shall notify the Engineer in writing and within 3 calendar days. After the Contractor notifies the Engineer, the Contracting Agency will respond with a Written Determination within 14 calendar days. If the Engineer determines that a change to the Contract is warranted, a written change order will be processed in accordance with Section 1-04.4. If the Contractor disagrees with the Written Determination, the Contractor may protest in accordance with Section 1-04.5. Failure to follow procedures of this section will result in a waiver of claim.

#### **1-05.1(2) Requests for Information (RFI)**

No Claim shall be allowed because of ambiguities in the Contract if:

1. The Contractor discovers an ambiguity but fails to notify the Contracting Agency, or
2. The Contractor failed to discover a patent ambiguity that would be discovered by a reasonably prudent Contractor.

If the Contractor discovers an ambiguity in the Contract or desires an explanation or interpretation of the Contract, they shall request the explanation or interpretation in writing by way of a Request for Information (RFI). The RFI shall clearly define the ambiguity and have enough detail for the Engineer to provide an explanation or interpretation. If such detail is not provided, the Engineer will return the RFI as incomplete. Should the RFI require a change to the Contract, the Contractor will indicate in their RFI that it includes a request for change (RFC).

A RFI shall not be used nor constitute a notice required in accordance with Sections 1-04.5 and 1-04.7.

The Contractor may submit a RFI for the one of following reasons:

1. The Contractor believes there is information missing from the Contract Documents (Missing Information).
2. The Contractor believes a clarification of one or more of the Contract requirements is necessary (Clarification).
3. The Contractor needs to repair or otherwise correct a deficiency in the Work that requires a Change to the Contract to be acceptable (RFC – Construction Deficiency/Repair procedure). Requests submitted for this reason shall be submitted in accordance with Section 1-05.7(1).
4. The Contractor needs to substitute a material that provides an equal or better level of performance as the one specified in the Contract (RFC – Material Substitution). Requests shall indicate the location(s), quantity, and shall describe how the material provides an equal or better level of performance as the material originally specified.
5. The Contractor may submit a RFI that requests a change to the Contract requirements for a reason other than one listed in items 1-4 of this section (RFC – Other). To be considered, the request must not meet the requirements of a Value Engineering Change Proposal. To be considered, the request shall qualify as a Minor Change in accordance with Section 1-04.4(1) and shall describe how the change is and shall describe how the change is beneficial to the project.

The Engineer will respond, in writing, to RFIs within 14 calendar days in the order they are received. If the Engineer cannot respond within 14 calendar days due to the nature and complexity of the RFI, the Engineer will respond to the RFI stating how many additional days are needed for a full response. This does not relieve the Contractor of its responsibility to request a time extension in accordance with Section 1-08.8. If the Contractor needs to prioritize a RFI it shall indicate so as part of the RFI. Oral explanations, interpretations, or instructions given by anyone other than the Engineer will not be binding on the Contracting Agency. A response to a RFI shall be considered a Written Determination.

If the Contractor's Request for Information requires a change order, the Engineer's response will indicate whether they are authorizing the Contractor to proceed with the changed work prior to an executed change order. Without this authorization, the Contractor shall not proceed with the changed work until a Change Order has been processed. If the Contractor believes the response requires a change order and the Engineer does not specifically state that a change order is necessary, the Contractor shall submit their Protest in accordance with Section 1-04.5. Proceeding without Protest shall waive the Contractor's rights to Claim.

The Contractor shall bear all risk and costs of Work delays caused by rejection or nonapproval of RFIs that Requests for Change (RFC). The Contractor agrees the Engineer is under no obligation to accept an RFC. The Engineer's decision to accept or reject all or part of a RFI that requests a change is final and not subject to Protest.

Unit Bid prices shall cover all costs of submitting RFIs.

### 1-05.2 Authority of Assistants and Inspectors

Assistants and Inspectors have the authority to determine if the Work and materials meet the Contract requirements, reject defective material and suspend Work that is being done improperly, subject to the final decisions of the Engineer.

Assistants and Inspectors are not authorized to accept Work, to accept materials, to issue instructions, or to give advice that is contrary to the Contract. Work done or material furnished that does not meet the Contract requirements shall be at the Contractor's risk and shall not be a basis for a claim even if the Inspectors or assistants purport to change the Contract.

Assistants and Inspectors may advise the Contractor of faulty Work or materials or infringements of the terms of the Contract; however, failure of the Engineer or the assistants or Inspectors to advise the Contractor does not constitute acceptance or approval.

### 1-05.3 Working Drawings

The Contract may require the Contractor to submit Working Drawings for the performance of the work. Working Drawings shall be submitted by the Contractor electronically to the Engineer in PDF format; drawing details shall be prepared in accordance with conventional detailing practices. Unless allowed by the Engineer, the default page size shall be 8½ by 11 inches for text and calculations and 11 by 17 inches for drawings.

Working Drawings will be classified under the following categories:

1. **Type 1** – Submitted for Contracting Agency information. Submittal must be received by the Contracting Agency a minimum of 7 calendar days before Work represented by the submittal begins.
2. **Type 2** – Submitted for Contracting Agency review and comment. Unless otherwise stated in the Contract, the Engineer will require up to 20 calendar days from the date the Working Drawing is received until it is returned to the Contractor. The Contractor shall not proceed with the Work represented by the Working Drawing until comments from the Engineer have been addressed.
3. **Type 2E** – Same as a Type 2 Working Drawing with Engineering as described below.
4. **Type 3** – Submitted for Contracting Agency review and approval. Unless otherwise stated in the Contract, the Engineer will require up to 30 calendar days from the date the Working Drawing is received until it is returned to the Contractor. The Contractor shall obtain the Engineer's written approval before proceeding with the Work represented by the Working Drawing.
5. **Type 3E** – Same as a Type 3 Working Drawing with Engineering as described below.

All Working Drawings shall be considered Type 3 Working Drawings except as specifically noted otherwise in the Contract. Unless designated otherwise by the Contractor, submittals of Working Drawings will be reviewed in the order they are received by the Engineer. In the event that several Working Drawings are received simultaneously, the Contractor shall specify the sequence in which they are to be reviewed. If the Contractor does not submit a review sequence for simultaneous Working Drawing submittals, the review sequence will be at the Engineer's discretion.

Working Drawings requiring Engineering or calculations, Type 2E and 3E, shall be prepared by or under the direct supervision of a Licensed Professional in accordance with State of Washington Title 18 RCW (Business and Professions) WAC 196, and WAC 308. The Licensed Professional's signature and seal, date of signature, and registration number shall appear on the cover page. The cover page shall also include the Contract number, Contract title and sequential index to calculation page numbers.

If more than the specified number of calendar days is required for the Engineer's review of an individual Working Drawing or resubmittal, an extension of time will be considered in accordance with Section 1-08.8.

Review or approval of Working Drawings shall neither confer upon the Contracting Agency nor relieve the Contractor of responsibility for the accuracy of the drawings or their conformity with the Contract. The Contractor shall bear all risk and all costs of any Work delays caused by rejection or nonapproval of Working Drawings.

Unit Bid prices shall cover all costs of Working Drawings.

#### **1-05.4 Conformity with and Deviations from Plans and Stakes**

The Special Provisions may require that the Contractor be contractually responsible for part or all of the project surveying. For survey requirements not the responsibility of the Contractor, the Engineer will lay out and set construction stakes and marks needed to establish the lines, grades, slopes, cross-sections, and curve superelevations. These stakes and marks will govern the Contractor's Work. The Contractor shall take full responsibility for detailed dimensions, elevations, and slopes measured from them.

All Work performed shall be in conformity with the lines, grades, slopes, cross-sections, superelevation data, and dimensions as shown in the Plans, or as staked. If the Plans, Special Provisions, or these Specifications, state specific tolerances, then the Work shall be performed within those limits. The Engineer's decision on whether the Work is in conformity shall be final, as provided in Section 1-05.1.

The Contractor shall not deviate from the approved Plans and Working Drawings unless the Engineer approves in writing.

When the Contracting Agency is responsible for roadway surveying, and the Contractor trims the Subgrade with an automatic machine guided by reference lines, the Engineer will set control stakes for line and grade only once after grading is complete. To gain better control with unusual pavement widths or for other reasons, the Engineer may set more control stakes without added cost to the Contractor. The Contractor shall set reference lines from these control stakes for trimming Subgrade, for surfacing, and for controlling the paving machines.

The Contractor shall work to preserve stakes, marks, and monuments set by the Engineer. The Contracting Agency will deduct from payments due the Contractor all costs to replace such stakes, marks, and monuments carelessly or willfully damaged or destroyed by the Contractor's operation.

The Contractor shall provide enough safe areas to permit the Engineer to set those points and elevations that are the responsibility of the Contracting Agency and to perform random checks of the surveying performed by the Contractor.

The Contractor shall keep the Engineer informed of staking requirements to provide the Engineer with adequate time to set the stakes for which the Contracting Agency is responsible. Contractor requests for stakes shall be made at least 3 working days before the Engineer needs to begin the staking operation.

#### **1-05.5 Tolerances**

Geometrical tolerances shall be measured from the points, lines, and surfaces defined in Contract documents.

A plus (+) tolerance increases the amount or dimension to which it applies, or raises a deviation from level. A minus (-) tolerance decreases the amount or dimension to which it applies, or lowers a deviation from level. Where only one signed tolerance is specified (+ or -), there is no specified tolerance in the opposing direction.

Tolerances shall not be cumulative. The most restrictive tolerance shall control.

Tolerances shall not extend the Work beyond the Right of Way or other legal boundaries identified in the Contract documents. If application of tolerances causes the extension of the Work beyond the Right of Way or legal boundaries, the tolerance shall be reduced for that specific instance.

Tolerances shall not violate other Contract requirements. If application of tolerances causes the Work to violate other Contract requirements, the tolerance shall be reduced for that specific instance. If application of tolerances causes conflicts with other components or aspects of the Work, the tolerance shall be reduced for that specific instance.

#### **1-05.6 Inspection of Work and Materials**

The Engineer may inspect all Work and materials for conformity with Contract terms. To ensure the Engineer's safety and access during these inspections, the Contractor shall provide any equipment needed, such as walkways, railings, ladders, and platforms.

When the Engineer requests, the Contractor shall (without charge) provide samples of materials used or to be used in the Work. If the Contractor uses materials tested and approved for one project in an unrelated project, the Contracting Agency may deduct its testing and inspection costs from payments due the Contractor. The Engineer may order the Contractor to remove and replace materials used without inspection and the Contractor shall bear the cost of doing so.

Inspections, tests, measurements, or other actions by Contracting Agency employees serve only one purpose: to assure the Engineer that Work, materials, progress rate, and quantities comply with Contract terms. Such work by Contracting Agency employees shall not relieve the Contractor of its responsibility for completing the Work or for determining if Contract requirements are being met. The Contractor shall correct all substandard Work or materials. The Engineer will reject unsuitable Work or materials even though inspected or paid for in a progress estimate.

If the Engineer requests, then the Contractor shall remove or uncover any requested area of the completed Work. After the Engineer inspects it, the Contractor shall restore the area to the standard the Contract requires. The Contractor shall bear the cost of uncovering, removing, and restoring the exposed Work: (a) if it proves unacceptable, or (b) if it was placed without authority or without due notice to the Engineer. The Contracting Agency will pay these costs by agreed price or by force account if the Work proves to be acceptable and the Contractor had performed the original Work with the authority of and due notice to the Engineer.

The Contractor, if advised to do so by the Engineer, shall permit inspection of the Work from a representative of Railroad Companies, utilities, facilities of a public agency, or federal, state, or municipal agencies.

For crushing or screening operations, the Contractor shall provide and install a mechanical sampler that:

1. Is automatic or semi-automatic;
2. Can safely and easily obtain representative samples of the materials being produced;
3. Can convey the samples to ground level in Contracting Agency-provided sacks;
4. Moves at an even rate through the full width of the materials stream falling from the discharge end of the belt, gate, or chute;
5. Is power driven during the material intercept cycle; and
6. Can be adjusted to take samples of about 100 pounds as often as the Engineer requires.

No material from the crushing or screen operation will be accepted until after the Engineer has approved the design and operation of the sampling equipment. The Contractor shall bear all costs of providing the sampling equipment, the power to operate it, and the space for its use.

### **1-05.7 Removal of Defective and Unauthorized Work**

The Contracting Agency will not pay for unauthorized or defective Work. Unauthorized or defective Work includes: Work and materials that do not conform to Contract requirements; Work done beyond the lines and grades set by the Plans or the Engineer; and extra Work and materials furnished without the Engineer's written approval. The Contractor shall be responsible to immediately report to the Engineer all unauthorized or defective Work. The Contractor shall immediately remedy, remove, replace, or dispose of unauthorized or defective Work or materials and bear all costs of doing so.

#### **1-05.7(1) Request for Change for Defective or Unauthorized Work**

The Contractor may, as a request for information (RFI) in accordance with Section 1-05.1(2), submit a request to repair, replace or substitute defective, rejected, non-conforming, or unacceptable Work (RFC-Construction Deficiency/Repair Procedure).

RFIs submitted for RFC-Construction Deficiency/Repair Procedure shall include Type 2 Working Drawings. Type 2E Working Drawings shall be submitted when required by the Engineer. For preapproved repair procedures, Type 1 Working drawings shall be included. All requirements within the Contract for the repair, replacement or substitution of defective, rejected, non-conforming or unacceptable Work shall be followed and submitted as part of a RFI for RFC-Construction Deficiency/Repair Procedure. The Engineer has the right to reject all or part of the defective Work, and the Engineer's decision is final and not subject to protest.

### **1-05.8 Vacant**

#### **1-05.9 Equipment**

Prior to mobilizing equipment on site, the Contractor shall thoroughly remove all loose dirt and vegetative debris from drive mechanisms, wheels, tires, tracks, buckets and undercarriage. The Engineer will reject equipment from the site until it returns clean.

At the Engineer's request, the Contractor shall provide an operating and maintenance manual for each model or type of mixing, placing, or processing equipment before using it in the Work. The Contractor shall also provide test instruments to confirm whether the equipment meets operating requirements, such as vibration rate, revolutions-per-minute, or other requirements.

The Contract may require automatically controlled equipment for some operations. If the automatic controls on such equipment fail, then the Contractor may operate the equipment manually for the remainder of that normal working day, provided the method of operation produces results otherwise meeting the Specifications. Continued operation

of the equipment manually beyond this working day will be permitted only by specific authorization of the Engineer.

The Engineer will reject equipment that repeatedly breaks down or fails to produce results within the required tolerances. The Contractor shall have no claim for additional payment or for extension of time due to rejection and replacement of equipment.

Upon completion of the Work, the Contractor shall completely remove all loose dirt and vegetative debris from equipment before removing it from the job site.

#### **1-05.10 Guarantees**

The Contractor shall furnish to the Contracting Agency all guarantees or warranties furnished as a customary trade practice in connection with the purchase of equipment, materials, or items incorporated into the project.

#### **1-05.11 Final Inspection**

The Engineer will not make the final inspection until the physical Work required by the Contract, including final cleanup and all extra Work ordered by the Engineer, has been completed. The Physical Completion Date for the Contract will be determined as provided in Section 1-08.5.

#### **1-05.12 Final Acceptance**

The Contractor must perform all the obligations under the Contract before a Completion Date and final acceptance can occur. Failure of the Contractor to perform all the obligations under the Contract shall not bar the Contracting Agency from unilaterally accepting the Contract as provided in Section 1-09.9. The Secretary accepts the completed Contract and the items of Work shown in the final estimate by signature of the Final Contract Voucher Certification. The date of that signature constitutes the acceptance date. Progress estimates or payments shall not be construed as acceptance of Work under the Contract.

The Contractor agrees that neither completion nor final acceptance shall relieve the Contractor of the responsibility to indemnify, defend, and protect the Contracting Agency against all claims or loss resulting from the failure of the Contractor or subcontractors to pay all laborers, mechanics, subcontractors, material persons, or others who provides labor, supplies, or provisions for carrying out the Work or for payments required for unemployment compensation under Title 50 RCW or for industrial insurance and medical aid required under Title 51 RCW.

Final acceptance shall not constitute acceptance of unauthorized or defective work or material. The Contracting Agency shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of all unauthorized or defective work or material or from recovering damages for any such work or material.

#### **1-05.13 Superintendents, Labor, and Equipment of Contractor**

At all times, the Contractor shall keep at the Work site a set of the Plans, Specifications, Special Provisions, and Addenda. The Contractor shall devote the attention required to make progress on the Work in accordance with their approved schedule. The Contractor shall cooperate fully with the Engineer and Inspectors.

Either the Contractor in person or an authorized representative shall remain on site whenever the Work is underway. Before the Work begins, the Contractor shall name in writing an experienced superintendent who understands the Contract and is able to supervise the Work. This superintendent shall have full authority to represent and act for the Contractor. Superintendents who repeatedly fail to follow the Engineer's written or oral orders, directions, instructions, or determinations, shall be subject to removal from the project. Upon the written request of the Engineer, the Contractor shall immediately remove such superintendent and name a replacement in writing.

Competent supervisors experienced in the task being performed shall continuously oversee the Contract Work. At the Engineer's written request, the Contractor shall immediately remove and replace incompetent, careless, or negligent employees.

Noncompliance with the Engineer's request to remove and replace personnel at any level shall be grounds for terminating the Contract under the terms of Section 1-08.10.

The Contractor shall keep all machinery and equipment in good, workable condition. It shall be adequate for its purpose and used by competent operators.

The Engineer will rate the Contractor's performance and Contract compliance in these categories:

1. Progress of Work,
2. Quality of Work,
3. Administration/Management/Supervision, and
4. Compliance with Laws and Contract Requirements.

Whenever the Contracting Agency evaluates the Contractor's prequalification under RCW 47.28.070, it will take these reports into account.

#### **1-05.13(1) Emergency Contact List**

The Contractor shall submit an Emergency Contact List to the Engineer as a Type 1 Working Drawing no later than 5 calendar days after the date the Contract is executed. The list shall include, at a minimum, the Contractor's Project Manager, or equivalent, the Contractor's Project Superintendent, the Erosion and Sediment Control (ESC) Lead, and the Traffic Control Supervisor. The list shall identify a representative with delegated authority to act as the emergency contact on behalf of the Contractor and include one or more alternates. The emergency contact shall be available upon the Engineer's request at other than normal working hours. The Emergency Contact List shall include 24-hour telephone numbers for all individuals identified as emergency contacts or alternates.

#### **1-05.14 Cooperation with Other Contractors**

The Contracting Agency may perform other work at or near the site, including any material site, with other forces than those of the Contractor. This work may be done with or without a contract. If such work takes place within or next to this project, the Contractor shall cooperate with all other contractors or forces. The Contractor shall carry out Work under this project in a way that will minimize interference and delay for all forces involved. The Engineer will resolve disagreements that may arise among the contractors or the Contractor and the Contracting Agency over the method or order of doing the Work. The Engineer's decision in these matters shall be final, as provided in Section 1-05.1.

The coordination of the Work shall be taken into account by the Contractor as part of the site investigation in accordance with Section 1-02.4 and all resulting costs shall be incidental and included within the unit Bid prices in the Contract.

#### **1-05.15 Method of Serving Notices**

Written notices to the Contractor required under these Specifications may be served on the Contractor either personally or by mailing or by delivery to the last post office or email address known to the Engineer.

All correspondence from the Contractor shall be directed to the Engineer. If Certified Claims are filed in hard copy format, they shall be directed to the Engineer. Whether filed electronically or in hard copy format, the Certified Claims shall include the original notarized statement.

**1-06 Control of Material****1-06.1 Approval of Materials Prior to Use**

Prior to use, the Contractor shall notify the Engineer of all proposed materials. The Contractor shall use the Qualified Product List (QPL), the Aggregate Source Approval (ASA) Database, or the Request for Approval of Material (RAM) form.

All equipment, materials, and articles incorporated into the permanent Work:

1. Shall be new, unless the Special Provisions or *Standard Specifications* permit otherwise;
2. Shall meet the requirements of the Contract and be approved by the Engineer;
3. May be inspected or tested at any time during their preparation and use; and
4. Shall not be used in the Work if they become unfit after being previously approved.

**1-06.1(1) Qualified Products List (QPL)**

The QPL is a listing of manufactured products that have been evaluated and determined suitable for use in Highway construction.

If the Contractor elects to use the QPL, the most current list available at the time the product is proposed for use, shall be used. The QPL submittal shall be prepared by the Contractor in accordance with the instructions in the QPL and submitted to the Engineer prior to use.

The QPL identifies the approved products, the applicable Specification Section, and the basis for acceptance at the project level. The listing is divided into two categories, "Approved" and "Conditionally Approved". "Approved" products are denoted with an "A". Those products may be accepted without additional sampling. "Conditionally Approved" products are denoted with a "CA". The acceptance and use of these products is based upon additional job sampling and/or documentation. All additional acceptance actions need to be completed prior to the material being incorporated into the Work.

The Contractor shall advise the Engineer of the intended items for use from the QPL by reference to the Contract Bid item.

The use of listed products shall be restricted to the Standard Specification for which they are listed and fulfillment of the acceptance requirement defined in the QPL. Qualified products not conforming to the Specifications, not fulfilling the acceptance requirements, or improperly handled or installed, shall be replaced at the Contractor's expense.

To qualify for continued listing on the QPL, products may be sampled and tested for conformance to the *Standard Specifications*. The Contracting Agency reserves the right to make revisions to the QPL at any time.

If there is a conflict between the QPL and the Contract, the provisions of the Contract shall take precedence over the QPL.

The current QPL can be accessed online at [www.wsdot.wa.gov/business/materialslab/QPL.htm](http://www.wsdot.wa.gov/business/materialslab/QPL.htm).

**1-06.1(2) Request for Approval of Material (RAM)**

The RAM shall be used when the Contractor elects not to use the QPL or the material is not listed in the QPL. The RAM shall be prepared by the Contractor in accordance with the instructions on Form 350-071 and submitted to the Engineer for approval before the material is incorporated into the Work.

Approval of the material does not constitute acceptance of the material for incorporation into the Work.

Additional acceptance actions as noted on the RAM need to be completed prior to the materials being incorporated into the Work.

When requesting approval of an item that requires fabrication, both the fabricator and the manufacturer of the base material shall be identified on the RAM.

#### **1-06.1(3) Aggregate Source Approval (ASA) Database**

The ASA database contains the results of WSDOT preliminary testing of aggregate sources as well as the results pertaining to the review of the aggregate source Quality Control Programs. Aggregate sources evaluated after January 1, 2021 shall have Quality Control Program compliant with QC 11 and QC 12.

This database is used by the Contracting Agency to indicate the approval status of these aggregate sources for applications that require preliminary testing as defined in the Contract. The ASA 'Aggregate Source Approval Report' identifies the currently approved applications for each aggregate source listed. The acceptance and use of these aggregates is contingent upon additional job sampling and/or documentation. The ASA database can be accessed online at the agency website.

Aggregates approved for applications on the ASA 'Aggregate Source Approval Report' not conforming to the Specifications, not fulfilling the acceptance requirements, or improperly handled or installed, shall be replaced at the Contractor's expense.

Aggregate materials that are not approved for use in the ASA data base may be sampled and tested by the Agency, for a specified use on a project, from the source or from a processed stockpile of the material and all cost for the sampling and testing will be deducted from the Contract.

The Contractor agrees to authorize the Engineer to deduct the sampling and testing costs from money due or coming due to the Contractor.

Regardless of the status of the aggregate source, whether listed or not listed in the ASA database the Contractor shall provide toxicity test results on the aggregate source in accordance with Section 9-03.21(1) upon request from the Engineer.

#### **1-06.1(4) Fabrication Inspection Expense**

In the event the Contractor elects to have items fabricated beyond 300 miles from Seattle, Washington, the Contracting Agency will deduct from monies due or that may become due to the Contractor all costs to perform plant approval and fabrication acceptance inspection for the items listed in Table 1 and costs for initial plant approval for items listed in Table 2. Plants currently listed on the QPL for the items shown in Table 1 and Table 2 in this section do not require plant approval.

**Table 1** Items Requiring Plant Approval and Fabrication Acceptance Inspection

- Anchor Bolts (ASTM A449 & F1554 Grade 105)
- Anchor Cables and Components
- Bridge Bearings (Cylindrical, Disc, Fabric Pad, Low Rise, Pin, Pendulum, and Spherical)
- Cattle Guards
- Coated Piling and Casing
- Epoxy-Coated Reinforcing Steel
- Fabricated/Welded Miscellaneous Metal Drainage Items: Grate Inlets, and Drop Inlets
- Longitudinal Seismic Restrainers
- Metal Bridge Railing and Handrail
- Metal Castings for Concrete Drainage, electrical, and Utility Items
- Modular Expansion Joints
- Paint & Powder Coating Facilities for Table 1 items
- Precast Concrete Bridge Deck Panels
- Precast Concrete Catch Basins, Manholes, Inlets, Drywells, and Risers
- Precast Culvert, Storm Sewer, and Sanitary Sewer Pipe
- Precast Concrete Floor Panels
- Precast Concrete Junction Boxes, Pull Boxes, Cable Vaults
- Precast Concrete Marine Pier Deck Panels
- Precast Concrete Pier Caps
- Precast Concrete Retaining Walls, including Lagging Panels
- Precast Concrete Roof Panels
- Precast Concrete Structural Earth Walls, Noise Barrier Walls, Wall Panels, and Wall Stem Panels
- Precast Concrete Traffic Barrier
- Precast Concrete Vaults (Electrical, Utility, Drainage, etc.)
- Precast Concrete Girders and Precast Bridge Components
- Prestressed Concrete Girders
- Prestressed Concrete Panels
- Precast Reinforced Concrete Box Structures
- Precast Reinforced Concrete Split Box Structures
- Precast Reinforced Concrete Three Sided Structures
- Prestressed Concrete Piles
- Retrofit Guardrail Posts with Welded Base Plates
- Signal Standards
- Signaling Material
- Sign Structures – Cantilever, Sign Bridge, and Bridge Mounted, Roadside Type PLT/PLU
- Soldier Piles
- Steel Bridges and Steel Bridge Components
- Steel Column Jackets
- Steel Light Standards, and High Mast Light Poles
- Strip Seal Expansion Joints
- Structural Steel for Ferry Terminal Berthing, Pedestrian and Vehicle Loading Structures
- Timber Bridges
- Treated Timber and Lumber 6 inch by 6 inch or larger
- Welded Structural Steel (Miscellaneous)

**Table 2** Items Requiring Initial Plant Approval Only

- Epoxy Coating of Dowels and Tiebars for Concrete Pavement
- Guardrail Posts and Blocks
- Precast Concrete Blocks for Structural Earth Walls
- Steel Pipe Piling

The deductions for fabrication inspection costs will be as shown in the Payment Table below.

Zone	Place of Fabrication or Inspection Site	Reduction in Payment
1	Within 300 airline miles from Seattle	None*
2	Between 300 and 3,000 airline miles from Seattle	\$900.00 per inspection day** but not less than \$2,500 per trip
3	Over 3,000 airline miles from Seattle	\$1,200 per inspection day,** but not less than \$3,000 per trip

\*Fabrication inspection expense does not apply for initial acceptance inspection in Zone 1. Re-inspection of items due to unacceptable workmanship or scheduling errors made by the Contractor, fabricator, or facility applying protective coatings will be assessed at \$70.00 per hour but not less than \$140.00 per inspection.

\*\*An inspection day includes a calendar day or portion of a calendar day spent by one inspector inspecting, on standby, or traveling to and from, a place of fabrication. An additional cost per inspection day will be assessed for each additional inspector. Reimbursement will be assessed at 50% of the daily rate per Zone, per day for weekends and holidays for each on site inspector in travel status, but not engaged in inspection or travel activities when fabrication activities are not taking place.

Where fabrication of an item takes place in more than one zone, the reduction in payment will be computed on the basis of the entire item being fabricated in the farthest of zones where fabrication takes place on that item.

The rates for Zones 2 and 3 shall be applied for the full duration of time for all fabrication inspection activities, to include, but not be limited to: plant approvals, prefabrication meetings, fabrication, coatings, and final inspection. When an inspection is for more than one Contract the fabrication inspection costs shall be prorated as determined by the Engineer.

## 1-06.2 Acceptance of Materials

### 1-06.2(1) Samples and Tests for Acceptance

The Contractor shall deliver representative samples (from the Contractor, Producer, or Fabricator) to the Engineer without charge before incorporating material into the Work. In providing samples, the Contractor shall provide the Engineer with sufficient time and quantities for testing before use. The Engineer may require samples at any time. Samples not taken by or in the presence of the Engineer will not be accepted for test, unless the Engineer permits otherwise.

The Contractor shall designate specific Contractor employees as points of contact for concrete testing and acceptance. Alternates shall be designated to ensure that direct contact is maintained during concrete placement. If designated by the Contractor to the Engineer, the concrete supplier will receive all 28-day concrete strength test results.

The Engineer will designate specific Contracting Agency employees as points of contact for concrete testing and acceptance.

The Contractor may observe any of the sampling and testing performed by the Engineer. If the Contractor observes a deviation from the specified sampling and testing procedures, the Contractor shall verbally describe the deviations observed to the Engineer or designated representative immediately, and shall confirm these observed deviations in writing to the Engineer within 24 hours, referencing the specific procedures and steps. The Engineer will respond in writing within 3 working days of the receipt of the Contractor's written communications.

All field and Laboratory materials testing by the Engineer will follow methods described in Contract documents, or in the WSDOT *Materials Manual* M 46-01, using qualified testing personnel and calibrated or verified equipment. The standard or tentative standard in effect on the Bid advertising date will apply in each case.

Revisions to the WSDOT *Materials Manual* M 46-01 or revisions to other Specifications or test methods such as AASHTO, ASTM, or Federal Specifications will be considered as in effect 60 calendar days after publication.

### 1-06.2(2) Statistical Evaluation of Materials for Acceptance

#### 1-06.2(2)A General

Where specified, acceptance sampling and testing will be performed by the Contracting Agency and statistically evaluated for acceptance by the provisions of this Subsection. All test results for a lot will be analyzed collectively and statistically by the quality level analysis procedures shown at the end of this Subsection to determine the total percent of the lot that is within Specification limits and to determine an appropriate pay factor. Lots and sublots are defined in the appropriate Subsection of these Specifications for the material being statistically evaluated.

Quality level analysis is a statistical procedure for determining the percent compliance of the material with these Specifications. Quality level is the computed percent of material meeting these Specifications and is determined from the arithmetic mean, ( $\bar{X}_m$ ), and the sample standard deviation (S), for each constituent of the lot.

Rounding of test results or calculations will be accomplished according to the individual testing procedure, or, if not defined in the procedure, then accomplished according to the following rule:

1. The final significant digit will not be changed when the succeeding digit is less than 5.
2. The final significant digit will be increased by one when the succeeding digit is 5 or greater.

Table 1 Estimated percent of Work Within Specification Limits

Estimated percent Within Specification Limits ( $P_U$ or $P_L$ )	Upper Quality Index $Q_U$ or Lower Quality Index $Q_L$														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to $\infty$
100	1.16	1.49	1.72	1.88	1.99	2.07	2.13	2.20	2.28	2.34	2.39	2.44	2.48	2.51	2.56
99		1.46	1.64	1.75	1.82	1.88	1.91	1.96	2.01	2.04	2.07	2.09	2.12	2.14	2.16
98		1.43	1.58	1.66	1.72	1.75	1.78	1.81	1.84	1.87	1.89	1.91	1.93	1.94	1.95
97	1.15	1.40	1.52	1.59	1.63	1.66	1.68	1.71	1.73	1.75	1.76	1.78	1.79	1.80	1.81
96		1.37	1.47	1.52	1.56	1.58	1.60	1.62	1.64	1.65	1.66	1.67	1.68	1.69	1.70
95	1.14	1.34	1.42	1.47	1.49	1.51	1.52	1.54	1.55	1.56	1.57	1.58	1.59	1.59	1.60
94		1.31	1.38	1.41	1.43	1.45	1.46	1.47	1.48	1.49	1.50	1.50	1.51	1.51	1.52
93	1.13	1.28	1.33	1.36	1.38	1.39	1.40	1.41	1.41	1.42	1.43	1.43	1.44	1.44	1.44
92	1.12	1.25	1.29	1.31	1.33	1.33	1.34	1.35	1.35	1.36	1.36	1.37	1.37	1.37	1.38
91	1.11	1.22	1.25	1.27	1.28	1.28	1.29	1.29	1.30	1.30	1.30	1.31	1.31	1.31	1.31
90	1.10	1.19	1.21	1.23	1.23	1.24	1.24	1.24	1.25	1.25	1.25	1.25	1.25	1.26	1.26
89	1.09	1.16	1.18	1.18	1.19	1.19	1.19	1.19	1.20	1.20	1.20	1.20	1.20	1.20	1.20
88	1.07	1.13	1.14	1.14	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15
87	1.06	1.10	1.10	1.10	1.10	1.10	1.10	1.10	1.11	1.11	1.11	1.11	1.11	1.11	1.11
86	1.04	1.07	1.07	1.07	1.07	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06
85	1.03	1.04	1.03	1.03	1.03	1.03	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02
84	1.01	1.01	1.00	0.99	0.99	0.99	0.99	0.98	0.98	0.98	0.98	0.98	0.98	0.98	0.98
83	0.99	0.98	0.97	0.96	0.95	0.95	0.95	0.95	0.94	0.94	0.94	0.94	0.94	0.94	0.94
82	0.97	0.95	0.93	0.92	0.92	0.92	0.91	0.91	0.91	0.91	0.91	0.90	0.90	0.90	0.90
81	0.95	0.92	0.89	0.89	0.88	0.88	0.88	0.87	0.87	0.87	0.87	0.87	0.87	0.87	0.87
80	0.93	0.89	0.87	0.86	0.85	0.85	0.84	0.84	0.84	0.84	0.83	0.83	0.83	0.83	0.83
79	0.91	0.86	0.84	0.82	0.82	0.81	0.81	0.81	0.80	0.80	0.80	0.80	0.80	0.80	0.79
78	0.88	0.83	0.81	0.79	0.79	0.78	0.78	0.77	0.77	0.77	0.76	0.76	0.76	0.76	0.76
77	0.86	0.80	0.77	0.76	0.75	0.75	0.74	0.74	0.74	0.74	0.73	0.73	0.73	0.73	0.73
76	0.83	0.77	0.74	0.73	0.73	0.72	0.71	0.71	0.70	0.70	0.70	0.70	0.70	0.70	0.70
75	0.81	0.74	0.71	0.70	0.69	0.69	0.68	0.68	0.67	0.67	0.67	0.67	0.67	0.67	0.66

Table 1 Estimated percent of Work Within Specification Limits

Estimated percent Within Specification Limits ( $P_U$ or $P_L$ )	Upper Quality Index $Q_U$ or Lower Quality Index $Q_L$														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to $\infty$
74	0.78	0.71	0.68	0.67	0.67	0.65	0.65	0.65	0.64	0.64	0.64	0.64	0.64	0.64	0.63
73	0.75	0.68	0.65	0.64	0.63	0.62	0.62	0.62	0.61	0.61	0.61	0.61	0.61	0.61	0.60
72	0.73	0.65	0.62	0.61	0.60	0.59	0.59	0.59	0.58	0.58	0.58	0.58	0.58	0.58	0.57
71	0.70	0.62	0.59	0.58	0.57	0.57	0.56	0.56	0.55	0.55	0.55	0.55	0.55	0.55	0.54
70	0.67	0.59	0.56	0.55	0.54	0.54	0.53	0.53	0.52	0.52	0.52	0.52	0.52	0.52	0.52
69	0.64	0.56	0.53	0.52	0.51	0.51	0.50	0.50	0.50	0.49	0.49	0.49	0.49	0.49	0.49
68	0.61	0.53	0.50	0.49	0.48	0.48	0.48	0.47	0.47	0.47	0.46	0.46	0.46	0.46	0.46
67	0.58	0.50	0.47	0.46	0.45	0.45	0.45	0.44	0.44	0.44	0.44	0.43	0.43	0.43	0.43
66	0.55	0.47	0.45	0.43	0.43	0.42	0.42	0.42	0.41	0.41	0.41	0.41	0.41	0.41	0.40
65	0.51	0.44	0.42	0.40	0.40	0.39	0.39	0.39	0.38	0.38	0.38	0.38	0.38	0.38	0.38
64	0.48	0.41	0.39	0.38	0.37	0.37	0.36	0.36	0.36	0.36	0.35	0.35	0.35	0.35	0.35
63	0.45	0.38	0.36	0.35	0.34	0.34	0.34	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.32
62	0.41	0.35	0.33	0.32	0.32	0.31	0.31	0.31	0.30	0.30	0.30	0.30	0.30	0.30	0.30
61	0.38	0.30	0.30	0.30	0.29	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28
60	0.34	0.28	0.28	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
59	0.31	0.27	0.25	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.30	0.25	0.23	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
57	0.25	0.20	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.20	0.18	0.16	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15
55	0.18	0.15	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.15	0.13	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.10	0.10	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.08	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.05	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Table 2 Pay Factors

Pay Factor	Required Quality Level for a Given Sample Size (n) and a Given Pay Factor														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to ∞
1.05							100	100	100	100	100	100	100	100	100
1.04				100	100	99	97	95	96	96	96	97	97	97	97
1.03				100	98	96	94	92	93	93	94	95	95	96	96
1.02				99	97	94	91	89	90	91	92	93	93	94	94
1.01	100	100	100	98	95	92	89	87	88	89	90	91	92	92	93
1.00	69	75	78	80	82	83	84	85	86	87	88	89	90	91	92
0.99	66	72	76	78	80	81	82	83	84	85	86	87	89	90	91
0.98	64	70	74	76	78	79	80	81	82	84	85	86	87	88	90
0.97	63	68	72	74	76	77	78	79	81	82	83	84	86	87	88
0.96	61	67	70	72	74	75	76	78	79	81	82	83	84	86	87
0.95	59	65	68	71	72	74	75	76	78	79	80	82	83	84	86
0.94	58	63	67	69	71	72	73	75	76	78	79	80	82	83	85
0.93	57	62	65	67	69	71	72	73	75	76	78	79	80	82	84
0.92	55	60	63	66	68	69	70	72	73	75	76	78	79	81	82
0.91	54	59	62	64	66	68	69	70	72	74	75	76	78	79	81

Table 2 Pay Factors

Pay Factor	Required Quality Level for a Given Sample Size (n) and a Given Pay Factor														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to ∞
0.90	53	57	61	63	65	66	67	69	71	72	74	75	77	78	80
0.89	51	56	59	62	63	65	66	68	69	71	72	74	75	77	79
0.88	50	55	58	60	62	64	65	66	68	70	71	73	74	76	78
0.87	49	53	57	59	61	62	63	65	67	68	70	71	73	75	77
0.86	48	52	55	58	59	61	62	64	66	67	69	70	72	74	76
0.85	46	51	54	56	58	60	61	62	64	66	67	69	71	72	75
0.84	45	49	53	55	57	58	60	61	63	65	66	68	70	71	73
0.83	44	48	51	54	56	57	58	60	62	64	65	67	69	70	72
0.82	43	47	50	53	54	56	57	59	61	62	64	66	67	69	71
0.81	41	46	49	51	53	55	56	58	59	61	63	64	66	68	70
0.80	40	44	48	50	52	54	55	56	58	60	62	63	65	67	69
0.79	39	43	46	49	51	52	54	55	57	59	61	62	64	66	68
0.78	38	42	45	48	50	51	52	54	56	58	59	61	63	65	67
0.77	36	41	44	46	48	50	51	53	55	57	58	60	62	64	66
0.76	35	39	43	45	47	49	50	52	54	56	57	59	61	63	65
0.75	33	38	42	44	46	48	49	51	53	54	56	58	60	62	64
<b>REJECT</b>	Values Less Than Those Shown Above														

Reject Quality Levels Less Than Those Specified for a 0.75 Pay Factor

**Note:**

If the value of  $(P_U + P_L) - 100$  does not correspond to a  $(P_U + P_L) - 100$  value in this table, use the next smaller  $(P_U + P_L) - 100$  value.

**1-06.2(2)B Financial Incentive**

As an incentive to produce superior quality material, a pay factor greater than 1.00 may be obtained with the maximum pay factor being 1.05. A lot containing non-Specification material will be accepted provided the Composite Pay Factor reaches the minimum value specified elsewhere. A lot containing non-Specification material that fails to obtain at least the specified minimum Composite Pay Factor will be rejected by the Engineer. The Engineer will take one or more of the following actions when rejected material has been incorporated into the Work:

1. Require complete removal and replacement with Specification material at no additional cost to the Contracting Agency.
2. At the Contractor's written request, allow corrective work at no additional cost to the Contracting Agency and then an appropriate price reduction that may range from no reduction to no payment.
3. At the Contractor's written request, allow material to remain in place with an appropriate price reduction that may range from a designated percentage reduction to no payment.

Lots for which at least three samples have been obtained, and all of the test results meet one of the appropriate criteria listed below, will receive at least a 1.00 Composite Pay Factor:

1. All test results are within the allowable limits specified for the item, or
2. All test results that only have a lower Specification limit are greater than or equal to that limit, or
3. All test results that only have an upper Specification limit are less than or equal to that limit.

Computation of the quality level in these instances will be for determining the amount of a bonus that might be warranted.

Lots represented by less than three samples or unsampled lots will be exempt from statistical based acceptance.

**1-06.2(2)C Removed and Rejected Materials**

The Contractor may, prior to sampling, elect to remove defective materials and replace them with new material at no expense to the Contracting Agency. Any such new material will be sampled, tested, and evaluated for acceptance as a part of the subplot in accordance with this statistical sampling and testing procedure.

The Engineer may reject a subplot that tests show to be defective. Such rejected material shall not be used in the Work, and the results of tests run on the rejected material will not be included in the original lot acceptance tests.

**1-06.2(2)D Quality Level Analysis****1-06.2(2)D1 General**

The quality level calculations for HMA and other materials are completed using the formulas in Section 1-06.2(2)D4. For HMA, the definition of the "x" value used in the calculations and the definition of the upper and lower specification limit are in Section 1-06.2(2)D2. For other materials, the definition of the "x" value used in the calculations and the definition of the upper and lower specification limit are in Section 1-06.2(2)D3. All other terms and variables are the same for all calculations.

**1-06.2(2)D2 Hot Mix Asphalt**

For HMA mixture:

$x$  = difference between an individual test value and the job mix formula (JMF)

USL = maximum allowable limit in Section 9-03.8(7)

LSL = minimum allowable limit in Section 9-03.8(7)

For HMA compaction:

$x$  = individual test value

LSL = the value specified in Section 5-04.3(10)C3

**1-06.2(2)D3 Other Materials**

$x$  = individual test value

USL = upper specification limit

LSL = lower specification limit

**1-06.2(2)D4 Quality Level Calculation**

The procedures for determining the quality level and pay factors for a material are as follows:

1. Determine the arithmetic mean,  $X_m$ , for each specified material constituent:

$$X_m = \frac{\sum x}{n}$$

Where:

$$\begin{aligned} \sum &= \text{summation of } x \\ n &= \text{total number test values} \end{aligned}$$

2. Compute the sample standard deviation, "S", for each constituent:

$$S = \left[ \frac{n\sum x^2 - (\sum x)^2}{n(n-1)} \right]^{\frac{1}{2}}$$

Where:

$$\begin{aligned} \sum x^2 &= \text{summation of the squares of individual test values} \\ (\sum x)^2 &= \text{summation of the individual test values squared} \end{aligned}$$

3. Compute the upper quality index, ( $Q_U$ ), for each constituent:

$$Q_U = \frac{USL - X_m}{S}$$

4. Compute the lower quality index, ( $Q_L$ ), for each constituent:

$$Q_L = \frac{X_m - LSL}{S}$$

5. For each constituent determine  $P_U$  (the percent within the upper Specification limit which corresponds to a given  $Q_U$ ) from Table 1. If USL is 100.00 percent or is not specified,  $P_U$  will be 100. For negative values of  $Q_U$ ,  $P_U$  (e.g.,  $N = 15$  and  $Q_U = -0.5$ ) will result in  $P_U = 30$ ) is equal to 100 minus the table  $P_U$ . If the value of  $Q_U$  does not correspond exactly to a figure in the table, use the next higher value.
6. For each constituent determine  $P_L$  (the percent within the lower Specification limit which corresponds to a given  $Q_L$ ) from Table 1. If LSL is zero or not specified,  $P_L$  will be 100. For negative values of  $Q_L$ ,  $P_L$  is equal to 100 minus the table  $P_L$ . If the value of  $Q_L$  does not correspond exactly to a figure in the table, use the next higher value.

7. For each constituent determine the quality level (the total percent within Specification limits):

$$\text{Quality Level} = (P_U + P_L) - 100$$

8. Using the quality level from step 7, determine the pay factor (PF<sub>i</sub>) from Table 2 for each constituent tested.
9. Determine the Composite Pay Factor (CPF) for each lot.

$$\text{CPF} = \frac{f_1(\text{PF}_1) + f_2(\text{PF}_2) + \dots + f_i(\text{PF}_i)}{\sum f_i}$$

$$i = 1 \text{ to } j$$

Where:

- $f_i$  = price adjustment factor listed in these Specifications for the applicable material
- $j$  = number of constituents being evaluated

### 1-06.3 Manufacturer's Certificate of Compliance

When authorized by these Specifications or the Special Provisions and prior to use, the Engineer may accept certain materials on the basis of a Manufacturer's Certificate of Compliance as an alternative to material inspection and testing.

The Contractor may request, in writing, authority from the Engineer to install such materials prior to submitting the required certification; however, no payment will be made for the Work in the absence of an acceptable Manufacturer's Certificate of Compliance. The Contracting Agency reserves the right to deny the request for good cause. If for any reason the Contractor has not provided an acceptable Manufacturer's Certificate of Compliance by the Physical Completion Date established by Section 1-08.5, the Contracting Agency will assess the usefulness of the installed material. At the Engineer's discretion, the Contracting Agency will either require replacement of the material by the Contractor at no expense to the Contracting Agency or process the final payment as provided by Section 1-09.9 without paying for the materials or any portion of the Work performed to install the materials provided on such a basis. The unit Contract prices for the Work shall be used to determine the amount to be withheld. Where unit Contract prices do not exist, as in a lump sum item, the amount to be withheld shall be an equitable adjustment, covering labor, equipment and materials, determined in accordance with Section 1-09.4.

The Manufacturer's Certificate of Compliance must identify the manufacturer, the type and quantity of material being certified, the applicable Specifications being affirmed, and the signature of a responsible corporate official of the manufacturer and include supporting mill tests or documents. A Manufacturer's Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Manufacturer's Certificate of Compliance may be sampled and tested at any time. Materials not conforming to the requirements will be subject to rejection whether in place or not. The Contracting Agency reserves the right to refuse to accept materials on the basis of a Manufacturer's Certificate of Compliance.

### 1-06.4 Handling and Storing Materials

In storage and handling, the Contractor shall protect materials against damage from careless handling, from exposure to weather, from mixture with foreign matter, and from all other causes. The Engineer will reject and refuse to test materials improperly handled or stored.

The Contractor shall repair, replace, or make good all Contracting Agency-provided materials that are damaged or lost due to the Contractor's operation or while in the Contractor's possession, at no expense to the Contracting Agency.

#### **1-06.5 Owners Manuals and Operating Instructions**

For equipment and materials that are permanently incorporated in the Work, the Contractor shall provide to the Engineer all owners manuals and operating instructions furnished by the equipment or material manufacturer.

#### **1-06.6 Recycled Materials**

The Contractor shall make their best effort to utilize recycled materials in the construction of the project; the use of recycled concrete aggregate as specified in Section 1-06.6(1)A is a requirement of the Contract.

The Contractor shall submit a Recycled Material Utilization Plan on WSDOT Form 350-075A within 30 calendar days after the Contract is executed. The plan shall provide the Contractor's anticipated usage of recycled concrete aggregates for meeting the requirements of these Specifications. The quantity of recycled concrete aggregate will be provided in tons and as a percentage of the Plan quantity for eligible material listed in Section 9-03.21(1)F Table on Maximum Allowable percent (By Weight) of Recycled Material. When a Contract does not include Work that requires the use of a material that is included in the requirements for using materials the Contractor may state in their plan that no recycled materials are proposed for use.

Within 30 calendar days after Physical Completion the Contractor shall report the quantity of recycled concrete aggregates that were utilized in the construction of the project for each eligible item listed in Section 9-03.21(1)F. The Contractor's report shall be provided on WSDOT Form 350-075A, Recycled Concrete Aggregate Reporting.

#### **1-06.6(1) Recycling of Aggregate and Concrete Materials**

##### **1-06.6(1)A General**

The minimum quantity of recycled concrete aggregate shall be 25 percent of the total quantity of aggregate that is incorporated into the Contract for those items listed in Section 9-03.21(1)E Table on Maximum Allowable percent (By Weight) of Recycled Material that allow the use of recycled concrete aggregate. The percentage of recycled material incorporated into the project for meeting the required percentage will be calculated in tons based on the quantity of recycled concrete used on the entire Contract and not as individual items.

If the Contractor's total cost for Work with recycled concrete aggregate is greater than without the Contractor may choose to not use recycled concrete aggregate. If the Recycled Material Utilization Plan does not indicate the minimum usage of recycled concrete aggregate required above, or if completed project quantities do not meet the minimum usage required, the Contractor shall develop the following:

1. A cost estimate for each material listed in Section 9-03.21(1)E that is utilized on the Contract. The cost estimate shall include the following:
  - a. The estimated costs for the Work for each material with 25 percent recycled concrete aggregate. The cost estimate shall include for each material a documented price quote from the supplier with the lowest total cost for the Work.
  - b. The estimated costs for the Work for each material without recycled concrete aggregate.

The Contractor's cost estimates shall be submitted as an attachment to the Recycled Material Utilization Plan, or with the Reporting form.

**1-07 Legal Relations and Responsibilities to the Public****1-07.1 Laws to be Observed****1-07.1(1) General**

The Contractor shall always comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect Work under the Contract. The Contractor shall indemnify, defend, and save harmless the State (including the Governor, Commission, Secretary, and agents, officers, and employees) and the Contracting Agency (including agents, officers, and employees) against claims that may arise because the Contractor (or employees of the Contractor, subcontractors or material persons) violated a legal requirement.

Without usurping the authority of other agencies, the Contracting Agency will cooperate with them in their efforts to enforce legal requirements. Upon awareness of a violation of a legal requirement, the Engineer will notify the Contractor in an effort to achieve compliance. The Engineer may also notify the agency responsible for enforcement if the Engineer deems that action is necessary to achieve compliance with legal requirements. The Engineer will also assist the enforcement agency to obtain Contractor compliance to the extent such assistance is consistent with the provisions of the Contract.

**1-07.1(2) Health and Safety**

The Contractor shall be responsible for the safety of all workers and shall comply with all appropriate state safety and health standards, codes, rules, and regulations, including, but not limited to, those promulgated under the Washington Industry Safety and Health Act RCW 49.17 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). In particular the Contractor's attention is drawn to the requirements of WAC 296.800 which requires employers to provide a safe workplace. More specifically WAC 296.800.11025 prohibits alcohol and narcotics from the workplace. The Contractor shall likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work. A copy of all safety plans (e.g., fall protection work plan) that are developed by the Contractor shall be submitted to the Engineer as a Type 1 Working Drawing. When requested by the Engineer, the Contractor shall provide training to Contracting Agency employees working on-site for any activity covered by a safety plan. Costs for training that is provided solely to Contracting Agency employees will be paid to the Contractor in accordance with Section 1-09.4.

**1-07.1(3) Mine Safety**

U.S. Mine Safety and Health Administration rules apply when the project includes pit or quarry operations. Among other actions, these regulations require the Contractor to notify the nearest Mine Safety and Health sub district office (1) of the project before it begins, (2) of the starting date, and (3) of the Physical Completion Date.

**1-07.1(4) Wells**

When wells are included in the contract or encountered as part of the Work, the Contractor shall meet all the requirements in WAC 173-160 Minimum Standards for Construction and Maintenance of Wells and all environmental considerations for installing, protecting in place, decommissioning, or abandonment of wells.

**1-07.1(5) Changes to Laws to be Observed****1-07.1(5)A General**

The Contracting Agency will not adjust payment to compensate the Contractor for changes in legal requirements unless those changes are specifically within the scope of RCW 39.04.120. For changes under RCW 39.04.120, the Contracting Agency will compensate the Contractor by negotiated change order as provided in Section 1-04.4.

**1-07.1(5)B Taxes**

Under certain conditions, the Contracting Agency will adjust payment to compensate for tax changes. First, the changes shall involve federal or state taxes on materials or fuel used in or consumed for the project. Second, the changes shall increase or decrease Contractor-paid taxes by more than \$500. For items in the original Contract, the tax change must occur after the Bid opening date. For negotiated Contracts or items in a supplemental agreement, the tax change must take place after the execution date of the Contract or agreement. Within these conditions, the Contracting Agency will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes. If the Engineer requests it, the Contractor shall certify in writing that the Contract price does not include any extra amount to cover a possible change in taxes.

The Contracting Agency may audit the records of the Contractor as provided in Section 1-09.12, to verify claims for compensation because of changes in laws or taxes.

**1-07.2 State Taxes**

The Washington State Department of Revenue has issued special rules on the state sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contracting Agency will not adjust its payment if the Contractor bases a Bid on a misunderstood tax liability.

The Contracting Agency may deduct from its payments to the Contractor, retainage or lien the bond, in the amount the Contractor owes the State Department of Revenue, whether the amount owed relates to the Contract in question or not. Amounts so deducted will be paid into the proper State fund on the contractor's behalf. For additional information on tax rates and application refer to applicable RCWs, WACs or the Department of Revenue website.

**1-07.2(1) State Sales Tax: WAC 458-20-171 – Use Tax**

For Work designated as Rule 171, **Use Tax**, the Contractor shall include for compensation the amount of taxes paid in the various unit Bid prices or other Contract amounts. Typically, these taxes are collected on materials incorporated into the project and items such as the purchase or rental of; tools, machinery, equipment, or consumable supplies not integrated into the project.

The Summary of Quantities in the Contract Plans identifies those parts of the project that are subject to **Use Tax** under Section 1-07.2(1).

**1-07.2(2) State Sales Tax: WAC 458-20-170 – Retail Sales Tax**

For Work designated as Rule 170, **Retail Sales Tax**, the Contractor shall collect from the Contracting Agency, **Retail Sales Tax** on the full Contract price. The Contracting Agency will automatically add this **Retail Sales Tax** to each payment to the Contractor and for this reason; the Contractor shall not include the **Retail Sales Tax** in the unit Bid prices or in any other Contract amount. The Contractor (Prime or subcontractor) shall include sales or use tax on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project, in the unit bid prices.

The Summary of Quantities in the Contract Plans identifies those parts of the project that are subject to **Retail Sales Tax** under Section 1-07.2(2).

**1-07.2(3) Services**

Contracts wholly for professional or other applicable services are generally not subject to **Retail Sales Tax** and therefore, the Contractor shall not collect **Retail Sales Tax** from the Contracting Agency on those Contracts. All incidental taxes paid as part of providing the services shall be included in the payments under the Contract.

**1-07.3 Fire Prevention and Merchantable Timber Requirements****1-07.3(1) Fire Prevention Control and Countermeasures Plan**

The Contractor shall prepare and implement a project-specific fire prevention, control, and countermeasures plan (FPCC Plan) for the duration of the project. The Contractor shall submit a Type 2 Working Drawing no later than the date of the preconstruction conference.

**1-07.3(1)A FPCC Implementation Requirements**

The Contractor's FPCC Plan shall be fully implemented at all times. The Contractor shall update the FPCC Plan throughout project construction so that the plan reflects actual site conditions and practices. The Contractor shall update the FPCC Plan at least annually and maintain a copy of the updated FPCC Plan that is available for inspection on the project site. Revisions to the FPCC Plan and the Industrial Fire Precaution Level (IFPL) shall be discussed at the weekly project safety meetings.

**1-07.3(1)A1 FPCC Plan Element Requirements**

The FPCC Plan shall include the following:

1. The names, titles, and contact information for the personnel responsible for implementing and updating the plan.
2. The names and telephone numbers of the Federal, State, and local agencies the Contractor shall notify in the event of a fire.
3. All potential fire causing activities such as welding, cutting of metal, blasting, fueling operations, etc.
4. The location of fire extinguishers, water, shovels, and other firefighting equipment.
5. The response procedures the Contractor shall follow in the event of a fire.

Most of Washington State is covered under the IFPL system which, by law, is managed by the Department of Natural Resources (DNR). In some cases jurisdiction is transferred to the United States Forest Service (USFS) or to the local fire authority. It is the Contractor's responsibility to be familiar with the IFPL requirements and to verify whether or not IFPL applies to the specific project.

If the Contractor wishes to continue a work activity that is prohibited under an industrial fire precaution level, the Contractor shall obtain a waiver from the fire authority with jurisdiction and provide a copy to the Engineer prior to continuation of work on the project.

If the IFPL requirements prohibit the Contractor from performing Work the Contractor may be eligible for an unworkable day in accordance with Section 1-08.5.

The Contractor shall comply with the requirements of these provisions at no additional cost to the Contracting Agency.

**1-07.3(1)A2 Forest Fire Prevention**

When the Work is in or next to State or Federal forests, the Contractor shall know and observe all laws and rules (State or Federal) on fire prevention and sanitation. The Contractor shall ask the local forest supervisor or regional manager to outline requirements for permits, sanitation, firefighting equipment, and burning.

The Contractor shall take precautions to prevent and suppress forest fires. In case of forest fire, the Contractor shall immediately notify the nearest forest headquarters of its exact site and shall make every effort to suppress it. If needed, the Contractor shall require its employees and those of all subcontractors to work under forest officials in fire-control efforts.

**1-07.3(2) Merchantable Timber Requirements**

When merchantable timber is to be cut, the Contractor shall obtain a permit from the appropriate regional office of the State Department of Natural Resources and comply fully with the State Forest Practices Act.

No person may export from the United States, or sell, trade, exchange, or otherwise convey to any other person for the purpose of export from the United States, timber originating from the project.

The Contractor shall comply with the Forest Resources Conservation and Shortage Relief Amendments Act of 1993 (Public Law 103-45) and the Washington State Log Export Regulations (WAC 240-15).

**1-07.4 Sanitation****1-07.4(1) General**

The Contractor shall provide employees with all accommodations required by the State Department of Health and other agencies. These accommodations shall be kept clean, neat, and sanitized, and shall not create any public nuisance. The Contractor shall keep all campsites clean, properly dispose of all refuse, and leave each site in a neat and sanitary condition.

**1-07.4(2) Health Hazards**

Biological hazards and associated physical hazards may be present in the worksite. The Contractor shall take precautions and perform all necessary Work to provide and maintain a safe and healthful worksite in accordance with applicable laws. Payment for Work necessary to provide and maintain a safe worksite will be incidental to associated items of Contract Work unless the Contract includes provisions to the contrary.

**1-07.5 Environmental Regulations****1-07.5(1) General**

No Work shall occur within areas under the jurisdiction of resource agencies unless authorized in the Contract. Some, though not all, of these rules are summarized below. Any of these agencies may, without prejudice to the Contracting Agency, add rules as needed to protect game, fish, or the environment.

The Contractor shall be responsible to immediately report to the Engineer deviations from the contract provisions pertaining to environmental compliance, including but not limited to spills, unauthorized fill in waters of the State including wetlands, water quality standards, noise, air quality, etc.

**1-07.5(2) State Department of Fish and Wildlife**

In doing the Work, the Contractor shall:

1. Not degrade water in a way that would harm fish, wildlife, or their habitat.
2. Not place materials below or remove them from the ordinary high water line except as may be specified in the Contract.
3. Not allow equipment to enter waters of the State except as specified in the Contract.
4. Revegetate in accordance with the Plans, unless the Special Provisions permit otherwise.
5. Prevent fish-threatening silt buildup on the bed or bottom of any body of water.
6. Ensure continuous stream flow downstream of the Work area.
7. Dispose of all project debris by removal, burning, or placement above high-water flows.
8. Immediately notify the Engineer and stop all work causing impacts, if at any time, as a result of project activities, fish are observed in distress or a fish kill occurs.

**1-07.5(3) State Department of Ecology**

In doing the Work, the Contractor shall:

1. Comply with Washington State Water Quality Standards.
2. Perform Work in such a manner that all materials and substances not specifically identified in the Contract documents to be placed in the water do not enter waters of the State, including wetlands. These include, but are not limited to, petroleum products, hydraulic fluid, fresh concrete, concrete wastewater, process wastewater, slurry materials and waste from shaft drilling, sediments, sediment-laden water, chemicals, paint, solvents, or other toxic or deleterious materials.
3. Use equipment that is free of external petroleum-based products.
4. Remove accumulations of soil and debris from drive mechanisms (wheels, tracks, tires) and undercarriage of equipment prior to using equipment below the ordinary high water line.
5. Clean loose dirt and debris from all materials placed below the ordinary high water line. No materials shall be placed below the ordinary high water line without the Engineer's approval.
6. When a violation of the Construction Stormwater General Permit (CSWGP) occurs, immediately notify the Engineer and fill out WSDOT Form 422-011, Contractor ECAP Report, and submit the form to the Engineer within 48 hours of the violation.
7. Once Physical Completion has been given, prepare a Notice of Termination (Ecology Form ECY 020-87) and submit the Notice of Termination electronically to the Engineer in a PDF format a minimum of 7 calendar days prior to submitting the Notice of Termination to Ecology.
8. Transfer the CSWGP coverage to the Contracting Agency when Physical Completion has been given and the Engineer has determined that the project site is not stabilized from erosion.
9. Submit copies of all correspondence with Ecology electronically to the Engineer in a PDF format within four calendar days.
10. Comply with WAC 173-160 Minimum Standards for Construction and Maintenance of Wells.

**1-07.5(4) Air Quality****1-07.5(4)A General**

The Contractor shall comply with all regional clean air authority and/or State Department of Ecology rules and regulations.

The air quality permit process may include additional State Environment Policy Act (SEPA) requirements. Contractors shall contact the appropriate regional air pollution control authority well in advance of beginning Work.

Requirements included in Federal regulations regarding air quality that applies to the “owner or operator” shall be the responsibility of the Contractor.

**1-07.5(4)B Fugitive Dust**

The Contractor shall base fugitive dust control on Best Management Practices (BMPs) set forth in the Associated General Contractors of Washington Education Foundation and Fugitive Dust Task Force Pamphlet, “Guide To Handling Fugitive Dust From Construction Projects”.

**1-07.5(4)C Asbestos Containing Material**

When the Work includes demolition or renovation of existing facilities or structures that contains Asbestos Containing Material (ACM) and/or Presumed Asbestos-Containing Material (PACM), the Contractor shall comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP).

**1-07.5(5) U.S. Army Corps of Engineers**

When temporary fills are permitted, the Contractor shall remove fills in their entirety and the affected areas returned to pre-construction elevations.

If a U.S. Army Corps of Engineers permit is noted in Section 1-07.6 of the Special Provisions, the Contractor shall retain a copy of the permit or the verification letter (in the case of a Nationwide Permit) on the worksite for the life of the Contract. The Contractor shall provide copies of the permit or verification letter to all subcontractors involved with the authorized Work prior to their commencement of Work in waters of the U.S.

**1-07.5(6) U.S. Fish and Wildlife Service and National Marine Fisheries Service**

The Contracting Agency will provide fish exclusion and handling services if the Work dictates. However, if the Contractor discovers any fish stranded by the project and a Contracting Agency biologist is not available, they shall immediately release the fish into a flowing stream or open water.

**1-07.5(7) U.S. Environmental Protection Agency****1-07.5(7)A Waste Manifests**

If waste manifests are necessary, they shall be submitted using the EPA's e-Manifest system. The Hybrid Manifest method shall not be used. If a paper copy of the manifest is necessary while in transit, the Contractor shall use one of the paper manifest processes such as Data+Image, Scanned Image, or mailed paper. More information on e-Manifest is available at the EPA's website at: [www.epa.gov/e-manifest/how-submit-hazardous-waste-manifest](http://www.epa.gov/e-manifest/how-submit-hazardous-waste-manifest).

**1-07.6 Permits and Licenses**

Contractors shall obtain all required permits and licenses and give all required notices.

The Contracting Agency will support the Contractor in efforts to obtain a temporary operating permit in its name if:

1. A local rule or an agency policy prevent issuing the permit to a private firm;
2. The Contractor takes all action to obtain the permit;
3. The permit will serve the public interest;
4. The permit applies only to Work under the Contract;
5. The Contractor agrees in writing: (a) to comply with all the issuing agency requires, and (b) to hold the Contracting Agency harmless for all Work-related liability incurred under the permit; and
6. The permit costs the Contracting Agency nothing.

**1-07.7 Load Limits****1-07.7(1) General**

While moving equipment or materials on public Highways, the Contractor shall comply with all laws that control traffic or limit loads. The Contract neither exempts the Contractor from such laws nor licenses overloads. At the Engineer's request, the Contractor shall provide the equipment or load data needed to compute the equipment's weight on the Roadway.

All Contractor movement or storage of materials or equipment within the project limits (as shown in the Plans):

1. Legal load limits shall apply on all roads open to and in use by public traffic.
2. Legal load limits shall apply on existing roads not scheduled for major reconstruction under the current Contract.
3. The Contractor may haul overloads (not more than 25 percent above load limits) on newly paved roads (with final lift in place) built under this Contract not open to public traffic if this does not damage completed Work.
4. When moving vehicles or operating equipment on or over structures design for direct bearing of live load, buried structures, culverts, pipes, or retaining walls within the project limits, the Contractor shall meet the load-limit restrictions in Section 1-07.7(2).
5. When storing material on a Structure or retaining wall, the Contractor shall meet the load-limit restrictions in Section 1-07.7(2). These requirements are not intended for long term storage of material.
6. The Contractor shall remain responsible for and pay all repair costs due to loads that caused damage on newly paved roads, new and existing Structures, culverts, pipes and retaining walls.

Unit prices shall cover all costs for operating vehicles or storing materials on or over structures, culverts, pipes, and retaining walls. Nothing in this section affects the Contractor's other responsibilities under these Specifications or under public Highway laws.

Bridges that are under construction shall meet the load restrictions in Section 6-01.6.

**1-07.7(2) Load-Limit Restrictions**

At the request of the Engineer, the Contractor shall provide supporting documentation of vehicle, equipment or material loads, axle or support dimensions and any additional information used to determine the loads.

**1. Structures Designed for Direct Bearing of Live Loads**

The gross vehicle weight or maximum load on each axle shall not exceed the legal load limit nor any posted weight limit on a Structure.

Construction equipment that is not considered a legal vehicle licensed for legal travel on the public Highway, including but not limited to track or steel wheeled vehicles, may operate on a Structure. Gross equipment weight, axle spacing, equipment spacing, and other attributes identified in the Plans shall not be exceeded. When loads are not identified in the Plans, the construction equipment shall not exceed the following load restrictions:

- a. The gross vehicle weight or maximum load on each axle shall not exceed the legal load limit, axle spacing nor posted weight limits on a Structure.
- b. A tracked vehicle with a maximum gross vehicle weight of 40,000 pounds and track contact length no less than 8 feet. The maximum gross vehicle weight may increase by 2,000 pounds for each one foot of track contact length over 8 feet, but shall not exceed 80,000 pounds.
- c. A tracked vehicle with a maximum gross vehicle weight of 20,000 pounds and track contact length less than 8 feet.
- d. No single axle shall exceed 20,000 pounds.
- e. No more than one vehicle shall operate over any Structure at one time.

Track contact length shall be measured once for two or more parallel tracks.

The Contractor shall not store construction materials on timber Structures or Structures posted for weight limits. When a structure within the project limits is not posted for weight limits and there is no other reasonable storage space within the project limits, the Contractor may store construction material on the Structure and shall not exceed the maximum uniformly distributed load and distribution length along the structure per the following table:

Maximum Distributed Length Along Structure	Maximum Uniform Load (psf)	
	Structure Width (curb-to-curb)	
	24 feet or less	greater than 24 feet
15 ft	250	160
40 ft	125	80
80 ft	75	50
Full Structure Length	50	35

The load restrictions for storing material or operating equipment shall not be combined and shall apply to the full structure length. Materials that are stored in two or more locations on the same structure shall use the total combined length to determine the maximum load restriction. Vehicle traffic and the Contractor's equipment may operate in the adjacent lanes to the stored materials and shall not be allowed on the structure width that is occupied by the stored materials. Contractor's equipment that is used to deliver or remove stored material with the same structure width shall be considered in combination with all stored materials. This equipment shall be assumed to be uniformly distributed over the largest axle spacing and average axle width.

The Contractor shall immediately remove all dirt, rock, or debris that may gather on the Structure's roadway surface.

## 2. Buried Structures

Buried Structures shall include reinforced concrete three sided structures, box structures, split box structures, structural plate pipe, pipe arch, and underpasses.

Loads shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if the embankment has: (a) been built to Specifications, and (b) reached at least 3 feet above the top of the buried structure.

When the embankment has reached 5 feet above the top of the buried structure, the Contractor may increase per-axle loads up to 100,000 pounds if outside wheel spacing is at least 7 feet on axle centers.

## 3. Pipe Culverts and Sewer Pipes

Pipe culverts and sewer pipes shall include pipe for drainage, storm sewers, and sanitary sewers.

Loads over pipe culverts and sewer pipes shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if: (a) the culvert or pipe has been installed and backfilled to Specifications, and (b) the embankment has reached at least 2 feet above the top limit of pipe compaction.

When the embankment has reached 5 feet above the top limit of pipe compaction, the Contractor may increase per-axle loads up to 100,000 pounds if outside wheel spacing is at least 7 feet on axle centers, except that:

- a. For Class III reinforced concrete pipes, the embankment shall have risen above the top limit of compaction at least 6 feet.
- b. For Class II reinforced concrete pipes, the maximum load for each axle shall be 80,000 pounds if outside wheel spacing is at least 7 feet on axle centers. In this case, the embankment shall have risen above the top limit of compaction at least 6 feet.

## 4. Retaining Walls

Loads above existing and completed retaining walls designed for vehicular loads, where any part of the load is located within half the retaining wall height, shall not exceed the following load restrictions:

- a. The gross vehicle weight or maximum load on each axle shall not exceed the legal load limit.
- b. Construction equipment and material shall not exceed 250 pounds per square foot.

If necessary and safe to do so, the Engineer may allow higher loads than those allowed under these load-limit restrictions. For loads on or over structures designed for direct bearing of live load, the Contractor shall submit Type 3E Working Drawings consisting of calculations and other supporting information in accordance with the requirements of Section 6-01.6. For loads on or over pipes, culverts, buried structures, and retaining walls the Contractor shall submit Type 2E Working Drawings. All submittals shall contain the following information: a description of the loading details; arrangement, movement and position of all vehicles, equipment and materials on the Structure, culvert or pipe; and statement that the Contractor assumes all risk for damage.

**1-07.8 High-Visibility Apparel**

The Contractor shall require all personnel including service providers, subcontractors or material persons that are on foot in the work zone and are exposed to vehicle traffic or construction equipment to wear the high-visibility apparel described in this section.

The Contractor shall ensure that a competent person as identified in the MUTCD selects the appropriate high-visibility apparel suitable for the jobsite conditions.

High-visibility garments shall always be the outermost garments.

High-visibility garments shall be labeled as, and in a condition compliant with the ANSI/ISEA 107-2015 (or later version) and shall be used in accordance with manufacturer recommendations.

**1-07.8(1) Traffic Control Personnel**

All personnel performing the Work described in Section 1-10 (including traffic control supervisors, flaggers, and others performing traffic control labor of any kind) shall comply with the following:

1. During daylight hours with clear visibility, workers shall wear a high-visibility ANSI/ISEA 107 Type R Class 2 or 3 vest or jacket, and hardhat meeting the high-visibility headwear requirements of WAC 296-155-305; and
2. During hours of darkness (½ hour before sunset to ½ hour after sunrise) or other low-visibility conditions (snow, fog, etc.), workers shall wear a high-visibility ANSI/ISEA 107 Type R Class 2 or 3 vest or jacket, high-visibility lower garment meeting ANSI/ISEA 107 Class E, and hardhat meeting the high-visibility headwear requirements of WAC 296-155-305.

**1-07.8(2) Non-Traffic Control Personnel**

All personnel, except those performing the Work described in Section 1-10, shall wear high-visibility apparel meeting the ANSI/ISEA 107 Type R Class 2 or 3 standard.

**1-07.9 Wages****1-07.9(1) General**

This Contract is subject to the minimum wage requirements of RCW 39.12 and to RCW 49.28 (as amended or supplemented). On Federal-aid projects, Federal wage laws and rules also apply. The hourly minimum rates for wages and fringe benefits are listed in the Contract Provisions. When Federal wage and fringe benefit rates are listed, the rates match those identified by the U.S. Department of Labor's "Decision Number" shown in the Contract Provisions.

The Contractor, subcontractors, and all individuals or firms required by RCW 39.12, WAC 296-127, or the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by RCW 39.12 or the DBRA. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the Contracting Agency does not imply that the Contractor will find labor available at those rates. The Contractor shall be responsible for amounts above the minimums that will have to be paid.

When the project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate unless the State rates are specifically preempted by Federal law. When the project involves highway Work, heavy Work, and building Work, the Contract Provisions may list a Federal wage and fringe benefit rate for the highway Work, and a separate Federal wage and fringe benefit rate for both heavy Work and building Work. The area in which the worker is physically employed shall determine which

Federal wage and fringe benefit rate shall be used to compare against the State wage and fringe benefit rate.

If employing labor in a class not listed in the Contract Provisions on state funded projects only, the Contractor shall request a determination of the correct wage and benefits rate for that class and locality from the Industrial Statistician, Washington State Department of Labor and Industries (State L&I), and provide a copy of those determinations to the Engineer.

If employing labor in a class not listed in the Contract Provisions on federally funded projects, the Contractor shall request a determination of the correct wage and benefit for that class and locality from the U.S. Secretary of Labor through the Engineer. Generally, the Contractor initiates the request by preparing standard form 1444 Request for Authorization of Additional Classification and Rate, available at [www.gsa.gov/reference](http://www.gsa.gov/reference) forms, and submitting it to the Engineer for further action.

The Contractor shall ensure that all firms (all Suppliers, Manufacturers, or Fabricators) that fall under the provisions of RCW 39.12 because of the definition "Contractor" in WAC 296-127-010, complies with all the requirements of RCW 39.12.

The Contractor shall be responsible for compliance with the requirements of the DBRA and RCW 39.12 by all firms (all subcontractors, Suppliers, Manufacturers, or Fabricators) engaged in a part of the Work necessary to complete this Contract. Therefore, should a violation of this Subsection occur by any firm that is providing Work or materials for completion of this Contract whether directly or indirectly responsible to the Contractor, the Contracting Agency will take action against the Contractor, as provided by the provisions of the Contract, to achieve compliance, including but not limited to, withholding payment on the Contract until compliance is achieved.

In the event the Contracting Agency has an error (omissions are not errors) in the listing of the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the Contractor, subcontractors, or other firms that are required to pay prevailing wages, shall be required to pay the rates as determined to be correct by State L&I (or by the U.S. Department of Labor when that agency sets the rates). A change order will be prepared to ensure that this occurs. The Contracting Agency will reimburse the Contractor for the actual cost to pay the difference between the correct rates and the rates included in the Contract Provisions, subject to the following conditions:

1. The affected firm relied upon the rates included in the Contract Provisions to prepare its Bid and certifies that it did so;
2. The allowable amount of reimbursement will be the difference between the rates listed and rates later determined to be correct plus only appropriate payroll markup the employer must pay, such as, social security and other payments the employer must make to the Federal or State Government;
3. The allowable amount of reimbursement may also include some overhead cost, such as, the cost for bond, insurance, and making supplemental payrolls and new checks to the employees because of underpayment for previously performed Work; and
4. Profit will not be an allowable markup.

Firms that anticipated, when they prepared their Bids, paying a rate equal to, or higher than, the correct rate as finally determined will not be eligible for reimbursement.

There are many work-ready pre-apprentices who are currently looking for work in the highway construction trades all across the state of Washington. Contractors may have apprenticeship utilization commitments as part of their business practices and as part of their Contract. Contractors may be subject to hiring commitments such as Equal Employment Opportunity, union commitments, and apprenticeship utilization requirements on Contracts receiving Federal or State funds. As part of a Contractor's

Good Faith Efforts, contacting the Office of Equity and Civil Rights' On the Job Training Support Services (OJT/SS) Program Coordinator is highly encouraged. The OJT/SS Program Coordinator can connect Contractors with Washington State Apprenticeship Training Council recognized Pre-Apprenticeship training providers throughout the state, who give training to individuals in highway construction trades. These training providers can identify work-ready individuals in the necessary trades. Contractors who have been awarded WSDOT Contracts should be prepared to discuss their recruitment plans and how coordination with the OJT/SS Program Coordinator will be incorporated into that effort if needed. The Contractor may contact the OJT/SS Program Coordinator at 360-704-6314, or by email at ojtssinfo@wsdot.wa.gov.

### 1-07.9(2) Posting Notices

Notices and posters shall be placed in areas readily accessible to read by employees. The Contractor shall ensure the most current edition of the following are posted:

1. EEOC - P/E-1 – **Equal Employment Opportunity IS THE LAW** published by US Department of Labor. Post for projects with federal-aid funding.
2. Mandatory Supplement to EEOC P/E-1 published by US Department of Labor. Post for projects with federal-aid funding.
3. Pay Transparency Nondiscrimination Provision published by US Department of Labor. Post for projects with federal-aid funding.
4. FHWA 1022 – **NOTICE Federal-Aid Project** published by Federal Highway Administration (FHWA). Post for projects with federal-aid funding.
5. WH 1321 – **Employee Rights Under the Davis-Bacon Act** published by US Department of Labor. Post for projects with federal-aid funding.
6. WHD 1088 – **Employee Rights Under the Fair Labor Standards Act** published by US Department of Labor. Post on all projects.
7. WHD 1420 – **Employee Rights and Responsibilities Under The Family And Medical Leave Act** published by US Department of Labor. Post on all projects.
8. WHD 1462 – **Employee Polygraph Protection Act** published by US Department of Labor. Post on all projects.
9. F416-081-909 – **Job Safety and Health Law** published by Washington State Department of Labor and Industries. Post on all projects.
10. F242-191-909 – **Notice To Employees** published by Washington State Department of Labor and Industries. Post on all projects.
11. F700-074-000 – **Your Rights as a Worker in Washington State** by Washington State Department of Labor and Industries (L&I). Post on all projects.
12. EMS 9874 – **Unemployment Benefits** published by Washington State Employment Security Department. Post on all projects.
13. Post one copy of the approved “Statement of Intent to Pay Prevailing Wages” for the Contractor, each subcontractor, and other firms (Suppliers, Manufacturers, or Fabricators) that fall under the provisions of RCW 39.12 because of the definition of “Contractor” in WAC 296-127-010.
14. Post one copy of the prevailing wage rates for the project.

### 1-07.9(3) Apprentices

When employing apprentices, the Contractor shall supply a link or electronic copy of each approved Apprentice Program that shows the ratio of journey level to apprentice workers and the hourly wage rate steps for each craft on a project.

Apprentice workers employed for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council must be paid prevailing hourly rate for an apprentice of that trade. Workers not registered shall be considered to be a fully qualified journey level worker and therefore paid at the prevailing hourly rate for journey level workers of that trade in accordance with Section 1-07.9(1).

#### **1-07.9(4) Wage Disputes**

If labor and management cannot agree in a dispute over the proper prevailing wage rates, the Contractor shall refer the matter to the Director of State L&I (or to the U.S. Secretary of Labor when that agency sets the rates). The Director's (or Secretary's) decision shall be final, conclusive, and binding on all parties.

In the event of a dispute on proper prevailing wage rates the Contractor shall seek resolution in accordance with WAC 296-127-060.

If the prevailing wage in question was established by the State L&I Industrial Statistician, the Contractor shall seek a determination from the State L&I Industrial Statistician through their Request a Determination process. If resolution is not obtained through this process, the Contractor shall request a reconsideration from the Assistant Director of State L&I. After reconsideration, if resolution is not obtained, the Contractor shall refer the matter for arbitration to the Director of State L&I. The Director's decision shall be final, conclusive, and binding on all parties.

If the prevailing wage in question was established by the U.S. Department of Labor, the Contractor shall seek resolution through the Appeal Process identified in Form FHWA 1273, Section IV.1. Additional information may also be found in the Davis Bacon and Related Acts (DBRA) Frequently Asked Questions document on the Department of Labor website: [www.dol.gov/agencies/whd/government-contracts/construction/faq](http://www.dol.gov/agencies/whd/government-contracts/construction/faq).

Determinations from the Administrator shall be final, conclusive, and binding on all parties.

#### **1-07.9(5) Required Documents**

##### **1-07.9(5)A General**

All Statements of Intent to Pay Prevailing Wages, Affidavits of Wages Paid and Certified Payrolls shall be submitted to the Engineer using the L&I online Prevailing Wage Intent & Affidavit (PWIA) system.

##### **1-07.9(5)B Intents and Affidavit**

The Contractor shall submit via the PWIA system the following documents provided by the Industrial Statistician of the Washington State Department of Labor and Industries (State L&I) for themselves and for each firm covered under RCW 39.12 that will or has provided Work and materials for the Contract:

1. The approved "Statement of Intent to Pay Prevailing Wages". The Contracting Agency will make no payment under this Contract for the Work performed until this statement has been approved by State L&I and reviewed by the Engineer.
2. The approved "Affidavit of Prevailing Wages Paid". The Contracting Agency will not grant Completion until all approved Affidavit of Wages paid for the Contractor and all subcontractors have been received by the Engineer. The Contracting Agency will not release to the Contractor funds retained under RCW 60.28.011 until all of the "Affidavit of Prevailing Wages Paid" forms have been approved by State L&I and all of the approved forms have been submitted to the Engineer for every firm that worked on the Contract.

The Contractor is responsible paying all fees required by State L&I.

**1-07.9(5)C Certified Payrolls**

Certified payrolls are required to be submitted by the Contractor for themselves and all subcontractors. The payrolls shall be submitted weekly on all Federal-aid projects and no less than monthly on State funded projects.

**1-07.9(5)D Penalties for Noncompliance**

The Contractor is advised, if payrolls or Affidavits of Prevailing Wages Paid are not supplied, any or all payments may be withheld until compliance is achieved. In addition, failure to provide Statement of Intents, Affidavit of Wages Paid, or payrolls may result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12).

**1-07.9(6) Audits**

The Contracting Agency may inspect or audit the Contractor's wage and payroll records as provided in Section 1-09.12.

**1-07.10 Worker's Benefits**

The Contractor shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If payments required by Title 50 or Title 51 is not made when due, the Contracting Agency may retain such payments from money due the Contractor and pay the same into the appropriate fund. Such payment will be made only after giving the Contractor 15 days prior written notice of the Contracting Agency's intent to disburse the funds to the Washington State Department of Labor and Industries or Washington State Employment Security Department as applicable. The payment will be made upon expiration of the 15 calendar day period if no legal action has been commenced to resolve the validity of the claim. If legal action is instituted to determine the validity of the claim prior to the expiration of the 15-day period, the Contracting Agency will hold the funds until determination of the action or written settlement agreement of the appropriate parties.

For Work on or adjacent to water, the Contractor shall make the determination as to whether workers are to be covered under the Longshoremen's and Harbor Worker's Compensation Act administered by the U.S. Department of Labor, or the State Industrial Insurance coverage administered by the Washington State Department of Labor and Industries.

The Contractor shall include in the various items in the Bid Proposal all costs for payment of unemployment compensation and for providing either or both of the insurance coverages. The Contractor will not be entitled to additional payment for: (1) failure to include such costs, or (2) determinations made by the U.S. Department of Labor or the Washington State Department of Labor and Industries regarding the insurance coverage.

The Public Works Contract Division of the Washington State Department of Labor and Industries will provide the Contractor with applicable industrial insurance and medical aid classification and premium rates. After receipt of a *Revenue Release* from the Washington State Department of Revenue, the Contracting Agency will verify through the Department of Labor and Industries that the Contractor is current with respect to the payments of industrial insurance and medical aid premiums.

**1-07.11 Requirements for Nondiscrimination****1-07.11(1) Regulatory Authorities****1-07.11(1)A General Application**

Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, Section 162(a) of the Federal-Aid Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the American with Disabilities Act of 1990, the Civil Rights Restoration Act of 1987, 49 CFR Part 21, RCW 49.60 and other related laws and statutes. The referenced legal citations establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this section of these *Standard Specifications*.

**1-07.11(1)B Standard Title VI Statutory/Regulatory Authorities**

References to the term "Acts and Regulations" within Section 1-07.11 will refer to the following:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2. 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI of the Civil Rights Act Of 1964);
3. 28 C.F.R. section 50.3 (US Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

**1-07.11(1)C Nondiscrimination Authorities**

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and C.F.R. Part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et. seq.), as amended, (prohibits discrimination on the basis of sex).
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27.
5. The Age of Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age of Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition and terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not).

8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
9. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color national origin, and sex).
10. Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

#### 1-07.11(2) Contractual Requirements

1. The Contractor shall maintain a Work site that is free of harassment, humiliation, fear, hostility and intimidation at all times. Behaviors that violate this requirement include but are not limited to:
  - a. Persistent conduct that is offensive and unwelcome.
  - b. Conduct that is considered to be hazing.
  - c. Jokes about race, gender, or sexuality that are offensive.
  - d. Unwelcome, unwanted, rude or offensive conduct or advances of a sexual nature which interferes with a person's ability to perform their job or creates an intimidating, hostile, or offensive work environment.
  - e. Language or conduct that is offensive, threatening, intimidating or hostile based on race, gender, or sexual orientation.
  - f. Repeating rumors about individuals in the Work Site that are considered to be harassing or harmful to the individual's reputation.
2. The Contractor shall not discriminate against any employee or applicant for contracted employment because of race, religion, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability.
3. The Contractor shall, in all solicitations or advertisements for employees, state that all qualified applicants will be considered for employment, without regard to race, religion, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
4. The Contractor shall insert the following notification in all solicitations for bids for Work or material subject to the Acts and Regulations and made in connection with all FHWA programs and, in adapted form in all proposals for negotiated agreements regardless of funding source:

**The Contractor in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S. C § 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be**

afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

5. The Contractor shall make decisions with regard to selection and retention of subcontractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, religion, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
6. The Contractor shall send to each labor union, employment agency, or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency or worker's representative, of the Contractor's commitments under this Contract with regard to nondiscrimination.
7. The Contractor shall permit access to its books, records and accounts by the Contracting Agency for the purpose of investigating to ascertain compliance with these Specifications. In the event that information required of a Contractor is in the possession of another who fails or refuses to furnish this information, the Contractor shall describe, in writing, what efforts were made to obtain the information.
8. The Contractor shall maintain records with the name and address of each minority/female worker referred to the Contractor and what action was taken with respect to the referred worker.
9. The Contractor shall notify the Contracting Agency whenever the union with which the Contractor has a collective bargaining agreement has impeded the Contractor's efforts to effect minority/female workforce utilization. This being the case, the Contractor shall show what relief they have sought under such collective bargaining agreements.
10. The Contractor is encouraged to participate in Contracting Agency and Washington State Human Rights Commission approved program(s) designed to train craft-workers for the construction trades.
11. The Contractor shall comply with the following nondiscrimination provisions, and the Contractor shall ensure the nondiscrimination provisions are included in all subcontracts:
  - a. Nondiscrimination Requirement. During the term of this Contract, the Contractor, including all subcontractors, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, the Contractor, including all subcontractors, shall give written notice of this nondiscrimination requirement to any labor organizations with which the Contractor, or subcontractor, has a collective bargaining or other agreement.
  - b. Obligation to Cooperate. The Contractor, including all subcontractors, shall cooperate and comply with any Washington state agency investigation regarding any allegation that the Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
  - c. Default. Notwithstanding any provision to the contrary, the Contracting Agency may suspend the Contract in accordance with Section 1-08.6, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until the Contracting Agency receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event the Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), the Contracting Agency may terminate this Contract in whole or in part in accordance with Section 1-08.10(1), and in addition to the sanctions listed

in Section 1-07.11(5), the Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. The Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- d. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, the Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. The Contracting Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Contracting Agency for default under this Provision.

### 1-07.11(2)A Equal Employment Opportunity (EEO) Responsibilities

#### Title VI Responsibilities

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance With Regulations** – The Contractor (hereinafter includes consultants) shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (hereinafter DOT), Federal Highway Administration (FHWA), as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination** – The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate directly or indirectly in the discrimination prohibited by Acts and Regulations, including employment practices when the Contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment** – In all solicitations either by competitive bidding or negotiations made by the Contractor for Work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Acts and Regulations relative to nondiscrimination on the ground of race, color, or national origin.
4. **Information and Reports** – The Contractor shall provide all information and reports required by the Acts and Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Washington State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Washington State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance** – In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Washington State Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or;
  - b. Cancellation, termination, or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions** – The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts and Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontractor or procurement as the Washington State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Contractor may request the Washington State Department of Transportation to enter into any litigation to protect the interests of the Washington State Department of Transportation. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **1-07.11(3) Equal Employment Opportunity Officer**

The Contractor shall officially designate and make known to the Engineer during the preconstruction conference and discussions the firm's Equal Employment Opportunity Officer (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making him/herself known to each of the Contractor's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective Contractor program of equal employment opportunity.

#### **1-07.11(4) Dissemination of Policy**

##### **1-07.11(4)A Supervisory Personnel**

All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, shall be made fully cognizant of, and shall implement the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions shall be taken as a minimum:

1. **EEO Meetings** – Periodic meetings of supervisory and personnel office employees shall be conducted before the start of Work and then not less often than once every 6 months, at which time the Contractor's equal employment opportunity policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.
2. **EEO Indoctrination** – All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Contractor's equal employment opportunity obligations within 30 days following their reporting for duty with the Contractor.
3. **Internal EEO Procedures** – All personnel who are engaged in direct recruitment for the project shall be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group and female employees.

**1-07.11(4)B Employees, Applicants, and Potential Employees**

In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, e.g., schools, employment agencies, labor unions (where appropriate), college placement officers, and community organizations, the Contractor shall take the following actions:

1. **Notices and Posters** – Notices and posters setting forth the Contractor's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.
2. **EEO Indoctrination** – The Contractor's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**1-07.11(5) Sanctions**

In the event of the Contractor is found in noncompliance with the provisions of Section 1-07.11, the Contracting Agency may impose such Contract sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, but not limited to:

1. Progress payment requests may not be honored until the noncompliance is remedied to the satisfaction of the Contracting Agency.
2. The Contract may be suspended, in whole or in part, until such time as the Contractor is determined to be in compliance by the Contracting Agency.
3. The Contractor's pre-qualification may be suspended or revoked pursuant to WAC 468-16. The Contracting Agency may refer the matter to the Federal Highway Administration (FHWA) for possible federal sanctions.
4. The Contract may be terminated.

Immediately upon the Engineer's request, the Contractor shall remove from the Work site any employee engaging in behaviors that promote harassment, humiliation, fear or intimidation including but not limited to those described in these specifications.

**1-07.11(6) Incorporation of Provisions**

The Contractor shall include the provisions of Section 1-07.11(1)A through C, Section 1-07.11(2), Section 1-07.11(2)A and the Section 1-07.11(5) Sanctions in every subcontract including procurement of materials and leases of equipment. The Contractor shall take such action or enforce sanctions with respect to a subcontractor or supplier as the Contracting Agency or the FHWA may direct as a means of enforcing such provisions. In the event a Contractor becomes involved in litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Contracting Agency enter into such litigation to protect their interests and the Contracting Agency may request the federal government to enter into such litigation to protect the interests of the United States.

**1-07.11(7) Vacant****1-07.11(8) Vacant****1-07.11(9) Subcontracting, Procurement of Materials, and Leasing of Equipment**

**Nondiscrimination** – The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

**Solicitation and Utilization** – The Contractor shall use their best effort to solicit bids from, and to utilize, disadvantaged, minority, and women subcontractors, or subcontractors with meaningful minority and women representation among their employees.

**Subcontractor EEO Obligations** – The Contractor shall notify all potential Subcontractors and suppliers of the EEO obligations required by the Contract. The Contractor shall use their efforts to ensure subcontractor’s compliance with their equal employment opportunity obligations.

#### **1-07.11(10) Records and Reports**

##### **1-07.11(10)A General**

The Contractor shall keep such records as are necessary to determine compliance with the Contractor’s equal employment opportunity obligations. The records kept by the Contractor shall be designated to indicate:

1. **Work Force Data** – The number of minority and nonminority group members and women employed in each work classification on the project.
2. **Good Faith Efforts – Unions** – The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
3. **Good Faith Efforts – Recruitment** – The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
4. **Subcontracting** – The progress and efforts being made in securing the services of disadvantaged, minority, and women subcontractors or subcontractors with meaningful minority and female representation among their employees.

##### **1-07.11(10)B Required Records and Retention**

All records must be retained by the Contractor for a period of three years following acceptance of the Contract Work. All records shall be available at reasonable times and places for inspection by authorized representatives of either the Washington State Department of Transportation or the Federal Highway Administration.

#### **Federal-Aid Highway Construction Contractors Annual EEO Report**

**FHWA #1391** – This form is required for all federally assisted projects provided the Contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. Each Contract requires separate reports filed for the Contractor and each subcontractor (subject to the above noted criteria). These forms are due by August 25<sup>th</sup> in every year during which Work was performed in July. The payroll period to be reflected in the report is the last payroll period in July in which Work was performed. This report is required of each Contractor and subcontractor for each federally assisted Contract on which the Contractor or subcontractor performs Work during the month of July.

#### **Monthly Employment Utilization Reports**

**WSDOT Form 820-010** – This form (or substitute form as approved by the Contracting Agency) is required for all federally assisted projects if the Contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. These monthly reports are to be maintained in the respective Contractor or subcontractor’s records.

#### **1-07.12 Federal Agency Inspection**

Federal laws, rules, and regulations shall be observed by the Contractor on Federal-aid projects. This Work is subject to inspection by the appropriate Federal agency. The Contractor shall cooperate with the Federal agencies in these inspections. These inspections shall not make the Federal Government a party to the Contract and shall not constitute an interference with the rights of the Contracting Agency or the Contractor.

**1-07.13 Contractor's Responsibility for Work****1-07.13(1) General**

All Work and material for the Contract, including change order Work, shall be at the sole risk of the Contractor until the entire improvement has been completed as determined by the Engineer, except as provided in this section.

The Contractor shall rebuild, repair, restore, and make good all damages to the permanent or temporary Work occurring before the Physical Completion Date and shall bear all the expense to do so, except damage to the permanent Work caused by: (a) acts of God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the public enemy or of governmental authorities; or (c) slides in cases where Section 2-03.3(11) is applicable; Provided, however, that these exceptions shall not apply should damages result from the Contractor's failure to take reasonable precautions or to exercise sound engineering and construction practices in conducting the Work.

If the performance of the Work is delayed as a result of damage by others, an extension of time will be evaluated in accordance with Section 1-08.8.

Nothing contained in this section shall be construed as relieving the Contractor of responsibility for, or damage resulting from, the Contractor's operations or negligence, nor shall the Contractor be relieved from full responsibility for making good defective Work or materials as provided for under Section 1-05.

**1-07.13(2) Relief of Responsibility for Completed Work**

Upon written request, the Contractor may be relieved of the duty of maintaining and protecting certain portions of the Work, as described below, which have been completed in all respects in accordance with the requirements of the Contract. If the Engineer provides written approval, the Contractor will be relieved of the responsibility for damage to said completed portions of the Work resulting from use by public traffic or from the action of the elements or from any other cause, but not from damage resulting from the Contractor's operations or negligence.

Portions of the Work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include but are not limited to the following:

1. The completion of  $\frac{1}{4}$  mile of Roadway or  $\frac{1}{4}$  mile of one Roadway of a divided Highway or a frontage road including the Traveled Way, Shoulders, drainage control facilities, planned Roadway protection Work, lighting, and traffic control and access facilities.
2. A bridge or other Structure of major importance.
3. A complete unit of a traffic control signal system or of a Highway lighting system.
4. A complete unit of permanent Highway protection Work.
5. A building that is functionally complete and open to the public.
6. A Contract Proposal item.

**1-07.13(3) Relief of Responsibility for Damage by Public Traffic**

When it is necessary for public traffic to utilize a Highway facility during construction, the Contractor will be relieved of responsibility for damages to permanent Work by public traffic under the following circumstances:

1. The Work is in accordance with the Contract Plans or approved stage construction plans,
2. The Work is on a section of Roadway required by the Contract to be opened to public traffic, and
3. The traffic control is in accordance with the approved traffic control plans.

If traffic is relocated to another section of Roadway, the Contractor shall resume responsibility for the Work until such time as the section of Roadway is again open to public traffic or the Contractor submits a written request for Work that is completed to a point where relief can be granted in accordance with Section 1-07.13(2).

#### **1-07.13(4) Repair of Damage**

The Contractor shall promptly repair all damage to either temporary or permanent Work as ordered by the Engineer. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2), 1-07.13(3), or 8-17.5, payment will be made in accordance with Section 1-09.4, using the estimated Bid item "Reimbursement for Third Party Damage".

In the event the Contracting Agency pays for damage to the Contractor's Work or for damage to the Contractor's equipment caused by third parties, claims the Contractor had or may have had against the third party shall be deemed assigned to the Contracting Agency, to the extent of the Contracting Agency's payment for such damage.

Payment will be limited to repair of damaged Work only. No payment will be made for delay or disruption of Work.

For the purpose of providing a common Proposal for all Bidders, the Contracting Agency has entered an amount for "Reimbursement for Third Party Damage" in the Proposal to become a part of the total Bid by the Contractor.

#### **1-07.14 Responsibility for Damage**

The State, Governor, Commission, Secretary, all officers and employees of the State, and all officers and employees of the Contracting Agency, will not be responsible in any manner: for losses or damage that may happen to the Work or any part; for losses of material or damage to any of the materials or other things used or employed in the performance of Work; for injury to or death of either workers or the public; or for damage to the public for causes which might have been prevented by the Contractor, or the workers, or anyone employed by the Contractor.

The Contractor shall be responsible for all liability imposed by law for injuries to, or the death of, any persons or damages to property resulting from any cause whatsoever during the performance of the Work, or before final acceptance.

Subject to the limitations in this section, and RCW 4.24.115, the Contractor shall indemnify, defend, and save harmless the State, Governor, Commission, Secretary, all officers and employees of the State, and all officers and employees of the Contracting Agency from all claims, suits, or actions brought for injuries to, or death of, any persons or damages resulting from construction of the Work or in consequence of any negligence or breach of Contract regarding the Work, the use of improper materials in the Work, caused in whole or in part by an act or omission by the Contractor or the agents or employees of the Contractor during performance or at any time before final acceptance. In addition to a remedy authorized by law, the State may retain so much of the money due the Contractor as deemed necessary by the Engineer to ensure the defense and indemnification obligations of this section until disposition has been made of such suits or claims.

Subject to the limitations in this section and RCW 4.24.115, the Contractor shall indemnify, defend, and save harmless any county, city, or region, its officers, and employees connected with the Work, within the limits of which county, city, or region the Work is being performed, all in the same manner and to the same extent as provided above for the protection of the State, its officers and employees, provided that no retention of money due the Contractor be made by the State except as provided in RCW 60.28, pending disposition of suits or claims for damages brought against the county, city, or district.

Pursuant to RCW 4.24.115, if such claims, suits, or actions result from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the Contractor or the Contractor's agent or employees, the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the Contractor's negligence or the negligence of its agents and employees.

The Contractor shall bear sole responsibility for damage to completed portions of the project and to property located off the project caused by erosion, siltation, runoff, or other related items during the construction of the project. The Contractor shall also bear sole responsibility for any pollution of rivers, streams, ground water, or other waters that may occur as a result of construction operations.

The Contractor shall exercise all necessary precautions throughout the life of the Project to prevent pollution, erosion, siltation, and damage to property.

The Contracting Agency will forward to the Contractor all claims filed against the State according to RCW 4.92.100 that are deemed to have arisen in relation to the Contractor's Work or activities under this Contract, and, in the opinion of the Contracting Agency, are subject to the defense, indemnity, and insurance provisions of these *Standard Specifications*. Claims will be deemed tendered to the Contractor and insurer, who has named the State as a named insured or an additional insured under the Contractor's insurance provisions, once the claim has been forwarded via email with delivery confirmation to the Contractor. The Contractor shall be responsible to provide a copy of the claim to the Contractor's designated insurance agent who has obtained/met the Contractor's insurance provision requirements.

Within 60 calendar days following the date a claim is sent by the Contracting Agency to the Contractor, the Contractor shall notify both the Claimant as specified on the Claimant's contact information and the Contracting Agency by responding to the tendering email:

- a. Whether the claim is allowed or is denied in whole or in part, and, if so, the specific reasons for the denial of the individual claim, and if not denied in full, when payment has been or will be made to the claimant(s) for the portion of the claim that is allowed, or
- b. If resolution negotiations are continuing. In this event, status updates will be reported no longer than every 60 calendar days until the claim is resolved or a lawsuit is filed.

If the Contractor fails to provide the above notification within 60 calendar days, then the Contractor shall yield to the Contracting Agency sole and exclusive discretion to allow all or part of the claim on behalf of the Contractor, and the **Contractor shall be deemed to have WAIVED any and all defenses, objections, or other avoidances to the Contracting Agency's allowance of the claim, or the amount allowed by the Contracting Agency**, under common law, constitution, statute, or the Contract and these *Standard Specifications*. If all or part of a claim is allowed, the Contracting Agency will notify the Contractor via email with delivery confirmation that it has allowed all or part of the claim and make appropriate payments to the claimant(s) with State funds.

Payments of State funds by the Contracting Agency to claimant(s) under this section will be made on behalf of the Contractor and at the expense of the Contractor, and the Contractor shall be unconditionally obligated to reimburse the Contracting Agency for the "total reimbursement amount", which is the sum of the amount paid to the claimant(s), plus all costs incurred by the Contracting Agency in evaluating the circumstances surrounding the claim, the allowance of the claim, the amount due to the claimant, and all other direct costs for the Contracting Agency's administration and payment of the claim on the Contractor's behalf. The Contracting Agency will be authorized to withhold the total reimbursement amount from amounts due the Contractor, or, if no further payments are to be made to the Contractor under the Contract, the Contractor shall directly reimburse the Contracting Agency for the amounts paid within 30 days of the date notice

that the claim was allowed was sent to the Contractor. In the event reimbursement from the Contractor is not received by the Contracting Agency within 30 days, interest shall accrue on the total reimbursement amount owing at the rate of 12 percent per annum calculated at a daily rate from the date the Contractor was notified that the claim was allowed. The Contracting Agency's costs to enforce recovery of these amounts are additive to the amounts owing.

The Contractor specifically assumes all potential liability for actions brought by employees of the Contractor and, solely for the purpose of enforcing the defense and indemnification obligations set forth in Section 1-07.14, the Contractor specifically waives immunity granted under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties. The Contractor shall similarly require that each subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

### **1-07.15 Temporary Water Pollution Prevention**

#### **1-07.15(1) Spill Prevention, Control, and Countermeasures Plan**

The Contractor shall prepare a Type 2 Working Drawing consisting of a project-specific spill prevention, control, and countermeasures plan (SPCC Plan), and shall implement the plan for the duration of the project. No on-site construction activities may commence until the Contracting Agency accepts an SPCC Plan for the project. An SPCC Plan template and guidance information is available at <https://wsdot.wa.gov/engineering-standards/environmental-guidance/stormwater-water-quality>.

The SPCC Plan shall address all fuels, petroleum products, hazardous materials, and other materials defined in Chapter 447 of the WSDOT *Environmental Manual* M 31-11. Occupational safety and health requirements that may pertain to SPCC Plan implementation are contained in, but not limited to, WAC 296-824 and WAC 296-843. The SPCC Plan shall address conditions that may be required by Section 5706 of the current International Fire Code, or as approved by the local Fire Marshal.

#### **Implementation Requirements**

The Contractor shall update the SPCC Plan throughout project construction so that the written plan reflects actual site conditions and practices. The Contractor shall update the SPCC Plan at least annually and maintain a copy of the updated SPCC Plan on the project site. The Contractor shall fully implement the SPCC Plan, as accepted and updated, at all times.

#### **SPCC Plan Element Requirements**

The SPCC Plan shall set forth the following information in the following order:

1. **Responsible Personnel** – Identify the names, titles, and contact information for the personnel responsible for implementing and updating the plan and for responding to spills.
2. **Spill Reporting** – List the names and telephone numbers of the Federal, State, and local agencies the Contractor shall notify in the event of a spill.
3. **Project and Site Information** – Describe the following items:
  - a. The project Work.
  - b. The site location and boundaries.
  - c. The drainage pathways from the site.
  - d. Nearby waterways and sensitive areas and their distances from the site.

4. **Potential Spill Sources** – Describe each of the following for all potentially hazardous materials brought or generated on-site including but not limited to materials used for equipment operation, refueling, maintenance, or cleaning:
  - a. Name of material and its intended use.
  - b. Estimated maximum amount on-site at any one time.
  - c. Location(s) (including any equipment used below the ordinary high water line) where the material will be staged, used, and stored and the distance(s) from nearby waterways and sensitive areas.
5. **Preexisting Contamination** – Describe any preexisting contamination and contaminant sources (such as buried pipes or tanks) in the project area that are described in the Contract provisions and Plans. Identify equipment and Work practices that shall be used to prevent the release of contamination.
6. **Spill Prevention and Response Training** – Describe how and when all project personnel, including refueling personnel and other subcontractors, shall be trained in spill prevention, containment, and response and in the location of spill response kits.
7. **Spill Prevention** – Describe the following items:
  - a. The contents and locations of spill response kits that the Contractor shall supply and maintain that are appropriately stocked, located in close proximity to hazardous materials and equipment, and immediately accessible.
  - b. Security measures for potential spill sources to prevent accidental spills and vandalism.
  - c. Methods used to prevent stormwater from contacting hazardous materials.
  - d. Secondary containment for each potential spill source listed in 4, above. Secondary containment structures shall be in accordance with Section S9.D.9 of Ecology's Construction Stormwater General NPDES Permit, where secondary containment means placing tanks or containers within an impervious structure capable of containing 110 percent of the volume contained in the largest tank within the containment structure. Double-walled tanks do not require additional secondary containment.
  - e. BMP methods and locations where they are used to prevent discharges to ground or water during mixing and transfer of hazardous materials and fuel. Methods to control pollutants shall use BMPs in accordance with Ecology's Construction Stormwater General NPDES Permit. BMP guidance is provided in Ecology's Stormwater Management Manuals, such as Volume II – Construction Stormwater Pollution Prevention, BMP C153, and Volume IV – Source Control BMPs.
  - f. Refueling procedures for equipment that cannot be moved from below the ordinary high water line.
  - g. Daily inspection and cleanup procedures that ensure all equipment used below the ordinary high water line is free of all external petroleum-based products.
  - h. Routine equipment, storage area, and structure inspection and maintenance practices to prevent drips, leaks, or failures of hoses, valves, fittings, containers, pumps, or other systems that contain or transfer hazardous materials.
  - i. Site inspection procedures and frequency.
8. **Spill Response** – Outline the response procedures the Contractor shall follow for each scenario listed below, indicating that if hazardous materials are encountered or spilled during construction, the Contractor shall do everything possible to control and contain the material until appropriate measures can be taken. Include a description of the actions the Contractor shall take and the specific on-site spill response equipment that shall be used to assess the spill, secure the area, contain and eliminate the spill

source, clean up spilled material, decontaminate equipment, and dispose of spilled and contaminated material:

- a. A spill of each type of hazardous material at each location identified in 4, above.
- b. Stormwater that has come into contact with hazardous materials.
- c. A release or spill of any preexisting contamination and contaminant source described in 5, above.
- d. A release or spill of any unknown preexisting contamination and contaminant sources (such as buried pipes or tanks) encountered during project Work.
- e. A spill occurring during Work with equipment used below the ordinary high water line.

If the Contractor will use a subcontractor for spill response, provide contact information for the subcontractor under item 1 (above), identify when the subcontractor shall be used, and describe actions the Contractor shall take while waiting for the subcontractor to respond.

9. **Project Site Map** – Provide a map showing the following items:
  - a. Site location and boundaries.
  - b. Site access roads.
  - c. Drainage pathways from the site.
  - d. Nearby waterways and sensitive areas.
  - e. Hazardous materials, equipment, and decontamination areas identified in 4, above.
  - f. Preexisting contamination or contaminant sources described in 5, above.
  - g. Spill prevention and response equipment described in 7 and 8, above.
10. **Spill Report Forms** – Provide a copy of the spill report form(s) that the Contractor shall use in the event of a release or spill.

### Payment

Payment will be made for the following Bid item when it is included in the Proposal:

“SPCC Plan”, lump sum.

When the written SPCC Plan is accepted by the Contracting Agency, the Contractor shall receive 50 percent of the lump sum Contract price for the plan.

The remaining 50 percent of the lump sum price will be paid after the materials and equipment called for in the plan are mobilized to the project.

The lump sum payment for the “SPCC Plan” shall be full pay for all costs associated with creating and updating the accepted SPCC Plan, and all costs associated with the set up of prevention measures and for implementing the current SPCC Plan as required by this Specification.

### 1-07.16 Protection and Restoration of Property

#### 1-07.16(1) Private/Public Property

##### 1-07.16(1)A General

The Contractor shall protect private or public property on or in the vicinity of the Work site. The Contractor shall ensure that it is not removed, damaged, destroyed, or prevented from being used unless the Contract so specifies.

Property includes land, utilities, trees, landscaping, improvements legally on the right of way, markers, monuments, buildings, Structures, pipe, conduit, sewer or water lines, signs, and other property of all description whether shown on the Plans or not.

If the Engineer orders, or if otherwise necessary, the Contractor shall install protection, acceptable to the Engineer, for property such as that listed in the previous paragraph. The Contractor is responsible for locating and protecting all property that is subject to damage by the construction operation.

If the Contractor (or agents/employees of the Contractor) damage, destroy, or interfere with the use of such property, the Contractor shall restore it to original condition. The Contractor shall also halt all interference with the property's use. If the Contractor refuses or does not respond immediately, the Engineer may have such property restored by other means and subtract the cost from money that will be or is due the Contractor.

#### **1-07.16(1)B Contracting Agency Property**

The Contractor shall not use Contracting Agency owned or controlled property other than that directly affected by the Contract Work without the approval of the Engineer. If the Engineer grants such approval, the Contractor shall then vacate the area when ordered to do so by the Engineer. Approval to temporarily use the property shall not create entitlement to further use or to compensation for conditions or requirements imposed.

#### **1-07.16(1)C Private Property**

The Contractor may access the worksite from adjacent properties. The Contractor shall not use or allow others to use this access to merge with public traffic. During non-working hours, the Contractor shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through existing Structures. The access may go through fencing. The Contractor shall control or prevent animals from entering the worksite to the same degree that they were controlled before the fence was removed. The Contractor shall prevent persons not involved in the Contract Work from entering the worksite through the access or through Trails and Pathways intersected by the access. If the Contract documents require that existing Trails or Pathways be maintained during construction, the Contractor will insure the safe passage of Trail or Pathway users. The Contractor shall effectively control airborne particulates that are generated by use of the access. The location and use of the access shall not adversely affect wetlands or sensitive areas in any manner. The Contractor shall be responsible for obtaining all haul road agreements, permits and/or easements associated with the access. The Contractor shall replace fences, repair damage and restore the site to its original state when the access is no longer needed. The Contractor shall bear all costs associated with this worksite access.

#### **1-07.16(2) Vegetation Protection and Restoration**

Existing trees and other vegetation, where shown in the Plans or designated by the Engineer, shall be saved and protected through the life of the Contract. The Engineer will designate the vegetation to be saved and protected by a site preservation line, high visibility fencing, or individual flagging.

Damage which may require replacement of vegetation includes torn bark stripping, broken branches, exposed root systems, cut root systems, poisoned root systems, compaction of surface soil and roots, puncture wounds, drastic reduction of surface roots or leaf canopy, changes in grade greater than 6 inches, or other changes to the location that may jeopardize the survival or health of the vegetation to be preserved.

When large roots of trees designated to be saved are exposed by the Contractor's operation, they shall be wrapped with heavy, moist material, such as burlap or canvas, for protection and to prevent excessive drying. The material shall be kept moist and securely fastened until the roots are covered to finish grade. All material and fastening material shall be removed from the roots before covering. All roots 1 inch or larger in diameter, that

are damaged, shall be pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be removed as ordered by the Engineer at no additional cost to the Contracting Agency.

Pruning activity required to complete the Work as specified shall be performed by a Certified Arborist at the direction of the Engineer.

If due to, or for reasons related to the Contractor's operation, trees, shrubs, ground cover or herbaceous vegetation designated to be saved is destroyed, disfigured, or damaged to the extent that continued life is questionable as determined by the Engineer, it shall be removed by the Contractor at the direction of the Engineer.

The Contractor will be assessed damages equal to triple the value of the vegetation as determined in the *Guide for Plant Appraisal*, Current Edition, published by the International Society of Arboriculture or the estimated cost of restoration with a similar species. Shrub, ground cover, and herbaceous plant values will be determined using the Cost of Cure Method. Damage so assessed will be deducted from the monies due or that may become due the Contractor.

#### **1-07.16(2)A Wetland and Sensitive Area Protection**

Existing wetland and other sensitive areas, where shown in the Plans or designated by the Engineer, shall be saved and protected through the life of the Contract. When applicable, a site preservation line has been established as a boundary between work zones and sensitive environmental areas.

The Contractor shall install high visibility fence as shown in the Plans or designated by the Engineer in accordance with Section 8-01.3(1). The areas to be protected include critical environmental areas, buffer zones, and other areas of vegetation to be preserved. The Contractor shall keep areas identified by the site preservation lines free of construction equipment, construction materials, debris, and runoff. No access, including, but not limited to, excavation, clearing, staging, or stockpiling, shall be performed inside the protected area.

#### **1-07.16(3) Fences, Mailboxes, Incidentals**

The Contractor shall maintain all temporary fencing to prevent pedestrians from entering the worksite and to preserve livestock, crops, or property when working through or adjacent to private property. The Contractor is liable for all damages resulting from not complying with this requirement.

The usefulness of existing mail or paper boxes shall not be impaired. If the Contract anticipates removing and reinstalling the mail or paper boxes, the provisions of Section 8-18 will apply. If the mail or paper boxes are rendered useless solely by acts (or inaction) of the Contractor or for the convenience of the Contractor, the Work shall be performed as provided in Section 8-18 at the Contractor's expense.

#### **1-07.16(4) Archaeological and Historical Objects**

Archaeological or historical objects, such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint, which may be encountered by the Contractor, shall not be further disturbed. The Contractor shall immediately notify the Engineer of any such finds.

The Engineer will determine if the material is to be salvaged. The Contractor may be required to stop Work in the vicinity of the discovery until such determination is made. The Engineer may require the Contractor to suspend Work in the vicinity of the discovery until salvage is accomplished.

If the Engineer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under this Contract, the Engineer will make an adjustment in payment or the time required for the performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

#### **1-07.16(4)A Inadvertent Discovery of Human Skeletal Remains**

If human skeletal remains are encountered by the Contractor, they shall not be further disturbed. The Contractor shall immediately notify the Engineer of any such finds, and shall cease all work adjacent to the discovery, in an area adequate to provide for the total security and protection of the integrity of the skeletal remains. The Engineer may require the Contractor to suspend Work in the vicinity of the discovery until final determinations are made and removal of the skeletal remains is completed.

If the Engineer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under this Contract, the Engineer will make an adjustment in payment or the time required for the performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

#### **1-07.16(5) Wells**

##### **1-07.16(5)A Protection of Wells**

The Contractor shall save and protect existing wells throughout the life of the Contract at the locations as shown in the Plans. For the definition of well types see WAC 173-160-111 and WAC 173-160-410.

The existing wells shall not be disturbed during any construction activity.

##### **1-07.16(5)B Discovery of Unidentified Wells**

If unidentified wells are encountered by the Contractor, they shall not be further disturbed. The Contractor shall ensure unidentified wells encountered are protected from all construction activities including spills. The Contractor shall follow the procedures set forth in Section 1-04.7. The Engineer will determine if the well will be protected in accordance with Section 1-07.1, Section 1-07.5(3), and Section 1-07.16, or the well will be decommissioned as part of the Work.

#### **1-07.16(6) Payment**

All costs to comply with this section and for the protection and repair specified in this section, unless otherwise stated, are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the unit Bid prices of the Contract.

#### **1-07.17 Utilities and Similar Facilities**

The Contractor shall protect all private and public utilities from damage resulting from the Work. Among others, these utilities include: telephone, telegraph, and power lines; pipelines, sewer and water lines; railroad tracks and equipment; and highway lighting and signing systems, and intelligent transportation systems (ITS). All costs required to protect public and private utilities shall be considered incidental to the other items of Work in the Contract.

RCW 19.122 relates to underground utilities. In accordance with this RCW, the Contractor shall call the One-Number Locator Service for field location of utilities. If no locator service is available for the area, notice shall be provided individually to those owners of utilities known to, or suspected of, having underground facilities within the area of the proposed excavation.

**1-07.17(1) Utility Construction, Removal, or Relocation by the Contractor**

If the Work requires removing, installing, or relocating a utility, the Contract will assign the task to the Contractor or the utility owner. When the task is assigned to the Contractor it shall be performed in accordance with the Plans and Special Provisions.

To ease or streamline the Work for its own convenience, the Contractor may desire to ask utility owners to move, remove, or alter their equipment in ways other than those listed in the Plans or Special Provisions. The Contractor shall make the arrangements and pay all costs that arise from work performed by the utility owner at the Contractor's request. The Contractor shall submit a Type 2 Working Drawing consisting of plans and details describing the scope and schedule of all work performed at the Contractor's request by the utility owner.

In some cases, the Plans or Special Provisions may not show all underground facilities. If the Work requires these to be moved or protected, the Engineer will assign the task to others or issue a written change order requiring the Contractor to do so as provided in Section 1-04.4.

**1-07.17(2) Utility Construction, Removal, or Relocation by Others**

Authorized agents of the Contracting Agency or utility owners may enter the Highway right of way to repair, rearrange, alter, or connect their equipment. The Contractor shall cooperate with such effort and shall avoid creating delays or hindrances to those doing the work. As needed, the Contractor shall arrange to coordinate work schedules.

If the Contract provides notice that utility work (including furnishing, adjusting, relocating, replacing, or constructing utilities) will be performed by others during the prosecution of the Work, the Special Provisions will establish the utility owner's anticipated completion. The Contractor shall carry out the Work in a way that will minimize interference and delay for all forces involved. Costs incurred prior to the utility owners anticipated completion (or if no completion is specified, within a reasonable period of time) that results from the coordination and prosecution of the Work regarding utility adjustment, relocation, replacement, or construction shall be at the Contractor's expense as provided in Section 1-05.14.

When others delay the Work through late performance of utility work, the Contractor shall adhere to the requirements of Section 1-04.5. The Contracting Agency will either suspend Work according to Section 1-08.6, or order the Contractor to coordinate the Work with the work of the utility owner in accordance with Section 1-04.4. When ordered to coordinate the Work with the work of the utility owner, the Contractor shall prosecute the Work in a way that will minimize interference and delay for all forces involved.

**1-07.18 Public Liability and Property Damage Insurance****1-07.18(1) Insurance Provider Requirements**

The Contractor shall obtain and keep in force the policies of insurance required by this Section and as supplemented by the Special Provisions. The policies shall be with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.05.

Under no circumstances shall a wrap up policy be obtained, for either initiating or maintaining coverage, to satisfy insurance requirements for any policy required under this Section. A wrap up policy is defined as an insurance agreement or arrangement under which all the parties working on a specified or designated project are insured under one policy for liability arising out of that specified or designated project.

**1-07.18(2) Term of Insurance Coverage**

Unless otherwise indicated below, the policies shall be kept in force from the execution date of the Contract until the date of acceptance by the Secretary (Section 1-05.12), and shall be reinstated when performing warranty work when such work takes place after the date of acceptance by the Secretary.

**1-07.18(3) Initiating and Maintaining Coverage**

1. Prior to Contract execution, the Contractor shall submit electronically to the email address, CAPS@WSDOT.WA.GOV, completed ACORD Form Certificates of Insurance evidencing the minimum insurance coverages required under the Standard Specifications and Special Provisions for the Project, or the actual policies. Insurance shall be effective on or before the date of Execution. Each ACORD Certificate of Insurance or policy shall bear the Contracting Agency Contract number, Project title and expiration date.
2. Within 21 days after execution, the Contractor shall provide the Department with complete electronic copies of all insurance policies required under this Section and any Special Provisions. Policies shall be submitted electronically to CAPS@WSDOT.WA.GOV. Marked on the policy title and signatory page of each policy, shall be the policy number, Contracting Agency's Contract number, the Project title, and the expiration date.
3. Any time a policy expires or is cancelled and is renewed, the Contractor shall provide an electronic copy of the renewed policy to the Engineer and CAPS@WSDOT.WA.gov evidencing no break in coverage. Each ACORD Certificate of Insurance or policy shall bear the Contracting Agency Contract number, Project title and expiration date.
4. The Contractor shall provide written notice to the Engineer and the WSDOT Contract Payments Section (CAPS) of any policy cancellations within two business days of receipt of cancellation. Written notice shall be emailed to the Engineer and CAPS@WSDOT.WA.gov.

**1-07.18(4) General Requirements for Insurance**

1. The Contractor shall be named insured and the Contracting Agency, the State, the Governor, the Commission, the Secretary, the Department, all officers and employees of the State, and their respective members, directors, officers, employees, agents, and consultants (collectively the "additional insureds") shall be included as additional insureds for all policies and coverages specified in this section, with the exception of the OCP policy, under which the Contracting Agency is a named insured. Said insurance coverage shall be primary and noncontributory insurance with respect to the named insureds and the additional insureds. Any insurance or self-insurance beyond that specified in this Contract that is maintained by any named insured or additional insured shall be in excess of such insurance and shall not contribute with it. All insurance coverage required by this section shall be written and provided by "occurrence-based" policy forms rather than by "claims made" forms.
2. All endorsements adding additional insureds to required policies shall only be provided pursuant to form CG-20-10 (1985 edition) or a combination of the following: CG 2010 entitled "Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization" and CG 2037 entitled "Additional Insured - Owners, Lessees or Contractors - Completed Operations"; or CG 2033 entitled "Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You" and CG 2037 entitled "Additional Insured - Owners, Lessees or Contractors - Completed Operations". No form shall contain limitations or exclusions with respect to "products/completed operations" or ongoing operations coverage. No additional insured endorsement shall seek to limit coverage for the additional insureds for their own negligence with respect to

liability arising out of project operations and/or solely to vicarious liability arising out of the ongoing or completed operations of the named insured, its Contractors, subcontractors of any tier, consultants, agents or employees. The coverage, together with all coverage limits, required to be provided to the additional insureds shall be primary and non-contributory with respect to any other insurance maintained by, or obtained for the benefit of, the additional insured. Any insurance or self-insurance that is maintained by an additional insured, or their members, directors, officers, employees, agents, and consultants shall be in excess of, and shall not contribute with, the insurance required herein.

3. The coverage limits to be provided by the Contractor for itself and to the Contracting Agency and additional insureds pursuant to this section or any Special Provision, shall be on a "per project" aggregate basis with the minimum limits of liability as set forth herein for general liability claims. The coverage required under this section for products/completed operations claims shall remain in full force and effect for not less than 3 years following Substantial Completion of the project. If the Contractor maintains, at any time, coverage limits for itself in excess of limits set forth in this Section 1-07.18 or any Special Provision, then those additional coverage limits shall also apply to the Contracting Agency and the additional insured. This includes, but is not limited to, any coverage limits provided under any risk financing program of any description, whether such limits are primary, excess, contingent, or otherwise.
4. All insurance policies and coverages required under Sections 1-07.18 and 1-07.10 shall contain a waiver of subrogation against the Contracting Agency, the State, and any additional insureds, and their respective departments, agencies, boards, and commissions, and their respective officers, officials, agents, and employees for losses arising from Work performed by or on behalf of the Contractor. This waiver has been mutually negotiated by the parties.
5. Where applicable, the Contractor shall cause each subcontractor to provide insurance that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, in circumstances where the subcontractor is not covered by the Contractor-provided insurance. The Contractor shall have sole responsibility for determining the limits of coverage required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. In the event that a subcontractor is required to add the Contractor as an additional insured pursuant to its contract for Work at the project, then the Contractor shall also cause each subcontractor to include the Contracting Agency and the additional insureds, as additional insureds as well, for primary and noncontributory limits of liability under each subcontractor's Commercial General Liability, Commercial Automobile Liability, and any other coverages that may be required pursuant to a "Special Provision".
6. Unless specifically noted otherwise in the Contract, the parties to this Contract do not intend by any of the provisions of this Contract to cause the public or any member thereof or any other person to be a third-party beneficiary of the Contract. Nothing in this Contract authorizes anyone not a party to this Contract or a designated third-party beneficiary to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. It is the further intent of the Contracting Agency and the Contractor in executing the Form of Contract that no individual, firm, corporation, or any combination thereof that supplies materials, labor, services, or equipment to the Contractor for the performance of the Work shall become thereby a third-party beneficiary of this Contract.

The Contract shall not be construed to create a contractual relationship of any kind between the Contracting Agency and a subcontractor or any other person except the Contractor.

7. With the exception of the Commercial Automobile liability coverage, no policies of insurance required under this section shall contain an arbitration or alternative dispute resolution clause applicable to disputes between the insurer and its insureds. Any and all disputes concerning (i) terms and scope of insurance coverage afforded by the policies required hereunder and/or (ii) extra contractual remedies and relief, which may be afforded policy holders in connection with coverage disputes, shall be resolved in Washington State Superior Court, applying Washington law.
8. Failure on the part of the Contractor to maintain the insurance as required, or failure to provide certification and copies of the insurance prior to the time specified shall constitute a material breach of Contract upon which the Contracting Agency may, at its sole discretion:
  - a. immediately suspend all Work, except that required for maintaining public safety, as provided in item 2 of Section 1-08.6 until the required insurance is in place, at no expense to the Contracting Agency, or
  - b. procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency, or.
  - c. implement other remedies as provided in the Contract for Contractor breach of Contract.

All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the unit Contract prices and no additional payment will be made.

#### **1-07.18(5) Required Insurance Policies**

1. Owners and Contractors Protective (OCP) Insurance providing bodily injury and property damage liability coverage, with limits of \$3,000,000 per occurrence and per project in the aggregate for each policy period, which shall be written solely on Insurance Services Office (ISO) form CG0009 1204, together with Washington State Department of Transportation amendatory endorsement CG 2908 0999, specifying the Contracting Agency, the State, the Governor, the Commission, the Secretary, the Department, and all officers and employees of the State as named insured. No other forms or exclusions shall be accepted, added or amended to this policy. This policy shall be kept in force from the execution date of the Contract until the Physical Completion Date. OCP Insurance shall not be subject to a deductible or contain provisions for a deductible, nor shall it provide for any language rendering it excess over any other coverage available to a named insured for the claims alleged.
2. Commercial General Liability (CGL) Insurance written under ISO Form CG0001, with minimum limits of \$3,000,000 per occurrence and in the aggregate for each 1-year policy period. This coverage must be on a primary and non-contributory basis only. Products and completed operations coverage shall be provided for a period of 3 years following Substantial Completion of the Work. At the discretion of the Contractor, the CGL may contain provisions for a deductible. If a deductible applies to any claim under this policy, then payment of that deductible will be the responsibility of the Contractor, notwithstanding any claim of liability against the Contracting Agency. However, in no event shall any provision for a deductible provide for a deductible in excess of \$50,000.00.

3. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the Work, with a combined single limit of not less than \$1,000,000 per occurrence. This coverage may be any combination of primary, umbrella, or excess liability coverage affording total liability limits of not less than \$1,000,000 per occurrence, with the State named as an additional insured or designated insured in connection with the Contractor's performance of the Contract. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Commercial Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy. At the discretion of the Contractor the Commercial Automobile Liability policy may contain provisions for a deductible. If a deductible applies to any claim under this policy, then payment of that deductible will be the responsibility of the Contractor, notwithstanding any claim of liability against the Contracting Agency. However, in no event shall any provision for a deductible provide for a deductible in excess of \$50,000.00.

#### **1-07.19 Gratuities**

The Contractor shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of the Contracting Agency; nor will the Contractor rent or purchase any equipment or materials from any employee or officer of the Contracting Agency. Before payment of the final estimate will be made, the Contractor shall execute and furnish the Contracting Agency an affidavit certifying compliance with these provisions of the Contract.

The Contractor shall comply with all applicable sections of the State Ethics law, RCW 42.52, which regulates gifts to State officers and employees. Under that statute, any Contracting Agency officer or employee who has or will participate with the Contractor regarding any aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor or anything of economic value from the Contractor. Accordingly, neither the Contractor nor any agent or representative shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

#### **1-07.20 Patented Devices, Materials, and Processes**

The Contractor shall assume all costs arising from the use of patented devices, materials, or processes used on or incorporated in the Work, and agrees to indemnify, defend, and save harmless the State, Governor, Commission, Secretary, Contracting Agency, and their duly authorized agents and employees from all actions of any nature for, or on account of the use of all patented devices, materials, or processes.

#### **1-07.21 Rock Drilling Safety Requirements**

It shall be the Contractor's responsibility to maintain safe working conditions during rock drilling, by keeping dust concentration below the threshold limit value or by providing those protective devices that may be required by the State Department of Labor and Industries.

#### **1-07.22 Use of Explosives**

When using explosives, the Contractor shall use the utmost care to protect life and property, to prevent slides, and to leave undisturbed all materials, outside the neat lines of the cross-section.

Explosives shall be handled, marked, stored, and used in compliance with WAC 296-52 and such local laws, rules, and regulations that may apply. The stricter provisions shall apply.

All explosives shall be stored securely as required by all laws and ordinances that apply. Each storage place shall be clearly marked: "Dangerous-Explosives". No explosives shall be left unprotected.

If public utilities or railroads own equipment near the blast site, the Contractor shall notify the owners of the location, date, time, and approximate duration of the blasting. This notice shall be given sufficiently in advance to enable all owners to take any steps as they deem necessary to protect their property from injury.

Blasting near proposed Structures shall be completed before Work on them begins. When the use of explosives is necessary for the prosecution of the Work, the Contractor's insurance shall contain a special clause permitting the blasting.

### **1-07.23 Public Convenience and Safety**

The Contractor shall be responsible for providing adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, and safety of the public, and to protect property in connection with the performance of the Work covered by the Contract. The Contractor shall perform any measures or actions the Engineer may deem necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Contractor's except that which is to be furnished by the Contracting Agency as specified in other sections of these Specifications. Nothing contained in this Contract is intended to create any third-party beneficiary rights in favor of the public or any individual utilizing the Highway facilities being constructed or improved under this Contract.

#### **1-07.23(1) Construction Under Traffic**

The Contractor shall conduct all operations with the least possible obstruction and inconvenience to the public. The Contractor shall have under construction no greater length or amount of Work than can be prosecuted properly with due regards to the rights of the public. To the extent possible, the Contractor shall finish each section before beginning Work on the next. The Contractor shall enter interstate Highways only through legal movements from existing roads, streets, and through other access points specifically allowed by the Contract documents.

To disrupt public traffic as little as possible, the Contractor shall permit traffic to pass through the Work with the least possible inconvenience or delay. The Contractor shall maintain existing roads, streets, sidewalks, and Pathways within the project limits, keeping them open and in good, clean, safe condition at all times. Accessibility to existing or temporary pedestrian pushbuttons shall not be impaired. Deficiencies caused by the Contractor's operations shall be repaired at the Contractor's expense. The Contractor shall also maintain roads, streets, sidewalks, and Pathways adjacent to the project limits when affected by the Contractor's operations. Snow and ice control will be performed by the Contracting Agency on all projects. Cleanup of snow and ice control debris will be at the Contracting Agency's expense. The Contractor shall perform the following:

1. Remove or repair conditions resulting from the Work that might impede traffic or create a hazard.
2. Keep existing traffic signal and Highway lighting systems in operation as the Work proceeds. (The Contracting Agency will continue the routine maintenance on such system.)
3. Maintain the striping on the Roadway at the Contracting Agency's expense. The Contractor shall be responsible for scheduling when to renew striping, subject to the approval of the Engineer. When the scope of the project does not require Work on the Roadway, the Contracting Agency will be responsible for maintaining the striping.
4. Maintain existing permanent signing. Repair of signs will be at the Contracting Agency's expense, except those damaged due to the Contractor's operations.
5. Keep drainage Structures clean to allow for free flow of water. Cleaning of existing drainage Structures will be at the Contracting Agency's expense when approved by the Engineer, except when flow is impaired due to the Contractor's operations.

To protect the rights of abutting property owners, the Contractor shall:

1. Conduct the construction so that the least inconvenience as possible is caused to abutting property owners;
2. Maintain ready access to driveways, houses, and buildings along the line of Work;
3. Provide temporary approaches to crossing or intersecting roads and keep these approaches in good condition; and
4. Provide another access before closing an existing one whenever the Contract calls for removing and replacing an abutting owner's access.

When traffic must pass through grading areas, the Contractor shall:

1. Make cuts and fills that provide a reasonably smooth, even Roadbed;
2. Place, in advance of other grading Work, enough fill at all culverts and bridges to permit traffic to cross;
3. Make Roadway cuts and fills, if ordered by the Engineer, in partial-width lifts, alternating lifts from side to side to permit traffic to pass on the side opposite the Work;
4. Install culverts on half the width of the Traveled Way, keeping the other half open to traffic and unobstructed until the first half is ready for use;
5. After rough grading or placing subsequent layers, prepare the final Roadbed to a smooth, even surface (free of humps and dips) suitable for use by public traffic; and
6. Settle dust with water, or other dust palliative, as the Engineer may order.

If grading Work is on or next to a Roadway in use, the Contractor shall finish the grade immediately after rough grading and place surfacing materials as the Work proceeds.

#### **1-07.23(1)A Drop-Offs**

##### **1-07.23(1)A1 General Requirements**

The Contractor shall conduct all operations to minimize drop-offs (abrupt changes in roadway elevation) left exposed to traffic during nonworking hours. Unless otherwise specified in the Traffic Control Plan, drop-offs left exposed to traffic during nonworking hours shall be protected as follows with an accepted traffic control plan submittal in accordance with Section 1-10.2(2):

1. Drop-offs up to 0.20 foot, unless otherwise ordered by the Engineer, may remain exposed with appropriate warning signs alerting motorists of the condition.
2. Drop-offs more than 0.20 foot that are in the Traveled Way or Auxiliary Lane will not be allowed unless protected with appropriate warning signs and further protected as indicated in 3b or 3c below.
3. Drop-offs more than 0.20 foot, but no more than 0.50 foot, that are not within the Traveled Way shall be protected with appropriate warning signs and further protected by having one of the following:
  - a. A wedge of compacted stable material placed at a slope of 4:1 or flatter.
  - b. Channelizing devices (Type I barricades, plastic safety drums, or other devices 36 inches or more in height) placed along the traffic side of the drop-off and a new edge of pavement stripes placed a minimum of 3 feet from the drop-off. The maximum spacing between the devices in feet shall be the posted speed in miles per hour. Pavement drop-off warning signs shall be placed in advance and throughout the drop-off treatment.

- c. A temporary concrete barrier, temporary steel barrier, or other approved traffic barrier installed on the traffic side of a drop-off with a new edge line placed a minimum of 2-feet from the traffic face of the barrier. The barrier shall have a lateral offset from the edge of the drop-off to the back of the barrier as follows:
  - i. A minimum offset of 3-feet for temporary Type F or Type 2 concrete barrier when not anchored.
  - ii. A minimum offset of 1-foot for temporary Type F or Type 2 concrete barrier when anchored on hot mix asphalt pavement as shown on WSDOT Standard Plan C-60.10 or K-80.35.
  - iii. A minimum offset of 1-foot for temporary Type F concrete barrier when anchored on cement concrete pavement as shown on WSDOT Standard Plan C-60.10.
  - iv. A minimum offset of 9-inches for temporary Type F or Type 2 concrete barrier when anchored on cement concrete pavement and/or concrete bridge decks as shown on WSDOT Standard Plan K-80.35.
  - v. A minimum offset of 6-inches or 9-inches for temporary Type F or Type 2 narrow base concrete barrier when anchored on cement concrete pavement and concrete bridge decks as shown on WSDOT Standard Plan K-80.37.
  - vi. A minimum offset following manufacturer recommendations for temporary steel barrier when not anchored; or when anchored on hot mix asphalt pavement, cement concrete pavement, or concrete bridge decks.
  - vii. A minimum offset as directed by the Engineer for any barrier type or configuration not shown in this Section.

An approved terminal, flare, or impact attenuator is required at the approach end of the barrier run, and is required at the trailing end of a barrier run in two-way operations when shown in the plans or as directed by the Engineer.

4. Drop-offs more than 0.50 foot not within the Traveled Way or Auxiliary Lane shall be protected with appropriate warning signs and further protected as indicated in 3a, 3b, or 3c if all of the following conditions are met:
  - a. The drop-off is less than 2 feet;
  - b. The total length throughout the project is less than 1 mile;
  - c. The drop-off does not remain for more than 3 working days;
  - d. The drop-off is not present on any of the holidays listed in Section 1-08.5; and
  - e. The drop-off is only on one side of the Roadway.
5. Drop-offs more than 0.50 foot that are not within the Traveled Way or Auxiliary Lane and are not otherwise covered by No. 4 above shall be protected with appropriate warning signs and further protected as indicated in 3a or 3c.

#### **1-07.23(1)B Open Trenches**

##### **1-07.23(1)B1 General Requirements**

Unless behind guardrail or barrier, open trenches are prohibited within the Traveled Way, Auxiliary Lanes, Shoulders, or other areas in the work zone clear zone, backfilling and paving operations are required to reopen to traffic within the allowable closure.

If backfilling cannot be properly completed within a work shift and steel plates are allowed, the Contractor shall place steel plates over trenches during non-working hours.

When allowed, steel plates shall not be in place longer than 72 hours.

**1-07.23(1)B2 Steel Plates**

When steel plates are allowed the Contractor shall follow submittal requirements of this Section and have an accepted submittal prior to trench excavation.

1. Allowable use of steel plates within the Traveled Way, Auxiliary Lanes, Shoulders:
  - a. Posted Speeds 35 mph or less  
Steel plates are allowed whether highway is open or closed.
  - b. Posted Speeds 40 mph and higher  
Steel plates are allowed within closed highways. Steel plates are prohibited for open highways.
2. Allowable use of steel plates within Pedestrian Pathways:  
Steel plates are allowed for open and closed Pathways. When allowed, the walking surface shall be painted with either a non-slip paint, anti-slip tape, or rolled roofing. The transverse edges shall be beveled at 2:1 with a maximum ¼" vertical lip.

**1-07.23(1)B3 Signing**

When steel plates are used to cover trenches within the Traveled Way, Auxiliary Lanes, or Shoulders, a "MOTORCYCLES USE EXTREME CAUTION" (W21-1701) and "STEEL PLATE AHEAD" (W8-24) advanced warning signs shall be used to alert motorists of the presence of the steel plates. Additional signage for Traveled Way, Auxiliary Lane and Shoulder closures are to be in accordance with accepted traffic control plans.

**1-07.23(1)B4 Submittals**

A Type 2E Working Drawing shall be submitted for all steel plates allowed by this Section. Steel plates shall be capable of withstanding, at a minimum, AASHTO HS-20 loading. The Working Drawing shall contain the following information:

1. Length and width of steel plates.
2. Thickness of steel plates.
3. Dimensions for excavation to be spanned and overlap of excavation.
4. Information on permanent nonskid surfaces.
5. Method of mounting, including anchorages, shoring, or other hardware to secure the steel plate or any other method to resist sliding.
6. Analysis of sliding forces when steel plates are installed within 300' of intersections to account for motor vehicle braking.
7. Paving details on and adjacent to the steel plate on all sides.
8. All calculations.
9. Steel grade, alloy composition, and welding details.
10. Schedule for maintenance of steel plates.

**1-07.23(2) Construction and Maintenance of Detours**

Unless otherwise approved, the Contractor shall maintain two-way traffic during construction. The Contractor shall build, maintain in a safe condition, keep open to traffic, and remove when no longer needed:

1. Detours and detour bridges that will accommodate traffic diverted from the Roadway, bridge, sidewalk, or Pathway during construction;
2. Detour crossings of intersecting Highways; and
3. Temporary approaches.

Unit Contract prices will cover construction, maintenance, and removal of all detours shown in the Plans or proposed by the Contracting Agency.

The Contractor shall pay all costs to build, maintain, and remove all other detours, whether built for the Contractor’s convenience or to facilitate construction operations. Detours proposed by the Contractor shall not be built until the Engineer approves. Surfacing and paving shall be consistent with traffic requirements.

Upon failure of the Contractor to immediately provide, maintain, or remove detours or detour bridges when ordered to do so by the Engineer, the Contracting Agency may, without further notice to the Contractor or the Surety, provide, maintain, or remove the detours or detour bridges and deduct the costs from payments due or coming due to the Contractor.

**1-07.23(3) Work Zone Clear Zone**

The Work Zone Clear Zone (WZCZ) applies during working and nonworking hours. The WZCZ applies only to temporary roadside objects introduced by the Contractor’s operations and does not apply to preexisting conditions or permanent Work. Those work operations that are actively in progress shall be in accordance with adopted and approved Traffic Control Plans, and other contract requirements.

During nonworking hours equipment or materials shall not be within the WZCZ unless they are protected by permanent guardrail or temporary concrete barrier. The use of temporary concrete barrier shall be permitted only if the Engineer approves the installation and location.

During actual hours of work, unless protected as described above, only materials absolutely necessary to construction shall be within the WZCZ and only construction vehicles absolutely necessary to construction shall be allowed within the WZCZ or allowed to stop or park on the shoulder of the roadway.

The Contractor’s nonessential vehicles and employees private vehicles shall not be permitted to park within the WZCZ at any time unless protected as described above.

Deviation from the above requirements shall not occur unless the Contractor has requested the deviation in writing and the Engineer has provided written approval.

Minimum WZCZ distances are measured from the edge of traveled way and will be determined as follows:

**Minimum Work Zone Clear Zone Distance**

<b>Regulatory Posted Speed</b>	<b>Distance From Traveled Way (Feet)</b>
35 mph or less	10
40 mph	15
45 to 50 mph	20
55 to 60 mph	30
65 mph or greater	35

**1-07.24 Rights of Way**

All rights of way for the completed facility will be provided by the Contracting Agency in advance of construction. Any exceptions will be noted in the Special Provisions. Should the necessary Right of Way not be available as provided in the Contract, an extension of time will be considered in accordance with Section 1-08.8.

**1-07.25 Opening of Sections to Traffic**

The Contracting Agency reserves the right to use and open to traffic any portion of the Work before the Physical Completion Date of the entire Contract without constituting acceptance of the Work. This action will not cause the Contracting Agency to incur liability to the Contractor except as may otherwise be provided in the Contract.

If the Contracting Agency opens a portion of the Work prior to the Physical Completion Date of the entire Contract because early opening is specified in the Contract or when the Contractor has failed to prosecute the Work continuously and efficiently, all remaining Work shall be performed by the Contractor at the unit Contract prices for the items of Work involved. No additional payment will be made for costs incurred by the Contractor because of: (1) inconvenience, additional length of travel to conform to established traffic patterns and planned access features; (2) compliance with statutes governing traffic regulations and limitations of loads; or (3) additional flagging costs necessary to protect the operations and the traveling public. The Contractor shall take all costs due to traffic using portions of the Work into account when submitting the Bid Proposal, and the unit Contract prices for the various items of Work involved shall include these costs.

**1-07.26 Personal Liability of Public Officers**

Neither the Governor, the Commission, the Secretary, the Engineer, nor any other officer or employee of the State, nor any other officer or employee of the Contracting Agency shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters, they are acting solely as agents of the Contracting Agency.

**1-07.27 No Waiver of the Contracting Agency's Legal Rights**

The Contracting Agency shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Contracting Agency shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor and the Sureties such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Secretary, nor any payment for the whole or any part of the Work, nor any extension of time, nor any possession taken by the Contracting Agency shall operate as a waiver of any portion of the Contract or of any power herein reserved or any right to damages herein provided, or bar recovery of any money wrongfully or erroneously paid to the Contractor. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor and the Contracting Agency recognize that the impact of overcharges to the Contracting Agency by the Contractor resulting from antitrust law violations by the Contractor's suppliers or subcontractors adversely affect the Contracting Agency rather than the Contractor. Therefore, the Contractor agrees to assign to the Contracting Agency any and all claims for such overcharges.

**1-07.28 Railroads****1-07.28(1) General**

The Contractor shall protect all of the Railroad Company's property and facilities from damage resulting from the Work.

The Contractor shall not interfere with or menace the integrity or safe and successful operations of the Railroad Company or its appurtenances, trains, or facilities.

The Contractor shall not transport equipment, machinery, or materials across the Railroad Company's tracks, except at a public crossing, without the written consent of the Railroad Company.

No Work shall commence within the Railroad Company's Property unless and until the Contractor has executed, delivered, and received in return the fully executed Contractor's Right-of-Entry Agreement or Permit from the Railroad Company, and has obtained all of the insurance required by the Railroad Company as specified therein. All Work within the Railroad Company's right of way or within 25 feet of centerline of the nearest tracks shall be in accordance with the Contractor's Right of Entry Agreement or Permit.

The Contractor is responsible to participate in all coordination meetings with the Engineer and Railroad Company, provide schedule information and Working Drawings, and provide notifications as described herein. The Railroad Company will coordinate with the Contracting Agency, review all Working Drawings, and supervise all Work on the Railroad Right of Way.

No act of the Railroad Company in supervising or approving any Work shall reduce or affect the liability of the Contractor for damages, expense, or cost which may result to the Railroad Company from the construction of this Contract.

**1-07.28(2) Submittals and Working Drawings**

All submittals and Working Drawings prepared by the Contractor for review by the Railroad Company shall be Type 3 or 3E Working Drawings. The Contractor shall submit Working Drawings to the Engineer. The Contracting Agency will coordinate Working Drawing review with the Railroad Company. The Contractor shall develop a progress schedule that includes Working Drawing reviews by the Railroad Company.

**1-07.28(3) Protection of Railroad Right of Way and Other Property**

At the Contractor's expense, the Contractor shall exercise care and prosecute the Work protecting the Railroad Company's property, appurtenances, right of way, trains or facilities, from damage, destruction, interference or injury caused by the Contractor's operations.

**1-07.28(4) Protection of Railroad Operations**

The Railroad Company will specify what periods will be available to the Contractor for executing the Work in which the Railroad Company's tracks will be obstructed or made unsafe for operation of the railroad. No interference with BNSF Railway Company and Union Pacific Railroad operations will be permitted between October 1 and December 31. The Railroad Company may change these requirements to be more or less restrictive. Requests for extensions of time due to additional railroad restrictions shall be in accordance with Section 1-08.8. Railroad restrictions and changes to railroad restriction will not be eligible for a cost adjustment.

In the event that an emergency occurs in connection with the Work specified, the Railroad Company reserves the right to do any and all work that may be necessary to maintain railroad traffic. If the emergency is caused by the Contractor, the Contractor shall be responsible for all Railroad Company costs associated with the emergency response.

**1-07.28(5) Railroad Company Training Required for Contractor Employees**

Each person providing labor, material, supervision, or services connected with the Work to be performed within 25 feet of the centerline of the tracks or within railroad property shall complete a safety orientation session online at <https://bnfcontractor.com> or [www.contractororientation.com](http://www.contractororientation.com), and agree to abide by all applicable safety regulations and rules.

**1-07.28(6) Railroad Protective Services**

For purposes of Section 1-07.28, Railroad Protective Services shall mean work done by the Railroad Company or its agents to protect the Railroad Company's facilities, property, and movement of its trains or engines, including railroad flagging and other devices, required by the Railroad Company as a result of the Contractor's operations. The Contractor shall notify the Railroad Company a minimum of 30 calendar days in advance of whenever the Contractor is about to perform Work within Railroad Company property or within 25 feet of the centerline of tracks to enable the Railroad Company to provide flagging or other Railroad Protective Services.

Protective Services, personnel and other measures required will in all cases be determined by the Railroad Company. Nothing in these specifications will limit the Railroad Company's right to determine and assign the number of personnel, the classes of personnel for Railroad Protective Services nor other Railroad Protective Services measures it deems necessary. The Railroad Company will furnish such flaggers or inspectors as they deem necessary.

The Contractor shall submit to the Railroad Company and the Engineer, in writing, an itinerary of work within the Railroad Company's right of way or otherwise requiring a Railroad Company flagger for the following week. If such work spans multiple weeks, the itinerary shall be provided in advance of each work week.

Unless otherwise provided, all personnel assigned by the Railroad Company, other than those engaged in performing work by the Railroad Company as listed under Construction Work by Railroad Company, will be considered Railroad Protective Services personnel.

The Railroad Company's policy for assignment of railroad flaggers requires that the flagging position is established for fixed work days and times. Any railroad flagging performed outside of these parameters may be subject to overtime costs. The Contractor shall verify with the Railroad Company what categories of railroad flagging constitute overtime work and obtain prior authorization from the Engineer before coordinating with the Railroad Company for flagging requiring overtime payments.

**1-07.28(7) Railroad Insurance**

The Contractor, its subcontractors or agents, shall at its own expense, obtain and maintain in force all insurance required by Railroad until the completion date of the contract as described in Section 1-08.5 except as stated herein.

When all the Work involving construction activities within or immediately adjacent to the railroad right of way is completed, the Contractor may make a written request to the Engineer to be relieved of the responsibility to continue all or part of the insurance. If the Engineer deems the portion of the Work in that area is complete, the Engineer may approve the Contractor's request. However, if for any reason the Contractor resumes or starts new Work in that area (including being ordered to do so by the Engineer), the insurance shall be reinstated by the Contractor before the Work is started. If the insurance must be reinstated because of the Contractor's operations or failure of the Contractor to perform all the Contract requirements, the costs shall be the responsibility of the Contractor. If the insurance must be reinstated because of changes to the Contract, the costs will be considered in accordance with Section 1-04.4.

**1-07.28(8) Measurement and Payment**

All costs to comply with this Section, unless otherwise stated, are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the unit Bid prices of the Contract.

**1-08 Prosecution and Progress****1-08.1 Subcontracting****1-08.1(1) General**

For purposes of this Section, all Work that is not self-performed by the Contractor will be considered as subcontracting except the following, hereinafter referred to as materials supplying: (1) when purchased directly by the Contractor - sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready-mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the Work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies hired by those commercial plants.

References to subcontractors of a given tier mean the tier in relation to the Contractor. For example, first-tier subcontractors all hold a contract directly with the Contractor, known as a first-tier subcontract. Second-tier subcontractors all hold a contract with a first-tier subcontractor, known as a second-tier subcontract.

**1-08.1(2) Self-Performance Requirements**

Work done by the Contractor's own organization shall account for at least 30 percent of the Awarded Contract price.

Work done by the first-tier subcontractor's own organization shall account for at least 30 percent of its subcontract price.

Self-performance requirements of other subcontractors, such as DBE, SVBE, or MWBE, shall apply only when included elsewhere in the Contract. In the event of a conflict between specifications, the highest required minimum percentage for self-performance shall take precedence.

**1-08.1(3) Subcontractor Approval**

Work shall not be subcontracted at any tier unless the Engineer approves in advance and in writing. Each request to subcontract shall be submitted on WSDOT Form 421-012, Request to Sublet. If the Engineer requests proof that a subcontractor, of any tier, has the record, experience, equipment, and ability the Work requires, the Contractor shall provide such proof.

The Engineer will approve the request only if the proposed subcontractor meets the Contract requirements and the Engineer is satisfied with the proposed subcontractor's record, equipment, experience, and ability. Approval to subcontract, at all tiers, shall not:

1. Relieve the Contractor of responsibility to carry out the Contract,
2. Relieve the Contractor of obligations or liability under the Contract and the Contractor's bond,
3. Create a contract between the Contracting Agency and the subcontractor, or
4. Convey to the subcontractor any rights against the Contracting Agency.

**1-08.1(4) Requests to Sublet for First-Tier Subcontractors**

Along with the request to sublet for each first-tier subcontractor, the Contractor shall submit documentation which demonstrates that each first-tier subcontractor will self-perform at least 30% of its contract with the Contractor. This may be demonstrated by submitting the names, scope of work, and subcontract amounts of all second-tier subcontractors that each first-tier subcontractor proposes to use. For purposes of this calculation, the exclusion for materials suppliers described in Section 1-08.1(1) will apply.

**1-08.1(5) Restrictions on Subcontracting**

The Contractor, as well as subcontractors for all tiers, shall not use businesses (material suppliers, vendors, subcontractors, etc.) with federal purchasing exclusions. Businesses with exclusions are identified by using the System for Award Management web page at [www.sam.gov](http://www.sam.gov).

**1-08.1(6) Removal of Subcontractors**

If dissatisfied with any part of the Work performed by a subcontractor of any tier, the Engineer may request in writing that the subcontractor performing the unsatisfactory Work be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further Work under the Contract.

**1-08.1(7) Payments to Subcontractors and Lower-Tier Subcontractors****1-08.1(7)A Payment Reporting**

The Contractor shall report the actual amounts paid to all firms that were used as subcontractors of any tier, materials suppliers, manufacturers, regular dealers, or service providers on the Contract including all Disadvantaged, Minority, Small, Veteran, or Women's Business Enterprise firms. The following do not need reported: (1) retail sales or services that are paid for at the time of purchase; (2) payments to materials suppliers or manufacturers that are in normal course of business. The Contractor shall report this information by entering it into the Contracting Agency's Diversity Management and Compliance System at: <https://wsdot.diversitycompliance.com>. Payments shall be reported no later than the 20th of the month for all payments made to firms the previous calendar month. For example, the Contractor shall enter all payments made to firms during the month of March into DMCS by April 20th. Payments shall be reported between execution of the Contract and the Contract Completion Date. When no Work occurred or no payments were made for a firm, the reported payment shall be zero.

The Contractor shall require all recipients of such payments to use DMCS to acknowledge their receipt of payment.

**1-08.1(7)B Prompt Payment**

The Contractor shall comply with all requirements regarding prompt payment including, but not limited to, the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040.

The Contractor shall make payment to its first-tier subcontractors not later than 10 calendar days after receipt of payment from the Contracting Agency for Work satisfactorily completed by its first-tier subcontractors, to the extent of the first-tier subcontractor's interest therein. Satisfactorily completed Work shall mean when all the associated Contract items of Work have been accomplished and documented as required by the Contracting Agency.

Upon request by any subcontractor or materials supplier at any tier, the Engineer will provide a copy of any or all progress payment estimates the Engineer has made to the Contractor.

**1-08.1(7)C Subcontractor Retainage**

Requests by the first-tier subcontractor to the Contractor for the release of their retainage or retainage bond shall be in writing.

Within 10 calendar days of the request, the Contractor shall determine if the first-tier subcontract has been satisfactorily completed, including any required lien releases, documentation, and material testing, and shall inform the first-tier subcontractor, in writing, of the Contractor's determination. In determining whether satisfactory completion has been achieved, the Contractor may require the first-tier subcontractor to provide documentation such as certifications and releases, showing that all laborers,

lower-tier subcontractors, suppliers of material and equipment, and others involved in the first-tier subcontractor's Work have been paid in full. The Contractor may also require any documentation from the first-tier subcontractor that is required by the first-tier subcontract, or by the Contract between the Contractor and Contracting Agency, or by any applicable law, including but not limited to affidavits of wages paid and material acceptance certifications, to the extent they relate to work performed by the first-tier subcontractor or to any of its lower-tier subcontractors.

If the Contractor determines the first-tier subcontract has been satisfactorily completed, the first-tier subcontractor's retainage or retainage bond shall be released by the Contractor within 10 calendar days from the date of the written notice. If the Contractor determines the first-tier subcontractor has not achieved satisfactory completion of the first-tier subcontract, the Contractor must provide the first-tier subcontractor with written notice stating specifically why the first-tier subcontract work is not satisfactorily completed and what must be done to achieve satisfactory completion. The Contractor shall release the first-tier subcontractor's retainage or retainage bond within 10 calendar days after the first-tier subcontractor has satisfactorily completed the Work identified in the notice.

If the Contractor fails to comply with the requirements of this Section and the first-tier subcontractor's retainage or retainage bond is wrongfully withheld, the Contractor will be subject to the actions described in Section 1-08.1(10). The first-tier subcontractor may also seek recovery against the Contractor under applicable prompt pay statutes in addition to any other remedies provided by the first-tier subcontract or by law.

#### **1-08.1(7)D Contractor or Subcontractor Withholding**

"Withholding" (or to Withhold) is the act by the Contractor of making a payment to one of its subcontractors that is less than the payment amount requested by its subcontractor, or the act by a subcontractor of making a payment to its lower-tier subcontractor that is less than the payment amount requested by its lower-tier subcontractor. Withholding includes but is not limited to offsets, back charges, deferrals, adjustments for incorrect invoicing, unsatisfactory performance, damages, and delay costs, and can be either agreed or disputed amounts. Such an amount shall be considered an unresolved Withholding unless the invoice clearly indicates agreement with the purpose and amount of the Withholding. Retainage will not be considered a Withholding unless it is disputed by the subcontractor.

In the event of a Withholding, the entity Withholding the payment shall provide written notice to the entity from which payment is Withheld. This notice should be sent as soon as the decision to Withhold is made, but in no case shall it be later than the date payment would otherwise be due. At the same time the Withholding notice is sent, a copy of the Withholding notice shall be sent to the Engineer. The Contractor shall send the Engineer copies of all Withholding notices it receives from materials suppliers and subcontractors of any tier, within three calendar days of their receipt.

A Withholding notice shall include an accounting of payments to date, the value and reason(s) for the Withheld amount, and an explanation of what must be done to have the Withheld amount released. If the cause of the Withholding is an improper invoice, the notice shall indicate the exact nature of the impropriety.

The entity from which payment is Withheld shall be paid within eight calendar days after it completes the remedial action identified.

#### **1-08.1(7)E Contracting Agency Withholding Regarding Prompt Pay**

Withholding will not be considered resolved until the Contracting Agency receives written confirmation, by the entity from which the payment was Withheld, that either:

1. The Withholding has been paid, or
2. It agrees with the Withholding purpose and amount, and the issue is closed.

In the event any Withholding is not resolved by the time the Contractor's first progress payment is due after the Engineer initially received notice that the Withholding occurred, the Engineer will withhold the same amount from the Contractor, in that progress payment, as the amount of the unresolved Withholding.

#### **1-08.1(7)F Subcontract Disputes Resolution Process**

When the Contracting Agency has not received written notice of resolution as described in Section 1-08.1(7)E by the due date of the second progress payment, except when the parties of a Withholding dispute agree to resolve the dispute later, the following shall occur:

1. The party withholding funds shall immediately initiate the dispute resolution process provided in its subcontract with the party from whom the funds are being withheld.
2. The Contractor shall notify the Contracting Agency of the status, or changes in status of all dispute resolutions regarding Withholding.

Disputes triggered by Contracting Agency withholding payment shall be resolved in accordance with Section 1-04.5.

#### **1-08.1(8) Required Subcontract Clauses**

##### **1-08.1(8)A Clauses Required in All First-Tier Subcontracts**

The Contractor shall include the following clauses in every first-tier subcontract.

First-tier subcontractors shall self-perform at least 30 percent of the dollar value of their contract with the Contractor. No more than 70 percent of the dollar value of their contract shall be subcontracted to lower-tier subcontractors. All work that is not performed by the first-tier subcontractor will be considered as lower-tier subcontracting except: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready-mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the Work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies hired by those commercial plants.

##### **1-08.1(8)B Clauses Required in Subcontracts of All Tiers**

The Contractor shall include in all of its first-tier subcontracts - and shall require subcontracts at all tiers to include - the following clauses, in addition to any subcontract clauses required elsewhere in the Contract.

Prior to subcontracting any Work, the Contractor shall verify that every first-tier subcontractor meets the criteria stated in items 1 through 5 at the time of subcontract execution.

1. Every subcontractor shall possess any electrical contractor license required by RCW 19.28 or elevator contractor license required by RCW 70.87, if applicable;
2. Every subcontractor shall have a certificate of registration in compliance with chapter RCW 18.27;
3. Every subcontractor shall have a current State unified business identifier number;
4. Every subcontractor shall, if applicable, have:
  - a. Industrial insurance coverage for the bidder's employees working in Washington (Title 51 RCW);
  - b. An employment security department number (Title 50 RCW);
  - c. A State excise tax registration number (Title 82 RCW);

5. No subcontractor shall be used that is disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
6. All subcontracts shall comply with Section 1-07.9, including the requirements to furnish all certificates and statements required by the Contract.
7. All subcontracts shall have a dispute resolution process incorporated for resolving issues between the parties to the subcontract.
8. Section 1-07.11 Requirements for Nondiscrimination - Item 11 from Section 1-07.11(2).
9. Section 1-08.1(3) Subcontractor Approval
10. Section 1-08.1(5) Restrictions on Subcontracting
11. Section 1-08.1(6) Removal of Subcontractors
12. Section 1-08.1(7)B Prompt Payment  
When incorporating this into subcontracts to which the Contractor is not a party, all duties, rights, and responsibilities of the Contractor shall be understood to adhere to the upper tier subcontractor; all duties, rights, and responsibilities of the first-tier subcontractor shall be understood to adhere to the lower-tier subcontractor.
13. Section 1-08.1(7)C Subcontractor Retainage  
When incorporating this into subcontracts to which the Contractor is not a party, all duties, rights, and responsibilities of the Contractor shall be understood to adhere to the upper tier subcontractor; all duties, rights, and responsibilities of the first-tier subcontractor shall be understood to adhere to the lower-tier subcontractor.
14. Section 1-08.1(7)D Contractor or Subcontractor Withholding  
Regarding the requirements for providing copies of notices to the Engineer, all communications from subcontractors at any tier shall be transmitted through higher tier subcontractors and the Contractor before going to the Engineer.
15. 1-08.1(7)E Contracting Agency Withholding Related to Prompt Pay  
Regarding the requirements for providing copies of notices to the Engineer, it shall be understood that all communications from subcontractors at any tier shall be transmitted through higher tier subcontractors and the Contractor before going to the Engineer.
16. 1-08.1(7)F Subcontract Disputes Resolution Process

#### **1-08.1(9) Submittal of Executed Subcontracts**

Before a subcontractor of any tier can perform Work, that subcontractor's executed subcontract shall be submitted to the Contracting Agency. In addition to any subcontract clauses required elsewhere in the Contract, each subcontract shall fully describe the Work to be performed. The executed subcontracts shall be submitted by email to the following email address for the region administering the Contract:

Eastern Region – ERRegionOEO@wsdot.wa.gov

North Central Region – NCRRegionOEO@wsdot.wa.gov

Northwest Region – NWRegionOEO@wsdot.wa.gov

Olympic Region – ORegionOEO@wsdot.wa.gov

South Central Region – SCRegionOEO@wsdot.wa.gov

Southwest Region – SWRegionOEO@wsdot.wa.gov

Washington State Ferries – FerriesOEO@wsdot.wa.gov

**1-08.1(10) Failure to Comply**

Failure by the Contractor to comply with the requirements of Section 1-08.1 may result in one or more of the following actions being taken against the Contractor:

1. Reflected in the Prime Contractor's Performance Evaluation.
2. Cancellation, termination, or suspension of the Contract, in whole or in part.
3. Sanctions as provided by the Contract or by law under applicable prompt payment statutes including RCW 39.04.250.
4. Suspension, revocation, or limitation of prequalification status as provided for in WAC 468-16 *et seq.*

**1-08.1(11) Payment**

Unless otherwise stated in Section 1-08.1, the Contractor shall be solely responsible for all costs related to complying with Section 1-08.1. Those costs shall be incidental to the respective Bid items.

**1-08.2 Assignment**

The Contractor shall not assign all or any part of the Work unless the Engineer approves in writing. The Engineer will not approve any proposed assignment that would relieve the original Contractor or Surety of responsibility under the Contract.

Money due (or that will become due) to the Contractor may be assigned. If given written notice, the Contracting Agency will honor such an assignment to the extent the law permits. But the assignment shall be subject to all setoffs, withholdings, and deductions required by law and the Contract.

**1-08.3 Progress Schedule****1-08.3(1) Progress Schedule Types**

When provided for in the proposal the Contractor shall submit a type B or type C progress schedule for acceptance. When no progress schedule is included in the proposal a type A progress schedule shall be submitted for acceptance.

**1-08.3(2) General Requirements**

The Contractor shall submit progress schedules and schedule updates to the Engineer for acceptance showing Work that complies with all time and order of Work requirements in the Contract. Scheduling terms and practices shall conform to the standards established in *Construction Planning and Scheduling, Second Edition*, published by the Associated General Contractors of America. Except for weekly look-ahead schedules, all schedules shall meet these General Requirements, and provide the following information:

1. Include all activities necessary to physically complete the project.
2. Show the planned order of Work activities in a logical sequence.
3. Show durations of Work activities in working days as defined in Section 1-08.5.
4. Show activities in durations that are reasonable for the intended Work.
5. Define activity durations in sufficient detail to evaluate the progress of individual activities on a daily basis.
6. Show the critical path.
7. Show the Physical Completion of all Work within the authorized Contract time. Total float belongs to the project and shall not be for the exclusive benefit of either party.

The Contracting Agency allocates its resources to a Contract based on the total working days allowed in the Contract. The Contracting Agency may accept a progress schedule indicating an early Physical Completion Date but cannot guarantee the Contracting

Agency's resources will be available to meet an accelerated schedule. No additional compensation will be allowed if the Contractor is not able to meet their accelerated schedule due to the unavailability of Contracting Agency's resources or for other reasons beyond the Contracting Agency's control.

If the Engineer determines that the progress schedule or a schedule update submitted in accordance with these specifications does not provide the required information, then the schedule will be returned to the Contractor for correction and resubmittal.

The Engineer's acceptance of schedules shall not transfer the Contractor's responsibilities to the Contracting Agency. The Contractor alone shall remain responsible for adjusting forces, equipment, and Work schedules to ensure completion of the Work within the time(s) specified in the Contract.

#### **1-08.3(2)A Type A Progress Schedule**

The Contractor shall submit a Type A progress schedule meeting the requirements of Section 1-08.3(2) and the following:

1. Schedule shall be submitted no later than 10 calendar days after the date the contract is executed, or some other mutually agreed upon submittal time.
2. The schedule may be a critical path method (CPM) schedule, bar chart, or other standard schedule format.

The Engineer will evaluate the Type A progress schedule and accept or return the schedule for corrections within 15 calendar days of receiving the submittal.

#### **1-08.3(2)B Type B Progress Schedule**

The Contractor shall submit a Type B progress schedule meeting the requirements of Section 1-08.3(2) and the following.

The Contractor shall submit the complete progress schedule depicting the entire project no later than 30 calendar days after the date the Contract is executed. The schedule shall be a critical path method (CPM) schedule developed by the precedence diagramming method (PDM). Restraints may be utilized but may not serve to change the logic of the network or the critical path. The schedule shall display at least the following information:

1. Contract Number and Title
2. Construction Start Date
3. Critical Path
4. Activity Description
5. Milestone Description
6. Activity Duration
7. Predecessor Activities
8. Successor Activities
9. Early Start (ES) and Early Finish (EF) for each activity
10. Late Start (LS) and Late Finish (LF) for each activity
11. Total Float (TF) and Free Float (FF) for each activity
12. Physical Completion Date
13. Data Date

Each time that a preliminary progress schedule, progress schedule, or schedule update is submitted, the Contractor shall provide the Engineer with an electronic copy (.XER or .XML file type extension) of that schedule. Each submitted progress and update schedule shall have a unique file name and date identifier. Regardless of the type of software

used, the schedule data provided to the Engineer shall be submitted to the Engineer in a compatible format of Primavera Project Manager Enterprise.

All calendars used shall be created as project calendars, not global or resource calendars. If multiple calendars are applied to the progress schedule, the Contractor shall submit a written narrative describing each one's purpose.

The Engineer will evaluate the progress schedule and accept or return the schedule for corrections within 15 calendar days of receiving the submittal.

#### **1-08.3(2)C Type C Progress Schedule**

In addition to the requirements of Section 1-08.3(2) and Section 1-08.3(2)B, the following shall apply for Type C schedules.

Type C progress schedules shall display at least the following additional information:

1. A time scaled logic diagram.
2. Activities for traffic detours and closures.
3. Milestones for required delivery of Contracting Agency furnished materials, if any.
4. Activities for Contracting Agency furnished traffic control resources, if any.
5. Activities for fabrication of materials longer than 90 calendar days lead time.
6. Fixed constraints shall be identified on the activity listing, supplemented with a written narrative describing why the constraint exists.
7. Milestones for interim or stage completion dates.
8. Activities for scheduled outages on illumination systems, ITS systems, traffic signal systems and other electrical service outages.
9. Nighttime activities shall be so coded.
10. Activities for all submittals requiring Contracting Agency review, including the allowable review duration.

#### **1-08.3(2)D Preliminary Progress Schedules**

The Contractor shall submit a preliminary progress schedule meeting the requirements of Section 1-08.3(2), Section 1-08.3(2)B, and the following:

1. The preliminary progress schedule shall be submitted no later than 10 calendar days after the date the Contract is executed for all Type B and Type C progress schedules.
2. The preliminary progress schedule shall comply with all of these requirements and the requirements of Section 1-08.3(2), except that it may be limited to only those activities occurring within the first 60 working days of the project. The preliminary progress schedule shall show the critical path.

#### **1-08.3(2)E Weekly Look-Ahead Schedule**

Each week that Work will be performed, the Contractor shall submit a weekly look-ahead schedule showing the Contractor's and all subcontractors' proposed Work activities for the next three weeks or other agreed upon duration. The weekly look-ahead schedule shall include the description, duration and sequence of Work, along with the planned hours of Work. This schedule may be a network schedule, bar chart, or other standard schedule format. The weekly look-ahead schedule shall be submitted to the Engineer by the midpoint of the week preceding the scheduled Work or some other mutually agreed upon submittal time.

#### **1-08.3(3) Schedule Updates**

The Engineer may request a schedule update when one or more of the following events occurs:

1. The project has experienced a change that affects the critical path.
2. The sequence of Work is changed from that in the approved schedule.
3. The project is significantly delayed.
4. Upon receiving an extension of Contract time.

The Contractor shall submit a progress schedule update within 15 calendar days of receiving a written request, or when an update is required by other provisions of the Contract. A "significant" delay in time is defined as 10 working days or 10 percent of the original Contract time, whichever is greater.

In addition to the other requirements of this section, schedule updates shall reflect the following information:

1. The actual duration and sequence of as-constructed Work activities, including changed Work.
2. Approved time extensions.
3. Construction delays or other conditions that affect the progress of the Work.
4. Modifications to the as-planned sequence or duration of remaining activities.
5. The Physical Completion of all remaining Work in the remaining Contract time.

Unresolved requests for time extensions shall be reflected in the schedule update by assuming no time extension will be granted, and by showing the effects to follow-on activities necessary to physically complete the project within the currently authorized time for completion.

#### **1-08.3(4) Vacant**

#### **1-08.3(5) Payment**

All costs for providing type A progress schedules and weekly look-ahead schedules are considered incidental to other items of Work in the Contract.

Regardless of schedule type, no payment will be made for schedule updates that are required due to the Contractors operations. Schedule updates required by events that are attributed to the actions of the Contracting Agency will be paid for in accordance with Section 1-09.4.

Payment will be made for each of the following Bid Items that are included in the Proposal:

"Type \_\_\_\_ Progress Schedule", lump sum.

The lump sum price shall be full pay for all costs for furnishing the progress schedule and preliminary progress schedule.

Payment of 80 percent of the lump sum price will be made upon acceptance of the progress schedule.

Payment will be increased to 100 percent of the lump sum price upon completion of 80 percent of the original total Contract Award amount.

#### **1-08.4 Prosecution of Work**

The Contractor shall begin Work within 21 calendar days from the date of execution of the Contract by the Contracting Agency, unless otherwise approved in writing. The Contractor shall diligently pursue the Work to the Physical Completion Date within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the Work within the time(s) specified in the Contract.

When shown in the Plans, the first order of work shall be the installation of high visibility fencing to delineate all areas for protection or restoration, as described in the Contract. Installation of high visibility fencing adjacent to the roadway shall occur after the placement of all necessary signs and traffic control devices in accordance with Section 1-10.1(2). Upon construction of the fencing, the Contractor shall request the Engineer to inspect the fence. No other work shall be performed on the site until the

Contracting Agency has accepted the installation of high visibility fencing, as described in the Contract.

#### **1-08.5 Time for Completion**

The Contractor shall complete all physical Contract Work within the number of "working days" stated in the Contract Provisions or as extended by the Engineer in accordance with Section 1-08.8. Every day will be counted as a "working day" unless it is a nonworking day or an Engineer determined unworkable day. A nonworking day is defined as a Saturday, a Sunday, a whole or half day on which the Contract specifically prohibits Work on the critical path of the Contractor's approved progress schedule, or one of these holidays: January 1, the third Monday of January, the third Monday of February, Memorial Day, June 19, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. When any of these holidays fall on a Sunday, the following Monday shall be counted a nonworking day. When the holiday falls on a Saturday, the preceding Friday shall be counted a nonworking day. The days between December 25 and January 1 will be classified as nonworking days.

An unworkable day is defined as a half or whole day the Engineer declares to be unworkable because of weather or conditions caused by the weather that prevents satisfactory and timely performance of the Work shown on the critical path of the Contractor's approved progress schedule. Other conditions beyond the control of the Contractor may qualify for an extension of time in accordance with Section 1-08.8.

Contract time shall begin on the first working day following the 21st calendar day after the date the Contracting Agency executes the Contract. If the Contractor starts Work on the project at an earlier date, then Contract time shall begin on the first working day when on-site Work begins. The Contract Provisions may specify another starting date for Contract time, in which case, time will begin on the starting date specified.

Each working day shall be charged to the Contract as it occurs, until the Contract Work is physically complete. If Substantial Completion has been granted and all the authorized working days have been used, charging of working days will cease. By each Thursday at 5:00 P.M., the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the Contract the week before; (2) specified for the Physical Completion of the Contract; and (3) remaining for the Physical Completion of the Contract. The statement will also show the nonworking days and all half or whole days the Engineer declares as unworkable. The statement will be identified as a Written Determination by the Engineer. If the Contractor does not agree with the Written Determination of working days, the Contractor shall pursue the protest procedures in accordance with Section 1-04.5. By failing to follow the procedures of Section 1-04.5, the Contractor shall be deemed as having accepted the statement as correct.

The Engineer will give the Contractor written notice of the Physical Completion Date for all Work the Contract requires. That date shall constitute the Physical Completion Date of the Contract but shall not imply the Secretary's acceptance of the Work or the Contract.

The Engineer will give the Contractor written notice of the Completion Date of the Contract after all the Contractor's obligations under the Contract have been performed by the Contractor. The following events must occur before the Completion Date can be established:

1. The physical Work on the project must be complete; and
2. The Contractor must furnish all documentation required by the Contract and required by law, to allow the Contracting Agency to process final acceptance of the Contract. The following documents must be received by the Engineer prior to establishing a Completion Date:
  - a. Certified Payrolls
  - b. Material Acceptance Certification Documents
  - c. Monthly Reports in DMCS of the amounts paid including the final payment confirmation to all firms required by Section 1-08.1(7)A
  - d. Final Contract Voucher Certification
  - e. Copies of the approved "Affidavit of Prevailing Wages Paid" for the Contractor and all subcontractors
  - f. A copy of the Notice of Termination sent to the Washington State Department of Ecology (Ecology); the elapse of 30 calendar days from the date of receipt of the Notice of Termination by Ecology; and no rejection of the Notice of Termination by Ecology. This requirement will not apply if the Construction Stormwater General Permit is transferred back to the Contracting Agency in accordance with Section 8-01.3(16).

#### 1-08.6 Suspension of Work

The Engineer may order suspension of all or any part of the Work if:

1. Unsuitable weather prevents satisfactory and timely performance of the Work; or
2. The Contractor does not comply with the Contract; or
3. It is in the public interest.

When ordered by the Engineer to suspend or resume Work, the Contractor shall do so immediately.

If the Work is suspended for reason (1) above, the period of Work stoppage will be counted as unworkable days. But if the Engineer believes the Contractor should have completed the suspended Work before the suspension, all or part of the suspension period may be counted as working days. The Engineer will set the number of unworkable days (or parts of days) by deciding how long the suspension delayed the entire project.

If the Work is suspended for reason (2) above, the period of Work stoppage will be counted as working days. The lost Work time, however, shall not relieve the Contractor from the Contract responsibility.

If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the Contracting Agency in the administration of the Contract, or by failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), the Engineer will make an adjustment for increases in the cost or time for the performance of the Contract (excluding profit) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for suspensions, delays, or interruptions if (1) the performance would have been suspended, delayed, or interrupted by other causes, including the fault or negligence of the Contractor, or (2) an equitable adjustment is provided for or excluded under another provision of the Contract.

If the Contractor believes that the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time and such suspension, delay, or interruption is the responsibility of the Contracting Agency, the Contractor shall immediately submit a written notice of protest to the Engineer within 14 calendar days of the start of the suspension delay or interruption requesting an equitable adjustment. No adjustment shall be allowed for costs incurred more than 14 calendar days before the date the Engineer

receives the Contractor's written notice of protest. The Engineer will issue a Written Determination to the Contractor and adjust payment and time in accordance with this section, if warranted. If the Contractor does not agree with the Written Determination, then the Contractor shall pursue the protest procedures in accordance with Section 1-04.5. The Contractor shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit the Engineer to have access to those records and any other records as may be deemed necessary by the Engineer to assist in evaluating the protest.

The Engineer will determine if an equitable adjustment in cost or time is due as provided in this section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in Section 1-09.4, provided that no profit of any kind will be allowed on increases in costs caused by the suspension, delay, or interruption.

Request for extensions of time will be evaluated in accordance with Section 1-08.8.

The Engineer's determination as to whether an adjustment should be made will be final as provided in Section 1-05.1.

By failing to follow procedures of Section 1-04.5, the Contractor completely waives claims for protested Work.

### **1-08.7 Maintenance During Suspension**

Before and during suspensions (as described in Section 1-08.6) the Contractor shall protect the Work from damage or deterioration. Suspension shall not relieve the Contractor from anything the Contract requires unless this section states otherwise.

At no expense to the Contracting Agency, the Contractor shall provide through the construction area safe, smooth, and unobstructed roadways and pedestrian access routes for public use during the suspension (as required in Section 1-07.23 or the Special Provisions). This may include a temporary road, alternative pedestrian access route or detour.

If the Engineer determines that the Contractor failed to pursue the Work diligently before the suspension, or failed to comply with the Contract or orders, then the Contractor shall maintain the temporary Roadway in use during suspension. In this case, the Contractor shall bear the maintenance costs. If the Contractor fails to maintain the temporary Roadway, the Contracting Agency will do the Work and deduct all resulting costs from payments due to the Contractor.

If the Engineer determines that the Contractor has pursued the Work diligently before the suspension, then the Contracting Agency will maintain the temporary Roadway (and bear its cost). This Contracting Agency-provided maintenance work will include only routine maintenance of:

1. The Traveled Way, Auxiliary Lanes, Shoulders, and detour surface;
2. Roadway drainage along and under the traveled Roadway or detour; and
3. All barricades, signs, and lights needed for directing traffic through the temporary Roadway or detour in the construction area.

The Contractor shall protect and maintain all other Work in areas not used by traffic. All costs associated with protecting and maintaining such Work shall be the responsibility of the Contractor.

After any suspension during which the Contracting Agency has done the routine maintenance, the Contractor shall accept the traveled Roadway or detour as is when Work resumes. The Contractor shall make no claim against the Contracting Agency for the condition of the Roadway or detour.

After any suspension, the Contractor shall resume all responsibilities the Contract assigns for the Work.

### 1-08.8 Extensions of Time

The Contractor shall submit requests for time extensions to the Engineer in writing no later than 14 calendar days after the delay occurs. No adjustment shall be allowed for contract time incurred more than 14 calendar days prior to the date the Engineer receives the Contractor's written request of time extension. The requests for time extension shall be limited to the effect on the critical path of the Contractor's approved schedule attributable to the change or event giving rise to the request.

The Engineer may request additional information regarding the request, to ascertain the basis and amount of the time requested. In addition, the Engineer may request, and the Contractor shall provide within 14 calendar days after Engineer's request, an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the Work or by using other reasonable alternatives. Contractor may request additional time to respond to the supplemental information requested by the Engineer. If a request combined with previous extension requests, equals 20 percent or more of the original Contract time then the Contractor's letter of request must bear consent of Surety. In evaluating requests for time extension, the Engineer will consider how well the Contractor used the time from Contract execution up to the point of the delay and the effect the delay had on any completion times included in the Special Provisions. The Engineer will evaluate and issue a Written Determination within 21 calendar days of receiving the request or supplemental information.

The authorized time for Physical Completion will be extended for a period equal to the time the Engineer determines the Work was delayed because of:

1. Adverse weather causing the time requested to be unworkable, provided that the Engineer had not already declared the time to be unworkable and the Contractor has filed a written protest according to Section 1-08.5.
2. Actions, neglect, or default of the Contracting Agency, its officers, or employees, or of other contractors employed by the Contracting Agency.
3. Fire or other casualty for which the Contractor is not responsible.
4. Strikes.
5. Other conditions for which these Specifications permit time extensions such as:
  - a. In Section 1-04.4 if a change increases the time to do any of the Work including unchanged Work.
  - b. In Section 1-04.5 if increased time is part of a protest that is found to be a valid protest.
  - c. In Section 1-04.7 if a changed condition is determined to exist that caused a delay in completing the Contract.
  - d. In Section 1-05.3 if the Contracting Agency does not approve properly prepared and acceptable drawings within the time defined in Section 1-05.3.
  - e. In Section 1-07.13 if the performance of the Work is delayed as a result of damage by others.
  - f. In Section 1-07.17 if the removal or the relocation of a utility by forces other than the Contractor caused a delay.
  - g. In Section 1-07.24 if a delay results from all the Right of Way necessary for the construction not being purchased and the Special Provisions does not make specific provisions regarding unpurchased Right of Way.
  - h. In Section 1-07.28(4) if the Railroad Company changes railroad restrictions.

- i. In Section 1-08.6 if the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of the Contracting Agency.
  - j. In Section 1-09.11 if a dispute or claim also involves a delay in completing the Contract and the dispute or claim proves to be valid.
  - k. In Section 1-09.6 for Work performed on a force account basis.
6. If the actual quantity of Work performed for a Bid item was more than the original Plan quantity and increased the duration of a critical activity. Extensions of time will be limited to only that quantity exceeding the original Plan quantity.
  7. Exceptional causes not specifically identified in items 1 through 6, provided the request letter proves the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

Working days added to the Contract by time extensions, when time has overran, shall only apply to days on which liquidated damages or direct engineering have been charged, such as the following:

If Substantial Completion has been granted prior to all of the authorized working days being used, then the number of days in the time extension will eliminate an equal number of days on which direct engineering charges have accrued. If the Substantial Completion Date is established after all of the authorized working days have been used, then the number of days in the time extension will eliminate an equal number of days on which liquidated damages or direct engineering charges have accrued.

The Engineer will not allow a time extension for causes listed above if it resulted from the Contractor's default, collusion, action or inaction, or failure to comply with the Contract.

The Contracting Agency considers the time specified in the Special Provisions as sufficient to do all the Work. For this reason, the Contracting Agency will not grant a time extension for:

1. Failure to obtain all materials and workers unless the failure was the result of exceptional causes as provided above in Subsection 7;
2. Changes, protests, increased quantities, or changed conditions (Section 1-04) that do not delay the completion of the Contract or prove to be an invalid or inappropriate time extension request;
3. Delays caused by nonapproval of drawings or plans as provided in Section 1-05.3;
4. Rejection of faulty or inappropriate equipment as provided in Section 1-05.9;
5. Correction of thickness deficiency as provided in Section 5-05.5(1)B.

If the Contractor does not agree with the Engineer's Written Determination, the Contractor shall pursue the protest procedures in accordance with Section 1-04.5. By failing to follow the procedures of Section 1-04.5, the Contractor completely waives claims for protested Work.

#### **1-08.9 Liquidated Damages**

Time is of the essence of the Contract. Delays inconvenience the traveling public, obstruct traffic, interfere with and delay commerce, and increase risk to Highway users. Delays also cost tax payers undue sums of money, adding time needed for administration, engineering, inspection, and supervision.

Accordingly, the Contractor agrees:

1. To pay the liquidated damages identified in the Special Provisions for each working day beyond the number of working days established for Physical Completion, and
2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

When the Contract Work has progressed to the extent that the Contracting Agency has full use and benefit of the facilities, both from the operational and safety standpoint, all the initial plantings are completed and only minor incidental Work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains to physically complete the total Contract, the Engineer may determine the

Contract Work is substantially complete. The Engineer will notify the Contractor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, liquidated damages identified in the Special Provisions will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Contractor shall complete the remaining Work as promptly as possible. Upon request by the Engineer, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

Liquidated damages will not be assessed for days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

### **1-08.10 Termination of Contract**

#### **1-08.10(1) Termination for Default**

The Contracting Agency may terminate the Contract upon the occurrence of one or more of the following events:

1. If the Contractor fails to supply sufficient skilled workers or suitable materials or equipment;
2. If the Contractor refuses or fails to prosecute the Work with such diligence as will ensure its Physical Completion within the original Physical Completion time plus extensions of time which may have been granted to the Contractor by change order;
3. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of a debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within 15 calendar days of receipt of a request for assurance from the Contracting Agency;
4. If the Contractor disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
5. If the Contractor disregards the authority of the Contracting Agency;
6. If the Contractor performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work; or
7. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract.

Once the Contracting Agency determines that sufficient cause exists to terminate the Contract, written notice shall be given to the Contractor and its Surety indicating that the Contractor is in breach of the Contract and that the Contractor is to remedy the breach within 15 calendar days after the notice is sent. In case of an emergency such as potential damage to life or property, the response time to remedy the breach after the notice may be shortened. If the remedy does not take place to the satisfaction of the Contracting Agency, the Engineer may, by serving written notice to the Contractor and Surety either:

1. Transfer the performance of the Work from the Contractor to the Surety; or
2. Terminate the Contract and at the Contracting Agency's option prosecute it to completion by contract or otherwise. Extra costs or damages to the Contracting Agency shall be deducted from money due or coming due to the Contractor under the Contract.

If the Engineer elects to pursue one remedy, it will not bar the Engineer from pursuing other remedies on the same or subsequent breaches.

Upon receipt of a notice that the Work is being transferred to the Surety, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons satisfactory to the Engineer to finish the Work and provide the materials without termination of the Contract. Such employment shall not relieve the Surety of its obligations under the Contract and the bond. If there is a transfer to the Surety, payments on estimates covering Work subsequent to the transfer shall be made to the extent permitted under law to the Surety or its agent without any right of the Contractor to make any claim.

If the Engineer terminates the Contract or provides such sufficiency of labor or materials as required to complete the Work, the Contractor shall not be entitled to receive any further payments on the Contract until all the Work contemplated by the Contract has been fully performed. The Contractor shall bear any extra expenses incurred by the Contracting Agency in completing the Work, including all increased costs for completing the Work, and all damages sustained, or which may be sustained, by the Contracting Agency by reason of such refusal, neglect, failure, or discontinuance of Work by the Contractor. If liquidated damages are provided in the Contract, the Contractor shall be liable for such liquidated damages until such reasonable time as may be required for Physical Completion of the Work. After all the Work contemplated by the Contract has been completed, the Engineer will calculate the total expenses and damages for the completed Work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the Contracting Agency to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the Surety shall be jointly and severally liable to the Contracting Agency and shall pay the difference to the Contracting Agency on demand.

In exercising the Contracting Agency's right to prosecute the Physical Completion of the Work, the Contracting Agency shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. In the event that the Contracting Agency takes Bids for remedial Work or Physical Completion of the project, the Contractor shall not be eligible for the Award of such Contracts.

In the event the Contract is terminated, the termination shall not affect any rights of the Contracting Agency against the Contractor. The rights and remedies of the Contracting Agency under the Termination Clause are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the Contracting Agency will not release the Contractor from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Termination for Public Convenience in Section 1-08.10(2). This shall include termination for default because of failure to prosecute the Work, and the delay was found to be excusable under the provisions of Section 1-08.8.

**1-08.10(2) Termination for Public Convenience**

The Engineer may terminate the Contract in whole, or from time to time in part, whenever:

1. The Contractor is prevented from proceeding with the Work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
2. The Contractor is prevented from proceeding with the Work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
3. The Engineer determines that such termination is in the best interests of the Contracting Agency.

**1-08.10(3) Termination for Public Convenience Payment Request**

After receipt of Termination for Public Convenience as provided in Section 1-08.10(2), the Contractor shall submit to the Contracting Agency a request for costs associated with the termination. The request shall be prepared in accordance with the claim procedures outlined in Sections 1-09.11 and 1-09.12. The request shall be submitted promptly but in no event later than 90 calendar days from the effective date of termination.

The Contractor agrees to make all records available to the extent deemed necessary by the Engineer to verify the costs in the Contractor's payment request.

**1-08.10(4) Payment for Termination for Public Convenience**

Whenever the Contract is terminated in accordance with Section 1-08.10(2), payment will be made in accordance with Section 1-09.5 for the actual Work performed.

If the Contracting Agency and the Contractor cannot agree as to the proper amount of payment, then the matter will be resolved as outlined in Section 1-09.13 except that, if the termination occurs because of the issuance of a restraining order as provided in Section 1-08.10(2), the matter will be resolved through mandatory and binding arbitration as described in Sections 1-09.13(3)A and B, regardless of the amount of the claim.

**1-08.10(5) Responsibility of the Contractor and Surety**

Termination of a Contract shall not relieve the Contractor of any responsibilities under the Contract for Work performed. Nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Contract Bond or retainage bond for Work performed.

**1-09 Measurement and Payment****1-09.1 Measurement of Quantities**

In measuring all acceptably completed Bid items of Work, the Engineer will:

1. Use United States standard measure;
2. Make all measurements as described in this section, unless individual Specifications require otherwise;
3. Follow methods generally recognized as conforming to good engineering practice;
4. Conform to the usual practice of the Contracting Agency by carrying measurements and computations to the proper significant figure or fraction of units for each item; and
5. Measure horizontally or vertically (unless otherwise specified).

The terms listed below shall be defined as follows in all measurements under this section:

“Lump Sum” (when used as an item of payment): complete payment for the Work described for that item in the Contract.

“Gauge” (in measurement of plates): the U.S. Standard Gauge.

“Gauge” (in measurement of galvanized sheets used to manufacture corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing): that specified in AASHTO M 36, M 167, M 196, M 197, or M 219.

“Gauge” (in measurement of wire): that specified in AASHTO M 336M.

“Ton”: 2,000 pounds of avoirdupois weight.

Items of payment that have “Lump Sum” or “Force Account” in the Bid item of Work shall have no specific unit of measurement requirement.

For each basis of measurement listed below, the Engineer will use the method of measurement described. For Bid items or materials measured on the basis of:

**Hour** – Measured for each hour that Work is actually performed. Portions of an hour will be rounded up to a half hour.

**Square Yard or Square Foot** – The measurement shall be a calculation from the neat dimensions shown in the Plans or as altered by the Engineer. If there is an exception within the measured area where the item of Work is not performed (such as a drainage vault within a measured sidewalk) and if the exception area is greater than 9 square feet, then the area of the exception will be subtracted from the payment area calculated from the neat dimensions.

**Linear Foot** – A length measured along an element unless the Plans require otherwise.

**Weight** – Weighed as required in Section 1-09.2.

**Volume** (of excavation and embankment) – Measured by the average-end-area method or by the finite element analysis method utilizing digital terrain modeling techniques. All or some computations may be based on ground elevations and other data derived photogrammetrically. The Engineer may correct for curvature.

**Volume** (in the hauling vehicle) – Measured at the point of delivery. Hauling vehicles may be of any size or type the Engineer approves provided that the body is of such shape that the actual contents may be readily and accurately determined. If the Engineer requires, the Contractor shall level loads at the delivery point to facilitate measurement.

For each item listed below, the Engineer will use the method of measurement described.

**Structures** – Measured on the neat lines shown in the Plans or as altered by the Engineer. When a complete Structure or structural unit is specified as the unit of measurement, the unit shall include all fittings and accessories.

**Timber** – Measured by the thousand board feet (MBM) actually used in the Structure. Measurements will be based on nominal widths and thicknesses and the extreme length of each piece.

**Standard Manufactured Items** (fence, wire, plates, rolled shapes, pipe conduit, etc., when specified) – Measured by the manufacturer's identification of gage, unit weight, section dimension, etc. The Engineer will accept manufacturing tolerances set by each industry unless cited Specifications require more stringent tolerances.

**Cement** – Measured by the pound, ton, or sack. A sack shall be 94 pounds.

**Asphalt** – Measured by the gallon or ton. If measured by gallon, measurement will be made at 60 F (or will be corrected to the volume at 60 F in keeping with ASTM D1250). If shipped by rail, truck, or transport, measurement will be by net certified scale masses or certified volumes (corrected for material lost en route or not actually incorporated into the Work).

No measurement will be made for:

1. Work performed or materials placed outside lines shown in the Plans or set by the Engineer;
2. Materials wasted, used, or disposed of in a manner contrary to the Contract;
3. Rejected materials (including those rejected after placement if the rejection resulted from the Contractor's failure to comply with the Contract);
4. Hauling and disposing of rejected materials;
5. Material remaining on hand after the Work is completed, except as provided in Sections 1-09.5 and 1-09.10; or
6. Other Work or material contrary to the Contract Provisions.

## 1-09.2 Weighing Equipment

### 1-09.2(1) General Requirements for Weighing Equipment

Unless specified otherwise, all construction materials to be proportioned or measured and paid for by weight shall be weighed on a scale.

**Scales** – Scales shall:

1. Be accurate to within 0.5 percent of the correct weight throughout the range of use;
2. Not include spring balances;
3. Include beams, dials, or other reliable readout equipment;
4. Be built to prevent scale parts from binding, vibrating, or being displaced and to protect all working parts from falling material, wind, and weather; and
5. Be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors and with knife edges given extra care and protection.

**Scale Operations** – "Contractor-provided scale operations" are defined as operations where a scale is set up by the Contractor specifically for the project and most, if not all, material weighed on the scale is utilized for Contract Work. In this situation, the Contractor shall provide a person to operate the project scale, generate E-tickets, perform scale checks and prepare reports.

"Commercial scale operations" include the use of established scales used to sell materials to the public on a regular basis. In addition, for the purposes of this Specification, all batch, hopper, and belt scales are considered to be commercial scales. When a commercial scale is used as the project scale, the Contractor may utilize a commercial scale operator provided it is at no additional cost to the Contracting Agency.

In addition, the Contractor shall ensure that:

1. The Engineer is allowed to observe the weighing operation and check the daily scale weight record;
2. Scale verification checks are performed at the direction of the Contracting Agency (see Section 1-09.2(5));
3. Several times each day, the scale operator records and makes certain the platform scale balances and returns to zero when the load is removed; and
4. Test results and daily summary reports for each day's hauling operations are provided to the Engineer daily.

**Trucks and E-Tickets** – Each truck to be weighed shall bear a unique identification number. This number shall be legible and in plain view of the scale operator. The Contracting Agency will provide item quantity tickets for scales that are not self-printing. The Contractor shall provide E-tickets for all weighed materials. All E-tickets shall, at a minimum, contain the following information:

1. Date of haul;
2. Contract number;
3. Contract unit Bid item;
4. Unit of measure;
5. Identification number of hauling vehicle; and
6. Weight delivered:
  - a. Net weight in the case of batch and hopper scales.
  - b. Gross weight, tare (a.m. and p.m. minimum) and net weight in the case of platform scales (tare may be omitted if a tare beam is used).
  - c. Approximate load out weight in the case of belt conveyor scales.

E-tickets shall be uploaded to the designated site so that they can be accessed by the material receiver at the material delivery point. The material delivery point is defined as the location where the material is incorporated into the permanent Work. The Contractor's representative shall make report summaries available to the Engineer's designated receiver, not later than the end of shift, for reconciliation. E-tickets for loads not verified as delivered will receive no pay.

#### **1-09.2(1)A Electronic Delivery Management System (E-Ticketing)**

No fewer than 30 days prior to delivery or placement activities, the Contractor shall submit a Type 2 Working Drawing to the Engineer detailing all E-Ticketing Systems (ETS) used to provide the required information. It is recognized that multiple systems may be used to accommodate individual Contractors and Material supplier capabilities. The Working Drawings shall explain how partial loads will be tracked, and include contingency plans for lost internet connectivity and/or phone reception. The Contractor shall provide on-site technical assistance and training during the initial setup to all parties requiring access to the e-ticket information. The Contractor shall provide ETS support as necessary during the Work to ensure effective ongoing utilization.

#### **1-09.2(1)A1 Equipment**

The Contractor shall demonstrate that the ETS can provide the following:

1. The ETS shall generate an E-ticket in PDF format meeting the requirements of Section 1-09.2(1)A2. The information shall be immediately uploaded to a designated site so the information can be accessed by the Inspector located at the material delivery site.

2. The ETS shall be accessible by real-time monitoring with a mobile communication device such as a tablet or smartphone.

The Material Source site (point of load out) shall have a reliable, stable internet connection, with a local Wi-Fi device (hot spot) in areas with poor or no cell service.

The Contractor shall install and operate equipment in accordance with their accepted ETS. The Type 2 Working Drawing shall identify an alternative method for manually capturing and electronically delivering data if internet access and/or cell phone service is temporarily unavailable at the load out site.

#### **1-09.2(1)A2 E-Tickets**

The E-Tickets must provide, at a minimum, the information required in Section 1-09.2(1) for truck weight measurement and Section 6-02.3(5)B for concrete delivery.

#### **1-09.2(1)A3 Daily Summary Report**

The Contractor shall provide to the Engineer a means in which to gather report summaries using mobile communication devices. The following summary of information shall be provided to the Engineer electronically, in a file format that cannot be edited, at the end of the days hauling operation or as agreed to by the Project Engineer. The summary report shall include:

1. For each Material:
  - a. List of Individual Loads including:
    - i. Contractor Name and Material Producer
    - ii. Project Number and County
    - iii. Truck Number
    - iv. Net Weight for Payment (nearest 0.1 tons) or volume for payment
    - v. Date Placed
    - vi. Time Loaded
2. For each Bid Item:
  - a. Total Quantity for Payment (weight or volume)

#### **1-09.2(2) Specific Requirements for Batching Scales**

Each batching scale shall be designed to support a weighing container. The arrangement shall make it convenient for the operator to remove material from the weighing container while watching readout devices. A weighing container mounted on a platform scale shall have its center of gravity directly over the platform centerline. Batching scales used for concrete or hot mix asphalt shall not be used for batching other materials.

Readout devices used for batching or hopper scales shall be marked at intervals evenly spaced throughout and shall be based on the scale's nominal rated capacity. These intervals shall not exceed one-tenth of 1 percent of the nominal rated capacity. Before use at a new site and then at 6-month intervals, all batching and hopper scales shall be: approved under rules of the Weights and Measures Section of the Washington State Department of Agriculture or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In each case, the Contractor shall provide the Engineer with a copy of the final test results.

#### **1-09.2(3) Specific Requirements for Platform Scales**

Each platform scale shall be able to weigh the entire hauling vehicle or combination of connected vehicles at one time. No part of the vehicle or vehicle combination will be permitted off the platform as it is weighed. A tare weight shall be taken of each hauling vehicle at least once daily.

Platform scales shall be installed and maintained with the platform level and with rigid bulkheads at each end to prevent binding or shifting. The readout device shall be marked at intervals of no more than 40 pounds. Test records shall show results to the nearest 20 pounds. During weighing operations, weights shall be read and recorded to the nearest 100 pounds. Before use at a new site and then at 6-month intervals, platform scales shall be: approved under rules of the Washington State Department of Agriculture's Weights and Measures Section, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In each case, the Contractor shall provide the Engineer with a copy of the final test results.

#### 1-09.2(4) Specific Requirements for Belt Conveyor Scales

The Engineer may approve conveyor-belt weighing of untreated materials if the method and device meet all general requirements for weighing equipment. The recording tape, odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and the Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook No. 44, except where these Specifications modify those requirements.

A static load test shall be made: each day after the belt-conveyor has run continuously for about 30 minutes, and again, immediately after the air temperature changes significantly. If the static load test reveals a need for adjustment, the Contractor shall perform a chain test. The Contractor shall make the computation of the test chain calibration, the calibration procedures and results, and related records available for the Engineer's review. The test chain shall be clearly marked with its calibration, carried in a suitable container, and kept immediately available for testing.

#### 1-09.2(5) Measurement

**Scale Verification Checks** – The Engineer will verify the accuracy of each batch, hopper, or platform scale. Verification checks for “commercial scale operations” will be at the option of the Engineer. Verification checks for “Contractor-provided scale operations” will be twice per project per year with one check near the beginning of the scale utilization and one near the end of scale utilization.

Verification checks may not be routinely conducted for weighed material, whose proposal quantity multiplied by the unit Bid price, has a value less than \$20,000.

The verification will consist of one of the following methods and be at the Contractor's option:

1. Weigh a loaded truck on a separate certified platform scale designated by the Contractor, for the purpose of scale verification.
2. Weigh a vehicle that weighs at least 10,000 pounds on a separate certified scale and then check the project scale with it.
3. Establish a certified fixed load weighing at least 10,000 pounds as a check-weight. The certification shall consist of an affidavit affirming the correct weight of the fixed load.

Should the scale verification check reveal a weight difference of more than 0.5 percent, a second scale verification check shall be performed immediately. If the weight differences of both comparison checks exceed the 0.5-percent limit and the scale has been overweighing, the Contractor shall immediately stop weighing and the scale shall be recertified at the Contractor's expense. If the weight difference of both comparison checks exceed the 0.5 percent limit and the scale is underweighing, it shall be adjusted immediately. Contractor will not be compensated for resulting losses from under weighing.

**Belt Scales** – To test the accuracy of a belt-conveyor scale, the Contractor shall weigh five or more payloads from sequential hauling units and compare these weights with weights of the same payloads taken on a separate certified platform scale. If the test results fluctuate, the Engineer may require more than five check loads. Conveyor weights will be based on tonnage values taken from the sealed odometer at the beginning and end of each check period.

If scale verification checks show the scale has been under weighing, it shall be adjusted immediately. The Contractor shall not be compensated for resulting losses from under weighing.

If scale verification checks show the scale has been overweighing, its operation will cease immediately until adjusted.

### **1-09.2(6) Payment**

Unless specified otherwise, the Contracting Agency will pay for no materials received by weight unless they have been weighed as required in this section or as required by another method the Engineer has approved in writing.

The Contractor shall not be compensated for resulting losses from under weighing that is revealed by scale verification checks.

If scale verification checks reveal that the scale is overweighing, then payment for all material weighed since the last valid scale verification check will be adjusted. The Contracting Agency will calculate the combined weight of all materials weighed after the last verification check showing accurate results. This combined weight will then be reduced for payment by the percentage of scale error that exceeds 0.5 percent unless the Contractor demonstrates to the satisfaction of the Engineer that the defect in the scale was present for a lesser period of time.

Unit Contract prices for the various pay items of the project cover all costs related to weighing and proportioning materials for payment. These costs include but are not limited to:

1. Furnishing, installing, certifying, and maintaining scales;
2. Providing a weigher to operate a Contractor-provided scale;
3. Providing a weigher to operate a commercial scale, if necessary;
4. Providing self-printing tickets, if necessary;
5. Rerouting a truck for verification weighing;
6. Assisting the Engineer with scale verification checks;
7. Other costs associated with meeting the requirements of this section.

All costs to comply with this Section, unless otherwise stated, are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the Bid prices of the Contract.

### **1-09.3 Scope of Payment**

The payment provided for in the Contract shall be full payment to the Contractor for:

1. Furnishing all materials and performing all Work under the Contract (including changes in the work, materials, or Plans) in a complete and acceptable manner;
2. All risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the work; and
3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract.

The payment of an estimate or retained percentage shall not relieve the Contractor of the obligation to correct defective Work or materials.

Unless the Plans and Special Provisions provide otherwise, the unit Contract prices for the various Bids items shall be full payment for all labor, materials, supplies, equipment, tools, and all other things required to completely incorporate the item into the Work as though the item were to read "In Place".

If the "Payment" clause in the Specifications, for an item included in the Proposal, covers and considers all Work and material essential to that item, then the Work or materials will not be measured or paid for under any other item that may appear elsewhere in the Proposal or Specifications.

Certain payment items appearing in these Specifications contain a fill in indicated by an underbar at the end or within the Payment Item. The Plans and Proposal will include additional information to fill in the underbar, such as:

1. The words "For Structure", "For Concrete Barrier", "For Bridge", etc., with the intent of clarifying specific use of the item; or
2. The words "Site (Site Designation)", with the intent of clarifying where a specific item of Work is to be performed.
3. Words indicating the type of product to be used.

Modification of payment items in this manner shall in no way change the intent of the Specifications relating to these items.

#### **1-09.4 Equitable Adjustment**

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
  - a. Unit prices; or
  - b. Other agreed upon prices;
2. If the parties cannot agree, the price will be determined by the Engineer using:
  - a. Unit prices; or
  - b. Other means to establish costs.

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed as referred to in Section 1-09.6, and
2. To the extent that delay or failure of performance was concurrently caused by the Contracting Agency and the Contractor, the Contractor shall be entitled to a time extension for the portion of the delay or failure of performance concurrently caused, provided the Contractor makes such a request pursuant to Section 1-08.8; however, the Contractor shall not be entitled to an adjustment in Contract price.
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed.
4. No claim for consequential damages of any kind will be allowed.

#### **1-09.5 Deleted or Terminated Work**

The Engineer may delete Work by change order as provided in Section 1-04.4 or may terminate the Contract in whole or part as provided in Section 1-08.10(2). When the Contract is terminated in part, the partial termination shall be treated as a deletion change order for payment purposes under this section.

Payment for completed items will be at unit Contract prices.

When an item is deleted in whole or in part by change order or when the Contract is terminated in whole or in part, payment for deleted or terminated Work will be made as follows:

1. Payment will be made for the actual number of units of Work completed at the unit Contract prices unless the Engineer determines the unit prices are inappropriate for the Work actually performed. When that determination is made by the Engineer, payment for Work performed will be as mutually agreed. If the parties cannot agree the Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4;
2. Payment for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4;
3. To the extent not paid for by the Contract prices for the completed units of Work, the Contracting Agency will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Contractor in anticipation of performing the Work that has been deleted or terminated;
4. The total payment for an item in the case of a deletion or partial termination shall not exceed the Bid price as modified by approved change orders less the estimated cost (including overhead and profit) to complete the Work and less amounts paid to the Contractor for the item;
5. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract price as modified by approved change orders less those amounts paid to the Contractor before the effective date of the termination; and
6. No claim for damages of any kind or for loss of anticipated profits on deleted or terminated Work will be allowed because of the termination or change order.

Contract time shall be adjusted as the parties agree. If the parties cannot agree, the Engineer will determine the equitable adjustment for Contract time.

Acceptable materials ordered by the Contractor prior to the date the Work was terminated as provided in Section 1-08.10(2) or deleted as provided in Section 1-04.4 by the Engineer, will either be purchased from the Contractor by the Contracting Agency at the actual cost and shall become the property of the Contracting Agency, or the Contracting Agency will reimburse the Contractor for the actual costs connected with returning these materials to the suppliers.

#### **1-09.6 Force Account**

The terms of the Contract or of a change order may call for Work or material to be paid for by force account. If so, then the objective of this Specification is to reimburse the Contractor for all costs associated with the Work, including costs of labor, small tools, supplies, equipment, specialized services, materials, applicable taxes and overhead and to include a profit commensurate with those costs. The amount to be paid shall be determined as described in this section.

1. **For Labor** – Labor reimbursement calculations shall be based on a “Project Labor List” (List) prepared and submitted by the Contractor and by any subcontractors before Force Account work begins. Once a List is approved by the Engineer, it shall be used to calculate force account labor payment until a new List is submitted and approved. The Engineer may compare the List to payrolls and other documents and may, at any time, require the Contractor to submit a new List. The Contractor may submit a new List at any time without such a requirement. Prior payment calculations shall not be adjusted as a result of a new List.

To be approved, the List must be accurate and meet the requirements of this section. It shall include regular time and overtime rates for all employees (or work

classifications) expected to participate in force account Work. The rates shall include the basic wage and fringe benefits, the current rates for Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and Industrial Insurance premiums and the planned payments for travel and per diem compensation.

In the event that an acceptable initial List or requested revised List is not received by the time that force account calculations are begun, the Engineer will develop a List unilaterally, utilizing the best data available, that will be used until a Contractor's List is received and approved. Again, prior calculations, prepared using the Engineer's List, will not be revised as a result of differences with the Contractor's List.

In addition to compensation for direct labor costs defined above, the Contracting Agency will pay Contractor 29 percent of the sum of the costs calculated for labor reimbursement to cover project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and other costs incurred, except paid sick leave. The Contracting Agency will pay the Contractor an additional 2 percent of the sum of the costs calculated for labor reimbursement to cover the cost of paid sick leave. This amount will include all costs of safety training and health tests, but will not include such costs for unique force account Work that is different from typical Work and which could not have been anticipated at time of Bid.

2. **For Materials** – The Contracting Agency will reimburse invoice cost for materials. For the purpose of this provision, "Materials" shall include those items incorporated into the Work, supplies used during the Work and items consumed. This cost shall include freight and handling charges and applicable taxes. Before Work is started, the Engineer may require the Contractor to obtain multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to the Contracting Agency.

The Contracting Agency will provide a list of the types and quantities of materials witnessed by the Contracting Agency as being utilized in force account Work. The list will be furnished promptly after the material is incorporated, on a daily basis unless agreed otherwise. The Contractor may propose corrections to the list and will supply prices for the materials and other costs and return the list to the Contracting Agency. To support the prices, the Contractor shall attach valid copies of vendor invoices. If invoices are not available for materials from the Contractor's stocks, the Contractor shall certify actual costs by affidavit. The Engineer will review the prices and Contractor-proposed corrections and, if reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by Contractor affidavit, the price appears to be unreasonable, the Engineer will determine the cost for all or part of those materials, utilizing the best data available.

The Contracting Agency reserves the right to provide materials. In this case, the Contractor will receive no payment for additional costs, overhead, or profit arising from the value of the materials themselves. Labor and equipment necessary for handling and placing the Agency furnished material will be compensated as described in this Specification.

In addition to compensation for direct materials cost, the Contracting Agency will pay the Contractor 21 percent of the sum of the costs calculated for materials reimbursement to cover project overhead, general company overhead, profit, bonding, insurance, required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and all other costs incurred.

3. **For Equipment** – The Contracting Agency will reimburse the Contractor for the cost of equipment utilized in the Work. The equipment provided by the Contractor shall be of modern design and in good working condition. For the purpose of this provision, "provided" shall mean that the equipment is owned (either through outright ownership or through a long-term lease) and operated by the Contractor or subcontractor or that the equipment is rented and operated by the Contractor or subcontractor.

The amount of payment for Contractor-owned equipment that is utilized shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates listed in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the Work. Before Work is started, the Engineer may require the Contractor to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to the Contracting Agency. In the event that prior quotations are not obtained and the vendor is not a firm independent from the Contractor or subcontractor, then after-the-fact quotations may be obtained by the Engineer from the open market in the vicinity and the lowest such quotation may be used in place of submitted invoice.

In addition to the payments for Contractor-owned and rented equipment, one or more lump-sum payments may be made for small tools. The amount to be paid shall be determined as outlined in the AGC/WSDOT Equipment Rental Agreement.

The Contracting Agency will add 21 percent to equipment costs to cover project overhead, general company overhead, profit, bonding, insurance, required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and all other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for equipment overhead amounts included in the Blue Book rates.

Copies of the AGC/WSDOT Equipment Rental Agreement will be maintained on the Contracting Agency's website at <https://wsdot.wa.gov/publications/fulltext/construction/equipment-rental-agreement.pdf>.

4. **For Services** – Compensation under force account for specialized services shall be made based on an invoice from the providing entity. Before Work is started, the Engineer may require the Contractor to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to the Contracting Agency. If prior quotations are not obtained, and the service invoice is submitted by a subcontractor, then after-the-fact quotations may be obtained by the Engineer from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice. The following activities will be considered services and shall be compensated based on an invoice from the entity:
- a. Biohazard abatement services
  - b. Camera Inspection services for Sewer/Storm Sewer
  - c. Commissioning services including manufacturing startup services
  - d. Contaminated water and soil disposal fees including lab analysis
  - e. Geotechnical Engineering services
  - f. Laboratory Testing
  - g. Professional Engineering services

- h. Sanitation Services such as trash or restroom services
- i. Saw cutting
- j. Security or Surveillance services
- k. Surveying including aerial surveying
- l. Vacuum Truck
- m. Water Truck
- n. Well Decommissioning

The Contracting Agency will pay the Contractor an additional 21 percent of the sum of the costs included on invoices for services to cover project overhead, general company overhead, profit, bonding, insurance, required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and all other costs incurred.

5. **For Mobilization** – Force account mobilization is defined as the preparatory Work performed by the Contractor including procurement, loading and transportation of tools and equipment, and personal travel time (when such travel time is a contractual obligation of the Contractor or a customary payment for the Contractor to all employees). Mobilization also includes the costs incurred during demobilization. Pro-rata adjustments may be made when the mobilization applies to both force account and other Contract Work. The Contracting Agency will pay for mobilization for off-site preparatory Work for force account items provided that notice has been provided sufficiently in advance to allow the Engineer to witness the activity, if desired.

All costs experienced during mobilization activities for labor, equipment, materials or services shall be listed in those sections of the force account summary and paid accordingly.

6. **For Markup on Subcontractor's Work** – When Work is performed on a force account basis by an approved subcontractor, the Contractor will be allowed a markup, from the table below, applied to the costs computed for Work done by each subcontractor through Subsections 1, 2, and 3, to compensate for all administrative costs, including project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and all other costs incurred.

Work performed by each subcontractor on each force account and calculated through Subsections 1-3 will be marked up at the following percentages:		
On amounts up to and including	\$50,000	12 percent
On amounts between	\$50,000 and \$200,000	10 percent
On amounts greater than or equal to	\$200,000	7 percent

The amounts and markup rates shall be calculated separately for each subcontractor on each force account item established.

The payments provided above shall be full payment for all Work done on a force account basis. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and all others incurred on the Work being paid through force account. Nothing in this provision shall preclude the Contractor from seeking an extension of time or time-related damages to unchanged Work arising as a result of the force account Work. The amount and costs of all Work to be paid by force account shall be computed by the Engineer, and the result shall be final as provided in Section 1-05.1.

An item that has been Bid at a unit price or lump sum in the Proposal will not be paid as force account unless:

1. A change as defined in Section 1-04.4 has occurred and the provisions require a payment adjustment.
2. A Contract item paid by force account requires Work that is normally included in a lump sum Contract item. In such a case, the Work normally included in a lump sum Contract item will be paid by force account under the force account Contract item.

Items that are included in the Proposal as Force Account or that are added by change order as Force Account may, by agreement of the parties at any time, be converted to agreed unit prices or lump sums applicable to the remaining Work.

#### **1-09.7 Mobilization**

Mobilization consists of preconstruction expenses and the costs of preparatory Work and operations performed by the Contractor typically occurring before 10 percent of the total original Contract amount is earned from other Contract items. Items which are not to be included in the item of Mobilization include but are not limited to:

1. Portions of the Work covered by the specific Contract item or incidental Work which is to be included in a Contract item or items.
2. Profit, interest on borrowed money, overhead, or management costs.
3. Costs incurred for mobilizing equipment to perform force account Work.

Payment will be by lump sum as "Mobilization".

Based on the lump sum Contract price for "Mobilization", partial payments will be made as follows:

1. When 5 percent of the total original Contract amount is earned from other Contract items, excluding amounts paid for materials on hand, 50 percent of the amount Bid for mobilization, or 5 percent of the total original Contract amount, whichever is the least, will be paid.
2. When 10 percent of the total original Contract amount is earned from other Contract items, excluding amounts paid for materials on hand, 100 percent of the amount Bid for mobilization, or 10 percent of the total original Contract amount, whichever is the least, will be paid.
3. When the Substantial Completion Date has been established for the project, payment for mobilization in excess of 10 percent of the total original Contract amount, if any, will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

#### **1-09.8 Payment for Material on Hand**

The Contracting Agency may reimburse the Contractor for materials purchased before their use in the Work if they:

1. Meet the requirements of the Plans and Specifications;
2. Are delivered to or stockpiled near the project or other Engineer-approved storage sites; and
3. Consist of: sand, gravel, surfacing materials, aggregates, reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the project, prestressed concrete beams or girders, or other materials the Engineer may approve.

The Contracting Agency may reimburse the Contractor for traffic signal controllers as follows:

1. Fifty percent when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory.
2. One hundred percent when the traffic signal controller is approved for shipment to the project by the State Materials Laboratory.

The Contractor shall provide sufficient written evidence of production costs to enable the Engineer to compute the cost of Contractor-produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Contractor shall provide invoices from material suppliers. Each invoice shall be detailed sufficiently to enable the Engineer to determine the actual costs. Payment for materials on hand shall not exceed the total Contract cost for the Contract item.

If payment for material on hand is based upon an unpaid invoice, the Contractor shall provide the Engineer with a paid invoice within 60 calendar days after the Contracting Agency's payment. If the paid invoice is not furnished within this time, the payment amount will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

The Contracting Agency will not pay for material on hand when the invoice cost is less than \$2,000. As materials are used in the Work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Materials will be rejected if found to be defective, even if partial payment for it has been made.

#### **1-09.9 Payments**

The basis of payment will be the actual quantities of Work performed according to the Contract and as specified for payment.

The Contractor shall submit a breakdown of the cost of lump sum Items to enable the Engineer to determine the Work performed on a monthly basis. Lump sum item breakdowns shall be submitted prior to the first progress payment that includes payment for the Bid Item in question. A breakdown is not required for lump sum Items that include a basis for incremental payments as part of the respective Specification. Absent a lump sum breakdown, the Engineer will make a determination based on information available. The Engineer's determination of the cost of Work shall be final.

Payments will be made for Work and labor performed and materials furnished under the Contract according to the price in the Proposal unless otherwise provided.

Partial payments will be made once each month, based upon partial estimates prepared by the Engineer. The determination of payments under the Contract will be final in accordance with Section 1-05.1. Unless otherwise provided, payments will be made from the Motor Vehicle Fund.

Failure to perform obligations of the Contract may be decreed by the Contracting Agency to be adequate reason for withholding payments until compliance is achieved.

The Contractor shall sign electronically using the software provided by the Contracting Agency and return the Final Contract Voucher Certification (FCVC) as indicated in this section. Within 21 days of execution, the Contractor shall submit a Type 1 Working Drawing designating who will sign the FCVC, including their full name, email address, and text-message capable phone number. The designee shall be an authorized signer in accordance with Section 1-02.1.

Upon completion of all Work and after final inspection (Section 1-05.11), the amount due the Contractor under the Contract will be paid based upon the final estimate made by the Engineer and presentation of a Final Contract Voucher Certification to be signed by the Contractor. The Contractor's signature on such voucher shall be deemed a

release of all claims of the Contractor unless a Certified Claim is filed in accordance with the requirements of Section 1-09.11 and is expressly excepted from the Contractor's certification on the Final Contract Voucher Certification. The date the Secretary signs the Final Contract Voucher Certification constitutes the final acceptance date (Section 1-05.12).

If the Contractor fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or other documentation required for completion and final acceptance of the Contract, the Contracting Agency reserves the right to establish a Completion Date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral final acceptance will occur only after the Contractor has been provided the opportunity, by written request from the Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral final acceptance will be provided by email with delivery confirmation from the Secretary to the Contractor, which will provide 30-calendar days for the Contractor to submit the necessary documents. The 30-calendar day period will begin on the date the email with delivery confirmation is received by the Contractor. The date the Secretary unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the final acceptance date (Section 1-05.12). The reservation by the Contracting Agency to unilaterally accept the Contract will apply to Contracts that are Physically Completed in accordance with Section 1-08.5, or for Contracts that are terminated in accordance with Section 1-08.10. Unilateral final acceptance of the Contract by the Contracting Agency does not in any way relieve the Contractor of their responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Contractor of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

#### **1-09.9(1) Retainage**

Pursuant to RCW 60.28, a sum of 5 percent of the monies earned by the Contractor will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to the Contracting Agency with respect to taxes imposed pursuant to Title 82 RCW, and (2) the claims of any person arising under the Contract.

Monies retained under the provisions of RCW 60.28 shall, at the option of the Contractor, be:

1. Retained in a fund by the Contracting Agency; or
2. Deposited by the Contracting Agency in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Contractor). Deposits are to be in the name of the Contracting Agency and are not to be allowed to be withdrawn without the Contracting Agency's written authorization. The Contracting Agency will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Contractor as the interest accrues.

At the time the Contract is executed the Contractor shall designate the option desired. The Contractor in choosing option (2) agrees to assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. The Contracting Agency may also, at its option, accept a bond in lieu of retainage.

Release of the retainage will be made 60 days following the Completion Date (pursuant to RCW 39.12, and RCW 60.28) provided the following conditions are met:

1. On Contracts totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Contractor and all subcontractors are on file with the Contracting Agency (RCW 39.12.040).
3. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
4. Washington State Department of Labor and Industries (in accordance with Section 1-07.10) shows the Contractor is current with payments of industrial insurance and medical aid premiums.
5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3, and 4 are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the Contracting Agency sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

#### **1-09.10 Vacant**

#### **1-09.11 Disputes and Claims**

##### **1-09.11(1) Vacant**

##### **1-09.11(2) Claims**

If the Contractor claims that additional payment is due and the Contractor has pursued and exhausted all the means provided in Sections 1-04.5 and 1-04.5(1) to resolve a dispute, including the use of a Disputes Review Board if one was established, the Contractor may file a claim as provided in this section. If either the Contracting Agency or the Contractor does not accept the Dispute Review Board recommendation pursuant to Section 1-04.5(1), the Contractor shall submit to the Engineer a written notification of intent to file a Certified Claim, within 14 calendar days of the acceptance of Board recommendation. If a Dispute Review Board was not utilized, the Contractor shall submit to the Engineer written notification of intent to file a Certified Claim within 14 calendar days from the issuance of the Engineer's determination on merit of the protest pursuant to Section 1-04.5. The Contractor agrees to waive all claims for additional payment if the written notifications provided in Section 1-04.5 are not given, or if the Engineer is not afforded access by the Contractor to complete records of actual cost and additional time incurred as required by Section 1-04.5, or if a claim is not filed as provided in this section. The fact that the Contractor has provided a proper notification, provided a properly filed claim, or provided the Engineer access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the Certified Claim.

All Certified Claims filed by the Contractor shall be in writing and in sufficient detail to enable the Engineer to ascertain the basis and amount of the claim. All claims shall be submitted to the Engineer as provided in Section 1-05.15. As a minimum, the following information must accompany each claim submitted:

1. A detailed factual statement of the claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the claim.
2. The date on which facts arose that gave rise to the claim.
3. The name of each Contracting Agency individual, official, or employee involved in or knowledgeable about the claim.

4. The specific provisions of the Contract that support the claim and a statement of the reasons why such provisions support the claim.
5. If the claim relates to a decision of the Engineer that the Contract leaves to the Engineer's discretion or the Contract provides that the Engineer's decision is final, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Engineer.
6. The identification of documents and the substance of oral communications that support the claim.
7. Copies of any identified documents, other than Contracting Agency documents and documents previously furnished to the Contracting Agency by the Contractor, that support the claim (manuals that are standard to the industry, used by the Contractor, may be included by reference).
8. If an extension of time is sought:
  - a. The specific days and dates for which it is sought,
  - b. The specific reasons the Contractor believes a time extension should be granted,
  - c. The specific provisions of Section 1-08.8 under which it is sought, and
  - d. The Contractor's analysis of its progress schedule to demonstrate the reason for a time extension.
9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
  - a. Labor;
  - b. Materials;
  - c. Direct equipment. The actual cost for each piece of equipment for which a claim is made or in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement that was in effect when the Work was performed. In no case shall the amounts claimed for each piece of equipment exceed the rates established by that Equipment Rental Agreement even if the actual cost for such equipment is higher. The Contracting Agency may audit the Contractor's cost records as provided in Section 1-09.12 to determine actual equipment cost. The following information shall be provided for each piece of equipment:
    - (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 "G", Tractor Crawler ROPS & Dozer Included Diesel);
    - (2) The hours of use or standby; and
    - (3) The specific day and dates of use or standby;
  - d. Job overhead;
  - e. Overhead (general and administrative);
  - f. Subcontractor's claims (in the same level of detail as specified herein is required for subcontractor's claims); and
  - g. Other categories as specified by the Contractor or the Contracting Agency.

10. A notarized statement shall be submitted to the Engineer containing the following language:

Under the penalty of law for perjury or falsification, the undersigned,

\_\_\_\_\_, \_\_\_\_\_  
(name) (title)

of \_\_\_\_\_  
(company)

hereby certifies that the claim for extra compensation and time, if any, made herein for Work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties.

Dated \_\_\_\_\_/s/\_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_

If the Certified Claim, after consideration by the Engineer, is found to have merit, the Engineer will make an equitable adjustment either in the amount of costs to be paid in accordance with Section 1-09.4 or in the time required for the Work, in accordance with Section 1-08.8 or both. If the Engineer finds the Certified Claim to be without merit, no adjustment will be made. If the Contractor does not accept the Engineer's determination as to its Certified Claim, then the Contractor shall pursue its remedies in accordance with Section 1-09.13.

It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred for an alleged claim. The Contractor shall permit the Engineer to have access to those records and all other records as may be required by the Engineer to determine the facts or contentions involved in the claim. The Contractor shall retain those records for a period of not less than three years after final acceptance.

The Contractor shall pursue administrative resolution of a claim with the Engineer or the designee of the Engineer.

When the Contractor fails to submit such Certified Claim information and details as described in this Section with the Final Contract Voucher Certification or prior to the Contracting Agency's unilateral final acceptance, all claims, including Certified Claims shall be waived as provided in Section 1-09.9.

Provided that the Contractor is in full compliance with all the provisions of this section and after the formal Certified Claim document has been submitted, the Contracting Agency will respond, in writing, to the Contractor as follows:

1. Within 45 calendar days from the date the claim is received by the Contracting Agency if the claim amount is less than \$200,000;
2. Within 90 calendar days from the date the claim is received by the Contracting Agency if the claim amount is equal to or greater than \$200,000; or

3. If the above time restraints are insufficient due to the complexity of the claim under consideration, the Contractor will be notified within 14 calendar days from the date the claim is received by the Contracting Agency as to the amount of time that will be necessary for the Contracting Agency to prepare its response.

Full compliance by the Contractor with the provisions of this section is a contractual condition precedent to the Contractor's right to seek judicial relief.

#### **1-09.11(3) Time Limitation and Jurisdiction**

For the convenience of the parties to the Contract it is mutually agreed by the parties that all claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be brought within 180 calendar days from the date of final acceptance (Section 1-05.12) of the Contract by the Contracting Agency; and it is further agreed that all such claims or causes of action shall be brought only in the Superior Court of Thurston County unless otherwise agreed in writing by the parties. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to all such claims or causes of action. It is further mutually agreed by the parties that when claims or causes of action which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency or initiated in court, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

#### **1-09.12 Audits**

##### **1-09.12(1) General**

The Contractor's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of the Contracting Agency during the life of the Contract and for a period of not less than 3 years after the date of final acceptance of the Contract. The Contractor shall retain these records for that period. The Contractor shall also guarantee that the wage, payroll, and cost records of all subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of the Contracting Agency or by an auditor under contract with the Contracting Agency. The Contractor and subcontractors shall provide adequate facilities, acceptable to the Engineer, for the audit during normal business hours. The Contractor and subcontractors shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced more than 60 calendar days after the final acceptance date of the Contract, the Contractor will be given 20 calendar days' notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

##### **1-09.12(2) Audits - Claims**

All Certified Claims filed against the Contracting Agency shall be subject to audit at any time following the filing of the claim. Failure of the Contractor or subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Contractor or subcontractors shall constitute a waiver of a claim and shall bar recovery thereunder.

##### **1-09.12(3) Required Documents for Audits**

As a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports.
2. Collective Bargaining Agreements.
3. Insurance, welfare, and benefits records.

4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records.
10. Invoices for vendors, rental agencies and subcontractors.
11. Contracts between the Contractor and each of its first-tier subcontractors. All lower-tier subcontractor contracts, and supplier contracts.
12. Subcontractors' payment certificates.
13. Canceled checks (payroll and vendors).
14. Job cost reports, including monthly totals.
15. Job payroll ledger.
16. General ledger.
17. Cash disbursements journal.
18. Financial statements for all years reflecting the operations on this Contract. In addition, the Contracting Agency may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 3 years following final acceptance of the Contract.
19. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others.
20. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
21. All documents, including those to support the amount of damages for each claim.
22. Worksheets or software used to prepare claims for establishing the following:
  - a. Cost components for items
  - b. Cost of labor
  - c. Cost of benefits and insurance
  - d. Cost of materials
  - e. Cost of equipment
  - f. Subcontractor's costs
  - g. Analysis of time periods
  - h. Tabulation of individuals involved, and hours worked
  - i. Wage rates for the individuals
23. Worksheets, software, and all other documents used by the Contractor to prepare its Bid.

An audit may be performed by employees of the Contracting Agency or a representative of the Contracting Agency. The Contractor and its subcontractors shall provide adequate facilities acceptable to the Contracting Agency for the audit during normal business hours. The Contractor and all subcontractors shall cooperate with the Contracting Agency's auditors.

**1-09.13 Claims Resolution****1-09.13(1) Conditions Precedent to Binding Arbitration or Litigation****1-09.13(1)A General**

Prior to seeking claims resolution through arbitration or litigation, the Contractor shall proceed in accordance with Sections 1-04.5 and 1-09.11. The provisions of Sections 1-04.5 and 1-09.11 must be complied with in full as a condition precedent to the Contractor's right to seek claim resolution through binding arbitration or litigation.

Any claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be resolved, as prescribed herein, through binding arbitration or litigation.

The Contractor and the Contracting Agency mutually agree that those claims or causes of action which total \$1,000,000 or less, which are not resolved by mediation, shall be resolved through mandatory and binding arbitration as described herein, subject to the limitations described in Section 1-09.13(3)C.

The Contractor and the Contracting Agency mutually agree that those claims or causes of action in excess of \$1,000,000, which are not resolved by mediation, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

**1-09.13(1)B Time Limitation**

For the convenience of the parties to the Contract, it is mutually agreed by the parties that any arbitration or litigation shall be initiated within 180 calendar days from the "acceptance date" described in Section 1-05.12, Final Acceptance. Arbitration shall be deemed to be initiated on the date the Contractor has successfully completed the requirements of Section 1-09.13(3)B, Procedure to Initiate Arbitration. Litigation shall be deemed to be initiated on the date the Contractor files a cause of action with the Thurston County Superior Court, or such other Superior Court as mutually agreed to in writing by the parties. The parties understand and agree that the Contractor's failure to initiate arbitration or initiate litigation within the time period provided shall be a complete bar to any such claims or causes of action.

**1-09.13(2) Mediation**

After the Contracting Agency has been given the time and opportunity to respond to the Contractor as provided in Section 1-09.11(2), mediation may be used upon mutual agreement of the Contractor and the Contracting Agency. When parties mutually agree to use mediation, the following conditions apply:

1. The cost of the mediation shall be shared equally by both parties with each party bearing its own preparation costs.
2. The mediation shall be conducted within the State of Washington at a time and place mutually agreeable.
3. The Contractor agrees that the participation in a mediation does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 calendar days of final acceptance of the Contract, the same as other claims or causes of action as provided in Section 1-09.11(3).

**1-09.13(3) Arbitration****1-09.13(3)A Arbitration General**

Arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. For Certified Claims with an amount less than or equal to \$250,000 the current version of the Construction Industry Arbitration Rules and Mediation Procedures *Fast Track Procedures* shall be used.
2. For Certified Claims with an amount greater than \$250,000 and less than or equal to a \$1,000,000, the current version of the Construction Industry Arbitration Rules and Mediation Procedures *Regular Track Procedures* shall be used subject to the limitation in Section 1-09.13(3)C.

Certain aspects of the arbitration may be held by video conference if agreed by the parties and the arbitrator. If aspects of the arbitration require the parties to be at the same physical location, the locale shall be as agreed by the parties and the arbitrator, but in any case, within the state of Washington. If the parties and the arbitrator are unable to agree, the locale shall be in which the Contracting Agency's headquarters is located.

The Contracting Agency and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County or such other Superior Court as mutually agreed to in writing by the parties. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

**1-09.13(3)B Procedure to Initiate Arbitration**

The Contractor shall file a demand with the AAA in accordance with item (a) "Filing a Demand", of Section R-4 "Filing Requirements Under Arbitration Agreement in a Contract", of The Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association, amended effective July 1, 2015. The fee schedule used shall be the fee schedule effective on the date of filing. The Contractor shall notify the Engineer, in writing, that a demand has been filed with the AAA.

**1-09.13(3)C Limitations on Arbitration Related to Physical Completion**

Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion of the project, provided the Contractor certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless the Contracting Agency and the Contractor agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from a Contract must be brought in a single arbitration hearing and only after Physical Completion of the Contract. The total of those unresolved claims cannot be greater than \$1,000,000 to be eligible for arbitration.

**1-09.13(4) Venue for Litigation**

Litigation shall be brought in the Superior Court of Thurston County or such other Superior Court as mutually agreed to in writing by the parties. It is mutually agreed by the parties that when litigation occurs, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

**1-10 Temporary Traffic Control****1-10.1 General**

Temporary traffic control refers to the control of all types of traffic, including vehicles, bicyclists, and pedestrians (including pedestrians with disabilities). The Contractor, utilizing contractor labor and contractor-provided equipment and materials (except when such labor, equipment, or materials are to be provided by the Contracting Agency as specifically identified herein), shall plan, manage, supervise, and perform all temporary traffic control activities needed to support the Work of the Contract.

**1-10.1(1) Materials**

Materials shall meet the requirements of the following Sections:

Traffic Control Materials

9-35

**1-10.1(2) Description**

Unless otherwise permitted by the Contract or approved by the Engineer, the Contractor shall keep all existing pedestrian routes and access points (including sidewalks, paths, crosswalks, and detectable warning surfaces) open and clear at all times.

The Contractor shall keep lanes, on-ramps, and off-ramps, open to traffic at all times except when Work requires closures. Ramps shall not be closed on consecutive interchanges at the same time, unless approved by the Engineer. Lanes and ramps shall be closed for the minimum time required to complete the Work. When paving hot mix asphalt, the Contractor may apply water to the pavement to shorten the time required before reopening to traffic.

The Contractor shall provide signs and other traffic control devices not otherwise specified as being furnished by the Contracting Agency. The Contractor shall erect and maintain all construction signs, warning signs, detour signs, and other traffic control devices necessary to warn and protect the public at all times from injury or damage as a result of the Contractor's operations, which may occur on or adjacent to Highways, roads, streets, sidewalks, or paths. No Work shall be done on or adjacent to any Traveled Way until all necessary signs and traffic control devices are in place.

The traffic control resources and activities described shall be used for the safety of the public, of the Contractor's employees, and of the Contracting Agency's personnel and to facilitate the movement of the traveling public. Traffic control resources and activities may be used for the separation or merging of public and construction traffic when such use is in accordance with a specific traffic control plan.

Upon failure of the Contractor to immediately provide flaggers; erect, maintain, and remove signs; or provide, erect, maintain, and remove other traffic control devices when ordered to do so by the Engineer, the Contracting Agency may, without further notice to the Contractor or the Surety, perform any of the above and deduct all of the costs from the Contractor's payments.

The Contractor shall be responsible for providing adequate labor, sufficient signs, and other traffic control devices, and for performing traffic control procedures needed for the protection of the Work and the public at all times regardless of whether or not the labor, devices or procedures have been ordered by the Engineer, furnished by the Contracting Agency, or paid for by the Contracting Agency.

Wherever possible when performing Contract Work, the Contractor's equipment shall follow normal and legal traffic movements. The Contractor's ingress and egress of the Work area shall be accomplished with as little disruption to traffic as possible. Traffic control devices shall be removed by picking up the devices in a reverse sequence to that used for installation. This may require moving backwards through the work zone. When located behind barrier or at other locations shown on the traffic control plans, equipment may operate in a direction opposite to adjacent traffic.

The Contractor is advised that the Contracting Agency may have entered into operating agreements with one or more law enforcement organizations for cooperative activities. Under such agreements, at the sole discretion of the Contracting Agency, law enforcement personnel may enter the work zone for enforcement purposes and may participate in the Contractor's traffic control activities. The responsibility under the Contract for all traffic control resides with the Contractor and any such participation by law enforcement personnel in Contractor traffic control activities will be referenced in the Special Provisions or will be preceded by an agreement and, if appropriate, a cost adjustment. Nothing in this Contract is intended to create an entitlement, on the part of the Contractor, to the services or participation of the law enforcement organization.

## **1-10.2 Traffic Control Management**

### **1-10.2(1) General**

It is the Contractor's responsibility to plan, conduct, and safely perform the Work. The Contractor shall manage temporary traffic control with his or her own staff. Traffic control management responsibilities shall be formally assigned to one or more company supervisors who are actively involved in the planning and management of field Contract activities. The Contractor shall provide the Engineer with a copy of the formal assignment. The duties of traffic control management may not be subcontracted.

The Contractor shall designate an individual or individuals to perform the duties of the primary Traffic Control Supervisor (TCS). The designation shall also identify an alternate TCS who can assume the duties of the primary TCS in the event of that person's inability to perform. The TCS shall be responsible for safe implementation of traffic control plans provided by the Contractor.

The primary and alternate TCS shall be certified by one of the organizations listed in the Special Provisions. Possession of a current Washington State TCS card and flagging card by the primary and alternate TCS is mandatory. A traffic control management assignment and a TCS designation are required on all projects that will utilize traffic control.

The Contractor shall maintain 24-hour telephone numbers at which the Contractor's assigned traffic control management personnel and the TCS can be contacted and be available upon the Engineer's request at other than normal working hours. These persons shall have the resources, ability and authority to expeditiously correct any deficiency in the traffic control system.

### **1-10.2(1)A Traffic Control Management**

The responsibilities of the Contractor's traffic control management personnel shall include:

1. Overseeing and approving the actions of the Traffic Control Supervisor (TCS) to ensure that proper safety and traffic control measures are implemented and consistent with the specific requirements created by the Contractor's work zones and the Contract. Some form of oversight shall be in place and effective even when the traffic control management personnel are not present at the jobsite.
2. Providing the Contractor's designated TCS with the Contract or Engineer accepted traffic control plans (TCPs) which are compatible with the Work operations and traffic control for which they will be implemented.
3. Discussing proposed traffic control measures and coordinating implementation of the Contractor-accepted traffic control plan(s) with the Engineer.
4. Coordinating all traffic control operations, including those of subcontractors and suppliers, with each other and with any adjacent construction or maintenance operations.

5. Coordinating the project's activities (such as ramp closures, road closures, and lane closures) with appropriate police, fire control agencies, city or county engineering, medical emergency agencies, school districts, and transit companies.
6. Overseeing all requirements of the Contract that contribute to the convenience, safety, and orderly movement of vehicular and pedestrian traffic.
7. Reviewing the TCS's diaries daily and being aware of field traffic control operations.
8. Being present on-site a sufficient amount of time to adequately satisfy the above-listed responsibilities.
9. Have available at all times all applicable standards and specifications as described in Section 1-10.2(3).

Failure to carry out any of the above-listed responsibilities shall be a failure to comply with the Contract and may result in a suspension of Work as described in Section 1-08.6.

#### **1-10.2(1)B Traffic Control Supervisor**

A Traffic Control Supervisor (TCS) shall be present on the project whenever flagging or other traffic control labor is being utilized or less frequently, as authorized by the Engineer.

The TCS shall personally perform all the duties of the TCS. During nonwork periods, the TCS shall be available to the job site within a 45-minute time period after notification by the Engineer.

The TCS's duties shall include:

1. Having a current set of Contract or Engineer accepted traffic control plans (TCPs), applicable Contract Provisions as provided by the Contractor, the latest adopted edition of the MUTCD, including the [Washington State Modifications to the MUTCD](#), the book *Quality Guidelines for Temporary Work Zone Traffic Control Devices*, the most current edition of the PROWAG, and applicable standards and Specifications.
2. Inspecting traffic control devices and nighttime lighting for proper location, installation, message, cleanliness, and effect on the traveling public. Traffic control devices shall be inspected at least once per hour during working hours except that Class A signs need to be checked once a week and nighttime lighting need to be checked only once a shift. Traffic control devices left in place for 24 hours or more shall also be inspected once during the nonworking hours when they are initially set up (during daylight or darkness, whichever is opposite of the working hours). The TCS shall correct, or arrange to have corrected, any deficiencies noted during these inspections.
3. Preparing a daily traffic control diary on each day that traffic control is performed using WSDOT Form 421-040A and 421-040B, and submitting them to the Engineer no later than the end of the next working day. The Contractor may use alternate forms if approved by the Engineer. Diary entries shall include, but not be limited to:
  - a. Time of day when signs and traffic control devices are installed and removed,
  - b. Location and condition of signs and traffic control devices,
  - c. Revisions to the traffic control plan,
  - d. Lighting utilized at night, and
  - e. Observations of traffic conditions.
4. Making minor revisions to the traffic control plan to accommodate site conditions provided that the original intent of the traffic control plan is maintained, and the revision has the concurrence of both the Contractor and the Engineer.

5. Attending traffic control coordinating meetings or coordination activities as necessary for full understanding and effective performance.
6. Ensuring that all needed traffic control devices and equipment are available and in good working condition prior to the need to install or utilize them.
7. Ensuring that all pedestrian routes or access points, existing or temporary, are kept clear and free of obstructions and that all temporary pedestrian routes or access points are detectable and accessible to persons with disabilities as provided for in the traffic control plans.
8. Have available at all times all applicable standards and specifications as described in Section 1-10.2(3).
9. Other work described in Section 1-10.3(1)A or in Section 1-10.3(1)B, provided that items #1 through #8 are accomplished.

#### **1-10.2(2) Traffic Control Plans**

The traffic control plans appearing in the Contract documents show a method of handling vehicle, bicycle, and pedestrian traffic. All construction signs, flaggers, and other traffic control devices are shown on the traffic control plan(s) except for emergency situations. If the Contractor proposes adding the use of flaggers to a plan, this will constitute a modification requiring acceptance by the Engineer.

When the Contractor's chosen method of performing the Work in the Contract requires some form of temporary traffic control, for vehicles, bicyclists, or pedestrians, the Contractor shall either: (1) submit a Type 1 Working Drawing designating and adopting, in writing, the traffic control plans from the Contract documents that support that method; or (2) submit a Type 2 Working Drawing consisting of the Contractor's plan that modifies, supplements or replaces a plan from the Contract documents. Any Contractor-proposed modification, supplement or replacement shall show the necessary construction signs, flaggers, and other traffic control devices required to support the Work. The Contractor shall be solely responsible for submitting any proposed traffic control plan or modification, obtaining the Engineer's acceptance, and providing copies of the accepted traffic control plans to the Traffic Control Supervisor.

#### **1-10.2(3) Conformance to Established Standards**

Traffic control plans, signs, and all traffic control devices and procedures furnished or provided shall conform to the standards established in the latest WSDOT adopted edition (in accordance with WAC 468-95) of the MUTCD, published by the U.S. Department of Transportation. Flagging shall also be in accordance with WAC 296-155-305 and pedestrian traffic control shall also be in accordance with the Public Rights-of-Way Accessibility Guidelines (PROWAG) [www.access-board.gov/prowag](http://www.access-board.gov/prowag). Judgment of the quality of devices furnished will be based upon Quality Guidelines for Temporary Traffic Control Devices, published by the American Traffic Safety Services Association. Copies of the MUTCD and Quality Guidelines for Temporary Control Devices may be purchased from the American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406-1022.

In addition to the standards of the MUTCD described above, the Contracting Agency enforces crashworthiness requirements for most work zone devices. The AASHTO Manual for Assessing Safety Hardware (MASH) has superseded the National Cooperative Highway Research Project (NCHRP) Report 350 as the established requirements for crash testing. Temporary traffic control devices manufactured after December 31, 2019 shall be compliant with the 2016 edition of the Manual for Assessing Safety Hardware (MASH 16) crash test requirements, as determined by the Contracting Agency, except as follows:

1. In situations where a MASH 16 compliant traffic control device does not exist and there are no available traffic control devices that were manufactured on or before December 31, 2019, then a traffic control device manufactured after December 31, 2019 that is compliant with either NCHRP 350 or the 2009 edition of the Manual for Assessing Safety Hardware (MASH 09) is allowed for use with approval of the Engineer.
2. Temporary traffic control devices that were manufactured on or before December 31, 2019, and were successfully tested to National Cooperative Highway Research Program (NCHRP) Report 350 or MASH 09 may continue to be used on WSDOT projects throughout their normal service life.
3. Small and lightweight channelizing and delineating devices, including cones, tubular markers, flexible delineator posts, and plastic drums, shall meet the requirements of either NCHRP 350, MASH 09, or MASH 16, as determined by the manufacturer of the device.
4. A determination of crashworthiness for acceptance of trailer-mounted devices such as sequential arrow signs, temporary traffic signals, area lighting supports, and portable changeable message signs is currently not required.

The condition of signs and traffic control devices shall be acceptable or marginal as defined in the book *Quality Guidelines for Temporary Traffic Control Devices*, and will be accepted based on a visual inspection by the Engineer. The Engineer's decision on the condition of a sign or traffic control device shall be final. A sign or traffic control device determined to be unacceptable shall be removed from the project and replaced within 12 hours of notification.

### **1-10.3 Traffic Control Labor, Procedures, and Devices**

#### **1-10.3(1) Traffic Control Labor**

The Contractor shall furnish all personnel for flagging, for the execution of all procedures related to temporary traffic control and for the setup, maintenance and removal of all temporary traffic control devices and construction signs necessary to control vehicular, bicycle, and pedestrian traffic during construction operations.

Vests and other high-visibility apparel shall be in conformance with Section 1-07.8.

#### **1-10.3(1)A Flaggers**

Flaggers shall be posted where shown on traffic control plans or where directed by the Engineer. All flaggers shall possess a current flagging card issued by the State of Washington, Oregon, Montana, or Idaho. The flagging card shall be immediately available and shown to the Contracting Agency upon request.

Flagging stations shall be shown on traffic control plans at locations where construction operations require stopping or diverting public traffic. Flagging stations shall be staffed only when flagging is required. This staffing may be continuous or intermittent, depending on the nature of the construction activity. Whenever a flagger is not required to stop or divert traffic, the flagger shall move away from the flagging station to a safer location.

During hours of darkness, flagging stations shall be illuminated in a manner that flaggers can easily be visible and discernable as a flagger from 1000 feet by oncoming motorists.

Flagger station illumination shall meet the requirements of the MUTCD and these Specifications.

The Contractor shall provide portable lighting equipment capable of sufficiently illuminating a flagging station without creating glare for oncoming motorists or for the flagger while meeting the mobility requirements of the operation. The equipment shall be located on the same side of the roadway as the flagger, positioned 5 to 10 feet from the edge of the traveled lane and be aimed at the flagging station.

Flaggers shall be equipped with portable two-way radios, with a range suitable for the project. The radios shall be capable of having direct contact with project management (foremen, superintendents, etc.).

The Contractor shall furnish Stop/Slow paddles conforming to the requirements of Section 9-35.1 for all flagging operations.

#### **1-10.3(1)B Other Traffic Control Labor**

In addition to flagging duties, the Contractor shall provide personnel for all other traffic control procedures required by the construction operations and for the labor to install and remove any traffic control devices shown on traffic control plans. The Work shall consist of operating a pilot vehicle during one-way piloted traffic control, operating a traffic control vehicle or a chase vehicle during a rolling slowdown operation, operating any of the moving traffic control equipment, or adjusting signing during a mobile operation as described in Section 1-10.3(2)D, operating a vehicle or placing/removing traffic control devices required by a traffic control plan or performing preliminary work to prepare for placing and removing these devices, and relocation of any traffic control devices as Work progresses.

#### **1-10.3(2) Traffic Control Procedures**

##### **1-10.3(2)A Alternating One-Lane, Two-Way Traffic Control**

As shown on a traffic control plan or directed by the Engineer, on two-lane roadways, traffic may be placed in a single open lane under the control of flaggers, Automated Flagger Assistance Devices (AFADs), or temporary traffic signals to alternate the direction of traffic.

Side roads will be controlled by flaggers, AFADs, signals or closed. If flaggers and a pilot car are used, driveways and private roads may be controlled by signing informing drivers to wait for a pilot car. Flagger, AFAD or signal stations shall be illuminated at night.

If flaggers are used at an intersection, a flagger is required for each leg of the intersection and each direction of traffic should be reduced to one open lane approaching a flagger.

Contractor vehicles shall not use the open traffic lane except while following the same rules and routes required of the public traffic.

Alternating one-lane, two-way traffic controls shall remain in place until work is completed or the roadway can be opened in a safe operating condition.

##### **1-10.3(2)B Rolling Slowdown**

Rolling slowdown traffic control operations use a rolling blockade of vehicles traveling at slow speeds to create a gap in traffic to enable completion of work activities requiring access across or over all the directional lanes of a roadway. It is critical no traffic gets between the rolling blockade and work area. Rolling slowdown operations are not to be used for routine Work that can be addressed by standard lane or shoulder closure traffic control. When a short-term roadway closure is needed for an infrequent, nonrepetitive Work operation such as a sign bridge removal or utility wire crossing, the Contractor may implement a rolling slowdown on a multilane roadway, as part of an accepted traffic control plan.

The Contractor shall submit Type 2 Working Drawings consisting of a traffic control plan detailing the expected delay time, interchange ramp control, and rolling slowdown distance. A portable changeable message sign shall be placed ahead of the starting point of the traffic control to warn traffic of the slowdown. The sign shall be placed far enough ahead of the Work to avoid any expected backup of vehicles.

A rolling slowdown blockade requires one traffic control vehicle with flashing amber lights for each lane to be slowed, plus a traffic control vehicle to serve as a chase vehicle following traffic ahead of the blockade. These traffic control vehicles shall enter the

roadway and form a moving blockade to reduce traffic speeds and create a clear area ahead of the blockade. When the chase vehicle reaches the work area, work may begin. All on-ramps and entrances to the Roadway between the moving blockade and Work operation shall be temporarily closed with traffic control vehicles and Freeway-to-Freeway on-ramps to be closed with standard traffic control devices. A portable changeable message sign shall be used far enough ahead of the operation to warn of slowed traffic. Communications between the Work operation and the moving blockade vehicles shall establish and adjust the speed of the blockade and closure times needed based on the work progress.

The Contractor shall submit Type 2 Working Drawings consisting of a traffic control plan detailing the calculated location where the traffic control vehicles shall begin the slowdown and the speed at which the moving blockade will travel based on the estimated time needed for closure. The duration of the rolling slowdown operation shall not exceed 15 minutes. The plan will also include the locations of portable changeable message signs, blockade vehicles, chase vehicle and ramp control vehicles needed for the operation.

The location where the traffic control vehicles shall begin the slowdown and the speed at which the moving blockade will be allowed to travel will be calculated to accommodate the estimated time needed for closure. The chase control vehicle shall follow the slowest vehicle ahead of the blockade. When the chase vehicle passes, the Contractor may begin the Work operation. In the event that the Work operation is not completed when the moving blockade reaches the site, all Work except that necessary to clear the Roadway shall cease immediately and the Roadway shall be cleared and reopened as soon as possible.

#### **1-10.3(2)C Lane Closure Setup/Takedown**

Where allowed by the Contract and shown on the traffic control plans or directed by the Engineer, the Contractor shall set up traffic control measures to close one or more lanes of a Freeway or multi-lane roadway 45 mph or higher. When this is to occur, the following sequence shall be followed:

1. If shown on the traffic control plan place portable changeable message sign(s).
2. Advance warning signs are set up on the Shoulder of the Roadway opposite the lane to be closed.
3. Advance warning signs are set up on the same Shoulder as the lane to be closed.
4. A transportable attenuator, with sequential arrow sign in arrow mode, is moved into the lane being closed to protect workers. Only the operator is allowed in the vehicle.
5. Channelization devices and sequential arrow signs are placed to mark the closure taper as shown on the traffic control plan.
6. The transportable attenuator is repositioned within the closed lane, now with sequential arrow sign in caution mode, in advance of workers installing the remaining devices.

If additional lanes are to be closed, this shall be done in sequence with previous lane closures using the same sequence of activities. A transportable attenuator with sequential arrow sign is required during the process of closing each additional lane and is to be replaced with a sequential arrow sign without attenuator after the lane is closed. Each closed lane shall be marked with a separate sequential arrow sign at all times.

Channelization devices shall not be moved by traffic control personnel across an open lane of traffic. If an existing setup or staging of traffic control devices require crossing an open lane of traffic, the traffic control devices shall be taken down completely and then set up in the new configuration.

Traffic control for lane closures shall be removed in the reverse order of its installation.

### 1-10.3(2)D Mobile Operations

Where construction operations are such that the Work is moving down the Roadway continuously or near continuous to the extent that the placement of stationary traffic control devices will not be effective, the Contractor may implement mobile traffic control. Moving traffic control shall always be conducted in the same direction as the adjacent traffic.

Where shown on a traffic control plan or directed by the Engineer, mobile traffic control shall consist of portable equipment, moving with the operation. A portable changeable message sign shall be established in advance of the operation, far enough back to provide warning of both the operation and of any queue of traffic that has formed during the operation. The advance sign shall be continuously moved to stay near the back of the queue at all times. A shadow vehicle with a transportable attenuator and sequential arrow sign shall be positioned and maintain a varying distance ahead of the protective vehicle to provide advance warning and maintain adequate sight distance to approaching traffic. The protective vehicle with transportable attenuator and sequential arrow sign shall be placed at the proper roll-ahead distance upstream of the work area.

### 1-10.3(2)E Patrol and Maintain Traffic Control Measures

At all times, when temporary traffic control measures are in place, the Contractor shall provide for patrolling and maintaining these measures. The Work shall consist of resetting errant devices, assuring visibility of all devices, cleaning and repairing where necessary, providing maintenance for all equipment, including replacing batteries and light bulbs as well as keeping motorized and electronic items functioning, and adjusting the location of devices to respond to actual conditions, such as queue length, unanticipated traffic conflicts and other areas where planned traffic control has proven ineffective.

This Work shall be performed by the Contractor, either by or under the direction of the Traffic Control Supervisor. Personnel, with vehicles if necessary, shall be dispatched so that all traffic control can be reviewed at least once per hour during working hours and at least once during each non-working day.

### 1-10.3(3) Traffic Control Devices

The Contractor shall provide the following traffic control devices as shown on the traffic control plans.

#### 1-10.3(3)A Construction Signs

All construction signs required by traffic control plans, as well as any other appropriate signs directed by the Engineer shall be furnished by the Contractor. The Contractor shall provide the posts or supports and erect and maintain the signs in a clean, neat, and presentable condition until the need for them has ended. Post mounted signs shall be installed as shown in the [Standard Plans](#). When the need for construction signs has ended, the Contractor, upon approval of the Engineer, shall remove all signs, posts, and supports from the project and they shall remain the property of the Contractor.

No passing zones defined by existing pavement markings that will be obliterated by construction operations shall be replaced by "Do Not Pass" and "Pass With Care" signs. The Contractor shall provide, install, and maintain the signs and posts until the passing zones have been reestablished by permanent pavement markings. The signs and posts shall then be removed and become the property of the Contractor when the Contractor is not responsible for pavement markings and when the markings by others is not completed when the project is Physically Completed, the posts and signs shall be left in place and shall become the property of the Contracting Agency.

All signs that conflict with the current traffic configuration or the current sign configuration shall either be removed or completely covered in accordance with Section 8-21.3(3). If coverings are in place for 7 calendar days or less, in lieu of Section 8-21.3(3), the signs may be covered in accordance with the following requirements:

1. Sheeting shall be either ¼-inch plywood or ½-inch thick ABS plastic
2. No damage shall occur to the face of the sign being covered
3. The sheeting shall be non-reflective and black in color with U-brackets attached to hook the sign covering over the top of the conflicting signs
4. A 2 by 2-inch wooden handle or a PVC conduit of 2-inch nominal diameter handle shall be attached to install and remove the sign covering
5. The handle shall be secured to the signpost with a plastic “zip” tie until the sign covering is removed.

Existing speed limit signs shall be covered or removed when temporary reduced speed limit signs are in place in accordance with the traffic control plan and uncovered when the temporary speed limit signs are removed.

Construction signs will be divided into two classes. Class A construction signs are those signs that remain in service throughout the construction or during a major phase of the Work. They are mounted on posts, existing fixed Structures, or substantial supports of a semi-permanent nature. Class A signs will be designated as such on the traffic control plan. “Do Not Pass” and “Pass With Care” signs are classified as Class A construction signs. Sign and support installation for Class A signs shall be in accordance with the Contract Plans or the *Standard Plans*. Class B construction signs are those signs that are placed and removed daily or are used continuously in one location for durations extending up to 7 calendar days and are mounted on portable or temporary mountings with a mounting height of 1 to 5 feet. Class B construction signs located continuously for durations longer than 7 calendar days in any one location shall be approved by the Engineer.

Where it is necessary to add weight to signs for stability, sandbags or other similar ballast may be used, but the top of ballast shall not be more than 4-inches above the Roadway surface and shall not interfere with the breakaway features of the device. The Contractor shall follow the manufacturer’s recommendations for sign ballasting.

Signs, posts, or supports that are lost, stolen, damaged, destroyed, or which the Engineer deems to be unacceptable while their use is required on the project shall be replaced by the Contractor.

### **1-10.3(3)B Sequential Arrow Signs (Arrow Boards)**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, operate and maintain sequential arrow signs. A sequential arrow sign is required for all lane closure tapers on a multilane facility. A separate sequential arrow sign shall be used for each closed lane. The sequential arrow sign shall not be used to laterally shift traffic. When used in the caution mode, the four-corner mode shall be used.

### **1-10.3(3)C Portable Changeable Message Sign**

#### **1-10.3(3)C1 General**

Where shown on a traffic control plan or where ordered by the Engineer, the Contractor shall provide, operate, and maintain a portable changeable message sign (PCMS). A PCMS shall be a full sized PCMS mini portable changeable message sign (mPCMS), or truck-mounted PCMS. mPCMSs are compact version of full-size PCMSs. Truck-mounted PCMSs are permanently affixed to a traffic control vehicle and meant to be mobile.

**1-10.3(3)C2 Lateral Clearance and Delineation**

When feasible, position full sized PCMS or mPCMSs to provide at least 2 feet of lateral clearance from the nearest open lane and transversely delineate with at least 3 channelization devices. For truck-mounted PCMSs, provide 2 feet of lateral clearance when feasible but transverse delineation is not required.

**1-10.3(3)C3 PCMS Removal**

The Contractor shall remove these devices from the work zone clear zone when not in use unless protected by barrier or guardrail.

**1-10.3(3)D Barricades**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, install and maintain barricades. Barricades shall be kept in good repair and shall be removed immediately when, in the opinion of the Engineer, they are no longer functioning as designed.

Where it is necessary to add weight to barricades for stability, sandbags or other similar ballast may be used, but the height shall not be more than 4 inches above the Roadway surface and shall not interfere with the breakaway features of the device. The Contractor shall follow the manufacturer's recommendation for ballasting.

**1-10.3(3)E Traffic Safety Drums**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, install, and maintain traffic safety drums.

Used drums may be utilized, provided all drums used on the project are of essentially the same configuration and the devices conform to Section 1-10.2(3).

The drums shall be designed to resist overturning by means of a weighted lower unit that will separate from the drum when impacted by a vehicle.

Drums shall be regularly maintained to ensure that they are clean and that the drum and reflective material are in good condition. If the Engineer determines that a drum has been damaged beyond usefulness, or provides inadequate reflectivity, a replacement drum shall be furnished.

When the Engineer determines that the drums are no longer required, they shall be removed from the project and shall remain the property of the Contractor.

**1-10.3(3)F Vacant****1-10.3(3)G Traffic Cones and 42-Inch Tall Channelizing Devices**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, install and maintain traffic cones or 42-inch tall channelizing devices. Cones and 42-inch tall channelizing devices shall be kept in good repair and shall be removed immediately when directed by the Engineer. Where wind or moving traffic frequently displaces cones or tall channelizing devices, an effective method of stabilizing them, such as stacking two together at each location, shall be employed, or heavier weighted bases may be necessary.

**1-10.3(3)H Tubular Markers**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, install, and maintain tubular markers. Tubular markers shall be kept in good repair and shall be removed immediately when directed by the Engineer. Tubular markers are secondary devices and are not to be used as substitutes for cones or other delineation devices unless specifically shown on the traffic control plan.

Where the traffic control plan shows pavement-mounted tubular markers, the adhesive used to fasten the base to the pavement shall be suitable for the purpose, as approved by the Engineer. During the removal of pavement-mounted tubular markers, care shall be taken to avoid damage to the existing pavement. Any such damage shall be repaired by the Contractor at no cost to the Contracting Agency.

### **1-10.3(3)I Warning Lights and Flashers**

Where shown on a traffic control plan attached to traffic control devices or ordered by the Engineer, the Contractor shall provide and maintain warning lights. Lights attached to signs or a specific device shall be a Type A or B, flashing. Lights attached to traffic safety drums or 42-inch tall channelization devices shall be Type C, steady-burning. The devices and light unit shall conform to Section 1-10.2(3).

### **1-10.3(3)J Transportable Attenuator**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, operate, and maintain transportable impact attenuators consistent with the requirements of Section 9-35.12. These attenuators shall be available, on-site, for the entire duration of their projected use.

The transportable attenuator shall be positioned to separate and protect construction work zone activities from normal traffic flow.

During use, the attenuator shall be in the full down-and-locked position. For stationary operations, the host vehicle's parking brake shall be set.

A transportable attenuator may be used in lieu of a temporary impact attenuator when approved by the Engineer as part of a stage traffic control shift to protect an object such as blunt barrier end or bridge pier column that is located within the work zone clear zone. This use of a transportable attenuator is restricted to a maximum of 3 days or approved extension by the Engineer.

### **1-10.3(3)K Portable Temporary Traffic Control Signal**

Where shown on a traffic control plan, the Contractor shall provide, operate, maintain, and remove a portable temporary traffic control signal system (PTSS) to provide automatic control of traffic through an intersection or alternating one-lane traffic operations on a two-way facility. A PTSS shall be defined as two or more traffic control units that operate together. The system shall be trailer-mounted, fully self-contained, and designed so that it can be easily transported and deployed at different locations.

The Contractor shall submit a Type 2 Working Drawing consisting of the manufacturer's specifications for the PTSS. A manufacturer's representative is required to demonstrate the capabilities of the PTSS prior to approval and provide training to contractor personnel as necessary.

Remote manual control of the PTSS by the Traffic Control Supervisor (TCS) or a qualified operator may be allowed if necessitated by Work area or traffic conditions and as allowed by the Engineer.

Each PTSS shall provide two signal displays for all road approaches and driveways with existing signalization. Where signal displays are used for driveways between primary PTSS signal displays, only one signal display may be used. Where a PTSS controls a roadway with a through movement, one of the signal displays for that approach shall be overhead. Where a PTSS controls a roadway without a through movement, such as the stem of a tee intersection, the use of an overhead signal display is not required if there is not enough room for the trailer and approved by the Engineer. Maximum distance between signal display trailers shall be 1,500 feet unless otherwise shown on the Plans or ordered by the Engineer in accordance with Section 1-04.4.

The Engineer or designee will inspect the signal system at initial installation/operation and approve the signal timing. Final approval will be based on the results of the operational inspection.

The TCS shall monitor and ensure that the PTSS is fully operational and maintained as specified by the manufacturer. This Work may include cleaning and replacing lamps and other routine maintenance as needed.

In the event repairs or adjustments are required, the Contractor shall respond immediately replacing the PTSS operations with flagger traffic control. Flagger control shall remain in operation until the Roadway can be safely reopened to traffic. PTSS repairs or replacement with a backup unit shall occur within 24 hours.

The Engineer will monitor the traffic, signal operation and order adjustments as needed based on traffic conditions. Timing adjustments require the approval of the Engineer.

As shown on the traffic control plan, temporary stop bars and "STOP HERE ON RED" Signs (R10-6) shall be provided at the location traffic is expected to stop during the red display. The stop bar locations shall be illuminated at night. The illumination shall be the responsibility of the Contractor and shall be adjusted to ensure minimal glare to motorists.

When not in operation, remove signal heads from the view of traffic or cover signal heads with bags made of non-ripping material specifically designed for covering signal heads, including reflective backplates. Do not use trash bags of any type. Remove, cover, fold, or turn all inappropriate signs so that they are not readable by oncoming traffic.

The Contractor shall provide and install all field wiring to make a complete and operational PTSS and shall maintain the system throughout the life of the Contract.

PTSS shall not be installed within 300 feet of an at-grade railroad crossing. PTSS shall not be installed where driveways or Roadway access points are located between the primary signal displays unless the intersecting roadways and driveways are controlled by another PTSS signal as part of the overall PTSS.

#### **1-10.3(3)L Pedestrian Curb Ramps**

Where shown on a traffic control plan, the Contractor shall provide or construct, install, maintain, and remove temporary pedestrian curb ramps. Install or construct temporary curb ramps as shown in the Plans, or according to the manufacturer's recommendations, if applicable. Temporary pedestrian curb ramp dimensions and grades shall comply with the plans. For curb ramps that cross, or are placed adjacent to a gutter line or other drainage Structure, provide an approved means to prevent water from accumulating at the bottom of the ramp or overflowing onto the ramp surface.

#### **1-10.3(3)M Pedestrian Channelizing Devices**

Where shown on a traffic control plan or ordered by the Engineer, the Contractor shall provide, install, and maintain pedestrian channelizing devices.

Pedestrian channelizing devices shall be crashworthy when exposed to vehicular traffic. Devices used to channelize pedestrians shall be detectable to users of long canes and visible to pedestrians with vision disabilities. When used as a sidewalk closure, the device shall cover the entire width of the sidewalk. Pedestrian channelizing devices shall have continuous bottom and top surfaces. The bottom of the bottom portion shall be no higher than 2 inches above the walkway. The top edge of the bottom portion shall measure at least 8 inches above the walkway. The top of the top portion shall be no lower than 32 inches above the walkway. The top surface shall be smooth. Both upper and lower surfaces shall share a common vertical plane.

## 1-10.4 Measurement

### 1-10.4(1) Lump Sum Bid for Project (No Unit Items)

When the Bid Proposal contains the item "Project Temporary Traffic Control", there will be no specific unit of measurement for Work defined by Section 1-10 except as described in Section 1-10.4(3). Also, except as described in Section 1-10.4(3), all of Section 1-10.4(2) is deleted.

### 1-10.4(2) Item Bids With Lump Sum for Incidentals

Flaggers will be measured by the hour. Hours will be measured for each flagging station, shown on a traffic control plan, when that station is staffed in accordance with Section 1-10.3(1)A. When a flagging station is staffed on an intermittent basis, no deduction will be made in measured hours provided that the person staffing the station is in a standby mode and is not performing other duties. Work performed by the TCS will not be measured.

Other traffic control labor will be measured by the hour. Hours will be measured for each person performing the Work described in Section 1-10.3(1)B. Work performed by the TCS will not be measured.

Construction signs, Class A will be measured by the square foot of panel area for each sign designated on a traffic control plan as Class A or for each construction sign installed as ordered by the Engineer and designated as Class A at the time of the order. Class A signs may be used in more than one location and will be measured for each new installation. Class B construction signs will not be measured. Sign posts or supports will not be measured.

Sequential Arrow Sign will be measured by the hour for the time that each sign is operating as shown on a traffic control plan.

Portable Changeable Message Sign will be measured by the hour for the time that each sign is operating as shown on a traffic control plan.

Transportable Attenuator will be measured by the hour for the time that each host vehicle with mounted or attached impact attenuator is in place as shown on a traffic control plan.

Patrol and maintain traffic control measures will be measured by the hour. The hours of one person will be measured for each patrol route that the Contractor performs the Work described under Section 1-10.3(2)E regardless of the actual number of persons per route.

### 1-10.4(3) Reinstating Unit Items With Lump Sum Traffic Control

The Contract Provisions may establish the project as lump sum, in accordance with Section 1-10.4(1) and also include one or more of the items included above in Section 1-10.4(2). When that occurs, the corresponding measurement provision in Section 1-10.4(2) is not deleted and the Work under that item will be measured as specified.

### 1-10.4(4) Owner-Provided Resources

The Contract Provisions may call for specific items of labor, materials, or equipment, noted in Section 1-10 as the responsibility of the Contractor, to be supplied by the Contracting Agency. When this occurs, there will be no adjustment in measurement of unit quantities.

## 1-10.5 Payment

### 1-10.5(1) Lump Sum Bid for Project (No Unit Items)

"Project Temporary Traffic Control", lump sum.

The lump sum Contract payment shall be full compensation for all costs incurred by the Contractor in performing the Contract Work defined in Section 1-10 except for costs compensated by Bid Proposal items inserted through Contract Provisions as described in Section 1-10.5(3).

When the Bid Proposal contains the item "Project Temporary Traffic Control", except as described in Section 1-10.5(3), all of Section 1-10.5(2) is deleted.

#### 1-10.5(2) Item Bids With Lump Sum for Incidentals

Payment will be made for the following Bid items when they are included in the Proposal:

"Traffic Control Supervisor", lump sum.

The lump sum Contract payment shall be full compensation for all costs incurred by the Contractor in performing the Work defined in Section 1-10.2(1)B.

"Pedestrian Traffic Control", lump sum.

The lump sum Contract payment shall be full compensation for all costs incurred by the Contractor in performing the Work for pedestrian traffic control defined in Section 1-10.

"Flaggers", per hour.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all costs incurred by the Contractor in performing the Work defined in Section 1-10.3(1)A.

"Other Traffic Control Labor", per hour.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all labor costs incurred by the Contractor in performing the Work specified for this item in Section 1-10.4(2).

"Construction Signs Class A", per square foot.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all costs incurred by the Contractor in performing the Work described in Section 1-10.3(3)A. In the event that "Do Not Pass" and "Pass With Care" signs must be left in place, a change order, as described in Section 1-04.4, will be required. When the Bid Proposal contains the item "Sign Covering", then covering those signs indicated in the Contract will be measured and paid according to Section 8-21.

"Sequential Arrow Sign", per hour.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all costs incurred by the Contractor in performing the Work described in Section 1-10.3(3)B and for procuring all Sequential Arrow Signs required for the project and for transporting these signs to and from the project.

"Portable Changeable Message Sign", per hour.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all costs incurred by the Contractor in performing the Work described in Section 1-10.3(3)C and for procuring all portable changeable message signs required for the project and for transporting these signs to and from the project.

"Transportable Attenuator", per hour.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all costs incurred by the Contractor in performing the Work described in Section 1-10.3(3)J and for procuring all Transportable Attenuators for the project and for transporting them to and from the project, except for costs compensated separately under the item "Repair Transportable Attenuator".

“Repair Transportable Attenuator”, by force account.

All costs of repairing or replacing transportable attenuators that are damaged by the motoring public while in use as shown on a traffic control plan will be paid for by force account as specified in Section 1-09.6. To provide a common Proposal for all Bidders, the Contracting Agency has estimated the amount of force account for “Repair Transportable Attenuator” and has entered the amount in the Proposal to become a part of the total Bid by the Contractor. Transportable attenuators damaged due to the Contractor’s operation or damaged in any manner when not in use shall be repaired or replaced by the Contractor at no expense to the Contracting Agency.

“Other Temporary Traffic Control Devices”, lump sum.

The lump sum Contract payment shall be full compensation for all costs incurred by the Contractor in performing the Work defined in Section 1-10.3(3), and which costs are not compensated by one of the above-listed items.

“Portable Temporary Traffic Control Signal”, lump sum.

The lump sum Contract payment shall be full compensation for all costs incurred by the Contractor in performing the Work as described in Section 1-10.3(3)K, including all costs for traffic control during manual control, adjustment, malfunction, or failure of the portable traffic control signals and during replacement of failed or malfunctioning signals.

“Patrol and Maintain Traffic Control Measures”, per hour.

The unit Contract price, when applied to the number of units measured for this item in accordance with Section 1-10.4(2), shall be full compensation for all labor costs incurred by the Contractor in performing the Work specified for this item in Section 1-10.4(2).

### **1-10.5(3) Reinstating Unit Items With Lump Sum Traffic Control**

The Bid Proposal may establish the project as lump sum, in accordance with Section 1-10.5(1) and also reinstate the measurement of one or more of the items described in Section 1-10.5(2). When that occurs, the corresponding payment provision in Section 1-10.5(2) is not deleted and the Work under that item will be paid as specified.